



Home Office

Consultation on two legislative measures to improve the law enforcement response to serious and organised crime

Summary of consultation responses and conclusion

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Executive Summary

1. On 24th January 2023, the Home Office launched an 8-week consultation on two legislative measures to improve the law enforcement response to serious and organised crime.¹ The consultation aimed to gauge the views of the public, law enforcement agencies, and other organisations on the design of these proposals.
2. The consultation was open to the public. We made use of different media to encourage as many people as possible to make their views known. We wrote to over 35 organisations directly inviting them to provide input and attended stakeholder engagement events, where we invited views from various experts within their fields.
3. The consultation asked for views on the following measures:
 - Measure 1: New offences to criminalise the making, modifying, supplying, offering to supply and possession of articles for use in serious crime; and
 - Measure 2: Proposals to strengthen and improve the functioning of Serious Crime Prevention Orders (SCPOs).
4. The total number of responses was 57. Not all respondents answered all questions.
5. Individuals and organisations could respond to the consultation either via an online survey through gov.uk, by email to the serious and organised crime consultation shared mailbox, or by post. The vast majority of responses from members of the public were received online, whereas many industry and law enforcement experts emailed their responses.
6. The breakdown of the number of responses received by each medium is:
 - I. Online Survey (89%)
 - II. Email (11%)
 - III. Post (0%)
 - IV. Other (0%)
7. Of the total 57 responses, approximately half were submitted on behalf of organisations. For example, the National Police Chiefs' Council (NPCC) submitted one response representing the views of 19 police forces. The remainder of responses were submitted by individuals, including practitioners responding in their individual capacity.
8. The Government has now analysed the responses, which are summarised in this document. The majority of respondents were supportive of the proposals in measure 1 and in measure 2, in particular law enforcement agencies who would be directly involved in enforcing these measures.
9. Several key themes were raised in the responses, including:

¹ Home Office, SOC legislation Consultation, January 2023: [Strengthening the law enforcement response to serious and organised crime - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/strengthening-the-law-enforcement-response-to-serious-and-organised-crime)

- I. **The changing nature of serious and organised crime:** many respondents noted the significant increase in the exploitation of technological capabilities by organised crime groups, and the need to strengthen the law to stay ahead of the evolving threat landscape.
 - II. **Sophisticated encrypted communication devices:** the proposed inclusion of sophisticated encrypted communication devices in measure 1 caused the highest level of controversy amongst respondents. The definition of these devices provided for in the consultation document left a significant number of respondents concerned that they could become criminally liable for using encrypted technologies – both software and hardware – and that ceasing to use such devices and platforms would be at the expense of personal privacy, the legitimate protection of data, and technological innovation.
 - III. **Human rights considerations:** for both measures 1 and 2, respondents highlighted the potentially significant benefits to the law enforcement response to serious and organised crime, whilst emphasising the need to balance these proposals with human rights considerations, ensuring that individual freedoms are not unduly infringed. This was especially the case when considering the introduction of electronic monitoring as a standalone condition of a Serious Crime Prevention Order (SCPO).
10. The Government is grateful for all of the responses received and took careful consideration of the views and evidence provided. The responses have informed our thinking, and the Government has introduced the following measures as part of the Criminal Justice Bill:
- I. New offences to criminalise the importation, making, modifying, supplying, offering to supply and possession of a specified list of articles for use in serious crime. This will include the following articles:
 - vehicle concealments used to conceal things or people;
 - templates that can be used for 3D-printed firearm components;
 - pill presses and encapsulators

This specified list will be amendable via secondary legislation to ensure it keeps pace with the evolving threat.

- II. Measures to strengthen and improve the functioning of SCPOs, including increasing the number of bodies who can apply to the High Court for an SCPO in the absence of a conviction; empowering the Crown Court to issue an SCPO on acquittal; introducing an express power to include electronic monitoring as a condition of an SCPO; and prescribing a set of notification requirements for all SCPOs.
11. We have continued to engage key partners as we developed the policy to ensure the feedback was reflected appropriately.

Consultation Responses

Measure 1

Question 1: Do you think that the current offences are sufficient to tackle the issue of supply of articles for use in serious and organised crime?

