Title: Serious Crime Bill - overarching impact assessment **IA No:** **Lead department or agency:** Home Office **Other departments or agencies:** Ministry of Justice	**Impact Assessment (IA)** **Date:** 02/06/2014 – Updated on: 3/11/2014 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Charles Goldie, 020 7035 6773, charles.goldie1@homeoffice.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
N/A	£0m	£0m	No	N/A

What is the problem under consideration? Why is government intervention necessary?

Serious and organised crime is a threat to our national security and costs the UK more than £24 billion per year. The Government's 'Serious and Organised Crime Strategy' was published in October 2013 as a response to this threat. One strand of the Strategy ("Pursue") involves prosecuting and disrupting those engaged in serious and organised crime. The Strategy set out proposals for ensuring that law enforcement agencies have effective powers to this end. Legislation is required to effect the necessary changes in the existing legal framework of such powers. Where appropriate, individual impact assessments have been prepared for the main provisions of the Serious Crime Bill.

What are the policy objectives and the intended effects?

The Bill will contribute to a number of key policy objectives (see Evidence Base on pages 3 and 4 for a full list), including: ensuring that the National Crime Agency and other law enforcement agencies have effective powers to tackle serious and organised crime; increasing the amount of assets seized so as to deny criminals the profits of their crimes; improving the effectiveness of civil orders (the serious crime prevention order and gang injunctions) in preventing serious criminality; ensuring that sentences for attacks on computer systems properly reflect the seriousness of the harm caused; and tackling the illegal drug trade by introducing new powers to search for, seize and forfeit drug-cutting agents.

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

Option 1: Do nothing. Retain current position

Option 2: Introduce the Serious Crime Bill which will strengthen the powers of law enforcement agencies to prosecute and disrupt serious and organised crime.

Option 2 is the preferred option

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 03/2018

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Karen Bradley *Date:* 04 NOV 2014

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

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

Monetised costs for the main provisions are detailed in the individual impact assessments. In summary, the provisions of the Bill impact mainly on the public sector, in particular: the NCA, police forces (in the United Kingdom), local authorities, the Crown Prosecution Service (in England and Wales), the Crown Office and Procurator Fiscal Service (in Scotland), the Public Prosecution Service for Northern Ireland, the courts (in the UK) and prison and probation services (in the UK).

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

A number of public bodies will be required to make administrative changes in relation to the provisions in the Bill. These non-monetarised costs are also detailed in individual impact assessments.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

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

Full details of the key monetarised benefits are detailed in individual impact assessments.

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

The provisions of the Bill have the potential to improve protection of the public. These non-monetarised benefits by the main affected groups are detailed in indivudal impact assessments.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5%

The monetarised and non-monetarised costs and benefits are based on the key assumptions outlined in individual impact assessments which contain a breakdown of the risks and benefits in further detail. The net present value of each provision is presented in Table 1. These have not been totalled because of the different approaches taken to estimate the impact of each policy. A total figure would not accurately represent all the caveats to the individual figures and is likely to be misleading.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	**Benefits:** na	**Net:** na	No	NA

Evidence Base (for summary sheets)

Background and Rationale for Intervention

The Government's National Security Strategy (October 2010) identifies organised crime and, in particular, large scale cyber crime as serious risks to the UK's national security. The Home Secretary's Strategic Policing Requirement identifies organised crime and cyber crime as national threats which chief constables and Police and Crime Commissioners are required to address.

Serious and organised crime includes: trafficking and dealing in drugs, people, weapons and counterfeit goods; sophisticated theft and robbery; fraud and other forms of financial crime; and cyber crime and cyber enabled crime. It also includes child sexual exploitation.

Serious and organised crime can deprive people of their security, prosperity and their life. It can have a corrosi.ve impact on the fabric and cohesion of our communities. Cyber crime can undermine confidence in our communications technology and online economy. Organised immigration crime undermines the security of our border. Financial crime can jeopardise the integrity of financial markets.

The social and economic costs of organised crime in this country are at least £24 billion per year. Organised crime also has a significant human cost, with just under 2000 drug misuse deaths in England and Wales in 2013 (deaths related to drug misuse are those (a) where the underlying cause is drug abuse or drug dependence or (b) where the underlying cause is drug poisoning and where any of the substances controlled under the Misuse of Drugs Act 1971 are involved).

In 2010 the Government made a commitment to develop a new national law enforcement organisation, the National Crime Agency (NCA), to coordinate work against serious and organised crime in this country. The NCA was launched in October 2013. At the same time, the Government published its Serious and Organised Crime Strategy (Cm 8715)[1]. The aim of the strategy is to reduce substantially the level of serious and organised crime affecting the UK and its interests. The strategy has four components: prosecuting and disrupting people engaging in serious and organised crime (Pursue); preventing people from engaging in such activity (Prevent); increasing protection against serious and organised crime (Protect); and reducing the impact of such criminality where it takes place (Prepare). Under the Pursue strand of the strategy, the document set out proposals to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime.

Objectives

The Serious Crime Bill will improve the operation of existing legal powers and create new powers where they are needed. By giving effect to the Strategy, the Bill is intended to:

- Increase the amount of assets seized so as to deny criminals the profits of their crimes;
- Deter people from becoming involved in serious and organised criminal activity;
- Contribute to the relentless disruption of serious and organised crime;
- Ensure that sentences for attacks on computer systems properly reflect the seriousness of the harm caused;
- Tackle the illegal drug trade.

The provisions in the Bill will bring the following additional benefits:

- Strengthen the protection of children and women from abuse;
- Combat the possession of knives or other offensive weapons in prison; and
- Enhance our ability to deal with the threat posed to our domestic security by returning UK nationals and residents who have travelled to Syria to take part in the conflict in that country.

[1] http://www.official-documents.gov.uk/document/cm87/8715/8715.pdf

Proposed Measures

This overarching impact assessment has been developed to provide an overview of the main provisions of the Bill. The Bill will achieve the above objectives through:

- Strengthening the operation of the asset recovery process by closing loopholes in the Proceeds of Crime Act 2002;

- Amending the Computer Misuse Act 1990 to give full effect to the EU Directive on attacks against information systems (2013/40/EU) and to provide for a new aggravated offence where an attack on a computer system causes severe damage to human welfare, the environment, the economy or national security;

- Improving the effectiveness of serious crime prevention orders and gang injunctions;

- Creating a new offence to better tackle people who actively support, and benefit from, participating in organised crime;

- Creating new powers to seize, detain and destroy chemical substances suspected of being used as cutting agents for illegal drugs;

- Updating the offence of child cruelty in section 1 of the Children and Young Persons Act 1933, including by making it explicit that it covers psychological abuse;

- Creating a new offence of possession of “paedophile manuals”;

- Strengthening the legislative response to Female Genital Mutilation (FGM) by: Extending the extra-territorial reach of the law by enabling persons habitually resident in the UK who commit an offence overseas under the Female Genital Mutilation Act 2003 to be prosecuted in this country; introducing a new offence of failing to protect a girl from risk of FGM; granting lifelong anonymity to victims; and bringing in a civil order to protect potential victims;

- Creating a new offence of the unauthorised possession of knives and offensive weapons in prisons;

- Extending the extra-territorial reach of the law by enabling UK nationals and residents who commit acts preparatory to terrorism or engage in terrorist training overseas to be prosecuted in the UK.

Other Impact Assessments

For the main provisions, the rationale, problem under consideration, policy objectives and options have been considered in individual impact assessments. Nine such assessments have been published alongside the Bill for the following areas:

- Amendments to the Proceeds of Crime Act 2002 (Part 1 of the Bill);
- Amendments to the Computer Misuse Act 1990 to give full effect to the EU Directive on attacks against information systems (Part 2);
- Amendments to the Computer Misuse Act 1990 to provide for a new aggravated offence of impairing a computer (Part 2);
- New offence of participating in organised crime (Part 3);
- Improvements to the Serious Crime Prevention Order (Part 3);
- Amendments to Part 4 of the Policing and Crime Act 2009 (Injunctions: gang-related violence)(Part 3);
- New powers to allow law enforcement agencies to seize, detain and destroy drug-cutting agents (Part 4);
- New offence of the unauthorised possession of knives and other offensive weapons within the prison estate (Part 6);
- Amendment to the Terrorism Act 2006 to provide for the UK courts to have extra-territorial jurisdiction in respect of the offence of preparing to commit, or assist others to commit, acts of terrorism or training for terrorism (Part 6).

The net present values or costs from these individual impact assessments are presented in Table 1. In some cases these may have been updated to reflect latest available figures, so may not entirely replicate the previously published figures. A total net present value for the Bill as a whole has not been calculated as there are a number of caveats to the costs and benefits presented below which could not be reflected in an overall figure for the Bill.

