

Title: Crime and Courts Bill: Parts 1 and 3 IA No: HO0070 Lead department or agency: Home Office Other departments or agencies: Ministry of Justice (UKBA provisions) Department for Transport	Impact Assessment (IA)		
	Date: 12/04/2012		
	Stage: Development/Options		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries:			

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No
			In/Out/zero net cost

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

The Bill will contribute to the implementation of key parts of the Strategic Defence and Security Review and the Home Office Business Plan for 2011-15. There are coalition priorities identified in the Business Plans which this Bill will contribute to.

What are the policy objectives and the intended effects?

The Bill will contribute to the implementation of key policy commitments (see Evidence Base page 5 for the full list). These relate in particular to: a) The creation of the National Crime Agency to tackle serious, organised and complex crime and to strengthen border security; b) Strengthening the investigating powers of immigration officers and amending the appeal rights in respect of certain immigration decisions to contribute towards the security of our borders and reduce immigration.

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

Option 1: Retain the current position. Do nothing

Option 2: Introduce the Crime and Courts Bill which will make a significant contribution to the protection of the public

Option 2 is the preferred option

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 05/2016

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, 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:



Date: 09 May 2012

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

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

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

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

The provisions in parts 1 and 3 of the Bill impact mainly on the public sector (primarily the police, the UK Border Agency and other law enforcement agencies, HM Courts and Tribunals Service).

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

A number of public bodies will be required to make administrative changes in relation to provisions in the Bill. Further details are available in individual Impact Assessments.

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

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

By abolishing the full appeal rights on family visit visas there would be a net saving to the Home Office and Ministry of Justice respectively once fully implemented.

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

Provisions have the potential to improve public confidence - particularly through the improved efficiency and effectiveness identified from services across all provisions within the Bill. Additional key non-monetised benefits from the Bill arise from the creation of the NCA.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The above monetised and non-monetised costs and benefits are based on the key assumptions outlined in the individual impact assessments which contain a breakdown of the risks and benefits in further detail.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	NA

Evidence Base (for summary sheets)

Background

Parts 1 and 3 of this Bill bring together provisions from the Home Office to deliver commitments outlined in the *Home Office Business Plan 2011- 2015*.¹ This highlights the government vision to defend and protect the public and ensure best value for money for the tax payer. Amongst the priority actions in the Business Plans were the implication of the institutional structures for the police, phasing out the National Policing Improvement Agency (NPIA) and establishing the NCA and within it the Border Policing Command. The *UK Border Agency Business Plan 2011-2015*² breaks down the coalition priority into 3 core objectives: secure the border, control migration, reduce costs and improve customer service. The provisions in Parts 1 and 4 of this Bill directly contribute towards this.

Specifically Parts 1 and 3 of the Bill will -

- Establish the National Crime Agency (NCA) (and abolish the Serious Organised Crime Agency and National Policing Improvement Agency) and strengthen the tools and powers available to the UK Border Agency for dealing with border security;
- Abolish the full right of appeal for refusal of a family visit visa;
- Remove accompanying in-country rights of appeal for persons excluded from the UK;
- Strengthen the investigatory powers of immigration officers; and
- Create a new drug driving offence.

This overarching impact assessment has been developed to provide an overview of the costs and benefits of the Home Office and Department for Transport provisions within the Bill, taking into account the individual impact assessments that were produced for some but not all of the provisions of the Bill. Some of the provisions listed above have little or minor impact and therefore require no impact assessment. Individual impact assessments have been published for the following policy areas-

- The National Crime Agency (NCA)
- Appeals against refusal of entry clearance to visit the UK

Part 1

The National Crime Agency

Serious and organised crime poses a complex and high risk threat. The Government's *National Security Strategy*³ and the *Strategic Defence and Security Review*⁴ highlight a significant increase in the level of organised crime as a key risk to the UK's national security. The UK Threat Assessment highlights the evolving nature of the threat from serious and organised crime. Although recent years have seen significant advances in the response to serious and organised crime, including the publication of the first UK-wide Organised Crime Strategy, *Local to Global: Reducing the Risk from Organised Crime*,⁵ the absence of national tasking, coordination and intelligence arrangements means that serious and organised crime cannot yet be fully understood or gripped by existing structures.

