

Impact Assessment (IA), The Home Office

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

IA No: HO0424

Other departments or agencies: N/A

Date: 29 November 2022

Stage: Consultation

Intervention: Domestic

Measure: Primary legislation

Enquiries:

SeriousandOrganisedCrimeConsultation@homeoffice.gov.uk

RPC Opinion: N/A

Business Impact Target: Non-qualifying regulatory provision

Cost of Preferred (or more likely) Option (in 2021 prices)

Net Present Social Value NPSV (£m)	-85.3	Business Net Present Value BNPV (£m)	N/A	Net cost to business per year EANDCB (£m)	N/A
---	-------	---	-----	--	-----

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

Criminals are exploiting an evolving technological landscape to use new tools (described in section A1) to facilitate serious crime. Law enforcement agencies are increasingly encountering individuals possessing such tools, or 'articles', where there is a strong suspicion that they are being used for serious crime, but law enforcement is unable to take action under existing legislation. The Government's assessment is that this could leave a gap in the legal framework, and government intervention is necessary to create a criminal offence to disrupt the supply and possession of articles for use in serious crime. This consultation invites further evidence on the issue.

What are the policy objectives and the intended effects?

The strategic objective is to improve law enforcement's ability to disrupt serious organised criminals and reduce serious crime. The policy objective is to disrupt the supply and possession of articles for use in serious crime. The intended effect is to increase convictions for individuals who facilitate serious crime, leading to a reduction in serious crime offences being committed and ultimately a reduction in the economic and social costs of serious crime.

What policy options have been considered? Justify preferred option (further details in Evidence Base)

Option 1: "Do Nothing", do not legislate.

Option 2: Introduce new criminal offences where a person makes, modifies, supplies, offers to supply or possesses specified articles where they have reasonable grounds to suspect it will be used in serious crime.

Option 3: Introduce new criminal offences where a person makes, modifies, supplies, offers to supply or possesses any article where they reasonably suspect it will be used in serious crime.

This IA deals with regulatory options that require primary legislation. Non-regulatory options were considered inadequate to meet the policy objectives.

Main assumptions/sensitivities and economic/analytical risks	Discount rate (%)	3.5
---	--------------------------	-----

Due to having limited data on the number of the new offences targeted by this policy, there is uncertainty around estimates for familiarisation costs, police costs and prison costs. A range of estimates reflects the degree of uncertainty. It is assumed that **Options 2 and 3** incur the same costs. The consultation will seek better evidence to estimate the size of legitimate market and the potential increase in offences.

Will the policy be reviewed? If applicable, set review date: Month/Year

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Jella Braveman

Date:

29/11/2022

Summary: Analysis & Evidence

Policy Option 2

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

FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2022/23	PV Base	2022/23	Appraisal	10	Transition	1
Estimate of Net Present Social Value NPSV (£m)						Estimate of BNPV (£m)		
Low:	-72.0	High:	-99.1	Best:	-85.3	Best BNPV	N/A	

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	0.01	72.0	72.0	8.3	N/A
High	0.11	98.9	99.1	11.5	N/A
Best Estimate	0.04	85.2	85.3	9.9	N/A

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

Estimated familiarisation costs to government lie in a range of **£9,900 to £194,000** with a central estimate of **£49,700** in year 1 only. Ongoing costs to the Government, include prison costs and police costs which range from **£72.0, to £99.1 million (PV)**, with a central estimate of **£85.3 million (PV)** over 10 years.

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

Costs to businesses are expected but are not monetised due to a lack of data. Further evidence will be sought during the consultation. Under **Option 2** there may be additional costs to businesses where their activities involve the articles specified in the legislation, as the offence may have more of a deterrent effect on individuals producing or purchasing these articles legitimately. These costs have not been monetised. Additional criminal justice system (CJS) costs have not been monetised at this stage but are likely to increase as a result of the new offences.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A	N/A	N/A

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

Benefits have not been monetised due to a lack of data.

