

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Culture, Media and Sport</b>	<b>Title:</b> <b>Impact Assessment for Statutory Instrument allowing the Serious Organised Crime Agency (SOCA) to disclose information to UK Anti-Doping (UKAD)</b>	
<b>Stage: Legislation</b>	<b>Version: 1</b>	<b>Date: 14 December 2009</b>
<b>Related Publications:</b> Consultation for establishing a modernised UK Anti-Doping Organisation & also Privacy Impact Assessment (PIA) by UKAD in relation to sharing Personal Information with SOCA.		
<b>Available to view or download at:</b> <a href="http://www.culture.gov.uk/reference_library/consultations/6244.aspx">http://www.culture.gov.uk/reference_library/consultations/6244.aspx</a> and <a href="http://www.ukad.org.uk">www.ukad.org.uk</a> for P.I.A.		
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What is the problem under consideration? Why is government intervention necessary?

A decade of British Sport, including the London 2012 Games and the Glasgow 2014 Commonwealth Games, brings an increasing international focus on the strength of the UK's anti-doping policies and programmes. The Government has undertaken to modernise the delivery of its anti-doping policy and as part of this, has focused on developing more sophisticated methods for policing doping offences which cannot be detected by traditional testing processes. International experience has shown that an effective strategy for targeting 'non-analytical' doping offences (those which are not detectable or cannot be policed merely through testing, such as the trafficking and supply of banned substances) is the development of close working partnerships, which facilitate the exchange of information (including personal information) between anti-doping organisations and law enforcement agencies. Government intervention of this form overcomes information failures and ensures better access to relevant information for relevant parties.

What are the policy objectives and the intended effects?

To facilitate the exchange of information between the UK's national anti-doping organisation, UK- Anti Doping (UKAD) and the Serious Organised Crime Agency (SOCA) in order to:

- Develop an effective mechanism for the detection and investigation of 'non-analytical' doping offences as part of the development of a wider intelligence analysis and intelligence gathering function within UKAD
- Help identify trends and threats in doping which allow the targeting of athletes or particular sports and inform the development of education strategies.

What policy options have been considered? Please justify any preferred option.

1. Maintain the status quo
2. Establish an information sharing gateway which will facilitate the exchange of information between UKAD and SOCA

Option 2 is preferable for the reasons outlined above and to ensure the UK is in a position to deliver a first class and modern anti-doping programme ahead of the London 2012 Olympic and Paralympic Games and the Glasgow 2014 Commonwealth Games.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be monitored and reviewed as part of UKAD's annual report.

**Ministerial Sign-off** For Impact Assessments:

***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:

*G. Sutcliffe*

.....Date:

*14/12/09*

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description:** Establish an Information Sharing Gateway which will facilitate the exchange of Information between UKAD and SOCA.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups': <b>UKAD</b> - The information sharing gateway with SOCA will be one part of a new Intelligence Function, the full cost of which, including new staff, will be £100,000 per annum. The inclusion of this particular statutory instrument will only make a marginal difference to the running costs of the Intelligence Function.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ <b>Marginal</b>		<b>Total Cost (PV)</b> £ <b>Marginal</b>
<p>Other <b>key non-monetised costs</b> by 'main affected groups': SOCA &amp; ACPO anticipate that they may experience a negligible increase in convictions/cases as a result of this policy change. The more likely outcome is an expected increase in sports prosecutions and sporting sanctions involving UKAD. Sporting prosecutions will be carried out before the National Anti-Doping Panel (NADP) or the National Governing Body (NGB) tribunal if the NGB opts to retain this function. The NADP is budgeted for 50 cases per year. This change anticipates an increase from the current 30 cases to just under 50, therefore no extra costs will be incurred.</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b>
<p>Other <b>key non-monetised benefits</b> by 'main affected groups': Facilitate information sharing between the UK's national anti-doping organisation and law enforcement, in order to develop more effective methods for the detection and investigation of 'non-analytical' doping offences.</p>			

