



Home Office

Two legislative measures to improve the law enforcement response to serious and organised crime

Government consultation

This consultation begins on 24th January 2023

This consultation ends on 21st March 2023

About this consultation

To: This consultation is open to the public.

We are particularly interested to hear from those who may be affected by the proposals should they become legislation, including law enforcement practitioners, businesses, legal professionals and members of the general public, as well as non-governmental organisations with a focus on civil liberties and human rights.

Duration: 8 weeks from 24th January 2023 to 21st March 2023

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How to respond: Please provide your response by 17:00 on 21st March 2023 via the online form at:
<https://www.homeofficesurveys.homeoffice.gov.uk/s/YCIQTE/>

Additional ways to respond: If you are unable to use the online system, for example because you use specialist accessibility software which is not compatible with the system, you may download a Word document version of the online form and email or post it to the above contact details.

Please also contact the above details if you require information in another format, such as “easy read”, large print, Braille, audio or another language.

We may not be able to analyse responses not submitted in these provided formats.

Response paper: A response to this consultation exercise is due to be published in June 2023 at: www.gov.uk

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Ministerial Foreword

Crime destroys lives, ruins neighbourhoods and damages our economy. It makes people feel unsafe on the streets and in their homes and it holds us back in our mission to pursue economic growth.

The Government is committed to beating crime. But we cannot succeed in this mission without taking on the organised criminal gangs who prey on the vulnerable, dominate communities and undermine our prosperity and institutions. Organised crime groups, and the professional enablers who “turn a blind eye” to illicit activity whilst reaping the benefits themselves, must be pursued with the full force of the law.

As Home Secretary protecting the public is my highest priority. I am absolutely committed to equipping our law enforcement agencies with the tools and legal powers they need to tackle serious and organised crime and to stay ahead of the most resourceful and relentless criminals currently operating in the UK.

The Government has already taken significant steps to improve the UK response to serious and organised crime:

- as part of our manifesto, we made a commitment to strengthen the National Crime Agency (NCA) so that it can tackle the threats we face – from fraud, county lines gangs and child sexual abuse to illicit finance, modern slavery and people-trafficking;
- under the 2021 Integrated Review of Security, Defence, Development and Foreign Policy (“the Integrated Review”), we committed to bolster the response to the most pressing serious and organised crime threats currently faced by the UK, reduce our vulnerability to these threats in the longer term, strengthen the NCA and increase regional and local policing capacity¹;
- since Spring 2020, the joint approach between the NCA, Regional Organised Crime Units (ROCU), policing, the Crown Prosecution Service (CPS) and Government has led to the huge success of Operation Venetic, the largest law enforcement operation of its kind in UK history, including the arrest of 2,864 suspects, the seizure of over £76 million in criminal cash, 170 firearms, 3,404 rounds of ammunition and 18 tonnes of Class A and Class B drugs and the successful mitigation of over 200 threats to people’s lives²; and

¹ Cabinet Office, Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy, March 2021: <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>

² Operation Venetic: Operational statistics update on behalf of all UK law enforcement. Source: (public-newsroom-nca-01.azurewebsites.net).

- the Government is investing in the critical specialist capabilities needed to tackle serious and organised crime, including data collection and intelligence sharing. For example, in the 2021 Spending Review the Government committed an uplift of approximately £100million over three years for strategic capabilities, bringing the total funding portfolio in this area to £484million over the Spending Review period. This investment is building capabilities at a national and regional level, helping the NCA, police and partner organisations to protect the public from the most technologically sophisticated and harmful criminals, including those involved in the illegal drugs trade.

But there is still more to do and we must not become complacent. The threats we face are evolving constantly. Criminals have been resilient in the face of the coronavirus pandemic and are increasingly exploiting online spaces, emerging technologies and commercially-available tools to avoid detection and circumvent our legislation.

I welcome your input on these two proposals for possible future legislation to improve the response to the threat of serious and organised crime, to ensure that our law enforcement agencies remain ahead of the curve and to leave organised crime groups with no place to hide.

The Rt. Hon. Suella Braverman KC MP

Home Secretary

Executive summary

The UK Government is committed to cutting crime and enhancing our national security, as set out in our 2021 Beating Crime Plan³ and the 2021 Integrated Review⁴. To achieve this, we need to make life harder for organised criminals. That means taking on the criminal gangs who supply the drugs which drive half of all homicides, who facilitate illegal migration and modern slavery, who carry out the cyber crime attacks which threaten our national infrastructure and whose illicit financial activity damages our prosperity and global reputation.

The scale and complexity of serious and organised crime is likely to increase, as organised crime groups adopt new technologies and seek new opportunities. It is essential that the tools available to law enforcement keep pace.

We are consulting on legislative measures to strengthen how the National Crime Agency and other law enforcement agencies confront serious and organised crime by giving them access to new tools, as well as strengthening existing ones. The proposals will help law enforcement agencies to frustrate the activities of the largest and most harmful criminal enterprises operating in the UK. In particular, they will target the enablers and facilitators who support and profit from serious crime and improve our ability to manage and disrupt the highest harm offenders.

The responses to this 8-week consultation will inform our proposals for future legislation. The measures in this consultation are proposals at this stage and remain subject to change following the consultation process. The legislative proposals are in relation to England and Wales only. While we have already engaged extensively with operational partners, the consultation seeks the views of the public to ensure we capture areas of interest and concern from key stakeholder groups, so that these views can feed into our policy development and help to build a robust package of legislative measures.

³ Home Office, Beating Crime Plan, July 2021: <https://www.gov.uk/government/publications/beating-crime-plan>

⁴ Cabinet Office, Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy, March 2021: <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>

Measure 1: New offences to criminalise the making, modification, supply, offer to supply and possession of articles for use in serious crime

Law enforcement must always be able to address the rapidly evolving tools and technology used by serious criminals. The NCA and wider law enforcement agencies are increasingly encountering articles where there is a strong suspicion that they are being used for the purpose of serious crime. Such articles include:

- sophisticated encrypted communication devices used to facilitate organised crime;
- vehicle concealments used to conceal and transport illicit goods;
- digital templates that can be used for 3D-printed firearm components; and
- pill presses used in the supply of illegal drugs.

This consultation sets out options for new offences to criminalise the making, modifying, supply, offering to supply and possession of articles for use in serious crime. These offences will target those who enable and facilitate serious crime through the provision of articles that are essential to carrying out the most serious offences.

Measure 2: Proposals to strengthen and improve the functioning of Serious Crime Prevention Orders (SCPOs)

Serious Crime Prevention Orders (SCPOs) are civil preventative orders which can impose tailored prohibitions, restrictions and requirements on a person⁵ for a period of up to five years to prevent or disrupt their involvement in serious crime. The terms of an SCPO might relate to, for example: business and financial dealings, use of premises or items, provision of goods or services, employment of staff, association with individuals, means of communication or travel⁶. Breach of an SCPO is a criminal offence carrying a maximum penalty of five years' imprisonment.

SCPOs are a powerful tool for preventing and disrupting the activities of the highest-harm criminals involved in serious crime. However, the orders are not currently being used to maximum effect. For example, between 2011 and 2021, only two applications were made to the High Court for an SCPO in the absence of a conviction, of which only one was successful, compared to a total of 1057 SCPOs being made in the Crown Court on conviction in the same period⁷. This is significantly lower than Parliament anticipated when it introduced SCPOs in the Serious Crime Act 2007⁸ ("the 2007 Act").

⁵ "Person" includes bodies corporate, partnerships and unincorporated associations as well as individuals.

⁶ Other examples of suggested provisions which an SCPO may impose are published in the Crown Prosecution Service (CPS) SCPO Precedent Library: https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/SCPO-precedent-library.pdf

⁷ These figures are experimental, based on HMCTS management information and are not equivalent to official statistics published by the Ministry of Justice.

⁸ The Explanatory Notes to the 2007 Act state that "the main route for making an order will be an application to the High Court". In addition, at Lords Committee Stage of the Serious Crime Bill, Baroness Scotland of Asthal stated that operational partners had indicated that there may be 25 or 30 such orders – see Hansard, Volume 690, 7 March 2007: [https://hansard.parliament.uk/Lords/2007-03-07/debates/07030790000002/SeriousCrimeBill\(HL\)](https://hansard.parliament.uk/Lords/2007-03-07/debates/07030790000002/SeriousCrimeBill(HL))

In addition, monitoring and enforcement of SCPOs is currently inconsistent across police forces in England and Wales. The 2016 HMICFRS PEEL Police Effectiveness report found that only 13 of the 43 police forces had clear arrangements in place for monitoring SCPOs⁹. Standardising the personal information which law enforcement agencies record in relation to individuals subject to an SCPO could help to improve consistency of case management of this cohort.