Table 1: Costs and benefits of policies in the Serious Crime Bill

Policy	**Net Present Cost (millions)**	**Net Present Benefit (millions)**	**Net Present Value (millions)[2]**	**Non-monetised costs**	**Non-monetised benefits**
Amendments to Proceeds of Crime Act 2002	17.8	N/A	N/A	Time cost to Financial Investigation Units, who need to learn the new procedures.	Disruption of organised crime groups. Potential to discourage participation in organised crime.
New offence of impairing a computer that results in serious damage to the economy, the environment, national security or human welfare.	0.5	N/A	N/A	N/A	Potential deterrence benefits. Potential increase in public confidence.
Amendments to Computer Misuse Act 1990 to implement EU Directive: -Obtain for use offence -Extension of extra-territorial jurisdiction by nationality.	Negligible	N/A	N/A	Prosecution costs to Her Majesty's Courts and Tribunals Services, the CPS, the Legal Aid Services and HM Prison & Probation Services. Note: the increase in prosecutions is expected to be negligible.	Police intervention before an attack has taken place. Extra-territorial jurisdiction cover. Clear EU and UK legislation to punish past offenders who previously escaped justice.
New offence of participation in the activities of an organised crime group	57	N/A	N/A	N/A	Targets those currently evading prosecution. Discourages participation of minor criminal players in organised crime groups.
Changes to Serious Crime Prevention Orders	1.31	N/A	N/A	N/A	Easier for courts to prevent continued involvement in serious crime. Easier to prevent serious crime.

[2] All costs and benefits are over 10 years, discounted at 3.5%

					Encourages greater use of financial reporting requirements.
Changes to Gang Injunctions	9.9	0.0017	-9.9	Commissioning interventions costs to local authorities.	Reduction in gang related violence and drug activity, and a consequent reduction in social harm. Increased public confidence. Prevention of more serious offending.
Power to seize and forfeit drug-cutting agents	0.6	9.0	8.4	Compensation for legitimate traders whose goods are detained but no forfeiture order is subsequently made.	N/A
Updating the law on Child Cruelty	N/A	N/A	N/A	Greater clarity in the law might lead to an increase in the number of prosecutions. An additional prosecution is estimated to cost the Criminal Justice System up to around £15,000 per year.	Greater clarity in the law. Offences are punished through the CJS.
Possession of "paedophile manuals"	N/A	N/A	N/A	Cost impact is expected to be minimal. The average estimated costs per case to the CJS could be up to £11,000.	Supports the removal of "paedophilic" material from circulation Helps to protect children from sexual abuse.
FGM: Amendment to ETJ – Clause 67	N/A	N/A	N/A	Costs to the CJS estimated at up to £150,000[3] per case. The estimated annual cost to the CJS would be around £300,000 in the steady state.	Increases the likelihood of prosecutions for FGM. Sends a strong message to practising communities. Could benefit potential victims.

[3] In 2013/14 prices, rounded to the nearest £50,000

FGM: new offence of failing to protect a girl from the risk of FGM	N/A	N/A	N/A	Familiarisation and training costs to the police, the Crown Prosecution Service (CPS) and judiciary. Investigation costs to the police.	Ensuring appropriate punishment. Sends a strong message to practising communities. Could benefit potential victims.
FGM: Creation of a new civil order	N/A	N/A	N/A	The MoJ costs per case for each civil enforcement order could be up to roughly £5,000 per case. If an order is breached, there will be an impact on the CJS as criminal sanctions will be applied, although this is likely to be minimal.	The order will strengthen the protection for victims or potential victims of FGM. A successful prosecution of a breach sends a strong message to practising communities.

FGM: Victim Anonymity	N/A	N/A	N/A	Additional costs to the police of investigating additional FGM allegations. Any additional prosecutions would impact on the CJS. As breaching victim anonymity will be a summary only offence, punishable by a fine, the overall impact on the CJS is likely to be minimal.	Additional prosecutions send a strong message to practising communities and those who might breach victim anonymity. Could benefit potential victims.
Extension of extra-territorial jurisdiction under the Terrorism Act 2006	39.19	N/A	N/A	Investigation/arrests cost increases to police (expected to be minimal).	Averting a successful terrorist attack against UK interests. Fewer long-term police investigations.
New offence of unauthorised possession of knives and offensive weapons in prison	N/A	N/A	N/A	Additional costs to Criminal Justice System (CJS[4]) of between £250,000 and £850,000 per annum. Volumes are uncertain over the appraisal period. One-off training and familiarisation costs to the police, the judiciary and NOMS.	Increase in public confidence and fairness. Offences are punished through the CJS. The offence is included on an offender's record. The recorded offence can be used in any future sentencing decisions.

Note that these figures are subject to assumptions and caveats which can be found in the individual impact assessments.

[4] Costs to the Criminal Justice System (CJS) consist of costs to the Crown Prosecution Service (CPS), Legal Aid, Her Majesty's Courts and Tribunals Service (HMCTS), Prison and Probation.

Proceeds of crime

Problem under consideration

Sustained legal challenges to the Proceeds of Crime Act 2002 (POCA) are frustrating attempts to improve the recovery of assets attributable to criminal conduct. The asset recovery process is being delayed by criminals seeking to exploit POCA proceedings, in particular by using loopholes and weaknesses in the Act. Government intervention is necessary as legislation will be required to remedy the shortcomings identified in the Act.

Proposal

The Bill will make a number of changes to POCA to:
a) Ensure that criminal assets cannot be hidden with spouses, associates or other third parties;

b) Increase prison sentences for failing to pay confiscation orders;

c) Require courts to consider imposing an overseas travel ban for the purpose of ensuring that the confiscation order is effective;

d) Enable assets to be restrained more quickly and earlier in investigations;

e) Reduce the defendant's time to pay confiscation orders;

f) Extend investigative powers so that they are available to trace assets once a confiscation order is made;

g) Add victim surcharge orders to the excluded orders under section 13 of POCA (i.e. payments to victims to take priority over confiscation orders);

h) Add pecuniary advantage to external orders (i.e. provide for the recovery of unpaid tax when requested by other countries);

i) Ensure that individuals who abscond and are convicted in their absence can be subject to confiscation;

j) Ensure restraint orders can be maintained in the event of a re-trial;

k) Confer power on the Home Secretary to raise, by order, the £10,000 limit on the value of confiscation orders that may be made in magistrates' courts. We are working with the Ministry of Justice on secondary legislation which would allow low value confiscation orders to be heard in the magistrates' court as an alternative to the Crown Court;

l) Enable confiscation orders to be written off in cases where the subject of the order has died and there are insufficient assets to recover from the estate;

m) Amend the meaning of "appropriate approval" in POCA, thus allowing NCA officers to exercise POCA search and seizure powers. This will provide those officers with the power to secure property which may subsequently be required to settle a confiscation order;

In addition to the above changes to POCA, the Bill includes two measures specific to the POCA legislation in Scotland, namely:

n) Creation of management administrators for Prohibitory Property Orders (PPO). A PPO is an order that specifies or describes property to which it applies and prohibits any person to whose property the order applies from dealing with it in any way;

o) Serving a default sentence will not prevent the sum due from being collected; i.e. liability to pay the confiscation order will not be discharged as if it were a fine.

Rationale for intervention

The aim of the asset recovery regime is to deny criminals the use of their assets, recover the proceeds of crime and disrupt and deter criminality. In 2013/14 some £190 million was collected from confiscation orders and criminals were denied access to even larger sums (£500 million in 2012/13). But these sums are small when compared to the scale and cost of serious and organised crime to the UK economy; there is therefore scope to do more. The Serious and Organised Crime Strategy set out proposals to further improve the asset recovery system by strengthening the powers in POCA; ensuring enforcement by the courts; better recovery of assets hidden overseas; and implementation of new money laundering regulations. The Bill will take forward this first limb of ensuring that there are effective asset recovery powers under POCA. Implementation of the measures in the Bill to strengthen the operation of the Act will support the aims of the legislation by improving the enforcement of confiscation orders and reducing the gap between the confiscation orders that are made and those that are collected.

Impact

The proposed measures are expected to increase the total value of criminal assets recovered. Recovered assets are reinvested in financial investigation and asset recovery, local projects, crime prevention schemes and policing generally. These assets can therefore be used to benefit communities, victims and witnesses. Improved financial investigation and recovery of assets will contribute to the disruption of organised crime groups and send a clear signal to those engaging in serious organised crime. The measures will also discourage participation in organised financial crime.