**Key Assumptions/Sensitivities/Risks:** SOCA have confirmed in their response to the Consultation proposal regarding information sharing, that information will be provided to UKAD in the normal course of their business and therefore no significant additional costs will be incurred to enforce the policy.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate)
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			Early 2010		
Which organisation(s) will enforce the policy?			SOCA/UKAD		
What is the total annual cost of enforcement for these organisations?			£n/a		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			N/A		
What is the value of the proposed offsetting measure per year?			£ n/a		
What is the value of changes in greenhouse gas emissions?			£ n/a		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		n/a	n/a	n/a	n/a

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£n/a	Decrease of	£n/a	<b>Net Impact</b>	£n/a

### Rationale for intervention

#### Background

#### The International Fight against doping

1. The World Anti-Doping Agency (WADA) is the international organisation responsible for co-ordinating the fight against doping in sport. In 2003, the first World Anti-Doping Code (the Code) was introduced providing a global framework for the harmonisation of anti-doping policies across all sports.
2. The UK Government formally recognised the role of WADA and made a commitment to the Code, through the Copenhagen Declaration on Anti –Doping in Sport (2003) and the ratification of the UNESCO International Convention against Doping in Sport (2006).
3. Since 2003, WADA have sought to make the fight against doping more effective by focusing on new methods for investigating and gathering evidence in relation to “non-analytical” doping violations. Non-analytical violations are those such as trafficking, possession and supply of prohibited substances and are offences that cannot be detected solely through the testing process. Currently only three out of the eight anti-doping rule violations (ADRVs)<sup>1</sup> set out in the Code, can be pursued through the ‘traditional’ testing approach.

#### The need for a collaborative approach between anti- doping agencies and law enforcement

4. WADA recognised a need to develop capabilities to tackle these violations through a collaborative approach between anti-doping organisations and law enforcement<sup>2</sup>. Intervention of this form overcomes information failures and ensures better access to relevant information for relevant parties. Countries which have already pioneered this approach have shown this to be a successful strategy for doping control.
5. For example, since its creation, the US Anti-Doping Agency (USADA) has built constructive links with law enforcement agencies (LEAs). In 2003, the US Drug Enforcement Administration (DEA) raided the Bay Area Laboratory Co-Operative (BALCO) which was marketing and supplying undetectable designer steroids. This discovery eventually led to the criminal prosecution of and sporting sanctions against high profile athletes and sports stars.
6. Marion Jones, a US female sprinter, had been tested over 160 times for doping offences but the tests had been unable to detect the designer steroids developed in the BALCO laboratory. It was only through cooperation with law enforcement authorities that the systematic doping conducted by Jones was uncovered.
7. Additionally, a move to a more investigative approach has proved successful in Australia, where 38 per cent of athletes and support personnel caught doping in 2008-2009, were

<sup>1</sup> The eight anti-doping violations are: (i) Presence of a prohibited substance or method; (ii) Use or attempted use of a prohibited substance/methods; (iii) Refusing or failing to give a sample collection; (iv) Whereabouts violations; (v) Tampering or attempting to tamper with any part of the doping control process; (vi) Possession of prohibited substances/methods; (vii) Trafficking or attempted trafficking of prohibited substances/methods; (viii) Administration or attempted administration of a prohibited substance

<sup>2</sup> Then WADA President Richard Pound, speaking in March 2007 stated: “It (the global fight against doping) requires a more unified and cooperative action among law enforcement and anti-doping agencies to shut down source and supply”. See World Anti-Doping Agency Discussion Document for Investigation Protocols Draft version 1.1 October 2007: Introduction p2.

caught as a direct result of the Australian Sports Anti-Doping Agency's (ASADA's) enhanced investigations and intelligence work. This represents an increase from 19 per cent the year before.<sup>3</sup>