This consultation proposes amendments to the 2007 Act to strengthen and improve the functioning of SCPOs. The amendments aim to:

- **improve the application process for SCPOs**, so that SCPOs are more accessible to frontline practitioners in the full range of circumstances in which they may be appropriate; and
- **improve the ongoing monitoring and enforcement of SCPOs**, to enable closer management of those involved in serious crime and to support more consistent case management of this cohort by law enforcement agencies.

SCPOs are available UK-wide. However, the proposals in this consultation apply to England and Wales only.

⁹ His Majesty's Inspectorate of Constabulary, PEEL: Police effectiveness 2016, March 2017: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/peel-police-effectiveness-2016.pdf> – See page 112.

Introduction

This consultation sets out possible legislative measures to strengthen the powers of law enforcement agencies in England and Wales to bring serious and organised criminals to justice and protect the public from the risk that they pose.

These legislative measures are:

1. new offences to criminalise the making, modifying, supplying, offering to supply and possession of articles for use in serious crime; and
2. proposals to strengthen and improve the functioning of Serious Crime Prevention Orders (SCPOs) under the Serious Crime Act 2007.

This consultation is open to the public. We are particularly interested to hear from those who may be affected by the proposals should they become legislation in England and Wales, including law enforcement practitioners, businesses, legal professionals and members of the general public, as well as non-governmental organisations with a focus on civil liberties and human rights.

The Impact Assessments available alongside this consultation indicate which groups are likely to be particularly affected by these proposals. These include:

- organisations, businesses, communities and individuals affected by serious crime;
- businesses which make, modify, supply, offer to supply, possess or are otherwise involved with articles used in serious crime; and
- the Criminal Justice System.

The proposals are unlikely to lead to additional costs or savings for charities or the voluntary sector.

Comments on, and additional evidence which may contribute towards, the Impact Assessments from respondents are welcome.

Copies of this consultation paper are being sent to:

- Devolved Administrations
- National Crime Agency
- National Police Chiefs' Council
- British Transport Police
- Crown Prosecution Service
- Serious Fraud Office
- His Majesty's Revenue and Customs
- His Majesty's Prison and Probation Service
- His Majesty's Inspectorate of Constabulary and Fire & Rescue Services
- Association of Police and Crime Commissioners
- Organisations representing the interests of business and industry
- Legal services professional membership organisations
- Organisations with a focus on civil liberties and human rights
- Academics with an interest in serious and organised crime and criminal justice
- Interested Parliamentarians

This list is not meant to be exhaustive and responses are welcomed from anyone with an interest in, or views on, the subjects covered by this document.

Measures

Measure 1: New offences to criminalise the making, modifying, supplying, offering to supply and possession of articles for use in serious crime

Why do we need to change existing legislation?

Law enforcement agencies have raised concerns that there are limited legal options to address the rapidly evolving tools and technology exploited by serious criminals. Law enforcement agencies are increasingly encountering individuals possessing articles where there is a strong suspicion that they are being used for the purpose of serious crime. Such articles include: vehicle concealments used to conceal and transport illicit goods, sophisticated encrypted communication devices used to facilitate organised crime, digital templates for 3D-printed firearms components and pill presses used in the supply of illegal drugs. Further detail on these articles is set out below.

Vehicle concealments or “hides” (static or moveable hidden compartments in vehicles): Law enforcement agencies have reported that the manufacture and use of sophisticated vehicle concealments is a growing threat. Concealments may allow individuals to conceal and transport illicit goods with a reduced risk of the commodity being discovered, enabling the criminal activity to continue undetected.

Sophisticated encrypted communication devices: These sophisticated devices provide access to encrypted communication platforms used by serious and organised criminals to plan their illicit activities. The highly encrypted nature of such devices and the way they have been modified create considerable barriers to law enforcement agencies collecting intelligence and evidence in respect of serious crimes. These devices are expensive to obtain and involve complex methods of communication with other users of such devices. Just as their level of encryption makes them ideal for those engaged in serious criminality, so their price and complexity make it harder to foresee a need for anyone to use them for legitimate, legal reasons.

Digital files or templates for 3D-printed firearms components: The NCA has reported that it is highly likely that hybrid firearm designs, where 3D-printed components are combined with easily accessible metal non-firearms parts, represent the most significant threat from 3D-printing technologies in criminal firearms manufacture. Self-loading hybrid weapons, assembled from approximately 80% printed parts, have been seized in the UK. As the quality of 3D-printed weapons improve, it is highly likely that viable hybrid firearms will increasingly feature in UK criminality¹⁰.

¹⁰ This is an operational assessment provided by law enforcement partners.

Pill presses (used to make tablets): Although pill presses have legitimate uses across industry, the NCA has identified that organised crime groups are using pill presses to manufacture illicit benzodiazepines. Reports of benzodiazepine availability and related harm in England have been increasing in recent years, notably in the North East, North West and South West. Health data in England suggests increasing numbers of people are experiencing acute and chronic harm linked to benzodiazepine use.¹¹

For case studies in relation to vehicle concealments and sophisticated encrypted communication devices, please see the 'Case Studies' section at page 13 below.

Current legal regime

Law enforcement practitioners consider that it is not always possible to pursue criminals who make, modify, supply, offer to supply or possess articles for use in serious crime under existing legislation.

Part 2 of the Serious Crime Act 2007 created offences (sections 44-49) targeting acts that encourage or assist crime, which can in some circumstances be used to tackle those who supply or possess articles for use in serious crime.

For example, section 46 of the Serious Crime Act 2007 created an offence of encouraging or assisting the commission of offences believing one or more will be committed. In *R v Sadique*¹² section 46 was successfully used to prosecute an individual selling a drug adulterant (a legal product) for the purpose of criminal drugs supply. However, proving these offences relies on showing that the accused's state of mind meets the thresholds set in existing legislation. The section 46 offence relies on the belief of the accused that one or more offences will be committed (this test includes either belief or recklessness as to the presence of the circumstances, consequences and level of fault which make it an offence) and that the accused's act will encourage or assist the commission of one or more of those offences. It can be difficult to prove that the accused's state of mind meets the threshold of belief that an offence will be committed and that their act will encourage or assist.

The section 44 offence requires proof that the accused intends to encourage or assist the commission of an offence (including that the accused intends, believes or is reckless as to the circumstances, consequences and fault which make it an offence). This can fail to capture those involved in the supply of articles such as those described above, because they will not specifically intend to encourage or assist in the commission of an offence.

Section 45 of the Serious Crime Act 2015, created an offence of participating in activities of an organised crime group (OCG). This offence has a relatively low state of mind threshold

¹¹Public Health England, Drugs Harms Assessment and Response Team (DHART) Quarterly summary for professionals, May 2021 - https://khub.net/web/phe-national/public-library/-/document_library/v2WsRK3ZIEig/view_file/467541764?_com_liferay_document_library_web_portlet_DL_Portlet_INSTANCE_v2WsRK3ZIEig_redirect=https%3A%2F%2Fkhub.net%3A443%2Fweb%2Fphe-national%2Fpublic-library%2F-%2Fdocument_library%2Fv2WsRK3ZIEig%2Fview%2F345595238

¹² [2013] EWCA Crim 1150, [2013] 4 All ER 924, [2014] 1 WLR 986, [2013] 2 Cr App Rep 352

in that the prosecution only needs to show that the accused takes part in activities which the accused “reasonably suspects” are criminal activities of an OCG or will help an OCG carry on criminal activities. However, this offence relies on proving a link to an OCG. Suppliers may only ever deal with one criminal and may not be aware of the existence of an OCG, meaning that the offence will not always be suitable.

In relation to pill presses, section 9A(3) of the Misuse of Drugs Act 1971 makes it an offence to supply or offer to supply any article which may be used to prepare a controlled drug for administration, believing it is to be used in circumstances where the administration is unlawful. This offence could be used against the supply of pill presses, however law enforcement agencies have reported difficulties in proving the required state of mind threshold to establish the offence. A person supplying a pill press where they suspected, or should have suspected, it would be used in an offence would not necessarily be caught by the 1971 Act offence.

In relation to vehicle concealments, section 88 of the Customs and Excise Management Act 1974 (CEMA) allows officers with customs powers to seize vehicles which have been “constructed, adapted, altered or fitted in any manner for the purpose of concealing goods” if they are, or have been, within the confines of a port, railway customs area or aerodrome. However, this does not extend to vehicles discovered inland and it is not a criminal offence to possess such a vehicle.