The creation of the National Crime Agency (NCA) will bring a step change in the national response to serious and organised criminality, connecting the efforts of local policing with national and international capabilities to improve the UK's response to the full spectrum of threats. For the first

¹ <http://www.homeoffice.gov.uk/publications/about-us/corporatepublications/business-plan-2011-15/>

² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/uk-border-agency-business-plan/>

³ http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_191639.pdf?CID=PDF&PLA=furl&CRE=nationalsecuritystrategy

⁴ http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_191634.pdf?CID=PDF&PLA=furl&CRE=sdsr

⁵ <http://www.homeoffice.gov.uk/publications/crime/organised-crime-strategy?view=Binary>

time, the NCA will provide and task against a single, national intelligence picture, identifying gaps in current capability and providing support and direction to local law enforcement to build a comprehensive picture of serious, organised and complex crime and exploit every opportunity to disrupt it.

The NCA will build on the work of the Serious Organised Crime Agency (SOCA) which was established by Part 1 of the Serious Organised Crime and Police Act 2005. Part 1 of the Bill will provide for the establishment of the NCA and the abolition of SOCA.

Consultation

Within Government

Consultation has been undertaken with other government departments, including HMT, Cabinet Office, HM Revenue and Customs, the police service and the devolved administrations.

Public Consultation

The Government consulted on its plans for police reform, including the establishment of the NCA, in *Policing in the 21st Century*, published July 2010⁶. Consultation responses were published in December 2010. A summary of the responses and a list of respondents can be viewed at <http://www.homeoffice.gov.uk/publications/consultations/policing-21st-century/response-policing-21st?view=Binary>.

Following this the NCA plan was published in June 2011, setting out the aims and objectives of the NCA: <http://www.homeoffice.gov.uk/publications/crime/nca-creation-plan?view=Binary>

Rationale

Existing structures directed against serious and organised crime have evolved in isolation, working to divergent priorities and operating models in the absence of a single national intelligence picture. This context presents substantial opportunities to enhance the efficiency and effectiveness of the operational response, with a consequent reduction in the social and economic costs of serious and organised crime. In line with the commitments set out in the organised crime strategy, changes to current arrangements could bring significant benefits by improving the way law enforcement works to:

- **Stem** the opportunities for organised crime to take root;
- **Strengthen** enforcement action against organised criminals; and
- **Safeguard** communities, businesses and the state.

In order to meet the ambitions set out in the Government's organised crime strategy, law enforcement must see a step change in the operational response through better coordination of activity at the national and regional level, informed by a comprehensive picture of the threat from serious, organised and complex crime.

Abolition of NPIA

The National Policing Improvement Agency ("NPIA") was established by section 1 of the Police and Justice Act 2006. The Agency was formed in April 2007. The NPIA operates critical infrastructure that supports local and national policing (such as the Police National Computer and National DNA database) and provides specialist operational services to police forces. It helps to improve policing practice and develops national learning, leadership and people strategy products.

Rationale

In July 2010 the Home Office set out its plans for policing reform in *Policing in the 21st Century*⁷, including proposals for streamlining the national policing landscape by, amongst other things, phasing out of the NPIA. On 4 July 2011, the Home Secretary announced plans to set up a police information and communications technology company⁸ which would take on certain functions of the NPIA. In written statements on 15 December 2011 (House of Commons, Official Report, column

⁶ Policing in the 21st Century: reconnecting police and the people July 2010

⁷ <http://www.homeoffice.gov.uk/publications/consultations/policing-21st-century/policing-21st-full-pdf>

⁸ <http://www.homeoffice.gov.uk/media-centre/speeches/acpo-summer?version=1>

125WS-127WS) and 26 March 2012 (House of Commons, Official Report, column 94WS-95WS), the Home Secretary set out further proposals for a police professional body and to transfer certain other NPIA functions to the National Crime Agency (via the Serious Organised Crime Agency) and to the Home Office.