The proposed measures would mainly impact on the Crown Prosecution Service, the prison service, HM Courts and Tribunals Service, and the Ministry of Justice (MOJ) (and their equivalents in Scotland and Northern Ireland). Increases in default sentences for failure to pay a confiscation order over £500,000 and the ending of automatic early release for confiscation orders over £10 million are estimated to cost £1.78 million per annum in England and Wales when the costs reach steady state. This estimate is based on year-on-year increases in costs until 2030 at which point they remain level. This figure does not take account of the deterrent effect of the increased sentences in terms of encouraging offenders to pay the sums due under a confiscation order. It is, however, expected that the increase in default sentences/ending of automatic early release will lead to an increase in the number of offenders paying their confiscation orders. If payments for orders over £500,000 increase by 10%, the corresponding increase in confiscation receipts would total £2.33 million. There would also be an impact on the National Crime Agency (NCA) and police forces; in particular, established financial investigators will require additional training to familiarise themselves with the new provisions.

Computer misuse – EU Directive on attacks against information systems

Problem under consideration

The EU adopted the Directive on attacks against information systems (2013/40/EU) in August 2013. The UK is compliant with the Directive save in two respects:

- tools used for committing offences, and
- jurisdiction.

The relevant legislation in the UK is the Computer Misuse Act 1990 (the 1990 Act)). The 1990 Act does not prevent individuals from obtaining tools, such as malware, with the intention personally to commit a cyber crime. It also does not enable UK law enforcement agencies to take action against UK citizens committing cyber crime offences whilst physically outside the UK on the basis of their nationality alone, as required by the EU Directive.

Proposal

The Bill will:

- Extend section 3A (making, supplying, or obtaining articles for use in offences under sections 1 or 3) of the 1990 Act to include an offence of 'obtain for use' to cover the event of tools being obtained for personal use to commit offences under sections 1 (unauthorised access to computer material) or 3 (unauthorised acts with intent to impair, or with recklessness as to impairing operation of a computer etc); and
- Extend the existing extra territorial jurisdiction provisions (section 4) of the 1990 Act by nationality to provide a legal basis to prosecute a UK national who commits any Computer Misuse Act offence whilst physically outside the UK, where the offence has no link to the UK other than the offender's nationality. This is provided the offence is also an offence in the country where it took place.

Rationale for intervention

Tackling cyber crime and making the UK one of the most secure places in the world to do business is one of the core objectives of the UK Cyber Security Strategy. Implementing the EU Directive on attacks against information systems will support that objective by promoting greater levels of international cooperation and shared understanding of cyber crime. The amendments to the 1990 Act will also help reduce the threat and impact of cyber crime by ensuring that the UK's domestic legislation is up to date and so bring offenders to justice and deter individuals from committing cyber offences in the first instance.

Impact

The amendment to the 1990 Act to include the 'obtain for use' offence will allow police to intervene in an attack before it has taken place, when the offender has procured the malware to use themselves.

The extension of extra territorial jurisdiction by nationality will cover all offences in the 1990 Act and therefore provide some extra territorial jurisdiction cover to section 3A for the first time.

The pan-EU approach means that offenders who may have previously escaped justice due to a gap in legislation or lack of clear legal procedure could be dealt with under clear EU and UK legislation.

Any increase in prosecutions under the extended offence or by extending jurisdiction for the existing 1990 Act offences would incur costs to police, Her Majesty's Courts and Tribunals Service, the Crown Prosecution Service, Legal Aid and prison and probation services. The total cost to the Criminal Justice System is uncertain, but the additional number of prosecutions following the change in legislation is expected to be minimal.

Computer misuse – new offence of unauthorised act causing serious damage

Problem under consideration

A major cyber attack on essential systems (for example, those controlling power supply, communications, food or fuel distribution) could result in a risk to human life, public health or national security or cause serious social disruption or economic or environmental damage. However, the existing offence (in section 3 of the Computer Misuse Act 1990) of impairing a computer only carries a maximum sentence of 10 years, which the Crown Prosecution Service (CPS) and other law enforcement agencies consider too low for the level of harm that such an attack could cause. Although to date no cyber attacks have had an impact of this nature, a longer sentence maximum should be available should such an attack occur in future.

Proposal

The Bill will create a new (aggravated) offence of impairing a computer that result, either directly or indirectly, in serious damage to the economy, the environment, national security or human welfare, or creates a significant risk of such damage. As well as knowing that his or her actions in impairing the computer are unauthorised, the defendant should intend the impairment to cause the harms outlined, be reckless as to whether such harms are caused. The offence will be triable only on indictment, with a maximum sentence of life imprisonment for cyber attacks which result in loss of life, serious illness or injury or serious damage to national security and 14 years' imprisonment for cyber attacks causing, or creating a significant risk of, severe economic or environmental damage or social disruption.

Rationale for intervention

Cyber attacks have the potential to have a significant impact on public health, essential services, the economy, the environment or national security. It is in society's interest to acquire protection against these attacks, including a robust body of criminal law with appropriate sanctions to deter such attacks.

Impact

Any offences that fall within the scope of the new aggravated offence could already be prosecuted as the existing "section 3" offence. It is expected that the threshold for the aggravated offence would be met only very rarely, so potential costs to the criminal justice system would arise for HM Courts and Tribunals Service, the Crown Prosecution Service and the Legal Aid Agency from more complex investigations and trials and for the Prison and Probation Services from longer custodial sentences, which would generate costs of roughly £0.5 million (net present cost)

Any cyber attack that had a serious impact on human welfare, national security, the economy or the environment could be appropriately prosecuted and cyber attacks with serious consequences for society would be seen to be taken sufficiently seriously.

Participation in organised crime

Problem under consideration

It is estimated that there are 36,600 organised criminals. Organised crime groups also use a range of enablers, both professional and non-professional, to facilitate their criminal enterprises. These include those who ask no questions and then rely on the defence that they were unaware of the precise nature of the criminality. The new offence and aggravating factor will target those in organised crime groups currently evading prosecution and send a clear signal to discourage those who provide materials, services, infrastructure, information and other support that organised crime groups need.

The participation offence is complementary to the existing offence of conspiracy and can form the second tier of such an investigation. 'Conspiracy' is a widely-used offence and considered by the majority of law enforcement agencies to be effective for targeting key players in an organised crime group. The essential element of the crime of conspiracy is the agreement by two or more people to carry out a criminal act. It must involve spoken or written words or other overt acts to prove they had knowledge of the crime. However, this makes it difficult to pursue people in the wider organised crime group and beyond who 'ask no questions' and support organised crime at arm's length. The result is that a significant number of people can engage in and benefit from organised crime with limited risk of being prosecuted.

Proposal

The Bill will criminalise participation in an organised crime group (the participation offence). This will apply to a person who takes part in any activities which are criminal activities of an organised crime group, or helps an organised crime group to carry on criminal activities. This will rely on proving the active relationship with the organised criminality, so the individual will have to have actually done something to take part in the crime (deliver packages, rent warehouse space, written a contract). These criminal activities must attract a sentence of at least seven years' imprisonment for the participation offence to be applicable. This captures the various activities in which organised criminals are engaged , including (but not limited to) drug trafficking, human trafficking, organised illegal immigration, firearms offences, fraud, child sexual exploitation and cybercrime. The offence of participating in activities of an organised crime group will be indictable only, with a maximum penalty of five years' imprisonment.

Rationale for intervention

The new offence targets the people who oil the wheels of organised crime. It can also be used to target those who head a criminal organisation and who plan, coordinate and manage, but do not always directly participate in the commission of the final acts. The participation offence will put relentless pressure on a greater proportion of the 36,600 organised criminals and the professionals and others who help organised crime. This offence therefore carries the potential to prosecute effectively the full spectrum of criminality engaged in organised crime.

Impact

The creation of the new offence will lead to costs for the police, Crown Prosecution Service, Her Majesty's Courts and Tribunals Service, Legal Aid and prison and probation services. Based on an estimate of additional 100-200 prosecutions a year for the new offence, the total cost to the Criminal Justice System is estimated to be between £4.1m to £9.2m per year.

The new offence will target those currently evading prosecution and send a clear signal to discourage the participation of minor criminal players in organised crime and those who provide materials, services, infrastructure, information and other support that organised crime groups need. Any reduction in organised crime would benefit society due to the negative impact these crimes have on innocent members of society.

Serious crime prevention orders

Problem under consideration

The serious crime prevention order (SCPO) was introduced by Part 1 of the Serious Crime Act 2007. It is a court order that is used to protect the public by preventing, restricting or disrupting a person's involvement in serious crime. An SCPO can prevent involvement in serious crime by imposing various conditions on a person – for example, restricting who they can associate with, restricting their travel, or placing an obligation to report their financial affairs to the police.