1. We asked respondents to tick one of the following responses and explain the reason for their answer. The provided responses were:
 - I. Yes, the current offences are sufficient;
 - II. No, the current offences are insufficient;
 - III. Don't know.
2. Of those who responded to this question, the majority agreed that the current offences were insufficient. Law enforcement and criminal justice partners were overwhelmingly supportive, emphasising that the current legislative framework had not kept pace with an increase in technologies exploited by criminals.
3. Of those who responded that current offences were sufficient, many raised concerns with prohibiting encrypted communication devices. These comments are expanded under question 3.

Government Response

4. The Government's position is, along with the majority of respondents, that the current offences are not sufficient to effectively tackle serious and organised crime. Manufacturers, modifiers and suppliers profit from the supply of such articles to serious criminals but keep enough distance from the offences being carried out to avoid facing consequences.
5. 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.

Question 2: Which of the proposals for new criminal offences do you think should be pursued?

6. We asked respondents to tick one of the following responses and explain the reason for their answer. The provided responses were:
 - a) Option 1 (lower evidential threshold and specified articles)
 - b) Option 2 (higher evidential threshold and no specified articles)
 - c) None
 - d) Other - if 'other' please explain your answer (Max 250 words)
7. Of those who responded to this question, there was no clear majority response. Between options 1 and 2, a small majority chose option 1. Multiple respondents raised concerns that option 2 would be challenging to prove given its breadth and higher

evidential threshold, whilst option 1 would make the offence simpler and more practical to implement. However, others argued that option 1 (lower threshold and specified articles) could be difficult to enforce as articles could be frequently modified to evade the article's legal definition.

8. A substantial number of those who responded 'other' asked the Government to consider a third option which provides a combination of options 1 and 2. This would include a specified list at the lower evidential threshold, as well as the inclusion of 'any article that has reasonable grounds to suspect' at the higher evidential threshold.

Government Response

9. The Government has analysed all responses to this question and has further developed option 1 – a lower threshold and specified articles defined in legislation. This is to provide the public and businesses with certainty about what the law will and will not encompass. Whilst accepting this option is less flexible than an unspecified list, this offence would include a power under secondary legislation to amend and add to the list of specified articles to ensure that the list can be updated as serious crime evolves. The Government notes that defining articles will require careful consideration to ensure the offence does not inadvertently capture the use of widespread articles that are not in scope of this legislation.

Question 3: Which articles do you think should be listed for option 1? (Lower threshold and specified articles)

10. We asked respondents to tick all of the options that should be listed and provided an opportunity for respondents to list other articles. The articles listed and given options were:
 - a) Vehicle concealments
 - b) Sophisticated encrypted communication devices
 - c) Digital templates for 3D-printed firearm components
 - d) Pill Presses
 - e) Other – if 'other' please provide details
11. Of those who responded to this question, there were differing views on which of the above articles should be included, with a minority of respondents agreeing with all four. Throughout the consultation response, sophisticated encrypted communication devices proved most controversial. Many respondents argued that given the ubiquitous use of encrypted technologies, law enforcement and criminal justice partners could face substantial difficulty in identifying those which should be considered criminally dedicated. Some highlighted that challenging private communication methods could raise human rights concerns whilst harming technological innovation. Defining what counts as a 'sophisticated' level of modification to a device would also prove challenging.

Government Response

12. The Government has taken on board the evidence provided by law enforcement partners, including that which is operationally sensitive, and has developed legislation that will include vehicle concealments, templates for 3D-printed firearm components and pill presses in its defined set of articles. We do not propose including sophisticated communication devices at this time, recognising the number of concerns raised and ensuring that this legislation does not inappropriately criminalise technologies used in everyday lawful activity. In addition, electronic devices used to steal vehicles was also put forward by a number of respondents. We have included new criminal offences in the Criminal Justice Bill to prohibit the use of these devices to combat vehicle theft. Other articles were put forward by respondents, some of which we will consider further for inclusion using the secondary power once the legislation has been commenced.
13. The Government recognises the need to increase public awareness of the specified articles and their potential use for criminal activity.

Question 4: Do you have any views on how any of the following article should be defined?