The Government’s assessment is that there is a gap in the legal framework. Manufacturers, modifiers and suppliers profit from the supply of such articles to serious criminals, but keep just enough distance from the offences being carried out to avoid facing any consequences. Similarly, where people are found in possession of articles in circumstances which point to involvement in serious crime, it can be difficult to show the level of knowledge or intention that would be required to prosecute them for a criminal offence.

We would welcome further evidence from those responding to the consultation on the ability of or limitations to existing offences.

Case Studies

Vehicle concealments

Law enforcement agencies have reported that the manufacture and use of sophisticated vehicle concealments is a growing threat. Concealments may allow individuals to conceal and transport illicit goods with a reduced risk of the commodity being discovered, enabling the criminal activity to continue undetected. Some concealments are constructed to be large enough to facilitate people smuggling. Law enforcement partners have not only recorded an increase in the use of vehicle concealments, but also that concealments are no longer used exclusively for the importation of illicit commodities to the UK from abroad. They are now also being used inland to facilitate crimes involving drugs, firearms and criminal cash. Law enforcement agencies assess that construction of these concealments is lucrative for individuals and garages.

Law enforcement agencies are particularly concerned about sophisticated concealments introduced through the modification to vehicles; these concealments may not be visible even when inside the vehicle or when searching it. It is these types of concealments that the proposals seek to target. These proposals do not seek to target glove compartments or other ordinary storage in vehicles.

We welcome responses to this consultation from those who use, manufacture, modify, supply or own vehicles with concealments, or portable concealments that can be inserted into vehicles, for legitimate reasons and would value information on the circumstances in which they are used.

Case Study - Vehicle Concealments

This case study has been provided by law enforcement agencies. The subject of interest is referred to as 'C'.

Law enforcement agencies identified that subject 'C' is constructing vehicle concealments on demand for organised criminal networks across the country. His customers are involved in serious crime and, by constructing the hides, 'C' is facilitating offending by those networks.

Unfortunately, the investigation has not resulted in sufficient evidence of 'C's state of mind. He has never been directly involved in any drug transaction or exchanges and has maintained his role is simply as a builder of vehicle concealments. Pursuing an arrest and charges under current offences was considered but was believed not to pass the required thresholds.

Sophisticated encrypted communication devices

Sophisticated encrypted communication devices have been used extensively by criminals to facilitate organised crime. We're targeting the modified and bespoke devices that enable access to platforms, similar to Encro Chat, where the software/ hardware has been developed to anonymise its users and their communications and its user base is assessed to be almost certainly criminal. Under Option 1 where articles will be specified, we will be targeting those that supply, modify, and possess these bespoke devices; the provisions will not apply to commercially available mobile phones nor the encrypted messaging apps available on them. The proposed offences will seek to tackle those supplying and exploiting these devices in order to carry out serious crimes and will seek to reduce the supply of these devices to serious criminals.

Case Study – EncroChat devices

EncroChat was one of the most popular criminally dedicated encrypted communications platforms in the UK. The phones, which cost around £1,500 for a 6-month contract, had pre-loaded apps for encrypted instant messaging, had no other smart-phone functionality and offered users the ability to communicate in the belief that the technology was secure.

However, in 2020, international law enforcement partners successfully infiltrated the platform. “Operation VENETIC” was the UK law enforcement response to this international effort to target EncroChat and the most significant operation of its kind. It showed the prevalence of the EncroChat platform and the extent to which criminals were using it to conduct their criminal activity. The operation revealed that there were approximately 10,000 UK users and approximately 60,000 worldwide users.

Operation VENETIC has led to over 2,864 arrests and the seizure of £76 million of criminal cash, 170 firearms and over 18 tonnes of drugs so far, with work ongoing.¹³ In June 2020, details of Operation VENETIC were made public and EncroChat urged users to throw away their handsets.

It can be difficult to show that the suppliers of sophisticated encrypted communication devices which are used in serious crime have the required state of mind to enable law enforcement agencies to prosecute them under current legislation, as they will often not be engaging directly in the serious crime themselves. Individuals supplying such devices are nevertheless playing an important part in facilitating serious crime and gaining the financial rewards. Similarly, when individuals are found in possession of such a device, it may not be possible to prove their knowledge or intent to the thresholds required to convict them, despite the difficulty of identifying legitimate uses for such technology. The proposed offences will seek to tackle those supplying and exploiting these devices in order to carry out serious crimes and will seek to reduce the supply of these devices to serious criminals.

The case study below has been provided by the CPS and shows how the new offence could be useful for prosecuting a member of an organised crime group.

Case Study – EncroChat devices

The case relates to an alleged conspiracy to transfer cash in excess of £10m out of the UK.

A number of defendants were charged with conspiracy to remove criminal property from England and Wales contrary to section 1(1) of the Criminal Law Act 1977. Mr A was a relative of one of the defendants (Mr B). They both lived at the same address. When Mr B was arrested, the officers recovered an encrypted EncroChat telephone which Mr A admitted was his. Another defendant (Mr C) stated that he had been instructed to call Mr A on the EncroChat telephone once he had safely boarded the flight with the cash.

Mr A denied any knowledge or involvement in any of the criminal activities. Mr A had no legitimate income that would have allowed him to own and maintain such an expensive mobile device.

Based on available intelligence, the investigating team strongly believed that Mr A had been supplied with the EncroChat telephone by an OCG for the purpose of carrying out

¹³ Operation Venetic: Operational statistics update on behalf of all UK law enforcement. Source: (public-newsroom-nca-01.azurewebsites.net).

conduct in furtherance of the conspiracy. However, investigators were unable to access any data from the telephone due to the device's security features which led to the data automatically deleting after a few days. It was assessed that there was not sufficient evidence to seek to prosecute Mr A under existing offences.

Examples of existing statutory offences

There are precedents in existing legislation for offences which criminalise the possession making, modifying, supply of articles for use in crime, for example:

- the Fraud Act 2006:
 - section 6 sets out the offence of possessing any article for use or in connection with any fraud;
 - section 7 sets out the offence of making, adapting, supplying or offering to supply any article knowing it is designed or adapted for use or in connection with fraud, or intending it be it used to commit, or assist in the commission of fraud;
- section 17 of the Forgery and Counterfeiting Act 1981 makes similar provision in relation to articles that the person intends to be used for counterfeiting currency and for articles which the person knows has been 'specially designed or adapted' for counterfeiting, without a lawful excuse; and
- section 57 of the Terrorism Act 2000 makes it an offence to possess an article in circumstances which give rise to a reasonable suspicion that the possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. It is a defence for the person to prove that the article is not for such a purpose.

Proposed new offences

Definition of serious crime

These proposals focus on articles used in serious crime. For the purpose of these proposed new offences only, "serious crime" is intended to include offending associated with organised criminals that causes a high level of harm to individuals and society, such as: slavery, people trafficking, organised immigration crime, drug trafficking, firearms offences, terrorism, armed robbery and economic crime (including fraud, money laundering, sanctions evasion and offences in relation to the public revenue). It could also include serious offences against the person, including murder, kidnap, grievous bodily harm, sexual offences against children and other sexual offences. It is proposed that only offences with a maximum term of imprisonment of 5 years or more would be included within the definition of serious crime for the purposes of these offences.

We would welcome views on what should be included within the definition of serious crime for the purpose of these proposed new offences.

Options

We are considering two options for defining the possible offences, which seek to balance the need to be able to tackle enablers and facilitators of serious crime, whilst ensuring that the offences remain proportionate and targeted.

Option 1: Lower threshold and specified articles

This option would be a supply offence and a possession offence set at a low threshold, tied to a specific list of articles:

- An offence of making, modifying, supplying, offering to supply a **specified article** where a person has **reasonable grounds** to suspect that it will be used in any serious crime.
- An offence of possessing any **specified article** where a person **intends** or, has **reasonable grounds** to suspect, that it will be used in any serious crime.

The articles would be specified and defined in legislation, and would include vehicle concealments, sophisticated encrypted communication devices, digital templates for 3D-printed firearms components and pill presses. We would include in the legislation a power to add to the list of specified articles under secondary legislation, to ensure that the list remains up to date and can be updated as serious crime evolves. This option would require the drafting of precise definitions of the specific articles, for example a definition of sophisticated encrypted communication devices which does not include all mobile phones.

We would welcome views on definitions of specific articles in response to this consultation.