The Crown Prosecution Service or Serious Fraud Office make applications to a court for an SCPO to be imposed: the court hearing the case decides whether an SCPO is necessary. To help the court decide whether the crime is 'serious' enough, there is an indicative list of 'serious offences' in Schedule 1 to the Serious Crime Act 2007. An order can last for up to five years, and breaking its conditions is a criminal offence that can result in up to five years in prison.

Although it is a civil order, most SCPOs are imposed on people who have just been convicted of a serious crime in the Crown Court. As at 31 March 2014, a total of 181 'post conviction' SCPOs have been obtained by the NCA and its predecessor the Serious Organised Crime Agency (SOCA). A further 136 have been obtained by police forces and other agencies and notified to the NCA/SOCA[5]. There has also been one 'stand alone' SCPO imposed by the High Court outside of criminal proceedings. The law enforcement agencies who use SCPOs, notably the NCA and HM Revenue & Customs (HMRC), find them to be a very effective tool against serious and organised crime.

The financial reporting order (FRO) was introduced by the Serious Organised Crime and Police Act 2005. In many ways the FRO is a precursor to the SCPO. It is also a preventative civil order, but can only be imposed if the person has just been convicted of a qualifying offence (i.e. it is a 'post conviction' order). The large majority of qualifying offences overlap those of the SCPO; fraud, money laundering, drug trafficking, and corruption or bribery etc. An FRO can require a person to make regular reports of their personal finances to the police (bank accounts, assets etc). This makes it easier for the police to identify if the person is offending again – for example, sudden large and unexplained deposits into a bank account could be an indicator of continued involvement in crime. Breach of an FRO is also a criminal offence, but is only punishable by up to six months in prison.

A number of weaknesses have been identified with SCPOs and FROs:

- There are gaps in the list of indicative offences that guide the use of SCPOs by courts;
- The courts have a limited ability to extend the duration of an SCPOs even after a person has breached one;
- The FRO is also under used.

Proposal

The Bill will make the following changes to the SCPO regime:

- Add offences relating to firearms possession, cyber crime, and the cultivation of cannabis plants to the list of 'trigger' offences for imposing an SCPO;
- Enable the Crown Court to replace an existing SCPO where the subject of an order is prosecuted for the offence of breaching the order;
- Extend SCPOs to Scotland;
- Consolidate the FRO into the SCPO.

Rationale for intervention

Gaps in the list of indicative offences for SCPOs

The legislation includes a list of indicative 'trigger' offences to help courts decide what constitutes a serious crime when considering the imposition of an SCPO. The current list has some notable gaps, particularly in relation to firearms offences and cyber crime. It is important that the list is kept up to date

[5] This number may not be the complete picture of other law enforcement SCPOs secured, as some may not have been reported to NCA/SOCA.

to ensure that SCPOs are available in appropriate cases and that the courts are given clear and unambiguous guidance as to what constitutes a serious offence.

Breach of an SCPO
Breach of an SCPO is a criminal offence that can be punished with up to five years in prison. Since the conditions of an order are designed to prevent activity linked to serious crime, a breach can also be an indicator of continued involvement in serious and organised crime.

However, while the legislation allows an order to be varied by the Crown Court after a criminal conviction for its breach or following conviction for another serious offence (for example increasing the duration of the order or adding further conditions), it is not possible for a new order to be imposed by the court dealing with the offence. Nor can a variation extend the duration of an existing order beyond the current five year limit. So if a person is nearing the end of the five year limit of an existing SCPO, the court that convicts him or her for the breach or other serious offence cannot also extend the SCPO to prevent continued involvement in serious crime. Conferring a power on the courts to impose a new SCPO in such circumstances will strengthen the protection afforded to communities by these orders.

Extension of SCPOs to Scotland
The provisions in Part 1 of the Serious Crime Act 2007 do not extend to Scotland. Accordingly the SCPO is not available to law enforcement agencies in Scotland as a tool to help deter and disrupt serious and organised crime in that jurisdiction. Following a consultation carried out in September 2013, the Scottish Government propose to make these orders available in Scotland in order to make it harder for serious organised crime groups to operate.

Under use of the Financial Reporting Order
The FRO can be imposed after a conviction for a 'qualifying' offence to prevent future re-offending. The volume of active FROs is thought to be around 150: this is substantially less than the original expectation of 1,500 per year.

A feature of the FRO is that breach of an order is a summary only offence, with a maximum sentence of six months in prison**.** This is not consistent with offences relating to the breach of the SCPO (and other preventative civil orders) where the 'qualifying' offences are similar to those in respect of the FRO. The maximum penalty for breach of the SCPO (and other civil orders) is five years' imprisonment.

The summary nature of the offence has a practical impact on the ability of law enforcement agencies to enforce FROs. A search warrant cannot be applied for to investigate a suspected breach. Also, an investigation cannot be pursued if the offence was committed more than six months previously – this is problematic for breach of an FRO as it may take some time for the non-compliance to become apparent. The relatively modest sanction available for breach is not a sufficient deterrent for criminals who are likely to have already been convicted of a serious crime. The cumulative effect of these problems is to discourage law enforcement agencies from pursuing FROs. Moreover, having two preventative civil orders – the FRO and SCPO – both operating to deter and disrupt serious organised crime over complicates the landscape in this area. Merging FROs into the SCPO will simplify the current arrangements and support more effective enforcement of the obligations on those subject to these civil orders to report their financial dealings.

<u>Impact</u>

These measures will support delivery of the Serious and Organised Crime Strategy by encouraging the use of SCPOs to tackle the threat -

- It will be easier to obtain an SCPO to prevent involvement in serious crime where the criminality is not currently on the list of trigger offences;
- Allowing the Crown Court to extend an SCPO beyond the five year limit when dealing with an offence of breaching the order (or other serious offence) will help address the behaviour of those who continue to be involved in serious crime;
- Extension of the SCRO to Scotland will provide for a unified regime across the whole of the UK;
- Consolidating the FRO into the more effective SCPO will encourage greater use of financial reporting requirements.

These proposals are expected to lead to an increase in the number of SCPOs being used. This increase in volume will result in additional costs for law enforcement agencies making applications and for other criminal justice agencies (HMCTS, legal aid) for hearing such cases. Depending on the restrictions or requirements attached to the SCPO, there may be additional costs to law enforcement agencies in enforcing compliance. Finally, breaches of the additional SCPOs may lead to criminal prosecutions that incur costs on the criminal justice system (CPS, HMCTS, legal aid and prison and probation services).

There would be costs to the Police, NCA, CPS, other law enforcement agencies of making more SCPO applications, as well as investigating and prosecuting more offences for breach of the orders. There will be costs to HMCTS, Legal Aid Agency and NOMS from SCPO applications and prosecutions for breaching orders. These would be heard in court, offenders may have legal aid, and those convicted of breaches could be imprisoned, or given probation.

In year 1, we forecast an additional 10-30 Crown Court 'post conviction' SCPOs will be imposed. Also including additional prosecutions and applications to extend the duration of SCPOs, the total estimated cost is between £6,000 and £126,000. From year 2 onwards, we forecast a further 40-80 Crown Court SCPOs. The estimated annual cost is £25,000 to £301,000.

Gang injunctions

Problem under consideration

Gang injunctions, introduced in the Policing and Crime Act 2009 ("the 2009 Act"), allow courts to place a range of prohibitions and requirements on the behaviour and activities of an individual in order to prevent gang-related violence. Evidence from front line practitioners has identified two issues the Government needs to address in order to ensure gang injunctions can be used more effectively by the police and local authorities as a tool to tackle gang violence. These are:

(a) The meaning of gang-related violence is defined in section 34(5) of the 2009 Act; practitioners find this definition to be unduly restrictive and unreflective of the nature of how gangs operate in England and Wales;
(b) Practitioners do not currently have an injunction with which to address gang activity at the cross-over between urban street gangs and organised crime. They tell us gangs are usually engaged in a wider range of criminality than simply violence itself or which leads to violence, in particular the drug market.

Proposal

The legislative amendments that would be introduced under this option would:

(a) Change the definition of the "gang" element to which gang-related violence and activity applies. Something is gang-related if it occurs in the course of, or is otherwise related to, the activities of a group that:

(i) consists of at least three people, and
(ii) has one or more characteristics that enable its members to be identified by others as a group.

(b) Expand the range of activities to include any involvement in support of the illegal drugs market. This will allow gang injunctions to be used to prevent individuals from engaging in drug dealing and to protect people from being further drawn into such activity (which is particularly important for vulnerable people, including children).

Rationale for intervention

Following consultation with practitioners, we have concluded that the current definition of "gang" as defined in section 34(5) of the 2009 Act is unduly restrictive and does not reflect the true nature of how gangs operate in England and Wales. We are proposing a new definition which is better suited to the reality of the gangs in England and Wales.