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

There should be a reduction in serious crime, as the proposed legislative measures will disrupt or deter individuals who commit serious crime and will deter potential future offenders, which could lead to a reduction in serious crime and societal harm overall.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:									
Cost, £m	N/A	Benefit, £m	N/A	Net, £m	N/A				
Score for Business Impact Target (qualifying provisions only) £m:					N/A				
Is this measure likely to impact on trade and investment?					No				
Are any of these organisations in scope?		Micro	Y	Small	Y	Medium	Y	Large	Y
CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	N/A	Non-Traded:	N/A		

PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Option 2)

Are all relevant Specific Impacts included?	Y	Are there any impacts on particular groups?	Y
---	---	---	---

Summary: Analysis & Evidence

Policy Option 3

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

FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2022/23	PV Base	2022/23	Appraisal	10	Transition	1
Estimate of Net Present Social Value NPSV (£m)						Estimate of BNPV (£m)		
Low:	-72.0	High:	-99.1	Best:	-85.3	Best BNPV	N/A	

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	0.01	72.0	72.0	8.3	N/A
High	0.11	98.9	99.1	11.5	N/A
Best Estimate	0.04	85.2	85.3	9.9	N/A

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

Estimated costs include familiarisation costs in a range of **£9,900 to £194,000** with a central estimate of **£49,700** in year 1 only and will fall on the Government. Ongoing costs to the Government, include prison costs and police costs which range from **£72.0, to £99.1 million (PV)**, with a central estimate of **£85.3 million (PV)** over 10 years.

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

Costs to businesses are expected but are not monetised due to a lack of data. Further evidence will be sought during the consultation. **Option 3** would impact businesses who make, modify, supply, offer to supply, possess or are otherwise involved in the use of articles that could be used in serious crime, but only where the person involved at least reasonably suspects the article will be used in serious crime. Any costs as a result of this are uncertain and have not been monetised. Additional criminal justice system (CJS) costs have not been monetised at this stage but are likely to increase as a result of the new offences.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	N/A	N/A	N/A	N/A
High	N/A	N/A	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A	N/A	N/A

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

Benefits have not been monetised due to a lack of data.

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

There should be a reduction in serious crime, as the proposed legislative measures will disrupt or deter individuals who commit serious crime and will deter potential future offenders, which could lead to a reduction in serious crime and societal harm overall.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:									
Cost, £m	N/A	Benefit, £m	N/A	Net, £m	N/A				
Score for Business Impact Target (qualifying provisions only) £m:					N/A				
Is this measure likely to impact on trade and investment?					No				
Are any of these organisations in scope?		Micro	Y	Small	Y	Medium	Y	Large	Y
CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	N/A	Non-Traded:	N/A		

PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Option 3)

Are all relevant Specific Impacts included?	Y	Are there any impacts on particular groups?	Y
---	---	---	---

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Strategic Objective

1. The measures proposed in this Impact Assessment to criminalise the making, modification, supply, offer to supply and possession of articles for use in serious crime will help to deliver on a number of over-arching government strategic objectives, such as:
 - The Home Office “People’s Priorities” to cut crime and the harm it causes, including cyber-crime and serious and organised crime, and to protect vulnerable people and communities¹;
 - The Home Office Outcome Delivery Plan priority outcomes to reduce crime (ODP1) and to protect the vulnerable from organised immigration crime (ODP4)²;
 - The Government’s manifesto³ and 2021 Integrated Review of Security, Defence, Development and Foreign Policy⁴ commitment to strengthen the National Crime Agency so that it can tackle the multiple threats the UK currently faces;
 - The Beating Crime Plan⁵ and Integrated Review, set out the Government’s commitment to reducing crime, enhancing our national security and prosperity, whilst sustaining our strategic advantage. The Integrated Review committed to bolstering the response to the most pressing serious and organised crime threats currently faced by the UK⁶. To achieve this, it is essential that law enforcement have the tools necessary to keep pace with the fast-evolving landscape of serious and organised crime.

A.2 Background

2. Law enforcement have raised concerns that there are limited legal options at present to address the rapidly evolving tools which serious organised criminals are using to facilitate serious crime. Law enforcement agencies are increasingly encountering individuals possessing such tools, or “articles” where there is a strong suspicion that they are being used for the purpose of serious crime, but they cannot always take action under existing legislation.
3. Examples of 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-printing firearms components and pill presses used in the supply of illegal drugs.
4. Law enforcement practitioners consider that it is not always possible to pursue individuals who make, modify, supply, offer to supply or possess such articles for use in serious crime under existing legislation, due to the difficulties in proving that the individual has the relevant state of mind to commit an offence. For instance, Part 2 of the Serious Crime Act 2007 created a number of offences targeting acts that encourage or assist crime, however these offences require that it is proven that the accused believed or intended that an offence be committed – this can be difficult to do where suppliers keep a deliberate distance from the crimes they are facilitating. The Government’s assessment is that this could leave a gap in the legal framework.

