



Bar Council and CBA response to the Home Office's Consultation on Strengthening the law enforcement response to serious and organised crime

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) and the Criminal Bar Association (CBA) to the Home Office's Consultation on Strengthening the law enforcement response to serious and organised crime.¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

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

¹ Available here: <https://www.gov.uk/government/consultations/strengthening-the-law-enforcement-response-to-serious-and-organised-crime>

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

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

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

4. Our response is that yes, we consider the current offences to be sufficient, for the following reasons:

5. First, it is not clear to us that the consultation paper has established either (a) that existing provisions do not already fulfil the task, or (b) that the scale of those who presently “slip through the net” is sufficiently large to justify the introduction of what is potentially a very broad offence, with a relatively low *mens rea* requirement.

6. Secondly, it seems to us that any perceived problem with existing offences may be capable of being resolved through increased investigative resource or more focused application.

7. Accordingly, we take the view that the case has not been made that there is a real lacuna in the law. Instead, it seems that there are occasionally evidential difficulties in proving either (a) encouragement or assistance or (b) a link to an organised criminal group (“OCG”). All that the new offence (in each of the forms proposed) really seeks to do, therefore, is to make it easier to prosecute cases that could, if the evidence of involvement with a guilty state of mind were present, already be brought to trial.

8. We have a concern that the lowering of the required mental element may cause the offences to become too broad, and inappropriately render criminally liable those who engage in lawful activity (e.g. creating technologically secure means of

communication, or outfitting vehicles) without any provable criminal state of mind, which is then later misused by criminals.

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

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

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

9. The Bar Council and the CBA did not submit a response to this question.

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

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

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

10. The Bar Council and the CBA did not submit a response to this question.

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

a) Vehicle concealments

Please provide details. (Max. 250 words)

11. The Bar Council and the CBA did not submit a response to this question.

b) Sophisticated encrypted communications devices

Please provide details. (Max. 250 words)

12. The Bar Council and the CBA did not submit a response to this question.

c) Digital templates for 3D-printed firearm components

Please provide details. (Max. 250 words)

13. The Bar Council and the CBA did not submit a response to this question.

d) Pill presses

Please provide details. (Max. 250 words)

14. The Bar Council and the CBA did not submit a response to this question.

e) Other

Please provide details. (Max. 250 words)

15. This response continues from our previous answer.

16. Further, although the reference in the consultation paper refers to the new offence only covering 'serious crime' it proposes a definition of 'serious crime' which would include all offences carrying a maximum sentence of 5 years or more. That would capture a large number of crimes, many of which would not typically be considered 'serious'. For example, that definition would include simple possession of cannabis, potentially rendering illegal the manufacture of relatively harmless or 'joke' items which are capable of being used for concealment of small quantities of such lower categorisation controlled drugs. In all the circumstances, we do not consider the new proposed offence to be necessary.

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

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

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

17. The Bar Council and the CBA did not submit a response to this question.

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

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

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

18. There should certainly be a defence but 'acting reasonably' is too ill-defined for those who are manufacturing/converting items. Those commercially engaged in such activities should have certainty that their behaviour is in accordance or not with the law.

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

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

19. The Bar Council and the CBA did not submit a response to this question.

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

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

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

20. The Bar Council and the CBA did not submit a response to this question.

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

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

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

21. The Bar Council and the CBA did not submit a response to this question.

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

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

22. The Bar Council and the CBA did not submit a response to this question.

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

23. The Bar Council and the CBA did not submit a response to this question.

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

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

24. The Bar Council and the CBA did not submit a response to this question.

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

25. The Bar Council and the CBA did not submit a response to this question.

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

26. The Bar Council and the CBA did not submit a response to this question.

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

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

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

27. The Bar Council and the CBA did not submit a further response to this question.

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

a)	Yes	
b)	No	✓

Please provide details. (Max. 250 words)

28. In our view sections 44 to 46 of the Serious Crime Act 2007 provides sufficient measures for the prosecution for the production/possession of the items cited in the example, where there is a belief on the part of the individual that their act will lead to the commission of an offence. For example prosecutions under those sections have successfully been brought for possession or supply of legal cutting agents for class A drugs such as benzocaine or phenacetin, where it could be established that the individual had no legitimate purpose for the possession of such substances and from that it could be inferred that the offender believed that the items were to be used for the commission of a criminal offence. We see no reason to distinguish this from for example, supplying or being in possession of a pill press or digital print for firearms components.