14. We asked respondents for their views on how any of the articles listed in this consultation, and any additional suggestions in their answer to question 3, should be defined in legislation. Less than half of all respondents provided suggestions here.
15. In response to vehicle concealments, it was argued that the definition would need to cover all modes of transport – maritime, aviation and road, and include both private and commercial vehicles. It was also highlighted that categories of vehicle concealments could be listed in the definition, such as structural, portable, hybrid and parasitic concealments, and including those of a manual, electronic, or hydraulic nature.
16. The points raised in relation to defining sophisticated encrypted communication devices have been noted under question three.
17. For templates used to print 3D firearm components, many respondents emphasised the need to ensure the definition was sufficiently broad to account for future adaptations in designs, technology, manufacturing process, and filetypes
18. For pill presses, one respondent suggested looking at international parallels such as the US Government’s Drug Enforcement Administration’s definition for pill presses (tableting and encapsulating machines).²

Government Response

19. The Government has worked with subject matter experts and lawyers to develop the definitions of these articles that will be set out in the legislation.

² United States Drug Enforcement Administration: [Home | DEA.gov](https://www.dea.gov)

Question 5: 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?

20. We asked respondents to tick which statement best defines serious crime for the purposes of these offences. The statements listed were:
- 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- if 'other' please provide details
 - d) Don't know
21. Of those who responded to this question, the majority thought that the definition of serious crime for the purposes of these offences should be 'offending associated with serious and organised crime and serious offences against the person'. Respondents emphasised that the definition should be as broad as possible given the crossover between serious and organised crime and serious offences. This was especially the case with regards to the printing of 3D firearms which could be utilised by an individual for serious violent offences including homicide unconnected to serious and organised crime.
22. Other respondents said that a definition of a 'serious crime' offence should be consistent with other guidelines and follow the same criteria, such as the Regulation of Investigatory Powers Act 2000, or Section 18 of the Offences Against the Person Act 1861. One respondent suggested the inclusion of offences in relation to heritage assets and cultural property and public revenue under the definition of serious crime.

Government Response

23. For the purposes of these criminal offences, the definition of serious crime will include serious offences specified in Part 1 of Schedule 1 of the Serious Crime Act 2007.³ The Government considered other serious offences against the person such as murder, kidnap, grievous bodily harm, sexual offences against children and other sexual offences. However, after careful analysis, the Government considers the existing list of serious crimes under Schedule 1 to be sufficient for the purpose of these new offences and will not seek to widen this definition further.

³ Serious Crime Act 2007, Schedule 1 details serious offences under the Act, including: Drug trafficking; Slavery and People Trafficking; Terrorism; Firearms offences; Prostitution and Child sex; Armed robbery; Money laundering; Fraud; Public revenue offences; bribery; Counterfeiting; Computer Misuse; Intellectual property; Environmental crimes; Organised Crime (*participating in the activities of an organised crime group*); Sanctions evasion; Inchoate offences: [Serious Crime Act 2007 \(legislation.gov.uk\)](https://legislation.gov.uk)

Question 6: Do you think there should be a defence of ‘acting reasonably’ available for these offences?

24. We asked respondents to tick one statement only. The statements listed were:
- Yes
 - No
 - Other - if ‘other’ please provide details
 - Don’t Know
25. Of those who responded to this question, approximately one third selected that there should be a defence of ‘acting reasonably’ available for these offences, to ensure legitimate possession and supply of such articles were accounted for by the court. One respondent suggested using the Serious Crime Act 2007 as a model, which includes a defence of acting reasonably.⁴
26. The majority of those who responded selected ‘other’. Some raised concerns that the burden of proof ‘beyond reasonable doubt’ should be placed on the Government and not the individual or business. ‘Acting reasonably’ was cited as being too vague, and that those commercially engaged in such activities should have certainty that their behaviour is in accordance or not with the law. A change in terminology was also proposed from ‘acting reasonably’ to ‘acting lawfully’.

Government Response

27. The Government considered including a defence of acting reasonably in line with Section 50 of the Serious Crime Act 2007,⁵ but has concluded that this subjective defence would not be applicable given the proposed criminal offence’s objective threshold. However, it is the intention for there to be a defence where it was reasonable for a person to act as they did because they acted under duress. This would not be on the face of the legislation and would rely on the common law defence of duress.

Question 7: (for businesses) How many employees does your business have?

28. We asked respondents, answering on behalf of an organisation or business, to confirm how many employees their business has. The following options provided were:
- 0-9 employees
 - 10-49 employees
 - 50 employees or more
29. Of those who responded to this question, the majority of respondents were answering on behalf of an organisation with 50 or more employees, while the rest of respondents were answering on behalf of a business or organisation with 0-9 employees.