Gangs tend to be engaged in a wider range of criminality than simply violence. In addition to violence, street level gangs are involved in drug dealing. Expanding the range of activities to include any involvement in support of the illegal drugs market will allow gang injunctions to be used to prevent individuals from engaging in such activity and to protect people from being further drawn into this illegal activity, in particular teenage children. This change will also enable areas to address the cross-over between urban street gangs and the lower levels of drug activity controlled at a higher level by organised crime groups.

Impact

The central estimate is that the provisions in the Bill will result in an additional 85 gang injunctions being made per year. The average annual cost of these to criminal justice agencies and local authorities is estimated to be £1.1 million.

The main non-monetised benefits will be:

- Reduction in cost of gang-related violence and drugs activity to public sector;
- Reduction in social harm as a result of communities being protected from individuals involved in gang-related violence and drug dealing;
- Increased public confidence in police and local authorities' ability to deal with gangs and violence; and
- Prevention of more serious offending by individuals due to prohibitions and positive requirements.

Drug-cutting agents

Problem under consideration

Certain chemical substances, which in their raw form have limited uses in the legitimate manufacture of medicinal products, can also be used as cutting agents for bulking illegal drugs (predominantly cocaine), thereby maximising criminal profit margins.

The 'grey market' trade (with no apparent legitimate end use) in these substances has become a significant element of the UK illegal drugs trade over the last five years, but the importation and supply of these substances when used as cutting agents is not controlled by law. This trade impacts across the UK enabling organised criminals to maximise their profits by increasing the availability of illegal drugs and increases the risks posed to local communities.

The use of cutting agents by organised criminals to increase the volume of drugs is a matter of great concern. In the UK, raw powder benzocaine, lidocaine and phenacetin are the most common chemicals used to 'cut' illicit drugs and are legal to import and sell. This is because these chemicals mimic some of the effects, as well as resembling the drug in appearance, allowing a significant increase in adulteration of the illicit drug than would be possible with an inert substance such as glucose. In 2013, there were over 75 border seizures of chemicals such as benzocaine, lidocaine and phenacetin, totalling over 2 tonnes. The additional profits that these chemicals would have provided to drug traffickers are substantial. Importing a kilogram of high quality cocaine may cost around £45,000, while a kilogram of benzocaine can be bought for £300. It is common for cocaine to be mixed at an initial 1:1 ratio with benzocaine, allowing the resulting product potentially to be sold for £90,000.

The majority of cocaine available at street level contains one or more adulterants, some of the most common being benzocaine and phenacetin. In 2013, 57% of street level seizures contained phenacetin.

Benzocaine and lidocaine are legal to import and sell as bulk chemicals. They are used within the pharmaceutical industry as active substances in a number of medicinal products. However, they have limited legitimate use in the UK in raw powder form, requiring laboratory processes and licensing for manufacturing into an administrable form. Phenacetin, also legal to import and sell, is an analgesic that is no longer used in legitimate business because of its carcinogenic properties.

Neither the National Crime Agency (NCA) nor the police have explicit powers for tackling the domestic trade in cutting agents. In the absence of a successful prosecution for conspiracy to supply Class A drugs, or assisting in the commission of an offence under the Serious Crime Act 2007, it would be preferable for statute to provide for an express legal basis for the seizure and detention of cutting agents that are reasonably suspected of being intended for use in unlawful conduct. Bespoke new powers will ensure that law enforcement agencies can deal robustly with cutting agents, enabling law enforcement officers to enter and search premises for specified substances, suspected of being for use in unlawful conduct. It will also ensure that they do not have to return seized cutting agents to a dealer in circumstances where they will in all probability be used to facilitate the supply in illegal drugs.

Proposal

The Government proposes to introduce new powers to allow law enforcement agencies to enter and search premises for drug-cutting agents, and to seize and detain any chemical substance that is reasonably suspected of being intended for use for such purposes. We would envisage these powers being available to the NCA, police forces and Border Force, and that they would include:

- A new power to enter and search premises for substances if a law enforcement officer has reasonable grounds to suspect they are intended for use as a drug-cutting agent;

- A new power to seize any such substances if a law enforcement officer has reasonable grounds to suspect they are intended for use as a drug-cutting agent; and

- A new power to detain any such substances for an initial period of 30 days.

It is envisaged that law enforcement officers would then be able to make an application to a magistrates' court for the continued detention of the seized substances for a maximum of 60 days (including the initial 30 day period) or until the conclusion of any criminal proceedings with which the substances are connected. It would then be open to the law enforcement officer to make an application to a magistrates' court for forfeiture of the seized cutting agents. If the court orders the forfeiture of the substances, the substances could then be destroyed or otherwise disposed of (subject to the outcome of any appeal). Provision will be make for the person entitled to the seized substances to apply for compensation in cases where no forfeiture order is made.

It is proposed that the new powers would apply any chemical substance suspected of being for use as a drug-cutting agent, although any use of the power is likely to focus on benzocaine, lidocaine and phenacetin, the three main chemical substances being used as cutting agents in the UK.

Rationale for intervention

The misuse of drugs imposes a cost on society greatly in excess of the perceived cost to the individual. Government intervention is necessary to help protect the public from the harms of drugs and their misuse.

The supply and importation of chemical substances for use in adulterating and bulking illegal drugs is a matter of great concern. It impacts across the UK enabling organised criminals to maximise their profits from the trade in illegal drugs and increases the risks posed to local communities. The Government's 2010 Drug Strategy made a clear commitment to develop a robust approach to stop criminals profiting from the trade in cutting agents, working with production countries, the legitimate trade and international partners.

There are currently no laws or regulations that specifically target the domestic trade in cutting agents. We consider Government intervention is necessary to enable law enforcement agencies, in the absence of a criminal prosecution, to seize and detain any cutting agent which is reasonably suspected of being intended for use in unlawful conduct (that is, drug trafficking).

Impact

Bespoke new powers will ensure that law enforcement agencies can deal robustly with cutting agents, enabling law enforcement officers to enter and search premises for specified substances, suspected of being for use in unlawful conduct. It will also ensure that they do not have to return seized cutting agents to a dealer in circumstances where they will in all probability be used to facilitate the supply in illegal drugs. This will result in an increase in court costs which will be significantly outweighed by the potential savings in law enforcement storage costs.

The power to apply to a magistrates' court to forfeit the seizure of cutting agents will assist in reducing the storage costs associated with retaining large volumes of cutting agents.

The Crown Prosecution Service and HM Courts and Tribunals Service are likely to incur costs, which will be updated in due course.

The annual benefit of these new powers is estimated at £1.1m as a result of savings accrued from law enforcement agencies' storage costs for storing seized cutting agents.

Updating the law on child cruelty

The Bill includes provisions to clarify and update the law on child cruelty by amending section 1 of the Children and Young Persons Act 1933 ("the 1933 Act").

Proposal

In response to a long running campaign by children's groups who argue that the law on child cruelty is out-dated and does not include emotional harm, the Government is updating and clarifying the law on child cruelty. Clause 65 amends section 1 of the 1933 Act to modernise some of the outdated language and make it clear that the offence covers cruelty likely to cause physical or psychological suffering or harm to a child.

In addition, the clause clarifies that the behaviour necessary to establish the ill-treatment limb of the offence can be non-physical (for example, emotional). It also amends section 1(2)(b) of the 1933 Act which makes provision about liability for the neglect limb of the offence in circumstances where a child under the age of three is suffocated whilst in bed with a drunken person. The clause extends this provision to cover the circumstances where a child is suffocated whilst in bed with a person who is under the influence of illegal drugs. It also makes provision for the word 'bed' to be interpreted as including any kind of furniture or surface used for the purpose of sleeping. It is important to note that section 1(2)(b) does not create a separate offence but is a deeming provision: if the circumstances described are proved by the prosecution, ,then the defendant is automatically held to have "neglected [the child under 3] in a manner likely to cause injury to its health" as required by section 1(1) (i.e. without the need for those ingredients of the offence to be proved individually).

Rationale for intervention

The key argument put forward by those seeking to reform the current law on child cruelty is that section 1 does not cover the full range of harm that might be done to children. They often cite the House of Lords judgment in R v Sheppard (1981) to suggest that section 1 covers physical, but not emotional cruelty. The Government does not agree with this interpretation.

The offence under section 1 may be committed by way of five behaviours: assault, ill-treatment, neglect, abandonment or exposure. Whilst non-physical behaviour is beyond the scope of the 'neglect' limb of the offence, the Government considers that the other limbs of the offence (in particular ill-treatment) can relate to non-physical cruelty. In addition, the Crown Prosecution Service Legal Guidance and the Sentencing Council guidelines explicitly refer to psychological suffering or injury in relation to child cruelty.

