MAKING SURE THAT CRIME DOESN’T PAY

Proposals for a new measure to prevent convicted criminals profiting from published accounts of their crimes

November 2006
It is wrong for convicted criminals to profit from their crimes, whether directly from the proceeds of the crime itself or indirectly through cashing in on the story of their crime. It is not only distasteful but contrary to the principles of natural justice that they should be able to exploit for financial gain crimes which have devastated the lives of victims and their families.

There are various measures in place, from the Proceeds of Crime Act 2002 to the Press Complaints Commission's Code of Practice, which help to prevent criminals from profiting from their crimes or from glorifying those crimes in the press or media and so causing renewed distress and grief to victims and their families. But the problem still remains and we have looked to see what else might be possible.

This consultation paper sets out a range of possible options including new criminal offences making payment to and/or receipt by convicted criminals of money for publications about their crimes illegal; a new civil scheme for the recovery of profits based on the civil recovery provisions in the Proceeds of Crime Act; or extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers. Out of these we think a new civil scheme is the most promising approach but we would like your views.

This is not a simple issue: there are conflicting interests. We want to prevent further hurt and distress to victims and their families who have already been deeply traumatised by their unwanted exposure to dreadful experiences. But at the same time we do not want any prohibition on profit to discourage or prevent publications which may help us to understand why criminal acts are committed, contribute to the rehabilitation of ex-offenders or constitute genuine academic research. Publications about alleged miscarriages of justice could pose particular difficulties. All of these issues need to be considered within the context of a free society where, except for certain carefully limited circumstances, citizens and the media are free to express opinions and publish views.

We know that the families of homicide victims are concerned not just about preventing criminals profiting from publications about their crimes but about the fact that they may paint a defamatory picture of the victim. Whether any additional remedy can be introduced to provide redress in such circumstances is an equally complex issue. Because it raises very different considerations, the issue of defamation of homicide victims is not discussed in this consultation but it
remains under consideration separately with a view to possible consultation in the context of other work on defamation being taken forward by the Department for Constitutional Affairs.

We consider it to be extremely important that, in matters which involve the publication of criminal memoirs, a common approach is taken across the United Kingdom and are determined that any response that we do make to this particular problem is robust and does not create cross border issues that might be exploited by those seeking to profit from publishing material about their crimes.

It may be that no legislative measure can provide a complete answer to this problem and that any new measure will in practice capture very few cases. The purpose of this consultation is to find the best solution and one which balances the conflicting requirements in a way that is right and appropriate.

Details of how to contribute to the consultation process are set out in the Executive Summary. We welcome comments on these proposals and will consider all responses carefully.
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EXECUTIVE SUMMARY

All crime has a victim, whether an individual or society as a whole. If the convicted criminal then seeks to profit indirectly from his crime, the victims and their families can end up suffering a second time. Where the most serious crimes, such as murder and manslaughter, are concerned the suffering can be great.

Currently, there is no effective mechanism through which criminals’ profits from publications about their crimes can be seized. That is largely because writing about a crime is not unlawful conduct and so any profit resulting from publication is not unlawfully obtained. In principle, we believe it is unacceptable for criminals to profit in this way. But whether and how they can be prevented from exploiting their crimes for commercial gain raises some extraordinarily difficult issues, in terms of both defining the problem and framing any new legislation in a way that will tackle it effectively.

We have considered arguments for and against the following options:

1. Making receipt by and/or payment to convicted criminals of money for publications about their crimes a criminal offence;
2. Introducing a new civil scheme for the recovery of profits based on the civil recovery provisions in the Proceeds of Crime Act.
3. Extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers;

These proposals are targeted only at the profit made by criminals from publications about their crimes. They are not targeted at anyone else’s profits from such publications or at publishers and are not intended to prevent publications relating to serious crimes. But some of the options may have a direct impact on the media and publishing industry in terms of criminal liability for making or assisting the receipt of such payments. And to a greater or lesser extent they may all have some indirect impact on the media and publishing industry by making publication of some material less attractive to offenders.