¹ Home Office, About Us: <https://www.gov.uk/government/organisations/home-office/about#priorities>

² Home Office, Home Office Outcome Delivery Plan: 2021 to 2022, July 2021: <https://www.gov.uk/government/publications/home-office-outcome-delivery-plan/home-office-outcome-delivery-plan-2021-to-2022>

³ The Conservative and Unionist Party Manifesto 2019: https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf – see page 19.

⁴ Cabinet Office, Global Britain in an Competitive Age: The Integrated Review of Security, Defence, Development and Foreign Policy, March 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975077/Global_Britain_in_a_Competitive_Age_the_Integrated_Review_of_Security_Defence_Development_and_Foreign_Policy.pdf - see second bullet on page 83.

⁵ Beating crime plan - GOV.UK (www.gov.uk)Beating crime plan - GOV.UK: <https://www.gov.uk/government/publications/beating-crime-plan>

⁶ The Integrated Review, page 82

5. The Government is committed to protecting the public and equipping law enforcement agencies with the tools and powers needed to tackle serious and organised crime. The harm caused by serious and organised crime, including through drugs and firearms trafficking, child sexual abuse and exploitation, modern slavery, organised immigration crime, cyber-crime, money laundering and fraud is significant and ongoing.
6. The proposals considered in this Impact Assessment seek to improve law enforcement's ability to target those who facilitate serious criminality, leading to a reduction in offending, and ultimately a reduction in the economic and social costs of serious crime.

A.3 Groups Affected

7. The proposals in this consultation apply to England and Wales only. The following groups might be affected by the policy:
 - Members of the public involved in serious crime.
 - Organisations, business, communities and individuals impacted by serious crime.
 - Business and individuals who legitimately make, modify, supply, possess or are otherwise involved in the use of articles which may be captured by this offence.
 - Police.
 - National Crime Agency (NCA).
 - Her Majesty's Revenue and Customs (HMRC).
 - Crown Prosecution Service (CPS).
 - Serious Fraud Office (SFO).
 - Her Majesty's Courts and Tribunals Service (HMCTS).
 - Legal Aid Agency (LAA).
 - Her Majesty's Prisons and Probation Service (HMPPS).

A.4 Consultation

8. The Home Office has engaged with other government departments and law enforcement agencies as part of the policy development process for the proposals within this consultation.

Public Consultation

9. The Government has launched a public consultation to seek views on the proposals contained within this Impact Assessment. During the 8-week public consultation, the Government is particularly interested to hear from those who may be impacted by the proposals should they become legislation in England and Wales, including law enforcement agencies, businesses, legal professionals and members of the general public, as well as non-governmental organisations with a focus on civil liberties and human rights.

B. Rationale for intervention

10. It is the Government's assessment that without intervention law enforcement would continue to be limited in their ability to disrupt individuals who exploit technology, such as vehicle concealments or sophisticated encrypted communication devices, to facilitate serious crime. Law enforcement agencies can be unable to use existing powers or offences to pursue individuals who possess or supply such articles, even where there is a strong suspicion that they are for use in serious crime. Criminals are then able to use articles to facilitate serious crime and the associated societal damage this causes.

11. Although the consultation seeks more data on the nature and scale of the crimes being facilitated, law enforcement agencies have reported that vehicle concealments are being used to transport illicit commodities such as drugs and firearms. Further, in Operation Venetic, a joint NCA and policing operation which infiltrated encrypted communication devices, showed that encro-phones, a type of sophisticated encrypted communication device, were being used by organised criminals to facilitate crimes such as drugs and firearms offences, acquisitive crime and money laundering⁷.
12. Such crimes are harmful and costly. For instance, the National Crime Agency's National Strategic Assessment 2021 states that the illicit drugs costs society over £19 billion, ranging from tackling supply to providing treatment⁸.
13. The Government is therefore seeking views on proposals to create new criminal offences which would criminalise the making, modifying, supply, offering to supply and possession of articles for use in serious crime. Creating such offences would disincentivise individuals from being involved in these activities, would provide law enforcement with improved legal powers to disrupt individuals facilitating serious crime, and reduce the associated societal damage caused by serious crime. Government intervention is needed in order to bring forward primary legislation to create new criminal offences.