Question 8: (for businesses) Does your business involve any of the following articles?

⁴ Serious Crime Act 2007, Section 50: [Serious Crime Act 2007 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁵ [Serious Crime Act 2007 \(legislation.gov.uk\)](https://legislation.gov.uk)

30. We asked respondents answering on behalf of an organisation or business if their business was involved with, or used any of, the specified articles within this consultation. We asked for the respondents to tick all articles which apply and explain in what circumstance and capacity they use such articles.
31. Of the small number of businesses who responded to this question, approximately half involved vehicle concealments and sophisticated encrypted communication devices, while a small proportion involved digital templates for 3D-firearm components and used pill/tablet presses.

Government Response

32. The Government has continued to engage with businesses on the legitimate uses of the specified articles.

Question 9: Outside of business, does your life involve the use of any of the following for legitimate activities?

33. We asked respondents if they used any of the specified articles in the consultation. We asked for the respondents to tick all articles which applied and explain the circumstances in which they use such articles.
34. Of those who responded to this question, the large majority of respondents stated that they use sophisticated encrypted communication devices compared to a small minority of respondents who use the other articles. Many of the responses stating individual use of sophisticated encrypted communication had misinterpreted the consultation's definition of bespoke and sophisticated encrypted communication devices, and instead focussed on widespread encrypted platforms such as WhatsApp or iMessage. Academic research into 3D-printed firearms and associated emerging technologies was also cited as a legitimate activity.

Government Response

35. The Government has continued to work with stakeholders to ensure we do not criminalise the possession and supply of these articles when used in legitimate circumstances.

Question 10: (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?

36. We asked respondents, and specifically those who responded to question 8, how many articles they sold, supplied, bought, and used in each year from 2017-2021.
37. No responses were provided.

Question 11: (for businesses) What was the value of your turnover specific to any of the articles below in each year from 2017-2021?

38. We asked respondents, and specifically those who responded to question 8, the value of their turnover specific to any of the mentioned articles in each year from 2017 – 2021.

39. No values of turnover were provided.

Question 12: (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.

40. We asked respondents what the impact would be of measure 1, option 1 and 2 on their business or organisation if they came into force. We asked respondents, where possible, to provide estimates on any costs or benefits.

41. Based on the very small number of responses to this question, there would be little or no negative impact on specific businesses. One respondent, on the assumption that measure 1, option 1 would include vehicle theft devices, emphasised a potential positive impact on the customer by a reduction in car insurance costs.

Government Response

42. The Government engaged with businesses and organisations to understand the impact of both options.

Question 13: (for law enforcement agencies) Please provide annual figures in each year from 2017 – 2021 for how many of the following articles you encounter 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

43. We asked respondents to provide figures for each year from 2017 – 2021, for how many of the articles they encountered and how many investigations involved the use of these

articles. Figures are not available for publication for the reasons set out below, but the following trends have been observed by law enforcement partners.

44. Law enforcement agencies have increasingly encountered sophisticated encrypted communication devices used by criminals to facilitate organised crime. They have also observed a diversification of, and increase in, the number of encrypted platforms being used by criminals.
45. Many law enforcement agencies do not hold records for templates of 3D-printed firearms components. However, intelligence indicates that as the quality of 3D-printed weapons improve, it is highly likely that viable hybrid firearms will increasingly feature in UK criminality.
46. Concealments that are found to be empty are not currently routinely recorded, and therefore the full scale of the issue is not known. However, law enforcement partners have recorded an increase in the use of vehicle concealments over recent years.
47. Many law enforcement agencies do not hold records for pill presses encountered or investigated. However, from the data received, there has been a small increase in the number of pill presses encountered in recent years.

Government Response

48. The Government recognises the increase in the use of these articles amongst organised crime groups. Figures provided have informed the impact assessment for these offences.

Question 14: Do you think new civil powers should be available to allow seizure and forfeiture of articles intended for use in serious crime?