The Code of Practice overseen by the Press Complaints Commission (PCC) states that newspapers and magazines should not pay criminals for accounts of their crime, unless it is in the public interest to do so. In broadcasting there is a similar statutory provision in the Office of Communication (OFCOM) Programme Code which applies to broadcasters. Both of these Codes contain useful principles to which we have had regard in formulating the proposals in this paper. So for media organisations already covered by existing statutory or self-regulatory regimes any additional burden resulting from these proposals should not be significant. Book publishers and film-makers, who do not have a similar self-regulatory or statutory regime, will be more affected.

Our preferred option is a new civil scheme which would allow a flexible approach and is more proportionate to the mischief being addressed. However, we would welcome views both on the options put forward in the paper and on any other possible solutions.

Any legislation resulting from this consultation will be a matter for each of the three jurisdictions to consider and take forward, but we will work together in considering the best way forward in view of the need not to create cross border issues which could be exploited. You are invited to send your views, using the
response proforma at Annex B, by 9th February 2007 to:

England and Wales
Consultation on Making Sure That Crime Doesn’t Pay
Home Office
Criminal Law Policy Unit
2nd Floor, Fry Building
2 Marsham Street
London SW1 4DF

Tel: 020 7035 6991
Fax: 0870 336 9141
E-mail: MSCDPConsultation@homeoffice.gsi.gov.uk

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

For additional hard copies of the consultation paper and response proforma please contact us at the above address. Electronic copies of this document are available on the NIO website (www.nio.gov.uk).

Scotland
If you respond on behalf of a UK-wide organisation, a copy of your response will be sent to the Scottish Executive. If you live in Scotland or your organisation is based in Scotland, please send your views to:-

Consultation on Making Sure That Crime Doesn’t Pay
Criminal Procedure Division
Justice Department
Scottish Executive
Regent’s Road
Edinburgh EH1 3DG

Tel: 0131 244 2610
Fax: 0131 244 2623
Email: MSCDPConsultation@Scotland.gsi.gov.uk

For additional hard copies of the consultation paper and response proforma please contact us at the above address. Electronic copies of these documents are also available at:
http://www.scotland.gov.uk/Consultations/Current

Northern Ireland
If you respond on behalf of a UK-wide organisation, a copy of your response will be sent to the Northern Ireland Office. If you live in Northern Ireland or your organisation is based in Northern Ireland, please send your views to:-

Consultation on Making Sure That Crime Doesn’t Pay
Criminal Law Branch
Northern Ireland Office
Massey House
Stoney Road
Belfast BT4 3SX

Tel: 028 90 527 299
Text phone: 028 90 527 668
Email: CJPB.Public@nio.x.gsi.gov.uk

For additional hard copies of the consultation paper and response proforma please contact us at the above address. An electronic version of this document is available on the NIO website (www.nio.gov.uk).

You should also contact the Criminal Law Policy Unit should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.

A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on our website.
BACKGROUND

1. The issue of criminals writing about and profiting from their crimes has long been a source of concern. The natural first response to this issue is that those found guilty of a crime should not be permitted to glorify their misdeeds and cause further distress to victims and their families. Longer consideration reveals that imposing any such controls involves difficulties of definition, and raises fundamental questions about the right to freedom of expression that illustrate the inherent tension between the greater good of society and the protection of the rights of the individual.

2. The most recent re-examination of the law in this area was prompted by the public outcry that occurred when Gitta Sereny published her book *Cries Unheard* about the life of Mary Bell. This was serialised in the Times newspaper which described it as a searching book on the most difficult of crimes – the story of a girl who was convicted of killing two young boys when she was aged 11. Public concern was fuelled by the allegation that Mary Bell had received the sum of £50,000 for her contribution towards it.

3. In the light of these concerns, as part of a Parliamentary answer on 22nd July 1998 (Official Report Volume 316 Column 546) setting out the outcome of an internal Home Office inquiry into the handling of the Mary Bell case, the then Home Secretary announced that he had asked officials to consider whether the scope of existing powers to prevent criminals profiting from their crimes might sensibly be strengthened. This review was carried out by an Interdepartmental Working Group chaired by the Home Office.