For these offences, the prosecution would need to show that the accused had reasonable grounds to suspect that the article they are making, modifying, supplying, offering to supply or possessing will be used in serious crime. This would be an objective standard of what a reasonable person would have suspected, given the information available to the accused. It could in some cases criminalise those who did not suspect the articles would be used for serious crime. The justification for criminalising such people, who lack actual suspicion, is that the articles named in legislation are so closely associated with serious crime that it is appropriate to expect that those who are involved in making, modifying, supplying or offering to supply, or who are found in possession of such articles have at least a reasonable standard of awareness of the signs of criminal activity. These signs could include customers wanting an encrypted device designed to access a criminally dedicated network or payment through means which disguise the identity of the payer.

These offences would assist where law enforcement agencies find articles, such as vehicle concealments or sophisticated encrypted communications devices, and those in possession of the articles claim ignorance, such as in the EncroChat device case study provided above. Where it can be shown that a reasonable person with the same information as the

information available to the accused would have suspected that the article in question will be used in serious crime, then that person could be caught by the offence. The offence would also apply where the person in possession of the article intends to use it in serious crime themselves.

The offence would not capture people who are making, adapting, supplying offering to supply, or possessing the specific articles where there are no reasonable grounds to suspect that the articles will be used in serious crime. It would not have the effect of banning the production, supply or possession of these articles. It would not be necessary to show that the accused had reasonable grounds to suspect an article would be used in a specific serious crime; it would be enough to show the accused had reasonable grounds to suspect it would be used in any serious crime.

Option 2: Higher threshold and no specified items

This option would be a supply offence and a possession offence set at a higher threshold, but not tied to specified articles:

- An offence of making, modifying, supplying, offering to supply **any article** where a person **reasonably suspects** that it will be used in any serious crime.
- An offence of possessing **any article** where a person **intends** or **reasonably suspects** that it will be used in any serious crime.

These offences would be broader than Option 1, in that they would not specify articles, however this breadth would be balanced with a higher threshold – that the accused reasonably suspects that the article will be used in serious crime. For these offences, the prosecution would need to show that the accused in the particular case suspected that the article they are making, modifying, supplying, offering to supply or possessing will be used in serious crime. This would be a subjective test, rather than the objective test proposed in Option 1. The suspicion of the accused would need to be based on evidence; the offence would not be made out where the suspicion was based on imagination or conjecture. This higher threshold could reduce the impact of the offence, as it may be more difficult to prove. As in Option 1, the offence would also apply where the person in possession of the article intends to use it in serious crime themselves.

Unlike Option 1, these offences would have the advantage of flexibility on the types of articles covered, ensuring that law enforcement agencies can respond quickly to emerging technology without the need to frequently update legislation. It would also minimise the opportunities for serious criminals to avoid the definitions of articles used in legislation. It is intended that the definition of articles would include both tangible and intangible things, so that it would capture articles such as computer programmes¹⁴.

¹⁴ See section 8 in the Fraud Act 2006 for an example of definition of “article” that includes programs and data held in electronic form - <https://www.legislation.gov.uk/ukpga/2006/35/section/8>

Similarly to Option 1, it would not be necessary to prove that the accused reasonably suspected that the article will be used in a specific serious crime; it would be enough to prove the accused reasonably suspected the article will be used in any serious crime.

Both options intend to better equip law enforcement agencies to target people supplying the tools of organised crime and people found in possession of those tools.

Defences

The offences could include a defence of acting reasonably, similar to that found in section 50 of the Serious Crime Act 2007. Where a person accused of committing a supply or possession offence could show they acted reasonably in the circumstances they were aware of, or in the circumstances they reasonably believed existed, they will have a defence.

We would welcome views on the inclusion of this or alternative defences.

Penalties

The penalties available for these offences would be set in line with comparable offences. For example, the offence in section 6 of the Fraud Act 2006 has a maximum penalty of 5 years' imprisonment and the manufacture and supply offence under section 7 of the Fraud Act 2006 has a maximum penalty of 10 years' imprisonment. Sentencing in any case will be a matter for the courts, within the maximum prescribed by Parliament.

Civil seizure and forfeiture powers

The Government would welcome views on whether civil seizure and forfeiture powers should be available with the proposed criminal offences. This would allow an article to be seized where a law enforcement officer has reasonable grounds for suspecting it is intended for use in serious crime. Where a senior officer or court is satisfied on the balance of probabilities that the article is intended for use in serious crime, the article could then be forfeited. Anyone with an interest in the property would have the opportunity to dispute the forfeiture taking place. These would be civil powers that could be used against property.

These powers would allow for articles to be removed from circulation where they are intended for use in serious crime, without the need to convict someone for a criminal offence. Examples of existing civil seizure and forfeiture powers are in Part 5 of the Proceeds of Crime Act 2002 in relation to cash and listed assets.

Questions to consultees

Q1. Do you think that current offences are sufficient to tackle the issue of supply of articles for use in serious crime? (Please tick one.)

- a) Yes, the current offences are sufficient
- b) No, the current offences are insufficient
- c) Don't know

Please explain your answer and give evidence where possible, including on the scale and nature of the issue. (Max. 250 words)

Q2. Which of the proposals for new criminal offences do you think should be pursued? (Please tick one.)

- a) Option 1 (lower threshold and specified articles)
- b) Option 2 (higher threshold and no specified articles)
- c) None
- d) Other

If you chose 'Other', please explain your answer. (Max. 250 words)

Q3. Which articles do you think should be listed for Option 1? (lower threshold and specified articles) (Please tick all that apply.)

- a) Vehicle concealments
- b) Sophisticated encrypted communication devices
- c) Digital templates for 3D-printed firearm components
- d) Pill presses
- e) Other

If you chose 'Other', please provide details. (Max. 250 words)

Q4. Do you have any views on how any of the following articles should be defined?

- a) Vehicle concealments

Please provide details. (Max. 250 words)

- b) Sophisticated encrypted communication devices

Please provide details. (Max. 250 words)

- c) Digital templates for 3D-printed firearm components

Please provide details. (Max. 250 words)

- d) Pill presses

Please provide details. (Max. 250 words)

- e) Other

Please provide details. (Max. 250 words)

Q5. Options 1 and 2 both tackle articles for use in serious crime. For the purpose of these options, what do you think “serious crime” should include? (Please tick one.)

- a) Offending associated with serious and organised crime and serious offences against the person
- b) Only offending associated with serious and organised crime, not serious offences against the person
- c) Other
- d) Don't know

If you chose 'Other' please provide details. (Max. 250 words)

Q6. Do you think there should be a defence of “acting reasonably” available for these offences?

- a) Yes
- b) No
- c) Other
- d) Don't know

If you chose 'Other' please provide details. (Max. 250 words)

Q7. [For businesses] How many employees does your business have? (Please tick one.)

- a) 0-9 employees
- b) 10-49 employees
- c) 50 employees or more

Q8. [For businesses] Does your business involve any of the following articles? (Please tick all that apply.)

- a) Vehicle concealments
- b) Sophisticated encrypted communication devices
- c) Digital templates for 3D-printed firearm components
- d) Pill presses

If you selected any of the above articles, please explain the circumstances and how the proposed offences might impact you. (Max. 250 words)

Q9. Outside of business, does your life involve the use of any of the following for legitimate activities? (Please tick all that apply.)

- a) Vehicle concealments
- b) Sophisticated encrypted communication devices
- c) Digital templates for 3D-printed firearm components
- d) Pill presses

If you selected any of the above articles, please explain the circumstances and how the proposed offences might impact you. (Max. 250 words)

Q10. [For businesses] In your business activities, how many of the following did you i) sell /supply ii) buy iii) use, in each year from 2017 - 2021?

- a) Vehicle concealments
- b) Sophisticated encrypted communication devices
- c) Digital templates for 3D-printed firearm components
- d) Pill presses

Q11. [For businesses] What was the value of your turnover specific to any of the articles below in each year from 2017 – 2021?

- a) Vehicle concealments
- b) Sophisticated encrypted communication devices
- c) Digital templates for 3D-printed firearm components
- d) Pill presses

Q12. [For businesses] What would be the impact of Measure 1, Options 1 and 2 on your business or organisation if they came into force? Please provide estimates on any costs or benefits, if possible. (Max. 250 words each).

- a) Measure 1, Option 1 (lower threshold and specified articles)
- b) Measure 1, Option 2 (higher threshold and no specified articles)

Q13. [For law enforcement agencies] Please provide annual figures in each year from 2017-2021 for: how many of the following articles you encountered and how many investigations involved the use of the following articles:

- a) Vehicle concealments
- b) Sophisticated encrypted communication devices
- c) Digital templates for 3D-printed firearm components
- d) Pill presses

Q14. Do you think new civil powers should be available to allow seizure and forfeiture of articles intended for use in serious crime? (Please tick one.)