While the Government considers that current law is still effective in that it covers cruelty likely to cause non-physical as well as physical harm and the courts are able to interpret it appropriately, it recognises that the law would benefit from further clarity. Clause 65 will provide this clarity.

Impact

The Government is amending the law on child cruelty through clause 65 with a view to clarifying and updating it. For that reason, we envisage the impact of the changes would not be significant. However, greater clarity in the law might lead to an increase in the number of prosecutions if it results in cases of non-physical suffering or injury being investigated and referred to the Crown Prosecution Service by the police which currently would not be. These would bring associated costs. Each additional case is estimated to cost the Criminal Justice System[6] up to around £15,000 per year in steady state.

A breakdown of published figures for 2013 show that 553 offenders were found guilty of offences under section 1 of the 1933 Act. Approximately 16% of offenders proceeded against were sentenced to immediate custody and the average custodial sentence length given in 2013 was 20 months.[7]

[6] Costs to the Criminal Justice System (CJS) consist of costs to the Crown Prosecution Service (CPS), Legal Aid, Her Majesty's Courts and Tribunals Service (HMCTS), Prison and Probation.

[7] Ministry of Justice Criminal Justice System Statistics.

Possession of "paedophile manuals"

The Government has been made aware of a potential gap in the law which allows the possession of written material that contains practical advice on how to commit a sexual offence against a child, commonly referred to as "paedophile manuals".

Under the Protection of Children Act 1978, there is a strict prohibition on the production, circulation and possession with a view to distribution of any indecent photograph of a child under 18. The simple possession of an indecent photograph of a child is also an offence under section 160 of the Criminal Justice Act 1988. These offences carry a 10 and five year maximum prison sentence respectively.

The Government considers that the current criminal law, under the Obscene Publications Act 1959 (the "OPA") would already cover the publication, online and offline, and possession for gain of the sort of material that has been brought to its attention. And, in some circumstances the law on encouraging and assisting the commission of offences would also cover the use of this sort of material to encourage or assist other offenders to commit a sexual offence. However, the simple possession of such material is not covered by the existing criminal law.

The Prime Minister has made a public commitment to address this issue.

Proposal

The Bill will close a loophole in the law by criminalising the possession of "paedophile manuals". Clause 66 creates a new offence making it illegal to possess "paedophile manuals", that is any item that contains advice or guidance about abusing children sexually. The offence will be subject to a three year maximum prison sentence.

Rationale

The laws in England and Wales designed to protect children in this area are quite rightly robust and respected across the world. However, it is important to keep these laws under review so as to remain responsive to changes, including developments in technology, and ensure that the law is fully equipped to protect our children from harm.

Recently, following advice from officers from the Child Exploitation and Online Protection Centre (CEOP) Command of the National Crime Agency, the Government has been made aware of the discovery of written material, which appears to have been created to give practical advice to child sex offenders.

The material is deeply disturbing. Some of it is highly detailed and "instructive" in content. Some of the material gives advice on how to entrap or "groom" a child, where to find a child, and how to offend and escape capture. Some articles included detailed pseudo-scientific advice endorsing paedophilia as harmless and an "experience" to be enjoyed by the victims.

It is highly likely that the current criminal law, under the OPA already covers the publication, online or offline, and possession for gain of this sort of material (we are not aware of any cases). Alongside this, in some circumstances the law on encouraging and assisting the commission of offences would also cover the use of this sort of material to encourage or assist other offenders to commit a sexual offence.

However, the simple possession (including the downloading) of some of this material, would not likely fall under the current criminal law.

Impact

It is expected that the creation of this criminal offence would have minimal resource impacts on the criminal justice system. The average estimated costs per case to the CJS could be up to £11,000 in steady state. However, given that "paedophile manuals" have usually been found in collections of material which it is already illegal to possess (for example, indecent images of children), it is expected that relatively few stand alone prosecutions for possession of "paedophile manuals" will take place.

The new offence will support removal from circulation of this deeply disturbing and instructive "paedophilic" material, helping to protect children from sexual abuse.

Female genital mutilation

Female genital mutilation (FGM) involves procedures that include the partial or total removal of the external female genital organs for non-medical reasons. The practice is extremely painful and has serious health consequences both at the time when the mutilation is carried out and in later life.

The age at which girls undergo FGM varies enormously according to the community. The procedure may be carried out when the girl is newborn, during childhood or adolescence, just before marriage or during the first pregnancy. However, the majority of cases of FGM are thought to take place between the ages of five and eight.

Estimates of the prevalence of FGM, in terms both of the number of individuals at risk and the number of individuals who have suffered FGM procedures vary. Precise figures are not available. As a result, there are several uncertainties with the costs currently estimated. Post-commencement, the impact of these proposals will be monitored closely to ensure that costs have not been underestimated.

FGM has been a specific criminal offence in this country since 1985 when the (UK-wide) Prohibition of Female Circumcision Act was passed. The Female Genital Mutilation Act 2003 ("the 2003 Act") replaced the 1985 Act in England, Wales and Northern Ireland[8]. It modernised the offence of FGM and the offence of assisting a girl to carry out FGM on herself while also creating extra-territorial offences to deter people from taking girls abroad for mutilation. To reflect the serious harm caused, the 2003 Act increased the maximum penalty for any of the female genital mutilation offences from five to 14 years' imprisonment.

To date no-one has been convicted of FGM in England and Wales. The Crown Prosecution Service announced the first prosecutions for FGM in March 2014. In July 2014, the UK Government and UNICEF hosted the first Girl Summit,[9] aimed at mobilising domestic and international efforts to end FGM. The Government made a number of commitments for new legislation to tackle FGM.

There are four FGM related proposals in the Bill:

1. Amendment to extra-territorial jurisdiction

Proposal

Section 4 of the 2003 Act already extends the offences in sections 1 to 3 to extra-territorial acts committed by a UK national or permanent UK resident. Section 3 makes it an offence to aid, abet, counsel or procure a person who is not a UK national or permanent UK resident to do an act of FGM outside the UK on a victim who is a UK national or permanent UK resident. The Bill omits "permanent" from these sections of the 2003 Act so that they refer simply to "UK residents".

Rationale

Currently, section 6(3) of the 2003 Act defines a "permanent" UK resident as an individual who is settled in the UK within the meaning of the Immigration Act 1971. The intention when the 2003 Act was passed was to catch offences involving those with a substantial connection to the UK (i.e. people who ordinarily live in this country without being subject under the immigration laws to any restriction on the period for which they may remain) but not those who are here temporarily. That is because the stronger the connection to the UK the greater the justification for taking extra-territorial jurisdiction.

The Director of Public Prosecutions has highlighted a small number of cases where a prosecution for FGM committed abroad could not be brought because those involved were not, at the material time, permanent UK residents as defined in section 6(3) of the 2003 Act. Closing this 'loophole' has also been recommended by the National Policing Leads and the Metropolitan Police in their written evidence to the Home Affairs Select Committee (HASC) inquiry into FGM.

[8] The Prohibition of Female Genital Mutilation (Scotland) Act 2005 replaced the 1985 Act in Scotland.

[9] https://www.gov.uk/government/topical-events/girl-summit-2014

Provided that offences of FGM committed abroad are committed at a time when those involved are usually resident in this country, the Government believes that it should not matter whether or not they intend to live here indefinitely or whether they also live elsewhere. Accordingly, the Bill amends section 6(3) of the 2003 Act so that it defines a UK resident as an individual who is habitually resident in the UK.

The amendments made by the Bill will mean that the 2003 Act can capture offences of FGM committed abroad by or against those who are habitually resident in the UK irrespective of whether they are subject to immigration restrictions. It will be for the courts to determine on the facts of individual cases whether or not those involved are habitually resident in the UK and thus covered by the 2003 Act.

Impact

The existing extra-territorial provisions in the 2003 Act have been in force for more than 10 years and are well understood by the police and the CPS. Extending the provisions to habitual (as well as permanent) UK residents should not therefore give rise to any familiarisation or training costs.

We estimate that the cost to the Criminal Justice System per case will be up to £150,000 in steady state[10]. Given the extremely low number of prosecutions to date, it is difficult to estimate the number of prosecutions per year following extension of extra-territorial jurisdiction. We estimate there could be around two additional prosecutions per year. This is based on the mid-point between a lower estimate of one prosecution and a higher estimate of four prosecutions. The higher estimate is based on the number of FGM cases referred to the Crown Prosecution Service (CPS) for advice on charge and prosecution in a 13-month period, but where the CPS was unable to proceed specifically because of the existing residency requirement[11]. The lower estimate is based on the fact that there were no referrals made to the CPS before 2010[12]. So the estimated annual cost to the CJS would be around £300,000 in the steady state (reached in year 6 after implementation).