With regard to other NPIA functions, the Government's plans include:

- transferring key national critical operational functions, to the NCA, which naturally fit with its new national crime fighting remit. Those areas already identified include the Central Witness Bureau, Crime Operational Support, the National Missing Persons Bureau, the Serious Crime Analysis team, and the Specialist Operations centre
- to transfer the Proceeds of Crime Centre to the NCA when it is established in 2013
- responsibility for the 101 non-emergency phone service, crime mapping, pathology services, forensic and other non-ICT procurement and the programme for implementing Schengen Information System (II) transferred to the Home Office.;
- handing over, to a lead force, the hosting of the new National Police Air Service;
- for the police professional body, once established, to continue the relationship with the Office for Security and Counter Terrorism and the Home Office – funded Police National Chemical, Biological, Radiological, Nuclear (CBRN) Centre
- ending the work the NPIA currently does on advising on value for money by November 2012. In its place, police and crime commissioners will drive value for money in the police service, with further support where necessary.

These functions will be placed in SOCA in the period during the NPIA's phasing out and before the creation of the NCA in law to ensure that there is no gap in provision. The reforms to NPIA functions will streamline the national policing landscape by clarifying responsibilities and remits. This greater coherence will better support the police in their core mission to cut crime, improve accountability of national policing bodies and, through removing unnecessary layers, bureaucracy will be reduced.

Part 3

Appeals against refusal of entry clearance to visit the UK

Unlike other temporary entry clearance applications, refusal of an application for a family visit visa attracts a full right of appeal. This was abolished in 1993, but was reinstated in 2000. The Government now plans to remove the full right of appeal. Subject to the passage of the Crime and Courts Bill the aim is to implement this change by January 2014.

Rationale

The appeal process for family visitors involves significant resource for the UK Border Agency and HM Courts and Tribunals Service. Removing it would allow the UK Border Agency to devote more time and resource to improving the quality of its service and allow the UK Border Agency and HM Courts and Tribunals Service to give greater priority to those appeals that have far-reaching impacts for the individuals concerned and the public, for example asylum claims, settlement applications and the deportation of foreign criminals. Removing the full right of appeal will also generate combined savings to both departments.

New evidence is often submitted on appeal which should have been submitted with the original application. Such information should be put forward with the original application and the appropriate remedy is to reapply. Those refused a visa can reapply as many times as they wish, on payment of the £76 application fee. An appeal is more expensive costing £80 for a determination on the papers or £140 for an oral hearing. Reapplications are not prejudiced by previous refusals and receive a decision more quickly than from the outcome of an appeal. It can take up to 8 months for a family visitor appeal to be completed compared with a 15 day turnaround for processing applications.

Consultation

A 12-week public consultation to consider proposals was conducted by the UK Border Agency, running from 13 July 2011 to 6 October 2011. In total 5046 responses were received; 28% agreed that, beyond race discrimination and ECHR grounds, there should be circumstances in which an appeal right should be retained in family visit visa applications; 39% disagreed; there were 33% 'no opinion' responses.

Removal of in-country rights of appeal in respect of cancellation leave decisions made in conjunction with an exclusion decision by the Secretary of State.

An exclusion decision taken by the Secretary of State essentially prevents an individual from entering the UK on the grounds that his or her exclusion would be conducive to the public good. The effect of the exclusion decision is to direct Immigration Officers and Entry Clearance Officers to refuse entry or applications for entry to the UK.

When taking an exclusion decision this may involve cancelling an individual's leave to give effect to the exclusion decision. Whilst the decision to exclude does not carry a right of appeal the decision to cancel leave provides, as an immigration decision, an automatic right of appeal under section 82(2)(e) of the Nationality, Immigration and Asylum Act (NIA) 2002. A Court of Appeal judgement (MK Tunisia) found that the provisions of section 92(2) of the NIA Act 2002 provided for an in-country appeal in such cases, as it lists section 82(2)(e) as an immigration decision which can be appealed from within the UK. Furthermore it found that the provisions of section 3D of the Immigration Act 1971 provided for continuing leave whilst the appeal was ongoing in the UK. Therefore, in effect, this allowed an excluded individual to return to the UK to appeal the decision to cancel leave during a 10 day window from notification of the decision. This potentially undermines the operational effect of the Secretary of State's exclusion decision.

Rationale

The Bill will make the necessary amendments to primary legislation to ensure that when an exclusion decision is taken and accompanied by a cancellation of leave, an out of country appeal right only applies. The creation of a certification power for the Secretary of State would mean that a decision to exclude is taken alongside a decision to cancel leave, and the provisions of section 92 of the NIA Act 2000 or section 3D of the Immigration Act 1971 do not apply. The result of the above proposed change will be that once certified the excluded individual will remain outside of the UK whilst they are pursuing their appeal against the cancellation of leave.