C. Policy objectives

14. The policy objective of these proposals is to criminalise the making, modifying, supply, offering to supply and possession of articles for use in serious crime, thereby disrupting the use of such articles in serious crime.
15. Indicators of success include an increase of convictions for individuals who are involved in the possession or supply of articles for use in serious crime, leading to a reduction in serious crime offences being committed, and ultimately a reduction in the economic and social costs of serious crime.
16. The proposals will be tested at consultation to seek more evidence on the views on the extent to which they can achieve these objectives.

D. Options considered and implementation

Option 1 – 'Do Nothing'

17. This option would entail no further Government intervention through legislation to create a new offence. Costs and benefits for the other options assessed in this IA are measured relative to the "Do Nothing" position (that is, the current position represents the counterfactual in this analysis).

Non-Regulatory option

18. A non-regulatory option has not been included in this IA. This is because a new offence can only be created through legislative means. A non-regulatory approach (for example, guidance, voluntary arrangements etc.) would not be suitable to tackle the problem under consideration.

⁷ National Crime Agency, News, Operation Venetic, July 2020, <https://www.nationalcrimeagency.gov.uk/news/operation-venetic>

⁸ National Crime Agency, National Strategic Assessment of Serious and Organised Crime, 2021, <https://nationalcrimeagency.gov.uk/who-we-are/publications/533-national-strategic-assessment-of-serious-and-organised-crime-2021/file>

Option 2: Two new criminal offences with a lower state of mind threshold and a specified list of articles

19. A supply offence and a possession offence set at a very low state of mind 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.
20. These articles would be defined in legislation and could include vehicle concealments, sophisticated encrypted communication devices, 3D printing firearm templates and pill presses.
21. For these offences the prosecution would need to show that the accused had reasonable grounds to suspect 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 would in some cases potentially criminalise those who did not suspect the articles would be used for serious crime. The justification for criminalising at such a low threshold is that the articles named in legislation are so closely associated with serious crime that it is appropriate to expect those who are involved in making, modifying, supplying, offering to supply or found in possession of such things to at least have a reasonable standard of awareness of signs of criminality. The offence would also apply where the person in possession of the article intends to use it in serious crime themselves.

Option 3: Two new criminal offences with a higher state of mind threshold and no specific list of articles

22. A supply offence and a possession offence set at a higher state of mind threshold, but not tied to a specific list of 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 articles** where a person **intends**, or **reasonably suspects** that it will be used in any serious crime.
23. These offences would be broader than Option 2, 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. 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. As in Option 2, the offence would also apply where the person in possession of the article intends to use it in serious crime themselves.
24. Unlike Option 2, 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 programmes.

E. Appraisal

General assumptions and data

25. The general assumptions are as follows:

- The appraisal period for measuring the impacts of the proposed new legislation is 10 years. The appraisal period starts in 2022/23
- A 3.5% annual social discount rate is used.⁹
- Annual costs and benefits are in 2022/23 prices.
- Present values are in 2022/23 prices.
- The proposal is assumed to be operational in the first year of the appraisal period without any increase of benefits.
- All costs and benefits are relative to the 'Do Nothing' option 1.

26. It has been assumed that both option 2 and option 3 will incur the same costs.

Appraisal

27. This appraisal estimates the additional costs and benefits to individuals, firms and the Government that could arise from the introduction of new offences in options 2 and 3 compared to the "do nothing" option. As evidence emerges from the consultation, adjustments to any estimates will be made to ensure the assessment of the costs of the policy are as accurate as possible. All costs and benefits would only arise upon implementation of this proposal.

COSTS

Familiarisation Costs

28. One-off familiarisation costs are expected as the change in legislation will mean that lawyers, judges and other legal professionals will have to familiarise themselves with how the new legislation affects decisions during court proceedings, prosecutions, charges, convictions and the sentence lengths available to them following a guilty verdict. The familiarisation costs should occur only in year 1 after the implementation of the legislation.