- a) Yes, alongside new criminal offences
- b) Yes, instead of new criminal offences
- c) No
- d) Don't know

Please provide further details of the reason for your answer (Max. 250 words).

Q15. Do you have any comments or further information to add to the impact assessment to inform these legislative proposals? (Please tick one.)

- a) Yes
- b) No

Please provide details. (Max. 250 words)

Measure 2: Proposals to strengthen and improve the functioning of Serious Crime Prevention Orders (SCPOs)

Current legal regime

Serious Crime Prevention Orders (SCPOs) are provided for under Part 1 of the Serious Crime Act 2007¹⁵ (“the 2007 Act”). SCPOs are civil preventative orders which impose tailored prohibitions, restrictions and requirements on a person¹⁶ for a period of up to five years to prevent or disrupt their involvement in serious crime. The terms of an SCPO might relate to, for example: business and financial dealings, use of premises or items, provision of goods or services, employment of staff, association with individuals, means of communication or travel¹⁷. Breach of an SCPO is a criminal offence carrying a maximum penalty of five years’ imprisonment.

An SCPO can be made either by the Crown Court following a conviction or by the High Court in the absence of a conviction. Either court may only make an SCPO if it has reasonable grounds to believe that an order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime. In England and Wales, an application for an SCPO can only be made by the CPS, the Serious Fraud Office (SFO), or, in terrorism-related cases only, the police.

SCPOs are available UK-wide. However, the proposals in this consultation apply to England and Wales only.

Why do we need to change existing legislation?

SCPOs are a powerful tool for preventing and disrupting the activities of the highest-harm criminals involved in serious crime. However, the orders are not currently being used to maximum effect.

For example, between 2011 and 2021, only two applications were made to the High Court for an SCPO in the absence of a conviction, of which only one was successful, compared to a total of 1057 SCPOs being made in the Crown Court on conviction in the same period¹⁸. This is significantly lower than Parliament anticipated when it passed the 2007 Act¹⁹.

¹⁵ Serious Crime Act 2007: <https://www.legislation.gov.uk/ukpga/2007/27/part/1>

¹⁶ “Person” includes bodies corporate, partnerships and unincorporated associations as well as individuals.

¹⁷ Other examples of suggested provisions which an SCPO may impose are published in the Crown Prosecution Service (CPS) SCPO Precedent Library: https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/SCPO-precedent-library.pdf

¹⁸ These figures are experimental, based on HMCTS management information and are not equivalent to official statistics published by the Ministry of Justice.

¹⁹ The Explanatory Notes to the 2007 Act state that “the main route for making an order will be an application to the High Court”. In addition, at Lords Committee Stage of the Serious Crime Bill, Baroness Scotland of Asthal stated that operational partners had indicated that there may be 25 or 30 such orders – see Hansard, Volume 690, 7 March 2007: [https://hansard.parliament.uk/Lords/2007-03-07/debates/07030790000002/SeriousCrimeBill\(HL\)](https://hansard.parliament.uk/Lords/2007-03-07/debates/07030790000002/SeriousCrimeBill(HL))

In addition, monitoring and enforcement of SCPOs is currently inconsistent across different police forces in England and Wales. The 2016 HMICFRS PEEL Police Effectiveness report found that only 13 of the 43 police forces had clear arrangements in place for monitoring SCPOs²⁰. Standardising the personal information which law enforcement agencies record in relation to individuals subject to an SCPO could help to improve consistency of case management of this cohort.

The proposals on SCPOs in this consultation aim to:

1. **Improve the application process for SCPOs**, so that they are more accessible to frontline practitioners in the full range of circumstances in which they may be appropriate; and
2. **Improve the ongoing monitoring and enforcement of SCPOs**, to enable closer management of those involved in serious crime and to support more consistent case management of this cohort by law enforcement agencies.

Data from the NCA on ancillary orders indicate that individuals subject to SCPOs made on conviction are involved with all types of serious and organised crime, with the greatest concentration of offences occurring in drug crime, money laundering, fraud and firearms offences²¹. Improvements to the SCPO regime could therefore contribute towards tackling a wide range of threat types and reducing the harm sustained by organisations, businesses, communities and individuals. This is in line with the commitment in the 2021 Integrated Review to bolster the response to the most pressing serious and organised crime threats currently faced by the UK and reduce the vulnerability to these threats in the longer term.

The legislative proposals on SCPOs in this consultation document would also help to deliver other key government objectives, such as the manifesto commitment to strengthen the NCA²² and the commitment in the 2021 Integrated Review to strengthen the NCA and to increase regional and local policing capacity²³ so that law enforcement can tackle the multiple threats the UK currently faces.

²⁰ His Majesty's Inspectorate of Constabulary, PEEL: Police effectiveness 2016, March 2017: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/peel-police-effectiveness-2016.pdf>
See page 112.

²¹ National Crime Agency, Ancillary Orders: <https://nationalcrimeagency.gov.uk/who-we-are/publications/495-nca-ancillary-order-register-1>

²² The Conservative and Unionist Party Manifesto 2019: https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf – see page 19.

²³ Cabinet Office, Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy, March 2021: <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy> - see second bullet on page 83.

Measures to improve the application process for SCPOs

Option 1: Enabling HMRC, the NCA, the police (in all cases, not just cases which are terrorism-related) and the British Transport Police (BTP) to apply to the High Court for an SCPO, following consultation with the CPS

An SCPO can be made by the High Court in the absence of a criminal conviction. Under current legislation, in England and Wales an application to the High Court for an SCPO can only be made by the Director of Public Prosecutions, the Director of the Serious Fraud Office (SFO) or, in terrorism-related cases only, the police²⁴. If another agency such as HMRC, the NCA or BTP wishes to obtain an SCPO in the High Court, or the police wish to do so in a non-terrorism-related case, they must make a referral to the CPS (or the SFO as appropriate²⁵) to make an application on their behalf.

The aim of adding HMRC, the NCA, BTP and the police to the list of parties who can apply to the High Court for an SCPO is to ensure that the frontline agencies leading investigations into relevant conduct can apply directly to the High Court where an SCPO is considered appropriate. It is likely that in many cases where criminal proceedings are not being pursued these agencies will be best placed to lead the process of applying for an SCPO, as they will already have in-depth knowledge of the case and the relevant technical subject matter expertise. This measure would streamline the current SCPO application process and may also help to ensure that High Court SCPOs can be used more frequently where appropriate²⁶. Under this proposal, HMRC, the NCA, BTP and the police would be required by law to consult with the CPS prior to making an application to the High Court for an SCPO.

The CPS plays a crucial role in obtaining ancillary orders such as SCPOs, including: establishing that the legal tests for their necessity are made out; identifying potential conditions to be imposed; evaluating the future risk posed by individuals and the resource burden of monitoring the order; and ensuring that the orders are not being used as an alternative to prosecution where prosecution is a viable option. If this proposal were to become statute, the Home Office would work closely with the CPS, HMRC, the NCA, BTP and the police to put in place a Memorandum of Understanding (MoU) setting out a formal framework for this consultation process, to ensure a shared understanding amongst all parties of their roles and responsibilities in the process of applying to the High Court for an SCPO.

²⁴ Section 43 and Schedule 12 to the Counter-Terrorism and Sentencing Act 2021 amended the Serious Crime Act 2007 to enable the police to apply to the High Court for an SCPO in terrorism-related cases, alongside mandatory consultation with the prosecuting authority:
<https://www.legislation.gov.uk/ukpga/2007/27/contents>

²⁵ To note: Anecdotally, based on initial internal engagement with the Serious Fraud Office (SFO), the SFO has not made an application to the High Court for an SCPO to date.

²⁶ For example: where a person has a relevant overseas conviction and there is a need to protect the public whilst that person is in the UK; where there is evidence of conduct “likely to facilitate the commission of a serious offence” as per section 2(1)(c) of the 2007 Act; where a person was previously convicted by the Crown Court, but for good reason the Crown Court did not make an SCPO at that time; where a person has been acquitted of a relevant criminal offence, but is still considered to pose a risk to the public.

Questions to consultees:

Q16. We propose enabling HMRC, the NCA, the police (in cases other than terrorism²⁷) and BTP to apply directly to the High Court for an SCPO. Do you agree? (Please tick one.)

- a) HMRC (Yes / No / Don't know)
- b) The NCA (Yes / No / Don't know)
- c) The police (in cases other than terrorism) (Yes / No / Don't know)
- d) BTP (Yes / No / Don't know)

Please explain your answer(s). (Max. 250 words)

Q17. Apart from HMRC, the NCA, the police, BTP, the CPS and the SFO, are there any other agencies who you think should be able to apply to the High Court for an SCPO?