49. We asked respondents to consider if new civil powers should be available to allow seizure and forfeiture of articles intending for use in serious crime.
50. We asked respondents to tick one of the following responses and explain the reason for their answer. The provided responses were:
 - a) Yes, alongside new criminal offences;
 - b) Yes, instead of new criminal offences;
 - c) No
 - d) Don't know
51. Of those who responded to this question, the majority agreed that there should be new civil powers, alongside new criminal offences. Approximately a third of respondents did not believe new civil powers were needed, whilst a small minority opted for these civil powers instead of new criminal offences.
52. Respondents emphasised that civil seizure powers could act as a deterrent against those suppliers who fail to conduct appropriate due diligence checks by disrupting

supply chains. It was suggested that these new civil powers could replicate similar powers when investigating vehicle concealments at ports (Customs and Excise Management Act 1979⁶), or to consider POCA (Proceeds of Crime Act 2002⁷) which runs alongside money laundering offences, or to consider using pre-existing powers under the Power of Criminal Courts (Sentencing) Act 2000.⁸

Government Response

53. Following further legal analysis, the Government does not consider that there is a need to introduce additional civil seizure and forfeiture powers associated with these offences. Existing legislation such as the Police and Criminal Evidence Act 1984 ensures that articles that are considered as evidence of a crime can already be seized by law enforcement.

Question 15: Do you have any comments or further information to add to the impact assessment to inform these legislative proposals?

54. We asked respondents if they had any further comments or further information to add to the impact assessment to inform these legislative proposals. The majority of respondents had comments. These comments outlined both the benefits and risks of measure 1, which the Government has carefully considered.

Government Response

55. Introducing measure 1 reflects the Government's commitment to equipping law enforcement agencies with the tools and legal powers they need to tackle serious and organised crime and stay ahead of the highest harm criminals currently operating in the UK.

Measure 2

Question 16: We propose enabling HM Revenue and Customs (HMRC), the NCA, the Police (in cases other than terrorism) and British Transport Police (BTP) to apply directly to the High Court for a Serious Crime Prevention Order (SCPO). Do you Agree?

56. We asked respondents if they agreed with the Government's proposal to allow HMRC, the NCA, the Police (in cases other than terrorism) and BTP to apply directly to the High Court for an SCPO and to explain the reason for their answers.

57. Of those who responded to this question, the majority agreed with the proposal to enable all four additional bodies to apply directly to the High Court for an SCPO. One

⁶ Customs and Excise Management Act 1979, Section 88: [Customs and Excise Management Act 1979 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1979/69/section/88)

⁷ Proceeds of Crime Act 2002, Sections 47A - 47S: [Proceeds of Crime Act 2002 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2002/29/sections/47A-47S)

⁸ Powers of Criminal Courts (Sentencing Act) 2000, Section 143: [Powers of Criminal Courts \(Sentencing\) Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/17/section/143)

respondent highlighted that careful consideration would be required to ensure the application process does not become overly resource intensive.

58. Some respondents commented that all police forces should have this power, including the Civil Nuclear Constabulary and Ministry of Defence Police (MDP) for reasons of national security. Another respondent asked for clear guidance and standard operating procedures on what constitutes serious crime and when these orders would be appropriate.

Government Response

59. The Government's position is to ensure that these frontline agencies leading investigations into relevant conduct can apply directly to the High Court where an SCPO is considered appropriate. In addition to those parties that we consulted on we will also add the Ministry of Defence Police (MDP) - see response to Q.17 below. The inclusion of both BTP and MDP is to provide parity with the other 43 police forces given their roles in tackling serious and organised crime.
60. 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 appropriate.
61. Under this proposal, HMRC, the NCA, BTP, MDP and the police will be required by law to consult the CPS prior to making an application to the High Court for an SCPO. The Home Office will work closely with the CPS, HMRC, the NCA, BTP, MDP 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.

Question 17: Apart from HMRC, the NCA, the Police, BTP, the CPS, and the SFO, are there any other agencies who think you should be able to apply to the High Court for an SCPO? Please list.

62. We asked respondents if there were any other agencies who should be able to apply to the High Court for an SCPO.
63. Agencies listed from respondents were:
1. Trading standards (3 suggestions)
 2. Ministry of Defence Police (2 suggestions)
 3. Local authorities (2 suggestions)
 4. RSPCA (2 suggestions)
 5. Civil Nuclear Constabulary

6. DVLA
7. Natural Resources Wales
8. Probation
9. Border Force
10. Home Office Immigration Enforcement
11. Environment Agency
12. Foods Standard Agency

Government Response

64. Following engagement with law enforcement partners and the views provided in the public consultation, the Government's position is that the right balance is to widen the applicant list to the main law enforcement agencies - the NCA, HMRC, the police, BTP, and MDP. The MDP's inclusion is to provide parity with the other 43 police forces (and BTP) given its role in tackling serious and organised crime.