Investigatory powers of immigration officers

The UK Border Agency has evolved significantly as an independent law enforcement agency. There are a number of areas that need legislative amendments to equalise the powers available to customs officials and immigration officers within the UK Border Agency crime teams that this Bill will deliver. Following the Supreme Court in *Cadder v HMA*, fast-track legislation was passed in Scotland in the form of the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010. These provisions have been incorporated into customs detention but this Bill will make the equivalent provision in respect of immigration detention.

Rationale

The amendments will enable the UKBA to act as an independent law enforcement agency and also to ensure that the UKBA can act across jurisdiction and align its powers in Scotland to their criminal justice system. The UK Border Agency needs to be in a position where it is not reliant on other law enforcement agencies to provide assistance due to a lack of relevant powers.

There are four key areas that we are requiring legislative amendments:

1. RIPA/Police Act
The Bill will extend access to the more intrusive covert investigative techniques under RIPA and Part 3 of the Police Act 1997 to those within UK Border Agency responsible for the investigation of serious and/or organised immigration crime
2. Cross Border Powers of Arrest

The Bill will provide for cross border powers of enforcement contained within the Criminal Justice and Public Order Act 1994 available to immigration officers. This will ensure that they can deal independently with suspects wanted for offences in different jurisdictions across the United Kingdom, without over reliance on other law enforcement agencies.

3. Scotland

Provisions will create the necessary legislative change that is required to enable immigration officers to investigate crime effectively in the context of the Scottish criminal justice system and to facilitate lawful and efficient joint working between the relevant law enforcement agencies that operate within it. The Bill will provide immigration officers with the power of detention, access to common law warrants and alignment of powers to the Scottish criminal justice system

4. POCA – The Bill will enable immigration officers to:

- a) exercise freestanding money laundering, confiscation and cash detention investigations;
- b) seize, detain and seek the forfeiture of cash just as customs officers can currently;
- c) take advantage of the provisions to be inserted into POCA in due course by Part 5 of the Policing and Crime Act 2009 (which strengthened the powers to seize and confiscate the proceeds of crime).

Drug Impaired Driving

Sir Peter North CBE QC was commissioned by the then Secretary of State for Transport in 2009 to undertake an independent review of drink and drug driving laws. Sir Peter North CBE QC concluded, in June 2012, that the Government should consider the case for a new offence relating to drug impaired driving.

Rationale

The Bill includes a new offence of driving, or being in a charge of, a motor vehicle with concentrations of specified controlled substances in excess of specified levels. The new offence increases the effectiveness of enforcement activity, with the intention of bringing more drug impaired drivers to justice, deterring driving whilst impaired through drugs and improving road safety.

Consultation

The North review included a public call for evidence, which Sir Peter took into account when producing his final report in June 2010. Following the North review, the Department for Transport sought comments and views about the possibility of a new drug driving offence as part of a consultation about road safety compliance. Most of the responses received were supportive of the case for change. The Bill requires the Secretary of State for Transport to publically consult before making any subsequent regulations defining which controlled substances and which levels will be included in the drug driving offence.

Summary of Costs and Benefits

See individual impact assessments for detail.

One in One Out

Classification of a proposal as an IN or OUT for the purposes of one-in-one-out is undertaken for each policy within the Bill individually. As such, any direct costs on business have been assessed individually in the impact assessments for those policies that come within scope of ‘one in one out’.

Estimated Costs	Estimated Savings and Benefits
National Crime Agency (NCA)	
Costs are non-monetised at this stage as the Design and Operating model of the NCA is under development. Costs will be managed within overall precursor budgets and one-off transition costs will be kept to a minimum through through the use of existing estates and	Improved operational effectiveness and efficiency will reduce the costs to the state, private sector and civil society from organised crime. To provide a sense of scale a 1% decrease in the level of serious, organised and complex crime, would equate to benefits of

infrastructure.	approximately £200m per annum.
Appeals against refusal of entry clearance to visit the UK	
Transition costs: 0 Annual Average: £5m PV (over 10 years): £46m	PV (over 10 years): £154m Annual Average: £16m