29. Documentation associated with this legislative change, including the legislative provisions and Explanatory Notes to any future Act, are expected to be 4,200 words long. The estimate has been made by reference to the possession and supply fraud offences in the Fraud Act 2006¹⁰, and the list of "serious offences" in Schedule 1 to the Serious Crime Act 2007¹¹. The length of any legislative provisions and accompanying Explanatory Notes will be dependent on the finalised policy proposals and the drafting of the legislative provisions. The number of readers for this document have been based on the number of solicitors working for CLA (criminal legal aid) firms and barristers working in full-time practice. In 2018/19 there were 11,760 solicitors working for CLA firms and 2,690 barristers in full-time practice¹². Around half of CLA firms have business in other legal areas, so a solicitor in a CLA firm may not necessarily be working in CLA and may not read the legislation. Therefore, the low, central and high scenarios take a proportion of 25, 50 and 75 percent respectively of the number of solicitors and barristers. This range of scenarios is used as a default, due to a lack of evidence to justify another range.

⁹ The Green Book (2022) - GOV.UK (www.gov.uk)

¹⁰ [Fraud Act 2006 \(legislation.gov.uk\)](http://legislation.gov.uk)

¹¹ [Serious Crime Act 2007 \(legislation.gov.uk\)](http://legislation.gov.uk)

¹² [Independent Review of Criminal Legal Aid - Report \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

It is assumed that these figures also include any other legal professionals or judges that will need to familiarise themselves with the new policy. The hourly pay for a full-time solicitor is £23.69 and for a barrister it is £19.91¹³. Using these inputs, the familiarisation costs range from £6,000 to £107,800 with a central estimate of £37,700, as is shown in Table 1.

Table 1, Estimated solicitor familiarisation cost, 2021

	Number of readers	Hourly cost of solicitor (£s)	Time spent reading (hours)	Total familiarisation cost (£)	Total familiarisation cost (£ million)
Low	2,940	23.69	0.07	4,900	0.00
Central	5,880	23.69	0.22	30,600	0.03
High	8,820	23.69	0.42	87,800	0.09

Source: Home Office internal estimates.

Table 2, Estimated barrister familiarisation cost, 2022/23 prices

	Number of readers	Hourly cost of barrister (£s)	Time spent reading (hours)	Total familiarisation cost (£)	Total familiarisation cost (£ million)
Low	673	19.91	0.07	1,100	0.00
Central	1,345	19.91	0.22	7,000	0.01
High	2,018	19.91	0.42	20,100	0.02

Source: Home Office internal estimates.

Training Costs

30. The College of Policing ensure that all new legislation is incorporated into the national policing curriculum as a matter of course and falls within existing budgets. The additional public cost of training for this policy is therefore expected to be negligible. This cost is expected to be equal under all options.

Ongoing costs

Police

31. The estimated volume of offences per year were calculated by taking an approximate estimate of the number of vehicle concealments that are currently recovered by the NCA and Police which is 338 annually¹⁴ and this was added to the average number of prosecutions for existing offences under section 6 of the Fraud Act 2006 as a proxy, which is 849¹⁵. To reflect the uncertainty around whether the articles under this policy are less or more common than the fraud proxy, a low, central and high estimate were taken at 80 percent, 100 percent and 120 percent of the proxy figure respectively. Further data on the number of articles will be sought at the consultation stage. This gives a range for the estimated volume of offences between 1,017 and 1,1357, with a central estimate of 1,187. This has been used as the volume of arrests for the new offence under all options, due to limited data on an expected increase in offences and assumes that there is one arrest per article. This volume is likely the minimum volume of offences, as police may actively target these devices upon the creation of a new offence.

¹³ Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - (ons.gov.uk):

<https://cy.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

¹⁴ This number is likely an underestimate as this only includes encrypted devices and vehicle concealments, and it is not currently an offence to possess such articles for the use in serious crime. This figure also excludes the London Region, Scotland and Northern Ireland. The estimate for vehicle hides excludes discovery of hides by uniform policing and so is likely to be a large underestimate. Therefore this figure is purely indicative and is subject to change following the consultation.

¹⁵ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

The average cost of a police officer is £40 per hour¹⁶. The police time has been estimated to be between 12 and 18 hours, using an estimate of the time an individual is held in custody for a drugs offence as a proxy¹⁷.

Table 2, Estimated annual police costs, 2021

Estimate	Estimate of volumes	Estimate of police time per arrest (hours)	Average cost of police officer (£s per hour)	Annual Police Cost (£)	Total Police Costs (£ million PV)
Low	1,017	12	40	488,256	4.9
Central	1,187	15	40	712,200	7.1
High	1,357	18	40	976,896	9.8

Source: HO internal estimates.