Question 18: We propose enabling the Crown Court to make an SCPO on acquittal for a serious offence. Do you agree?

65. We asked respondents if they agreed with the Government's proposal to enable the Crown Court to make an SCPO on acquittal for a serious offence and to explain the reasoning behind their answer.
66. Of those who responded to this question, the majority agreed with the Government's proposal. Respondents highlighted that SCPOs on acquittal would allow the Judge to make a decision based on the widest range of possible evidence, and therefore better protect the public even when the criminal evidential burden had not been met.
67. Respondents who disagreed were concerned about the use of civil orders on acquittal and the balance with human rights, noting that such cases could be subject to legal challenge.

Government Response

68. The Government will seek to enable the Crown Court to impose an SCPO on acquittal on application from the CPS or the SFO under Section 19 of the SCA 2007.⁹ This measure will make it easier and quicker for an SCPO to be obtained where appropriate. Currently, under the Serious Crime Act 2007, Section 19,¹⁰ the Crown Court can only make an SCPO when dealing with a person who has been convicted of a serious crime, not when that person has been acquitted. When 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, proceedings currently have to start again with a new application to the High Court. The Government's proposed measure would ensure better use of this power. Human rights aspects will be carefully considered, alongside guidance for Judges in utilising SCPOs.

⁹ Serious Crime Act 2007, Section 19: [Serious Crime Act 2007 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2007/35/section/19)

¹⁰ Ibid.

Question 19: 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?

69. Of those who responded to this question, the majority agreed with the Government's proposal. Electronic Monitoring was viewed by many respondents as an effective way of ensuring compliance and to support better risk management of involvement in organised crime. While some respondents highlighted the potentially significant resource implications of enforcing electronic monitoring, others argued that it would reduce the need for police to deploy intensive covert tactics to monitor a subject's compliance. One respondent emphasised the need to set out the metrics that will be used to determine the effectiveness of monitoring individuals issued with an SCPO.

Government Response

70. The Government is seeking to amend the Serious Crime Act 2007 to provide the courts with an express legislative power to impose electronic monitoring as a term of an SCPO. The Government will work with partners to ensure the appropriate technology is in place, and that there is sufficient resource to monitor and enforce the conditions. All necessary safeguards will be carefully considered, including clearly outlining the limitations on who can access specific data sets to ensure processing complies with the stated purpose and is proportionate.

Question 20: (for law enforcement agencies) In your experience, roughly what proportion of SCPOs impose conditions which it would be relevant to use monitoring to monitor compliance with?

71. We asked law enforcement agencies what proportion of SCPOs impose conditions where electronic monitoring (EM) would be a relevant condition to monitor compliance.

72. The estimated proportion provided by law enforcement partners ranged from 0-100% with no clear majority benchmark. One agency offered that EM conditions should be reserved for the highest harm, highest risk offenders and would therefore only be applicable to approximately 1-2% of cases.

Government Response

73. The Government will continue to work with partners to provide guidelines on the circumstances in which electronic monitoring should be considered as a condition of an SCPO.

Question 21: 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?

74. We asked respondents if they agreed with the Government's proposal to provide courts with the express power to impose electronic monitoring as a standalone trail monitoring condition of an SCPO for the purpose of monitoring the subject's whereabouts. We asked respondents to tick one of the below answers and explain their reasoning behind their answer:
- 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
75. Of those who responded to this question, a small majority opted for both SCPOs made without a conviction and for SCPOs made post-conviction (both High Court and Crown Court). Respondents argued that monitoring should be available if deemed necessary, regardless of how the order was obtained.
76. Those who disagreed emphasised that electronic monitoring raised human rights concerns, with one respondent noting that orders including electronic monitoring granted without conviction could be subject to legal challenge. Another respondent emphasised that trail monitoring should be a limited practice and only reserved for the highest risk cases where alternatives have been rejected, in order to help justify the process as necessary and proportionate. To ensure data processing was compliant with the data minimisation principle, it would be essential that only the minimum amount of data necessary was captured by any monitoring technique.