The benefit of this small change is that it increases the likelihood of prosecutions for FGM. The strong message that a successful prosecution would send to the practising communities could have a deterrent effect and benefit potential victims.

2. Creation of a new offence of failing to protect a girl from the risk of FGM:

Proposal

This offence would make those who have parental responsibility, and those who have assumed responsibility, for a girl under 16 who has been mutilated, liable if they knew, or ought to have known, that there was a significant risk of FGM being carried out, but did not take reasonable steps to prevent it from happening. It would be a defence for a defendant to show that he or she did not know there was such a risk, or took such reasonable steps. The offence would be triable either way, and the maximum penalty on conviction on indictment would be seven years' imprisonment, or an unlimited fine, or both.

Rationale

The Director of Public Prosecutions (DPP) wrote to Ministers in February 2014, attaching a paper identifying several possible areas where the current law could be strengthened to make successful prosecutions for FGM more likely. This paper noted that the 2003 Act did not place a positive duty on parents to prevent their child from being mutilated. It suggested that the offence of causing or allowing death or serious harm to a child or vulnerable adult, under section 5 of the Domestic Violence, Crime and Victims Act 2004, provided a potential model for doing so. The paper noted that in two cases in Spain the parents of an FGM victim had been successfully prosecuted.

[10] In 2013/14 prices, rounded to the nearest £50,000

[11] Advice from CPS

[12] Home Affairs Committee: Written evidence Female Genital Mutilation, page 241, paragraph 8.

On 3 July 2014, the Home Affairs Select Committee published the report of an inquiry into FGM, including the effectiveness of the current legislative framework, *FGM: the case for a national action plan*.[13] The report refers at paragraph 92 to support, from the DPP, the Association of Chief Police Officers (ACPO) and other witnesses, for new legislation to place a positive duty on parents or carers to prevent their children from being mutilated, "in part because it would alleviate the need for children to give evidence or identify who performed the procedure on them".

The expectation is that it will, at least in some cases, be possible to prosecute a parent or parents for failing to protect a girl from FGM, when it would not have been possible to prosecute for one of the existing FGM offences.

At the Girl Summit on 22 July 2014, the Prime Minister announced that the Government intended to bring forward such legislation.

Impact

The proposed offence may lead to familiarisation and training costs to the police, the Crown Prosecution Service (CPS) and judiciary; however we expect these to be minimal. There would also be costs to the police of investigating alleged incidents of the new offence. It has not been possible to quantify these as the average time needed to investigate a case of this nature is highly uncertain.

Any prosecutions under the new offence would impose costs on the wider CJS, including: the CPS; Her Majesty's Courts and Tribunals Service (HMCTS); the Legal Aid Agency (LAA) and the National Offender Management Service (NOMS). Based on experience of previous FGM cases, the CPS suggests the proposed offence could result in up to 10 additional prosecutions per year. As this is low, we anticipate that the overall yearly cost to the CJS will be minimal.

As an example of an 'upper bound' cost for the 10 estimated prosecutions - if all defendants were proceeded against in the Crown Court (where court and legal aid costs tend to be higher); they were all found guilty; sentenced to immediate custody and given the maximum custodial penalty (7 years), then the total costs to the CJS are estimated to be approximately £1.1m. This includes 35 additional prison places. In practice it is extremely unlikely that all defendants will be found guilty and be given a custodial sentence with the maximum penalty available. Based on this, we would expect the actual annual cost to be lower and therefore minimal.

However, there is a chance that the number of additional prosecutions, and thus, total costs, could be higher.

The primary non-monetised benefit of this new offence is that it would enable those who have failed to protect a child for whom they are responsible from FGM to be appropriately punished. This will send a strong message to FGM practising communities and may exert a deterrent effect, thus benefiting potential future victims. The scale of any such deterrent effect is, however, unknown.

3. Creation of a new civil order:

Proposal

The proposal is for a specific civil order, similar to the Forced Marriage Protection Order (FMPO), as provided for in Part 4A of the Family Law Act 1996, which would provide protection for actual or potential victims of FGM. An application for such an 'FGM Protection Order' (FGMPO) might be made by the person to be protected (the victim) or a "relevant third party" (specified by the Lord Chancellor) without needing the leave of court or any other person with the leave of court. An order might contain such prohibitions, restrictions or other requirements as the court considers appropriate for the purposes of the order. This could include, for example, provisions to surrender a person's passport or any other travel document; and not to enter into any arrangements, in the UK or abroad, for FGM to be performed on the person to be protected. As with FMPOs, breach of an order would be a criminal offence with a maximum

[13] www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/201/201.pdf

penalty of five years' imprisonment (but with provision, as an alternative, for a breach to be dealt with in the civil court as contempt punishable by up to two years' imprisonment).

Rationale

The criminal law is only part of tackling the continuing problem of FGM in this country. Ideally, mutilation should be prevented from happening in the first place. There are general civil law protection measures that could apply to victims of FGM in some circumstances but none were designed with such victims in mind.

A MoJ consultation, *Female Genital Mutilation – Proposal to Introduce a Civil Protection Order*[14], was launched at the Girl Summit on 22 July 2014. It sought views on whether introducing a specific civil measure similar to the FMPO was a good idea and whether provisions similar to those in Part 4A of the Family Law Act 1996 could provide a useful model in providing similar protection for potential or actual victims of FGM.

The consultation closed on 19 August 2014. A large majority of the 88 responses[15] (85%) supported the introduction of a civil order for potential FGM victims and agreed that the FMPO provides a good model. The Government is taking forward provisions in the Serious Crime Bill to amend the Female Genital Mutilation Act 2003 to provide for a FGMPO[16].

Impact

The imposition of additional orders would have resource implications for the civil justice system, including HMCTS and the LAA. We expect that most of these orders will be imposed in the family courts, as is the case for FMPOs and domestic violence protection orders (DVPOs).

Due to the uncertainty surrounding the prevalence of FGM, it has not been possible to reliably estimate the number of protection orders that will be given out. We estimate that MoJ costs for obtaining each civil enforcement order could be up to roughly £5,000. This includes civil legal aid costs of around £4,000 (based on average legal aid costs in Forced Marriage protection orders) and £1,000 per order for the costs to the Family Courts (based on costs of making similar orders such as Domestic Violence Protection Orders) with an uplift added to reflect the expectation of additional uncertainties and potential complexities in FGM cases.

Any prosecutions for breach of an FGM protection order would have resource implications for the CJS, including the police, the CPS, HMCTS, the LAA and NOMS. As we have not been able to estimate the number of orders imposed, we have not estimated the number of breaches.

However, we expect the overall impact on the CJS to be minimal as we expect the number of breaches will be small. This is based on evidence from FMPOs which shows that since coming into force in 2008, the breach rate has been less than 2% and only one custodial sentence has been given. Other similar orders such as DVPOs show similarly low breach rates.

The provisions for the FGM protection order are part of the Government's wider work to tackle FGM, with victims, communities and professionals. The FGM civil protection measure will strengthen the protection for victims or potential victims of FGM and help prevent FGM from happening in the first place. A successful prosecution of a breach would reinforce to practising communities that the Government is taking a very strong stance on tackling and preventing FGM.

[14] https://www.gov.uk/government/consultations/female-genital-mutilation-proposal-to-introduce-a-civil-protection-order

[15] A summary of responses is available at https://consult.justice.gov.uk/digital-communications/female-genital-mutilation-proposal-to-introduce-a/consult_view

[16] http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0036/amend/su036-l-d.htm

4. Victim anonymity

Proposal

To provide victims of FGM with anonymity so that any information which could identify them as a victim of FGM is prohibited from being published for the individual's lifetime. Anonymity commences as soon as an allegation is made and can be lifted by a court if one of two conditions are satisfied – first, where a person's defence would be substantially prejudiced if anonymity remained in place, or, secondly, where the anonymity imposed a substantial and unreasonable restriction on reporting of the proceedings and it is in the public interest to remove the restriction.

If anonymity is breached by publishing details which can identify the victim of FGM, then each individual responsible (as defined in paragraph 2(3) of new Schedule 1 to the FGM Act 2003) is guilty of an offence. The offence is summary only and the maximum penalty is an unlimited fine (or a level 5 fine (currently £5,000) in Northern Ireland).

Rationale

CJS practitioners have suggested that a lack of anonymity for victims means that they are often reluctant to report the offence committed against them. This provision to afford anonymity to victims of FGM is designed to encourage more victims to come forward as they cannot be publicly identified.