4. The Working Group considered both the publication of material about crime and the separate issue of the profit made by criminals from that publication, recognising that the essence of the distress caused to victims is the publication itself but that the payment of money or other benefits to the criminal adds insult to injury. The Working Group did not recommend changing the law relating to the publication of such material because they concluded that a blanket ban on publications by criminals or others about their crimes would be an unacceptable restriction of freedom of expression, and that it was not possible to define what writing was acceptable or unacceptable. The Group did recommend that consideration should be given to preventing criminals profiting from such publications but no clear way of doing so was identified. This consultation paper builds on the earlier work.

Current law and practice

5. There is little in law that applies directly to the publication of material by criminals about their crimes. In certain limited circumstances criminal confiscation legislation could be used to obtain any profits which a convicted criminal makes in this way. But it could not be relied on in all cases, not least because confiscation is obtained on conviction whereas publications about the crime may not be written until many years later. Similarly, the civil law generally offers little opportunity at present for redress to victims and those affected by such publications.

Criminal confiscation: the Randle and Pottle case

6. The relevance of criminal confiscation law to publications about crime has been tested on only one occasion. This was in the case of *Randle and Pottle* who, in 1966, helped the spy George Blake to escape from prison and subsequently wrote a book entitled *The Blake Escape: How We Freed George Blake and Why* for which they received a payment of £30,000 from their publisher. (They were later tried with offences relating to the escape but acquitted.) The High Court held that the book was fairly to be regarded as “connected with” the commission of the offences of aiding Blake’s escape and conspiring to
harbour and assist him, and that the payment of £30,000 was obtained at least partly in connection with the commission of the offences and so potentially able to be confiscated.

7. The confiscation provisions in Part 2 of the Proceeds of Crime Act 2002 are similar to those that were in place in the Randle and Pottle case. Money can be confiscated from an individual if it was obtained as a result of or in connection with the offence for which he was convicted or if there has been a benefit following the commission of a criminal lifestyle offence. In light of the Randle and Pottle case it is therefore arguable that there is already the power to obtain the profits of publications about crime under Part 2 of the Proceeds of Crime Act 2002. This is on the basis that obtaining such a profit constitutes a benefit “as a result of or in connection with” the crime. However, dealing with publications about crime is not what the 2002 Act is designed to do and its application in such circumstances is far from certain. The legislation is generic and only bears incidentally upon accounts of crime.

Money laundering offences

8. Money laundering under UK law is a very wide regime which includes the criminalisation of the possession of criminal property and any attempt to conceal or arrange the transfer of such property. There are three principal money laundering offences in the Proceeds of Crime Act.

9. The Act provides that property is criminal property if:

(a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or in part and whether directly or indirectly); and

(b) the alleged offender knows or suspects that it constitutes such a benefit.

10. Arguably, an offender’s profit from a publication about his crime constitutes an indirect benefit from his criminal conduct. In theory, therefore, a publisher of the sort of material at which these proposals are targeted could, if he pays the offender, be prosecuted for an offence under section 326 of the Act (entering into or becoming concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person); and the offender receiving the payment could be prosecuted for an offence under section 329 (acquiring, using or having possession of criminal property).

11. However, as indicated above, dealing with publications about crime is not what the Proceeds of Crime Act is designed to do. In practice, it is highly unlikely that the prosecuting authorities would feel comfortable in using money laundering provisions in this way. And any attempt to do so would be highly arguable before the courts.

Proceeds of Crime Act: civil recovery

12. Whereas the confiscation provisions in the Proceeds of Crime Act 2002 are part of the criminal sentencing process, the civil recovery provisions in Part 5 of the 2002 Act concern the recovery of property obtained through unlawful conduct. The possibility that the civil recovery scheme now included in the Proceeds of Crime Act should cover the proceeds of publications by criminals about their crimes was considered as the scheme was developed. But it was decided that that scheme should be limited to property that was obtained through unlawful conduct. As writing about a crime is not unlawful conduct, the civil recovery provisions as they stand are not applicable.