Please list.

Please explain your answer(s). (Max. 250 words)

Option 2: Enabling the Crown Court to make an SCPO on acquittal on an application from the CPS or the SFO

Currently the Crown Court can only make an SCPO when dealing with a person who has been convicted of a serious crime, not where that person has been acquitted. This means that where a person is acquitted by the Crown Court, but there is still evidence that they have been involved in serious crime and there are reasonable grounds to believe that an SCPO would protect the public by preventing, restricting or disrupting that person's involvement in serious crime, proceedings currently have to start again with a new application to the High Court.

There are different reasons why a person may be found not guilty of a serious offence, but where an SCPO may still be appropriate for the protection of the public. For example, where the evidence provided by the prosecution does not satisfy the court beyond reasonable doubt that a serious offence has been committed, but there is evidence that a person has conducted themselves in a way that was likely to facilitate the commission of a serious offence by them or another person²⁸ and the person is considered to pose a risk to the public.

²⁷ Section 8 of the Serious Crime Act 2007, as amended by section 43 and Schedule 12 to the Counter-Terrorism and Sentencing Act 2021, already enables the police to apply to the High Court for an SCPO in terrorism-related cases, alongside mandatory consultation with the prosecuting authority: <https://www.legislation.gov.uk/ukpga/2007/27/contents>.

²⁸ Under section 2(1)(c) of the Serious Crime Act 2007 such a finding would amount to involvement in serious crime.

This proposed measure would make it easier and quicker for an SCPO to be obtained where appropriate. In such circumstances, the Crown Court would be best placed to decide whether to make an SCPO against a person which it has just acquitted, given that it is the court which will have heard all the evidence relating to the person's conduct.

There are other examples of statutory provisions which allow for court orders to be made against individuals on acquittal in other contexts, such as restraining orders under the Protection from Harassment Act 1997²⁹ and Domestic Abuse Protection Orders (DAPOs) under the Domestic Abuse Act 2021³⁰.

Question to consultees:

Q18. We propose enabling the Crown Court to make an SCPO on acquittal for a serious offence. Do you agree? (Please tick one.)

- a) Yes
- b) No
- c) Don't know

Please explain your answer. (Max. 250 words)

Measures to improve monitoring and enforcement of SCPOs by law enforcement agencies

Option 3: Providing the courts with an express power to impose electronic monitoring ("tagging") as a condition of an SCPO

Under the 2007 Act, SCPOs can include any requirements which the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime. However, in the absence of an express legislative power to do so, the circumstances in which a court might consider imposing an electronic monitoring (or "tagging") requirement may be limited³¹ – that is why we propose amending the 2007 Act to provide the courts with an express legislative power to impose electronic monitoring as a term of an SCPO.

Tagging the subject of an SCPO could be used to monitor their compliance with other relevant terms of the order, such as where an exclusion/inclusion zone or a curfew are imposed. For example, Radio Frequency technology can be used to monitor a curfew at a specific location during a defined time period, and GPS location monitoring technology can be used to send an alert if the subject enters a defined exclusion zone. These measures can deter the subject from associating with particular people, or from going to particular locations where they may be involved in criminal activity. Tagging could also be used to continually monitor the subject's whereabouts via GPS location monitoring technology,

²⁹ Protection from Harassment Act 1997: <https://www.legislation.gov.uk/ukpga/1997/40/contents>

³⁰ Domestic Abuse Act 2021: <https://www.legislation.gov.uk/ukpga/2021/17/contents>

³¹ See *R (on the application of Richards) v. Teesside Magistrates' Court and Chief Constable of Cleveland Police* (2015) 179 JP 119: <https://www.bailii.org/ew/cases/EWCA/Civ/2015/7.html>

known as “trail monitoring”. Where trail monitoring is in place, the agency responsible for the management of the SCPO would be able to retrospectively request to view data on, for example, the subject’s whereabouts and movements during a specified time period. This data could assist law enforcement agencies to investigate potential breaches of the SCPO, support prosecutions for breach, or support wider investigations in which the subject of the SCPO is a suspect. Trail monitoring would be a more intrusive intervention, particularly if it was included as a requirement of an SCPO made by the High Court in the absence of a conviction, because it can deter the subject from undertaking lawful activities not constituting a breach of their SCPO which they wish to remain private. Trail monitoring may therefore be appropriate only in relation to the very highest risk individuals.

The requirements of an SCPO are decided by the court based on the facts of the case, depending on the nature of the person’s activity and the risk which they pose to the public. Evidence suggests that currently only a small proportion of SCPOs include terms which can be monitored through tagging. However, where the court is satisfied that imposing electronic monitoring is a proportionate intervention because of the level of risk posed by the person (amongst other factors), electronic monitoring would improve law enforcement agencies’ ability to monitor compliance with the SCPO, manage the risk posed by the very highest risk individuals and provide evidence in the event that the SCPO is breached³².

As set out above, monitoring and enforcement of SCPOs has been inconsistent across police forces in England and Wales. There is therefore a need to support better risk management of individuals who law enforcement agencies believe have the intent and capability to offend or reoffend and to improve the monitoring and enforcement of SCPOs. As with other requirements of an SCPO, the court would only have the power to impose electronic monitoring where appropriate. When making this determination, the court would always act within the protection afforded by the European Convention on Human Rights through the Human Rights Act 1998, ensuring that electronic monitoring would only be used where necessary and proportionate in all the circumstances of the case. A further safeguard which could be considered would be to provide that the court can only impose an electronic monitoring requirement for a specified maximum duration, which could be extended by an application to vary the SCPO if necessary.

The Home Office would also work closely with MoJ, HMPPS, the NPCC lead for electronic monitoring and other operational partners to ensure that any new legislative provisions contained the appropriate practical safeguards. These could include: providing that electronic monitoring can only be imposed where these arrangements are available locally and where the local provider gives consent; providing that an SCPO which includes an electronic monitoring requirement must specify the “responsible officer” who is the recipient

³² Current rates where breach of an SCPO is dealt with via prosecution are estimated to be approximately 34 per cent. This is because since 2017 there have been 254 known prosecutions for failure to comply with a SCPO while approximately 748 SCPOs have been successfully imposed. The breach rate of SCPOs has been calculated based on figures sourced from Ministry of Justice Quarterly: December 2020, covering the period 2017 to 2020: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

of data such as breach notifications in relation to that requirement and who has responsibility for taking any enforcement action; providing that the respondent must make themselves available within a specified timeframe for the fitting, inspection and/or repair of the tagging equipment and must not interfere with the working of the EM equipment; and requiring the Government to issue a code of practice relating to the processing of data gathered in the course of electronic monitoring imposed under an SCPO.

Questions to consultees

Q19. We propose providing the courts with an express power to impose electronic monitoring (or “tagging”) as a condition of an SCPO for the purposes of monitoring compliance with other relevant terms of the order. Do you agree? (Please tick one.)

- a) Yes
- b) No
- c) Don't know

Please explain your answer. (Max. 250 words)

Q20. [For law enforcement agencies] In your experience, roughly what proportion of SCPOs impose conditions which it would be relevant to use electronic monitoring to monitor compliance with? (Please tick one.)

- a) 100%
- b) 75%
- c) 50%
- d) 25%
- e) 0%

Q21. We propose providing the courts with an express power to impose electronic monitoring (or “tagging”) as a standalone trail monitoring condition of an SCPO for the purposes of monitoring the subject's whereabouts. The agency responsible for the management of the SCPO would be able to retrospectively request to view this data. Do you agree? (Please tick one.)

- a) Yes, for SCPOs made without a conviction and for SCPOs made post-conviction (both High Court and Crown Court)
- b) Yes, for SCPOs made post-conviction only (Crown Court only)
- c) No
- d) Don't know

Please explain your answer. (Max. 250 words)

Q22. [For law enforcement agencies] Would the availability of electronic monitoring (or “tagging”) as a condition of an SCPO help law enforcement agencies to: monitor and enforce other relevant conditions of the SCPO more effectively; detect, investigate and prosecute more breaches of these conditions; progress wider investigations in which the subject of an SCPO is a suspect; and/or manage the risk posed by the very highest risk individuals? (Please tick one.)

- a) Yes
- b) No
- c) Don't know

Please explain your answer. (Max. 250 words)

Option 4: Providing that all SCPOs automatically impose a prescribed set of notification requirements

As set out above, SCPOs can already include any requirements which the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime. This includes requirements to notify the relevant law enforcement agency of certain personal information, such as notification of communications devices, vehicles, sources of income, travel outside the UK, places of residence, business premises and business interests.