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

Q16. We propose enabling HMRC, the NCA, the police (in cases other than terrorism²) and BTP to apply directly to the High Court for an SCPO. Do you agree? (Please tick.)

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

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

29. We can see the merit in expanding the groups who can apply to the High Court to include the HMRC, NCA or the police more generally (though funding would need to be in place to litigate these applications, along the lines of that available for, inter alia, civil recovery orders). These agencies (or at least some arm of each) all have a role in investigating and prosecuting serious crime. The same would not appear to apply to BTP, who (no doubt with exceptions) would typically not be involved in investigating and prosecuting crime at the OCG level.

30. In any event, if this expansion is to take place, we consider that it is important, particularly at a time of strained resources, that High Court SCPO applications are not seen as an alternative to prosecution, where prosecution is available. To that end, consideration should be given to including a legislative steer to the effect that an application to the High Court can only be made where prosecution has been discounted, either on evidential grounds or because the alleged offender cannot otherwise be prosecuted for some reason.

² Schedule 12 of the Counter-Terrorism and Sentencing Act 2021 enables the police to apply to the High Court for an SCPO in terrorism-related cases, alongside mandatory consultation with the prosecuting authority: <https://www.legislation.gov.uk/ukpga/2007/27/contents>.

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

Please list.

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

31. The Bar Council and the CBA did not submit a response to this question.

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

a)	Yes	
b)	No	✓
c)	Don't know	

Please explain your answer. (Max. 250 words)

32. While, as the consultation paper notes, that are existing examples of statutory provisions which allow for orders to be made against individuals upon acquittal, these are only available in a limited category of cases. They are typically protective orders made in relation to (contact with) particular individuals, and have something of the nature of a non-molestation order or a similar targeted aspect about them. They are designed to protect particular victims, and thus exist in order to protect the rights of specific members of the public. SCPOs are quite different, being focused on the (alleged) offender but otherwise of wide coercive application.

33. There is in any event always an uneasy tension between the end of a jury's role as finders of fact and the transfer of that role (in the context of protective orders) to a judge, whose view of the evidence may for whatever reason differ from that of the jury. Furthermore, there is a significant rule of law interest in a 'not guilty' verdict returned by a jury being conclusive, to preserve and protect the reputation of acquitted parties, save where there is very good reason to do so, for example to protect a specific complainant. For that reason (as an example), 'not guilty' verdicts

that are achieved by a majority of jurors are never publicly announced as such, contrary to the position relating to verdicts of 'guilty'.

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

a)	Yes	
b)	No	✓
c)	Don't know	

Please explain your answer. (Max. 250 words)

34. The Bar Council and the CBA did not submit a further response to this question.

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

35. The Bar Council and the CBA did not submit a response to this question.

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

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

Please explain your answer. (Max. 250 words)

36. The Bar Council and the CBA did not submit a further response to this question.

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

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

Please explain your answer. (Max. 250 words)

37. The Bar Council and the CBA did not submit a response to this question.

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

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

Do you agree? (Please tick one)

a)	Yes	
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b)	No	
c)	Don't know	✓

Please explain your answer. (Max. 250 words)

38. The Bar Council and the CBA did not submit a further response to this question.

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

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

l)	Other – Please list:
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Please explain your answer(s). (Max. 250 words)

39. The Bar Council and the CBA did not submit a further response to this question.

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

a)	Yes	
b)	No	✓

Please provide details. (max. 500 words)

40. The Bar Council and the CBA did not submit a further response to this question.

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

a)	Yes	
b)	No	
c)	Don't know	✓

Please provide details (Max. 500 words)

41. The Bar Council and the CBA did not submit a response to this question.

Equality Impacts

Q27. Do you have any comments about the proposals in this consultation document in relation to impacts on people on the basis of any of the following

protected characteristics under the Equality Act 2010: age; disability; pregnancy and maternity; race; religion or belief; sex; sexual orientation and gender reassignment; marriage or civil partnership? How might such impacts be mitigated? (Max. 500 words)

42. The Bar Council and the CBA did not submit a response to this question.

Bar Council
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