## Modernisation of the UK's Anti – Doping Programme

8. In February 2009, the Minister for Sport, Gerry Sutcliffe, announced the intention to establish a new National Anti-Doping Organisation (NADO) which would modernise the way in which the UK delivered its anti-doping programme. The new organisation will be known as UKAD (United Kingdom Anti-Doping) and as part of its remit to deliver a world class anti-doping organisation ahead of the London 2012 Olympic and Paralympic Games and the Glasgow 2014 Commonwealth Games, will focus on establishing strong effective partnerships with law enforcement agencies to fight the trafficking and supply of banned substances.
9. A Cross-Departmental Working Group on Anti-Doping in Sport (Working Group) was set up in November 2007 to establish a consensus on the need for sharing information (including personal information as defined by the Data Protection Act 1998) between law enforcement and UKAD, and to look at how best to achieve this. The Working Group includes, representatives from; the DCMS, the Association of Chief Police Officers (ACPO), SOCA, the UK Borders Agency (UKBA), the Medicines and Healthcare Products Regulatory Authority (MHRA), as well as the devolved administrations and other Government Departments and bodies.
10. The intention is for UKAD to develop an intelligence analysis and information-sharing function with public and private bodies across the UK. The organisation will utilise information it obtains from these authorities to help inform the intelligent planning of tests and targeted testing of specific athletes. It will also be used as 'evidence' to help tackle anti-doping rule violations that cannot be evidenced through testing athletes. The Code specifically allows for ADRVs to be; "established by any reliable means".<sup>4</sup>
11. The Working Group looked at a number of different routes for achieving information sharing and identified the SOCA as one of three organisations, along with the UK Border Agency (UKBA) and Medicine Healthcare products Regulatory Agency (MHRA), with whom the ability to share information should be made a priority. As such, Government is looking at how to establish a formal information sharing 'gateway' between UKAD and SOCA by making amendments to existing legislation. Legislation is already in place which allows UKBA and MHRA to share relevant information with UKAD.

## **Policy objectives**

12. The aim of this policy change is to establish an information sharing gateway which will allow the development of a close partnership between UKAD and SOCA, to tackle the 'non-analytical' ADRVs set out in the World Anti-Doping Code.
13. Information provided to UKAD, in the course of SOCA's normal intelligence work will be used to investigate specific or potential ADRVs and also to identify trends and threats in doping, to allow UKAD to target athletes or particular sports and to inform the development of education strategies.
14. It is intended that strengthening the mechanisms in place to pursue doping offences such as trafficking, supply, manufacturing and administration of prohibited substances, will act

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<sup>3</sup> [http://www.asada.gov.au/news/releases/current/asada\\_release\\_090805\\_2008-2009\\_yearly\\_results.html](http://www.asada.gov.au/news/releases/current/asada_release_090805_2008-2009_yearly_results.html)

<sup>4</sup> Code 2009 article 3.2

as a strong deterrent, ahead of the London 2012 and Glasgow 2014 Games, against those wishing to participate in and facilitate doping in sport.

## Policy Options considered

### Option 1: Status Quo

15. UKAD would establish its intelligence analysis and information sharing function with a limited capability. Initial collaboration would only involve information sharing with the UK Border Agency (UKBA) and the Medicines Healthcare Regulatory Authority (MHRA).
16. Although the formation of partnerships with these public authorities would be beneficial to UKAD in tackling 'non-analytical' doping violations, experience has shown that many of the perpetrators of these offences, particularly those involved with trafficking, possession and administration, have links with organised crime<sup>5</sup>. Without the capability to collaborate with SOCA, UKAD will not be fully equipped to successfully deliver all of its aims in the fight against doping which could damage the UK's international reputation ahead of the London 2012 Olympic and Paralympic Games and Glasgow 2014 Games.