32. It is likely that this underestimates the volume of articles recovered. It is also possible that the volume of offences would differ between options, however this could not be quantified due to a lack of data. These assumptions will be tested at consultation to give a clearer indication of volumes.

Prison costs

33. It is likely that new offences will lead to additional prosecutions and convictions, which would entail an increase in prison costs for individuals given a custodial sentence. For all options it is assumed that half of the volumes outlined above are prosecuted. It is further assumed that 87 per cent of prosecutions result in a conviction¹⁸, and that 50 per cent of those convicted receive a custodial sentence. The average custodial sentence length used to calculate prison costs is 9.2 months¹⁹. This is the average sentence length for the Fraud Act 2006 as the principal offence as this is likely to best represent the sentence length for the proposed policy.

34. The average cost per prisoner per year is £46,447²⁰. It is conservatively assumed for the central (and high) estimate that all cases go through the Crown Court. For the low option, all costs go through the Magistrates' Court. This leads to an annual cost of between £7.89 million and £10.51 million per year with a central estimate of £9.19 million for all options.

Table 3, Estimated annual prison costs, 2021

Estimate	Estimated volume of offences	Estimated number given custodial sentence	Average time spent in custody (years)	Cost per prisoner per year (£)	Annual prison costs (£)	Total prison costs (£ million PV)
Low	1,017	221	0.77	46,447	7.88	78.78
Central	1,187	258	0.77	46,447	9.19	91.93
High	1,357	295	0.77	46,447	10.51	105.08

Source: HO internal estimates.

¹⁶ Home Office internal estimates on police hourly costs – hourly cost for Sergeant and below. Includes salary, expenses, regional allowance, training and employer contributions to pension and national insurance. The estimates were calculated using the Annualised Survey of Hours Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) Police Actuals and The National Police Chiefs Council (NPCC) Mutual Aid Rates. Estimates use the latest figures available for the various inputs and are updated to 2021/22 prices.

¹⁷ Time for arrest based on the mean time a non-intoxicated individual is held in custody for a drugs offence, taken from Deehan, A, Marshall, E. Saville E. (2002), "Drunks and Disorder: Processing Intoxicated Arrestees in two city-centre custody suites", Home Office, rounded to the nearest hour (15 hours).

¹⁸ Ministry of Justice, Criminal Justice Statistics quarterly: December 2019, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019/criminal-justice-statistics-quarterly-december-2019-html>

¹⁹ Ministry of Justice, Criminal Justice Statistics quarterly: December 2020-Principal offence proceedings and outcomes by Home Office offence code data tool <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

²⁰ HM Prison & Probation Service, Annual Report and Accounts 2019/20. Average cost per prisoner across female/male prisons and all categories. Inflated to 2021/22 prices. For the purposes of present value calculations, all the prison costs are realised in the year the individual is sentenced.

Non-monetised costs

Costs to market

Option 2

35. Under Option 2 there is a low state of mind threshold in relation to specific articles, as someone could commit an offence where they have “reasonable grounds to suspect” the specific article will be used in serious crime. This means firms who legitimately supply these specific articles may be deterred from doing so, and individuals who legitimately purchase these articles may be deterred from doing so. This could have a negative effect on both businesses who provide these articles legitimately, and on individuals who use these articles. The current size of the legitimate market and the impact on the market is uncertain. Any costs as a result of this are uncertain and have not been monetised. Assumptions will be tested at consultation and information will be sought on the size of the market.

Option 3

36. Under Option 3, it is thought that there would be less negative impact on legitimate businesses involved in the making, modifying, supply, offer to supply and possession of these articles; as the state of mind threshold is higher, legitimate businesses would be less at risk of committing the offence and so a deterrent effect is less likely. The offence would only impact businesses where the person involved at least reasonably suspects the article will be used in serious crime. Any costs as a result of this are uncertain and have not been monetised. Assumptions will be tested at consultation and information will be sought on the size of the market.

Criminal Justice System (CJS)

37. Additional CJS costs are anticipated as a result of the proposed changes, including additional Legal Aid costs, costs to the courts, costs to the Crown Prosecution Service (CPS) for prosecuting the offence and probation costs for custodial and non-custodial sentences. CJS costs will not be monetised at consultation stage as a Justice Impact Test has not yet been completed.
38. CJS costs are applicable under all options. However, the anticipated offence volumes for making, modifying, supplying and possessing specific articles are not yet known, as this is a new offence. Therefore, at consultation stage the extent that CJS costs would vary under each option and cannot be calculated with the available data.