The aim of requiring all SCPOs to impose a prescribed set of notification requirements is to standardise the personal information received and recorded by law enforcement agencies in relation to individuals subject to an SCPO. This will help to ensure greater consistency in the way these individuals are managed and improve law enforcement agencies' ability to proactively manage SCPO cases and to share information with each other effectively.

This capability may be particularly important when individuals subject to an SCPO move between different geographical or police force areas, or between different stages of the criminal justice system, such as between custody and being on licence in the community.

Under this proposal, any future legislation would set out a list of notification requirements which all SCPOs must include. This list could include, for example:

- full name and details of any aliases used;
- home address and addresses of any secondary residences;
- phone numbers, email addresses and online usernames;
- passport number;
- vehicle registration;
- bank accounts; and
- employment details.

Where an SCPO is made against a business or corporation, rather than against an individual, a different list of prescribed notification requirements could be applied.

As set out above, monitoring and enforcement of SCPOs has been inconsistent across police forces in England and Wales. There is therefore a need to improve risk management of individuals who law enforcement agencies believe have the intent and the capability to offend or reoffend and to improve the monitoring and enforcement of SCPOs.

If this proposal were to become law, the list of notification requirements would only include items for which there is a clear justification.

The Home Office would work to ensure that any new legislative provisions contain appropriate practical safeguards to prevent duplication of notification requirements, such as where a person who becomes subject to an SCPO is already subject to other notification requirements under another Act, or as part of their licence conditions.

Under this proposal, in addition to the prescribed notification requirements, the court would continue to be able to impose any further notification requirements depending on the circumstances of the case.

There are already other civil orders which impose mandatory notification requirements, such as Stalking Protection Orders (SPOs) under the Stalking Protection Act 2019³³ and Domestic Abuse Protection Orders (DAPOs) under the Domestic Abuse Act 2021³⁴.

Questions to consultees

Q23. We propose providing that all SCPOs automatically include a prescribed set of notification requirements.

(To note: Under this proposal, in addition to the prescribed notification requirements, the court would still be able to impose further notification requirements depending on the circumstances of the case.)

Do you agree? (Please tick one.)

- a) Yes
- b) No
- c) Don't know

Please explain your answer. (Max. 250 words)

³³ Stalking Protection Act 2019: <https://www.legislation.gov.uk/ukpga/2019/9/contents/enacted>

³⁴ Domestic Abuse Act 2021: <https://www.legislation.gov.uk/ukpga/2021/17/contents>

Q24. Do you agree that the following notification requirements should be prescribed for all SCPOs as standard under this proposal? (Please tick.)

- a) Full name (Yes / No / Don't know)
- b) Any aliases used (Yes / No / Don't know)
- c) Address of primary residence (Yes / No / Don't know)
- d) Addresses of any secondary residences (Yes / No / Don't know)
- e) Phone number(s) (Yes / No / Don't know)
- f) Email address(es) (Yes / No / Don't know)
- g) Online username(s) (Yes / No / Don't know)
- h) Passport number(s) (Yes / No / Don't know)
- i) Vehicle registration(s) (Yes / No / Don't know)
- j) Bank accounts (Yes / No / Don't know)
- k) Employment details (Yes / No / Don't know)
- l) Other – Please list:

Please explain your answer(s). (Max. 250 words)

Q25. Do you have any comments, or further information or evidence to inform any of these legislative proposals on SCPOs, or our Impact Assessment? (Please tick one.)

- a) Yes
- b) No

Please provide details. (Max. 500 words)

Q26. Are there any other ways in which the legislation for SCPOs can be improved or strengthened? (Please tick one.)

- a) Yes
- b) No
- c) Don't know

Please provide details (Max. 500 words)

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (for example, member of the public, law enforcement agency, legal professional, industry professional etc.)	
Date	
Company name/organisation (if applicable)	
Email address	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/>
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Questionnaire

We would welcome responses to the following questions set out in this consultation document:

Measure 1: New offences to criminalise the making, modification, supply, offer to supply and possession of articles for use in serious crime

Q1. Do you think that current offences are sufficient to tackle the issue of supply of articles for use in serious crime? (Please tick one.)

a)	Yes, the current offences are sufficient	
b)	No, the current offences are insufficient	
c)	Don't know	

Please explain your answer and give evidence where possible, including on the scale and nature of the issue. (Max. 250 words)

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Q2. Which of the proposals for new criminal offences do you think should be pursued? (Please tick one.)

a)	Option 1 (lower threshold and specified articles)	
b)	Option 2 (higher threshold and no specified articles)	
c)	None	
d)	Other	

If you chose 'Other', please explain your answer. (Max. 250 words)

Q3. Which articles do you think should be listed for option 1? (low threshold and specified articles) (Please tick all that apply.)

a)	Vehicle concealments	
b)	Sophisticated encrypted communication devices	
c)	Digital templates for 3D-printed firearm components	
d)	Pill presses	
e)	Other	

If you chose 'Other', please provide details. (max. 250 words)

Q4. Do you have any views on how any of the following articles should be defined?

- a) Vehicle concealments

Please provide details. (Max. 250 words)

b) Sophisticated
encrypted
communications
devices

Please provide details. (Max. 250 words)

c) Digital templates
for 3D-printed
firearm
components

Please provide details. (Max. 250 words)

d) Pill presses

Please provide details. (Max. 250 words)

e) Other

Please provide details. (Max. 250 words)

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Q5. Options 1 and 2 both tackle articles for use in serious crime. For the purpose of these options, what do you think “serious crime” should include? (Please tick one.)

a)	Offending associated with serious and organised crime <u>and</u> serious offences against the person	
b)	<u>Only</u> offending associated with serious and organised crime, <u>not</u> serious offences against the person	
c)	Other	
d)	Don't know	

If you chose 'Other' please provide details. (Max. 250 words)

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Q6. Do you think there should be a defence of “acting reasonably” available for these offences? (Please tick one.)

a)	Yes	
b)	No	
c)	Other	
d)	Don't know	

If you chose 'Other' please provide details. (Max. 250 words)

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Q7. [For businesses] How many employees does your business have? (Please tick one.)

a)	0-9 employees	
b)	10-49 employees	
c)	50 employees or more	

Q8. [For businesses] Does your business involve any of the following articles? (Please tick all that apply.)

a)	Vehicle concealments	
b)	Sophisticated encrypted communication devices	
c)	Digital templates for 3D-printed firearm components	
d)	Pill presses	

If you selected any of the above articles, please explain the circumstances and how the proposed offences might impact you. (Max. 250 words)

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Q9. Outside of business, does your life involve the use of any of the following for legitimate activities? (Please tick all that apply.)

a)	Vehicle concealments	
b)	Sophisticated encrypted communication devices	
c)	Digital templates for 3D-printed firearm components	
d)	Pill presses	

If you selected any of the above articles, please explain the circumstances and how the proposed offences might impact you. (Max. 250 words)

Q10. [For businesses] Q10. [For businesses] In your business activities, how many of the following did you i) sell /supply ii) buy iii) use, in each year from 2017 - 2021?

- a) Vehicle concealments
- b) Sophisticated encrypted communication devices
- c) Digital templates for 3D-printed firearm components
- d) Pill presses

Article	Number of articles in each year				
	2017	2018	2019	2020	2021
a) Vehicle concealments					
i) Sell / supply					
ii) Buy					
iii) Use					
b) Sophisticated encrypted communication devices					
i) Sell / supply					
ii) Buy					
iii) Use					
c) Template for 3D-printed firearm components					
i) Sell / supply					
ii) Buy					

iii) Use					
d) Pill presses					
i) Sell / supply					
ii) Buy					
iii) Use					

Q11. [For businesses] What was the value of your turnover specific to any of the articles below in each year from 2017 – 2021?

Article	Value of turnover in each year (£)				
	2017	2018	2019	2020	2021
ii) Vehicle concealments					
iii) Sophisticated encrypted communication devices					
iv) Template for 3D-printed firearm components					

v)	Pill presses					
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Q12. [For businesses] What would be the impact of Measure 1, Options 1 and 2 on your business or organisation if they came into force? Please provide estimates on any costs or benefits, if possible. (Max. 250 words each).

a) Measure 1, Option 1 (lower threshold and specified articles)

b) Measure 1, Option 2 (higher threshold and no specified articles)

Q13. [For law enforcement agencies] Please provide annual figures in each year from 2017 - 2021 for: how many of the following articles you encountered and how many investigations involved the following articles:

Article	Number of articles encountered in each year				
	2017	2018	2019	2020	2021
a) Vehicle concealments					
b) Criminally dedicated secure communication devices					
c) Digital templates for 3D-printed firearm components					
d) Pill presses					

Article	Number of investigations in each year				
	2017	2018	2019	2020	2021
e) Vehicle concealments					
f) Criminally dedicated secure communication devices					
g) Digital templates for 3D-printed firearm components					
h) Pill presses					

Q14. Do you think new civil powers should be available to allow seizure and forfeiture of articles intended for use in serious crime? (Please tick one.)

a)	Yes, alongside new criminal offences	
b)	Yes, instead of new criminal offences	
c)	No	
d)	Don't know	

Please provide further details of the reason for your answer (Max. 250 words).