### Option 2: Establish an information sharing gateway between SOCA and UKAD

17. This option establishes a legislative basis to allow the exchange of personal information between UKAD and SOCA.
18. In its consideration of how a modernised anti-doping organisation should develop its intelligence management function, the government's Cross Departmental Working Group identified SOCA as a key public authority with whom the ability to share information should be made a priority<sup>6</sup>.
19. SOCA is an intelligence-led law enforcement agency receiving information from international and domestic police services as well as UKBA and HMRC and therefore has access to relevant intelligence.
20. A public consultation on establishing a modernised UK anti-doping organisation carried out in July this year, outlined the proposal for UKAD to work more closely with LEAs. The majority of respondents, which included SOCA, UKBA and ACPO, were broadly supportive of the proposal for a number of reasons. These included; evidence of the effectiveness of such collaboration from other countries whose anti-doping organisations had already developed partnerships with law enforcement agencies, the view that it would act as a deterrent to those participating in doping and the belief that it was necessary for successfully tackling non-analytical ADRVs<sup>7</sup>. Respondents also agreed that a legislative basis for information sharing was important to establish a clear legal footing for sharing information.<sup>8</sup>
21. This policy approach obviously raises potential confidentiality, data protection and human rights issues, where personal information is being exchanged. However it is planned that once the information sharing gateway is formally established, UKAD will sign a

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<sup>5</sup> World Anti-Doping Agency Discussion Document for Investigation Protocols Draft version 1.1 October 2007: Introduction pgs 1-2

<sup>6</sup> Pg 13 DCMS Consultation on establishing a modernised UK Anti-Doping Organisation: July 2009 ([http://www.culture.gov.uk/reference\\_library/consultations/6244.aspx](http://www.culture.gov.uk/reference_library/consultations/6244.aspx))

<sup>7</sup> Summary of responses to consultation on establishing a modernised UK Anti-Doping Organisation: Chapter 3 Key findings and future action - Information Sharing Powers, para 30.

<sup>8</sup> Summary of responses to consultation on establishing a modernised UK Anti-Doping Organisation: Chapter 3 Key findings and future action - Information Sharing Powers- Gateways via existing or impending legislation, para 43.

Memorandum of Understanding with SOCA, outlining how the information will be used in accordance with relevant legislation. A separate Privacy Impact Assessment looking at compliance with the Data Protection Act is also being conducted and a Human Rights Specific Impact Test is annexed to this document.

## **Costs and Benefits**

### Development of UKAD's Intelligence analysis and Intelligence gathering function

22. The creation of an information sharing gateway with SOCA is vital to developing UKAD's intelligence management function, which will collect, record, collate, analyse and share information for the purposes of tackling 'non analytical' ADRVs.
23. Any information provided to UKAD by SOCA will be obtained in the course of SOCA's normal investigative work and therefore information sharing will not additionally burden SOCA resources.
24. Both SOCA and ACPO have confirmed that any increase in criminal cases or convictions as a result of this policy change is likely to be negligible.
25. The National Anti Doping Panel (NADP), which will hear cases on behalf of UKAD, is likely to see an increase in cases as a result of the increased focus in the investigation of non-analytical offences. Traditional testing methods currently generate 30 cases to answer per year. It is estimated that, even with the increase of 'non-analytical' cases, the NADP's workload will not rise beyond 50 cases per year in the first two years of operation. The current contract for the NADP already assumes that there will be approximately 50 cases a year.

### Cost

The Information Sharing gateway with SOCA will be one part of a new Intelligence Management Function. Therefore implementation of this policy change will only make a marginal difference to the running costs of the Intelligence Management Function.

26. **Staff** – There will be an addition of 8 staff to deliver the new Intelligence Management Function.
27. **Budget** – Intelligence Management Function will have an annual budget of £100,000 in its first year of full operation, 2010/2011.
28. There are no transition costs for delivery of this policy proposal.

### Benefits

29. The main benefits of facilitating information sharing between UKAD and SOCA are the:
  - Ability to develop a close working partnership with a key law enforcement agency, in order to tackle 'non-analytical' ADRVs as set out in the Code.
  - Development of a fit for purpose Intelligence Management Function as part of the UK's modernised national anti-doping organisation.
  - A world class anti-doping programme ready before the London 2012 Olympic and Paralympic Games.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	Yes
Rural Proofing	No	No

## ANNEX 1

### Human Rights Specific Impact Test for Statutory Instrument allowing the Serious Organised Crime Agency (SOCA) to disclose information to UK Anti-Doping Limited (UKAD)

The statutory instrument will facilitate the sharing of personal information between SOCA and UKAD and could therefore engage the Article 8 rights of those people whose information is shared. Article 8(1) of the European Convention on Human Rights (ECHR) establishes the right to respect for private and family life, the home and correspondence.