Government Response

77. The Government recognises that trail monitoring is a particularly intrusive condition to track a subject's whereabouts with significant resource implications. The consultation did not yield a compelling evidence base that trail monitoring is a necessary or proportionate standalone condition for SCPOs at this time. Law enforcement agencies' ability to manage the threat posed by the very highest risk individuals must be balanced against the need to protect an individual's right to privacy and freedom.

Question 22: [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?

78. We asked law enforcement agencies if the availability of electronic monitoring would 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.

79. Of the those who responded, the large majority agreed that electronic monitoring would help realise these suggested benefits. However, objections raised often centred on the practicalities of electronic monitoring, such as insufficient access to data often undermining the tagging process. Others noted that this could potentially duplicate conditions placed on offenders realised on bail or on licence from prison.

Government Response

80. The Government recognises the proposed benefits of electronic monitoring as a tool to ensure compliance with other conditions of an SCPO, 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. As this form of electronic monitoring is limited to monitoring compliance with another condition of an SCPO and therefore less invasive than trail monitoring, the Government intends to ensure this condition is available to both the High Court (without a conviction) and the Crown Court (on conviction or acquittal).

Question 23: 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 on the case) Do you agree?

81. Of those who responded, the majority agreed with the Government's proposal of providing that all SCPOs automatically include a prescribed set of notification requirements.
82. Those in favour highlighted that this proposal would create consistency and simplicity, whilst noting that the court would retain its flexibility to impose additional requirements where necessary. It was emphasised that SCPOs imposed on a business or corporation, rather than against an individual, would require a different set of prescribed notification requirements. Those respondents who disagreed with the proposal suggested that all requirements should be selected on the basis that they were necessary and appropriate to the offending history of the subject.

Government Response

83. The Government intends to provide that all SCPOs automatically impose a prescribed set of notification requirements. The policy aim is to standardise the information received and recorded by law enforcement agencies in relation to both individuals and bodies corporate 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.

Question 24: Do you agree that the following notification requirements should be prescribed for all SCPOs as standard under this proposal?

84. We asked respondents if they agreed with the following notification requirements to be prescribed for all SCPOs. These include:
- a. full name,
 - b. any aliases used,
 - c. address of primary residences,
 - d. phone numbers,
 - e. email addresses,
 - f. online usernames,
 - g. passport numbers,
 - h. vehicle registration,
 - i. bank accounts,
 - j. employment details,
 - k. other.
85. The majority of respondents to this question agreed with all of the suggested notifications requirements to be prescribed to all SCPOs. It was emphasised that these requirements would be useful to ensure compliance with SCPOs and enable effective monitoring by law enforcement agencies. Another respondent highlighted that all notification requirements must be future-proofed as far as possible, or easily amendable to adapt as technology and modus operandi change.
86. The inclusion of 'bank accounts' received the smallest majority for inclusion. Another respondent argued that online usernames or private emails might not be accessible by law enforcement and would therefore be an unnecessary intrusion on personal freedoms. A further respondent argued that online services was a very broad term and may need to be made more specific so as to only capture relevant online services, dependent on the criminal activity, as it may be difficult to justify that all online services were relevant. Without specification there was the risk that authorities would be unnecessarily and disproportionately encroaching on intimate aspects of an individual's private life.
87. Other notification requirement suggestions from respondents were:

- a. properties with which a person has a legal association,
- b. all devices, applications, programmes or software used to communicate, (Phone IMEI, SIM, serial number, network provider, Cloud storage account details, instant messaging networks, PIN numbers / passwords,
- c. all data storage devices,
- d. any encryption used,
- e. any other anonymisation/privacy/obfuscation technology used,
- f. national insurance number,
- g. disclosure of prison visits,
- h. vehicle registration,
- i. rental vehicle use,
- j. minors living within primary residence,
- k. business interests,
- l. asset investments (over £5,000),
- m. full financial overview to include credit cards/store cards etc,
- n. international travel,
- o. associated parties (i.e. spouse details).

Government Response

88. The Government will standardise the information received and recorded by law enforcement agencies in relation to individuals subject to an SCPO as outlined in this proposal. The Government will standardise a different set of notification for businesses and corporations. This will help to ensure greater consistency in the way individuals and businesses are managed and improve law enforcement agencies' ability to proactively manage SCPO cases and to share information with each other effectively. We will continue to work with partners to consider additional notification requirements and will seek to ensure the legislation allows for future amendments via secondary legislation as the nature of serious and organised crime evolves.