Civil law remedies: Attorney-General v Blake

13. In 1991 the then Attorney-General commenced a civil action against the spy George Blake with a view to ensuring that he should not enjoy any further financial gain from his treachery. Blake’s case was exceptional. He had been convicted in 1961 of a serious breach of the Official Secrets Act 1911 and escaped from prison to Russia in 1966. He subsequently wrote a book *No Other*
Choice describing his life as a spy. By writing this book Blake committed a further offence under the Official Secrets Act 1989. It was recognised that in all probability he would never be put on trial for this further offence with the result that the statutory machinery to confiscate the proceeds of the further offence could not be used.

14. The case was complex involving both a public law claim (in the public interest) and private law claim (for breach of contract) by the Attorney General and went as far as the House of Lords. The private law claim was successful. The Lords ruled the public law claim would only have arisen if the private law one had failed, but in any event they considered the exact circumstances of the case meant it would have failed. However because the circumstances of the Blake case were so exceptional, relying on an undertaking Blake had signed not to divulge information, the judgement of the House of Lords does not hold out any prospect of a remedy in most cases of profit from publications about crime.

Other civil law remedies

15. In terms of preventing profit, it is conceivable that the law of restitution for unjust enrichment might apply in certain circumstances but this too is unlikely to have wide, if any, application and cannot be relied upon as a solution in most cases. More generally, bringing an action for defamation may be possible in some circumstances, for example if a publication about a crime contains a defamatory picture of the victim. But defamation is not an issue when publications are re-telling the truth. Nor, if the victim has died, is there any right for relatives to bring an action for defamation of the deceased.

Controls on publication by serving prisoners

England and Wales

16. In England and Wales current Prison Service policy on material that a serving prisoner might publish is contained in Standing Orders 4 and 5B.

17. Standing Order 4 deals with written material that is not correspondence and allows prisoners to submit ‘artwork or work of literary merit’ for sale or publication for profit through a charitable organisation approved by the Prison Service Chief Education Officer’s Branch. Whilst material sent out for these purposes can be published or sold for profit, current policy, which is supported by legal advice, is to ensure that the content of any material does not breach the restrictions imposed on correspondence by Standing Order 5B. This includes the restriction relating to material about a prisoner’s own crime or past offences.

18. Standing Order 5B deals with prisoners’ correspondence and includes a number of restrictions on what can be included in any correspondence. These include a prohibition on any material that is intended for publication or for use by radio or television if it is in return for payment. Prisoners are also prohibited from sending out any material for publication if it is about their own crime or past offences or those of others, except where it consists of serious representations about conviction or sentence or forms part of serious comment about crime, the processes of justice or the penal system.

19. In a recent case concerning Dennis Nilsen the High Court took the view that the Prison Service was justified in withholding a manuscript written by Mr Nilsen that contained details of the murders he committed. Counsel for the Secretary of State noted that publication of Mr Nilsen’s manuscript “would provoke distress and outrage on the part of the families of victims and the wider public”. The Court upheld the decision of the Prison Service to withhold the manuscript noting that “the Secretary of State is entitled to have regard to the likely effect of publication on members of the public, including survivors and families of the victim”. This decision was upheld by the Court of Appeal.

Northern Ireland

20. Northern Ireland contains provisions similar to those in England and Wales. These
are found in Standing Order 4 (4.6), and Standing Order 5 (5.3.6).

21. **Standing Order 4**: A prisoner may send out a completed notebook or other artistic or written material, which is not correspondence. If a prisoner is prevented from sending out such material he may be allowed to take it out on discharge provided it does not contain information about prison staff or prisoners, matters relating to crime or escape plans or material which could jeopardise national security.

22. **Standing Order 5**: Correspondence may not contain material which is intended for publication or for use by radio or television (or which, if sent, would be likely to be published or broadcast) if it: (i) is for publication in return for payment (unless a prisoner is unconvicted); (ii) is likely to appear in a publication associated with a person or organisation to whom the prisoner may not write as a result of the restriction on correspondence; (iii) is about the prisoner’s own crime or past offences or those of others, except where it consists of serious representations about conviction or sentence or forms part of serious comment about crime, the processes of justice or the penal system; (iv) refers to individual prisoners or members of staff in such a way that they might be identified; (v) is in contravention of any of the other restrictions on content applying to letters.