It is important to note that it is not certain that every instance of disclosure of information by SOCA to UKAD will amount to an interference with Article 8(1). However, in those cases where it does, as we set out below, as long as the disclosure is for the purposes of, and proportionate to, UKAD's anti-doping functions, it will be justified under Article 8(2) of the ECHR.

The Government has assessed the proposal and believes it is lawful. Any interference with the Article 8(1) will be in accordance with the law. Section 33(2)(f) of the Serious Organised Crime and Police Act 2005 (SOCPA) permits SOCA to disclose information for the purpose of "the exercise of any function which appears to the Secretary of State to be a function of a public nature and which he designates by order". The statutory instrument will designate the functions of UKAD, when it is acting as a national anti-doping organisation, as functions appearing to the Secretary of State to be functions of a public nature.

UKAD's anti-doping functions are functions of a public nature, exercisable by UKAD in the public interest. The functions themselves arise from obligations of the UK Government under the UNESCO International Convention Against Doping in Sport. In any event, in the Government's view, there is a strong public interest in the exercise of those functions because there is a strong public interest in sport being free of doping and other forms of cheating.

The Government has established UKAD specifically for the purpose of undertaking anti-doping functions on its behalf and, in so doing, meeting the UK's obligations under the UNESCO Anti-Doping Convention. UKAD is a publicly funded, non-departmental public body whose directors are appointed by, and accountable to, the Secretary of State.

Furthermore, we believe that any interference will be necessary in pursuit of one of the aims set out in Article 8(2) of the ECHR. The disclosure of information to UKAD by SOCA (and other public bodies) is, or is likely to be, essential for UKAD effectively to undertake its functions. Such information is particularly necessary for the effective enforcement by UKAD of non-analytical doping violations (that is, doping violations which are not detectable through usual blood or urine analysis processes). In the absence of information from law enforcement and other public bodies, it would be considerably more difficult for UKAD effectively to undertake anti-doping activity, in particular, in respect of non-analytical violations.

Some of the doping rule violations that UKAD will investigate will also amount to criminal offences (such as the trafficking of some doping substances and the possession of Class A drugs). In those cases, the disclosure of information can be justified on the basis of the "prevention of disorder or crime" under Article 8(2). Further, we believe that, in all cases, disclosure can be justified in the interests of protecting "health or morals" and / or "the rights and freedoms of others". As previously stated above, there is, in the Government's view, a strong public interest in keeping sport free from doping and other forms of cheating and UKAD's functions are aimed at meeting that interest. Ensuring that sporting competition is fair and free of doping helps to preserve the integrity of that competition and safeguards the rights of competitors, and others, who have a legitimate interest in sport being free of cheating (those "others" include spectators, promoters and organisers, sponsors, people who have placed bets on the competition and betting companies). In this way, UKAD's functions are allied with, and contribute to, the protection of morals and the rights and freedoms of others.

order to meet the requirements of Article 8(2) of the ECHR, disclosure of information by SOCA for the purposes of the exercise by UKAD of its anti-doping functions must also be proportionate.

Each disclosure of information will be judged on a case by case basis – the information disclosed in any particular instance will be that which is necessary for the exercise by UKAD of its functions, and only that which is so necessary. SOCA will not disclose more information to UKAD than that which is essential to enable the latter to undertake its functions. Furthermore, in exceptional cases, where disclosure would have a disproportionately adverse effect on an individual, SOCA will not disclose information to UKAD even though such disclosure might enable UKAD to exercise its functions.

The information sharing processes established by SOCA and UKAD will ensure that disclosure of information by SOCA to UKAD is proportionate in individual cases. That being the case, disclosure of information by SOCA to UKAD for the purposes of UKAD's functions will be consistent with Article 8 of ECHR.

**In light of the analysis above, we conclude that any impact of these proposals on the Article 8 rights of individuals whose personal information is shared is justified.**