Question 25: Do you have any comments, or further information or evidence to inform any of these legislative proposals on SCPOs, or our Impact Assessment?

89. We asked respondents if they had any comments or further information to inform any of these legislative proposals on SCPOs, or the Government's Impact Assessment.¹¹
90. Some respondents focused on the application process, with one emphasising the need for stronger training on drafting applications, and another citing the need for judges to provide explanations when rejecting an SCPO application. Others highlighted the need for stronger management of SCPOs, including ensuring that breaches of SCPOs were treated consistently across the country, including stronger sanctions to ensure the orders were a meaningful deterrent.

Government Response

¹¹ Home Office, Impact Assessment of proposals to strengthen SCPOs, January 2023: [SCPOs impact assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

91. The Government will continue to work with all stakeholders to identify any challenges and opportunities for improvements to the SCPO regime to ensure these protective orders are as effective as possible.

Question 26: Are there any other ways in which legislation for SCPOs can be improved or strengthened?

92. Of those who responded with comments, many highlighted that enhanced tracking and monitoring was required and therefore additional resource would be beneficial. One respondent suggested that SCPOs should be co-ordinated via Regional Organised Crime Units (ROCU), which would include management and oversight as well as disruption and enforcement capabilities. Another respondent made the case that the regime should be adapted to ensure a greater number of corporate SCPOs could be awarded. Guidance (either statutory or non-statutory) was welcomed to enable consistency in the application and monitoring of SCPOs.

Government Response

93. The Government will continue to work with all stakeholders to identify any challenges and opportunities for improvements to the SCPO regime to ensure these protective orders are as effective as possible.

Question 27: 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?

94. We asked respondents if they had any comments about the proposals in relation to the impact on people under the Equality Act 2010.¹²
95. Of those who responded, some highlighted that these legislative measures could disproportionality impact those of ethnic minority backgrounds due to the potentially discriminatory nature of policing, as reflected in stop-and-search statistics. Another respondent highlighted that vulnerable (including disabled) individuals kept personal information on encrypted applications as a means of protecting themselves from exploitative crimes. A further respondent also emphasised that those considered vulnerable may not have the capacity to understand the criminal intent behind the specified articles and that pill-presses were essential to self-medication.
96. One respondent highlighted the importance of frequently reviewing SCPOs to ensure that they were not being disproportionately applied to any particular group.

Government Response

¹² Equality Act 2010: [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

97. The Government has noted the concerns raised and has considered the full implications of these proposals in an Equalities Impact Assessment. Our analysis suggests people with some protected characteristics may be affected by these proposals more than others, however we consider that any negative impact can either be sufficiently mitigated or can be objectively justified as a proportionate means of achieving the legitimate aim of tackling serious crime. As the Measure 1 proposals would apply equally to all, irrespective of protected characteristics, we do not consider the proposals will result in any direct discrimination. Measure 2 proposals directly discriminate on the basis of age, as SCPOs can only be imposed on people over the age of 18. However, we consider this to be objectively justified. Our analysis suggests people with some protected characteristics may be affected by these proposals more than others, however we consider that any negative impact can either be sufficiently mitigated or can be objectively justified as a proportionate means of achieving the legitimate aim of tackling serious crime.

Annex A

The Consultation Analysis Methodology

1. The questions stated throughout this document were the questions as worded in the questionnaire of the full consultation listed on gov.uk.
2. Consultation responses were analysed, and a view also had to be taken on what correspondence constituted a formal response. It was decided not to include incomplete online survey responses (of which there were 108) on the grounds that the respondent had not formally submitted the data and may not have intended for their responses to be read.
3. Data from responses to the quantitative (closed) questions in the consultation (i.e. those that invited respondents to choose an answer) were extracted and analysed. All qualitative responses (i.e. those responses to open questions or where a respondent had submitted a paper, letter or email rather than answering specific questions) were also logged and analysed. Findings have been reported in this document.
4. There is an element of subjectivity when coding qualitative responses, this has been minimised by carrying out additional quality assurance.
5. A number of detailed consultation responses were received that did not adhere to the formal structure and questions posed. These were fed into the Government's response.