Impact

Ensuring victim anonymity is expected to increase the number of victims coming forward, which may increase the number of prosecutions for FGM. Additional FGM cases entering the CJS would have resource implications for the CJS agencies, including the police, CPS, HMCTS, LAA and NOMS.

Given the inherent uncertainty regarding the prevalence of FGM, it has not been possible to estimate the number of additional prosecutions. As the first prosecution for FGM was in 2014, it has also been difficult to estimate how these cases will progress through the CJS. Given the seriousness of the offence, we have assumed that:

- All cases would be tried in Crown Court;
- 50% of defendants would be found guilty;
- All convicted offenders would be sentenced to immediate custody;
- The average custodial sentence length given would be 7 years.

These assumptions give rise to a high-estimate cost, namely that each additional prosecution would cost the CJS around £60,000. This excludes costs to the police of investigating additional FGM allegations. We have been unable to estimate the costs to the police, as the length of FGM investigations is highly uncertain.

As breaching victim anonymity will be a summary only offence, punishable by a fine, the overall impact is likely to be minimal, comprising some cost to the CPS and HMCTS. There would be no impact on the National Offender Management Service. It is likely there would be no impact to Legal Aid, as an offence with a maximum disposal of a fine would be unlikely to pass the Interests of Justice test.

The primary benefit of this proposal is that it may increase the likelihood of prosecutions for FGM. The strong message that additional successful prosecutions would send to the practising communities may help deter future instances of FGM and benefit potential victims, although the scale of any such deterrent effect is unknown.

Unauthorised Possession of Knives and offensive weapons within the prison estate

Problem under consideration

It is not currently a criminal offence to possess a knife, or bladed or pointed weapon or other offensive weapon within a prison establishment. The criminal offences for possession of such items, as set out in section 1 of the Prevention of Crime Act 1953 and sections 139 and 139A of the Criminal Justice Act 1988, are limited to possession within a public place or school.

This has led to a disparity between the penalties available to tackle this sort of crime in the community and those available within prison. Whilst the possession offence for an offensive weapon is currently dealt with as a disciplinary offence within prison (for possession of an unauthorised item) the maximum penalty for the internal disciplinary offence is 42 added days served in prison compared to the 4 years maximum for the equivalent offence in the community.

Proposal

To insert into the Prison Act 1952 a new offence of the unauthorised possession within prison (including Young Offender Institutes) of a knife, or bladed or pointed weapon or other offensive weapon (as defined in section 1(9) of the Police and Criminal Evidence Act 1984)[17]. The offence would carry a four year maximum sentence on conviction on indictment or a fine or both. Alternatively, on summary conviction it would carry a maximum six month prison sentence or a fine or both, to mirror the penalties for such offences committed within the community.

There are circumstances where it is necessary for persons in prison (including prisoners) to have legitimate possession of bladed or sharply pointed articles, particularly knives and other tools which may constitute offensive weapons in another context. Provision is made in the Prison Act to enable authorisations to be provided in such circumstances.

Rationale for Intervention

The new offence will address the disparity in the criminal law and secure the ability to pursue criminal prosecution in the most serious cases of possession of weapons in prison.

Whilst there have been many improvements to prison safety, assaults and violence may still occur and, if left unchecked, can quickly destabilise a prison and threaten the safety of both staff and prisoners. Weapon-enabled violence, including intimidation, is not acceptable in any environment and those who continue to engage in this behaviour in prison should face a criminal charge, where possible. There is a strong public interest in doing more to deter knife crime in the prison environment where offenders are living in close proximity to one another.

Whilst assaults without weapons are more common, assaults with weapons still occur and inflict life-changing injuries on both staff and other prisoners. Prisoners most frequently manufacture weapons to attack other prisoners and to defend themselves, and also on occasion use weapons stolen from workshops or smuggled into the prison. In 2013, there were 14,125 assaults within prisons and Young Offender Institutions in England and Wales and 2,278 (16%) involved use of a weapon with 828 (6%) involving use of a knife, blade or sharp/blunt instrument.

Control and order is a fundamental foundation of prison life and without it the rehabilitation of prisoners may not be effective because of constant disruptions to the regime caused by security incidents, the need to close down the prison to search for weapons, general violence, intimidation and other disruptive

[17] Section 1(9) of Police and Criminal Evidence Act 1984
In this Part of this Act "offensive weapon" means any article—

(a)made or adapted for use for causing injury to persons; or

(b)intended by the person having it with him for such use by him or by some other person.

behaviour which is not conducive to effective learning. It is vital that all those working and incarcerated in a prison feel as safe as possible in such a closed environment.

Impact

The introduction of the new offence will add to the measures available within prison to deal with crimes involving weapons, with punishments which are proportionate to both the seriousness of the offence and comparable to that available in the community. It will allow longer sentences to be given for the more serious offences and may have general benefits in relation to public confidence in the fairness of the justice system.

Criminalisation will also ensure that more serious weapon possession offences are punished through the Criminal Justice System ("CJS") rather than the adjudication system, which is sometimes less appropriate for punishing more serious offences. Punishing some incidents of weapon possession through the CJS will also ensure that these incidents appear on the offenders' criminal records, allowing the police to more adequately assess the risk of these offenders should they go on to reoffend. This information can also be used in any future sentencing decisions, where relevant. The new offence may also have general benefits as regards the safety of prisoners and staff in prison.

Any additional referrals and subsequent prosecutions for the proposed offence would have cost implications for Criminal Justice agencies (including the Police, the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA) and the National Offender Management Service (NOMS)). Overall additional costs to the Criminal Justice System are estimated at between £250,000 and £850,000 per year (in 2013/14 prices, rounded to nearest £50k), including around 10 to 15 additional prison places.

Extra-territorial jurisdiction for the offence in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006

Problem under consideration

The overarching aim of this measure is to deal with the significant and evolving threat posed by 'foreign fighters', that is, UK-linked individuals who travel to foreign countries, such as Syria and Iraq, to engage in terrorist activities and who may pose a security risk upon their return to the UK.

So-called 'foreign fighters' are not a problem unique to Syria and Iraq, but the scale of travel, and the relative ease by which individuals are travelling there poses an unprecedented challenge. The Security Service is seeing more UK-linked foreign fighters travelling to take part in the fighting in Syria and Iraq than in any other place of conflict, and it is now the number one destination for jihadists anywhere in the world today.

Gaps in the current law as regards the ability to prosecute, in the UK courts, persons who commit preparatory acts of terrorism abroad are inhibiting our ability to protect the public from the threat posed by returning foreign fighters.

Proposal

The Bill will amend section 17 of the Terrorism Act 2006 ("the 2006 Act") so as to confer extra-territorial jurisdiction on the UK courts for the offence in section 5 (preparation of terrorism), and to extend the limited extra-territorial jurisdiction that currently applies to the offence in section 6 (training for terrorism). Extra-territorial jurisdiction currently only applies to the section 6 offence in as much as it relates to 'Convention offences' as set out in Schedule 1 to the 2006 Act.

Rationale for intervention

A current and significant operational challenge arises from individuals against whom there may be evidence of using transit countries (such as France or Turkey) to undertake planning or preparatory terrorist activities in or related to Syria or Iraq, and who for lack of extra-territorial jurisdiction in respect of preparatory activities undertaken *abroad*, cannot be prosecuted on their return to the UK. Operational partners have been clear that there would be real benefit in extending extra-territorial jurisdiction so that it applies to the offence of 'preparation of terrorist acts' in section 5 of the 2006 Act.

Similarly, operational partners have identified that extending extra-territorial jurisdiction in relation to the offence of terrorist training under section 6 of the Terrorism Act 2006 could offer more opportunities to take action against individuals of concern who are participating in terrorist training abroad.

Whilst the Government's priority is to dissuade people from travelling in the first place, we must have the right powers in place to counter the threat posed by those who are determined to travel with terrorist motivations. In the case of returnees it is open difficult to prove evidentially direct engagement in fighting, but the very purpose of the preparatory or pre cursor offences in Part 1 of the 2006 Act is to prevent escalation of criminal behaviours and to intervene before the public is in danger.

Impact

On the basis of a best estimate of three additional prosecutions per year in respect of section 5 offences and one additional prosecution every other year in respect of section 6 offences, the total cost to the criminal justice system of this change will be an estimated £1,255,000 in steady state (from 2030).

The amendments to the 2006 Act will:

- contribute to the effective disruption of individuals who engage in the preparation of terrorist activities or terrorist training abroad;
- ensure that operational partners are better equipped to prosecute individuals who prepare for terrorist acts overseas; and
- support wider Government efforts to ensure that the full range of operational responses available under CONTEST are being applied to deal with the unprecedented threat of foreign fighters in Syria and Iraq, and particularly the travel of UK-based individuals to engage in terrorism and potentially return to carry out attacks in the UK.