BENEFITS

Set-up benefits

39. This impact assessment does not anticipate any set-up benefits to private or public sector, due to lack of data.

Ongoing benefits

40. There are no monetised benefits for these options.

Non-monetised benefits

Reduced Serious Crime

41. The following benefits are applicable under options 2 and 3. However, the anticipated volumes for the proposed offences are not yet known. Therefore, at this stage the extent that the incapacitation benefit would vary under each option cannot be calculated with the available data. Information to inform estimates of potential volumes of offences will be sought from the consultation.

42. Law enforcement agencies report that they are increasingly encountering individuals possessing or providing lawful articles, but where there is a strong suspicion that these articles are being used for the purpose of serious crime. It can be difficult to prove that those who possess or provide these articles have the required state of mind to prosecute them under existing offences, such as the offences of encouraging or assisting under Part 2 of the Serious Crime Act 2007.
43. If these new offences provide law enforcement with further capability to disrupt and incapacitate individuals believed to be involved in serious crime, then this should reduce serious crime overall. The extent to which serious crime would be reduced as a result of these offences is uncertain and information will be sought from the consultation to inform this assessment.

Deterrence effect

44. People may be deterred from conducting the following activities if this offence is created: making, modifying, supplying, offering to supply and possessing articles for use in serious crime. Any reduction in these activities would result in fewer articles available for criminals to commit serious crime. Therefore, this may lead to fewer serious crimes that are facilitated by using these articles. It has not been possible to quantify the impact of the deterrence effect due to lack of data.

NPSV, BNPV, EANDCB

45. The NPSV has a range from **£72.0, to £99.1 million (PV)**, with a central estimate of **£85.3 million (PV)** over 10 years. Costs to businesses are expected but are not monetised due to lack of data. Costs to business will be sought during the consultation.

Table 4, Summary costs, NPSV (£ million PV) 10 years, 2022.

Summary	Low	Central	High
Costs			
Total Set up Costs	0.01	0.04	0.11
Total Ongoing Costs	72.0	85.2	98.9
Total Costs	72.0	85.3	99.1
NPSV	-72.0	-85.3	-99.1

Source, Home Office own estimates, 2022.

Value for money (VfM)

46. Since there are no monetizable benefits, no Benefit-Cost Ratio has been calculated. The NPSV has a range from -£72.0 million, to -£99.1 million (PV), with a central estimate of -£85.3 million (PV) over 10 years. Despite no monetizable benefits, there should be a reduction in serious crime, as the proposed legislative measures will disrupt or deter individuals who commit serious crime and will deter potential future offenders, which could lead to a reduction in serious crime and societal harm overall. Further data on benefits will be sought at the consultation stage. The proposal meets the strategic objective to improve law enforcement's ability to disrupt serious organised criminals and reduce serious crime. The policy objective is to disrupt the supply and possession of articles for use in serious crime.

Impact on small and micro-businesses

47. Under Option 2 there is likely to be an impact on small and micro firms that make, modify, supply, offer to supply or possess the articles listed, as there is a low state of mind requirement for the offence to be committed. Firms who currently make, modify, supply, offer to supply or possess these articles may be deterred from doing so. It is unclear how many firms legitimately provide these articles currently and what proportion of these firms would be small or micro based firms. Providing an exemption to small and micro firms would not allow this option to meet policy objectives. Information on the potential impacts on small and micro firms will be sought during the consultation.

F. Proportionality

48. This Impact Assessment is for policy that is at consultation stage, with Government consulting on many of the variables that would inform the final detail of proposed policies. The estimates used in this IA are purely indicative and any Final Stage Impact Assessment would be informed by the findings received from the consultation.

49. As this is a consultation stage IA, we have sought to monetise impacts as far as possible to inform consultees on the potential scale of impacts associated with the proposed changes, and the impacts estimates are indicative only.

G. Risks

50. There is a risk that volumes of these new offences are higher than anticipated, as the estimate is considered an indicative partial estimate. There is also a risk that the volume of offences would differ between options. There is a risk that prison and police costs are higher or lower than anticipated. There is a risk that arrests per article are above or below 1.

51. There is a risk the assumptions made for the prosecution/ conviction rate may be higher or lower depending on the offence.