Q15. Do you have any comments, or further information or evidence to add to the impact assessment to inform these legislative proposals? (Please tick one.)

a)	Yes	
b)	No	

Please provide details. (Max. 250 words)

Measure 2: Proposals to strengthen and improve the functioning of Serious Crime Prevention Orders (SCPOs)

Q16. We propose enabling HMRC, the NCA, the police (in cases other than terrorism³⁵) and BTP to apply directly to the High Court for an SCPO. Do you agree? (Please tick.)

	Agency:	Yes	No	Don't know
a)	HMRC			
b)	The NCA			
c)	The police (in cases other than terrorism)			
d)	BTP			

Please explain your answer(s). (Max. 250 words)

³⁵ Schedule 12 of the Counter-Terrorism and Sentencing Act 2021 enables the police to apply to the High Court for an SCPO in terrorism-related cases, alongside mandatory consultation with the prosecuting authority: <https://www.legislation.gov.uk/ukpga/2007/27/contents>.

Q17. Apart from HMRC, the NCA, the police, BTP, the CPS and the SFO, are there any other agencies who you think should be able to apply to the High Court for an SCPO?

Please list.

Please explain your answer(s). (Max. 250 words)

Q18. We propose enabling the Crown Court to make an SCPO on acquittal for a serious offence. Do you agree? (Please tick one.)

a)	Yes	
b)	No	
c)	Don't know	

Please explain your answer. (Max. 250 words)

Q19. We propose providing the courts with an express power to impose electronic monitoring (or “tagging”) as a condition of an SCPO for the purposes of monitoring compliance with other relevant terms of the order. Do you agree? (Please tick one.)

a)	Yes	
b)	No	
c)	Don't know	

Please explain your answer. (Max. 250 words)

Q20. [For law enforcement agencies] In your experience, roughly what proportion of SCPOs impose conditions which it would be relevant to use EM to monitor compliance with? (Please tick one.)

a)	100%	
b)	75%	
c)	50%	
d)	25%	
e)	0%	

Q21. We propose providing the courts with an express power to impose electronic monitoring (or “tagging”) as a standalone condition of an SCPO for the purposes of monitoring the subject’s whereabouts. The agency responsible for the management of the SCPO would be able to retrospectively request to view this data. Do you agree? (Please tick one.)

a)	Yes, for SCPOs made without a conviction <u>and</u> for SCPOs made post-conviction (both High Court and Crown Court)	
b)	Yes, for SCPOs made post-conviction <u>only (Crown Court only)</u>	
c)	No	
d)	Don’t know	

Please explain your answer. (Max. 250 words)

Q22. [For law enforcement agencies] Would the availability of electronic monitoring (or “tagging”) as a condition of an SCPO help law enforcement agencies to: monitor and enforce other relevant conditions of the SCPO more effectively; detect, investigate and prosecute more breaches of these conditions; progress wider investigations in which the subject of an SCPO is a suspect; and/or manage the risk posed by the very highest risk individuals? (Please tick one.)

a)	Yes	
b)	No	
c)	Don't know	

Please explain your answer. (Max. 250 words)

Q23. We propose providing that all SCPOs automatically impose a prescribed set of notification requirements.

(To note: Under this proposal, in addition to the prescribed notification requirements, the court would still be able to impose further notification requirements depending on the circumstances of the case.)

Do you agree? (Please tick one)

a)	Yes	
b)	No	
c)	Don't know	

Please explain your answer. (Max. 250 words)

Q24. Do you agree that the following notification requirements should be prescribed for all SCPOs as standard under this proposal? (Please tick.)

	Personal information, including any changes to this information:	Yes	No	Don't know
a)	Full name			
b)	Any aliases used			
c)	Address of primary residence			
d)	Addresses of any secondary residences			
e)	Phone number(s)			
f)	Email address(es)			
g)	Online username(s)			
h)	Passport number(s)			
i)	Vehicle registration(s)			
j)	Bank accounts			
k)	Employment details			

l)	Other – Please list:

Please explain your answer(s). (Max. 250 words)

Q25. Do you have any comments, or further information or evidence to inform any of these legislative proposals on SCPOs, or our Impact Assessment? (Please tick one.)

a)	Yes	
b)	No	

Please provide details. (max. 500 words)

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Q26. Are there any other ways in which the legislation for SCPOs can be improved or strengthened? (Please tick one.)

a)	Yes	
b)	No	
c)	Don't know	

Please provide details (Max. 500 words)

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Equality Impacts

Q27. Do you have any comments about the proposals in this consultation document in relation to impacts on people on the basis of any of the following protected characteristics under the Equality Act 2010: age; disability; pregnancy and maternity; race; religion or belief; sex; sexual orientation and gender reassignment; marriage or civil partnership? How might such impacts be mitigated? (Max. 500 words)

Thank you for participating in this consultation.

Contact details and how to respond

Please send your response by 21st March 2023 at 17:00 via the online form at: <https://www.homeofficesurveys.homeoffice.gov.uk/s/YCIQTE/>

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the following address:

Mailroom
Serious and Organised Crime Consultation
Public Safety Group
Home Office
2 Marsham Street
London
SW1P 4DF
United Kingdom

SeriousAndOrganisedCrimeConsultation@homeoffice.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at <https://www.homeofficesurveys.homeoffice.gov.uk/s/YCIQTE/>

Alternative format versions of this publication can be requested from the Home Office at the above address.

Publication of response

A paper summarising the responses to this consultation will be published in June 2023. The response paper will be available online at www.gov.uk

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Consultation principles and data protection note

The principles that govern government departments and other public bodies when consulting with stakeholders to develop policy and legislation are set out in the Consultation Principles Guidance Document. This document can be found here: <https://www.gov.uk/government/publications/consultation-principles-guidance>

The Home Office, 2 Marsham Street, London, SW1P 4DF, is the data controller in respect of any personal information you provide to us through your responses.

Your personal data is being collected and processed by the Home Office on the basis of informed consent and public task. We will securely hold the data you provide for a maximum of 2 years from the date of publication. Further information can be found within the Government's Home Office Personal Information Charter. We will process the names and addresses and email addresses provided by respondents, and information about which organisations respondents belong to, where this is provided. We will also process the information that you provide in relation to your responses. When the consultation ends, we will publish a summary of the key points raised on the Home Office website. This will include a list of the organisations that responded, but not any individual's personal name, address, or other contact details. All responses and personal data will be processed in compliance with the Data Protection Act 2018 and the UK General Data Protection Regulation. If you want some or all of the information you provide to be treated as confidential, it would be helpful if you could clearly identify the relevant information and explain why you consider it confidential in your response.

Please note that we may be required by law to publish or disclose information provided in response to this consultation in accordance with the access to information regimes: primarily the Freedom of Information Act 2000 and the Data Protection Act 2018 and the UK General Data Protection Regulation. If we receive any request to disclose this information, we will take full account of your explanation, but cannot give you an absolute assurance that disclosure will not be made. We will not regard an automatic disclaimer generated by your IT system as a relevant request for these purposes. Once you have submitted your response to the consultation you will not be able to withdraw your answers from the analysis stage. However, under the Data Protection Act 2018 (and the UK General Data Protection Regulation), you have certain rights to access your personal data and have it corrected or erased (in certain circumstances), and you can withdraw your consent to us processing your personal data at any time.

If you have any questions about the consultation process or concerns about the way in which this research is being carried out, or require any further clarification around how we process the findings, please contact Josephine Mackinnon in the first instance at Josephine.mackinnon2@homeoffice.gov.uk

You have the right to lodge a complaint either through the Home Offices Data Protection Office at DPO@homeoffice.gov.uk, Address: Office of the DPO, Home Office, Peel Building, 2 Marsham Street London SW1P 4DF or you can make your complete directly to the

Information Commissioner's Office at ICO, Office Wycliffe House Water Lane Wilmslow
Cheshire SK9 5AF or alternatively you can telephone on 0303 123 1113.



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