52. There is a risk that the Fraud Act 2006 proxy offense, may not fittingly represent the proposed policy.

53. There is a risk that legitimate providers are more adversely affected by Option 2.

H. Wider impacts

54. There are no anticipated wider impacts as a result of this policy.

I. Trade Impact

55. This proposal would criminalise the making, modification, supply, offer to supply and possession of articles for use in serious crime, which could impact legitimate international business involved in the supply of certain articles. However as legitimate businesses would still be permitted to supply these articles there are not anticipated to be significant trade impacts. Information on the size of the legitimate market for these articles will be sought during the consultation.

J. Monitoring and evaluation (PIR if necessary)

56. As the proposals are at consultation stage, there are no monitoring and evaluation plans established. However, we will consider during the consultation period:

- How the impact of the new arrangements can be monitored?
- The main external factors that will have an impact on the success of the intervention.
- Whether the original objectives have been met, or whether the intervention should be amended?
- The current monitoring and evaluation provisions in place for the current system, and how can they maintain the appropriate flexibility?
- Extra data that may need to be collected to assess whether the policy has been successful?
- What circumstances / changes in the market or sector would require the policy to be reviewed or change the preferred option?

Draft

Impact Assessment Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>Statutory Equalities Duties</p> <p>The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services. [Equality Duty Toolkit]</p> <p>In evaluating the impact of the introduction of the proposals set out in the consultation, due consideration has been undertaken to assess any discriminatory impacts on groups with protected characteristics including age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.</p> <p>As the proposed criminal offences would apply equally to all irrespective of protected characteristics, we do not consider the proposals will directly discriminate against anyone with any of the protected characteristics.</p> <p>Using the data available on those found to have been involved in serious / serious and organised crime²¹ we consider that there is a possibility that males, individuals falling within the age range of 30 – 39-years-old, and black people may be disproportionately impacted by these proposals, as people with those protected characteristics are over-represented among the cohort. Any differential impact of the proposed criminal offences in relation to these protected characteristics is considered to be objectively justified as a proportionate means of achieving the legitimate aims of reducing serious crime.</p> <p>We have considered whether there could be a risk of a disproportionate impact on those with autism, where it constitutes a disability, if a person's autism plays a role in them having an intense interest in and/or collecting articles closely associated with serious crime²². We have also considered whether option 1 of the proposed criminal offences (the “reasonable grounds to suspect” objective test) could have a disproportionate impact on those with a mental impairment constituting a disability, if their mental impairment makes it more difficult for them to identify when there are reasonable grounds to suspect serious crime. We consider that the risks of any potential differential impact on those with a disability can be sufficiently mitigated. We consider that any remaining residual risk of a negative impact can be objectively justified as proportionate means of achieving the legitimate aim of tackling serious crime.</p> <p>We will use the responses to the consultation to further our understanding and update our assessment as needed.</p> <p>The SRO has agreed these summary findings of the Equality Impact Assessment.</p>	<p>Yes</p>

²¹ For the purposes of our analysis, this population consists of: individuals convicted of any of the “serious offences” listed in Schedule 1 of the Serious Crime Act 2007; individuals convicted of the offence of participating in the activities of an organised crime group under section 45 of the Serious Crime Act 2015; and individuals sentenced for more than 7 years’ imprisonment.

²² Guidance suggests that autism can present itself as an intense interest in particular topics or items, including an interest in collecting items - [Obsessions and repetitive behaviour - a guide for all audiences \(autism.org.uk\)](#).

Economic Impact Tests

Does your policy option/proposal consider...?	Yes/No (page)
Business Impact Target The Small Business, Enterprise and Employment Act 2015 (s. 21-23) creates a requirement to assess the economic impacts of qualifying regulatory provisions on the activities of business and civil society organisations. [Better Regulation Framework Manual] or [Check with the Home Office Better Regulation Unit]	Yes
Review clauses The Small Business, Enterprise and Employment Act 2015 (s. 28) creates a duty to include a review clause in secondary legislation containing regulations that impact business or civil society organisations. [Check with the Home Office Better Regulation Unit]	Yes
Small and Micro-business Assessment (SaMBA) The SaMBA is a Better Regulation requirement intended to ensure that all new regulatory proposals are designed and implemented so as to mitigate disproportionate burdens. The SaMBA must be applied to all domestic measures that regulate business and civil society organisations, unless they qualify for the fast track. [Better Regulation Framework Manual] or [Check with the Home Office Better Regulation Unit]	Yes

Draft