23. Furthermore, a convicted criminal may not send correspondence material constituting the conduct of a business activity.

**Scotland**

24. In Scotland current Scottish Prison Service (SPS) policy on material that a serving prisoner might publish is contained in the Prisons and Young Offenders Institutions (Scotland) Rules 2006 and the Directions under the previous Prisons and Young Offenders Institutions (Scotland) 1994.

25. In Scottish prisons, prisoners are not permitted to carry on any trade, profession or vocation from the prison. However, prisoners are allowed to write articles or books for publication, whether or not such articles or books are written by the prisoner in a professional or vocational capacity. Any such activity is permissible only insofar as it is compatible with the Prison Rules and Directions.

26. The Prison Rules and Directions prohibit a prisoner sending or receiving material which relates to their own crime or past offences, except where it consists of serious representation about conviction or sentence or forms part of serious comment about crime, the processes of justice or the penal system. However, they do not prevent a prisoner from writing about his crime and a request from a prisoner to send such material from prison would be considered by the prison Governor on the merits of the individual case. If the material consisted of a serious comment about crime and did not refer to individual prisoners or officers of the prison in such a way as might identify them, the Governor may, in such circumstances, exercise his discretion and allow the material to be sent. The Governor would give full consideration to the interests of the victims and their family in reaching his decision while also retaining a focus on the rehabilitation of the prisoner.

27. The Scottish Prison Service gives consideration to the interests of victims and their families in a number of respects. In addition to the restrictions on written material, visits from journalists, authors and media representatives in their professional capacity, or wholly or partially connected with the purposes of journalism, broadcasting or publishing, are only permitted in terms of the Prison Rules in exceptional circumstances, and where the Governor is satisfied that they are appropriate. If, in exceptional circumstances, the Governor permits a visit, the visitor is required to sign an undertaking which includes a condition that no payment or gratuity is made to the prisoner or any other person in relation to the holding of the interview. Another condition is that any material obtained at the interview, or any photographs, films or recordings taken, are not used for publication or broadcast without the prior written consent of the Governor and subject to such conditions as he imposes. Other
restrictions include telephone calls being recorded, and a prisoner’s access to the telephone in certain circumstances. It is, however, not always possible to control what a prisoner says to a journalist over the phone. Furthermore, it is generally not possible for SPS to limit the information that former prisoners provide to journalists after they are released.

Controls in High Security Psychiatric Hospitals

28. High security psychiatric hospitals may contain those who have been sentenced by the courts and who are given certain types of hospital orders because of their mental state, or those who have been transferred from Prison Service establishments because they needed treatment for a mental disorder. It is quite possible for an offender to spend part of his sentence in a high security psychiatric hospital and part in a prison. In England and Wales when transferred to a high security psychiatric hospital, a prisoner becomes a patient detained under the Mental Health Act 1983 (MHA), and is treated in the same way as other patients. In Northern Ireland the relevant legislation is the Mental Health (Northern Ireland) Order 1986. In Scotland it is the Mental Health (Care and Treatment) (Scotland) Act 2003.

29. High security psychiatric hospitals are part of the NHS and responsibility for them lies: in England and Wales, with the Department of Health; in Northern Ireland, with the Department of Health, Social Services, and Public Safety; and in Scotland with the Scottish Executive Health Department. There has never been any central guidance to the high security psychiatric hospitals, or the wider NHS, on the subject of patients who are detained as a direct result of being convicted of committing an offence profiting from publicity about their crimes. Each of the high security psychiatric hospitals has thus established its own way of dealing with the issue.

30. In England and Wales section 134(1)(b) of the MHA allows managers of a hospital at which high security psychiatric services are provided to prevent a patient from posting a packet where the manager considers that the packet is likely to cause distress to another person (other than hospital staff). This power is exercised on a case by case basis and, in each case, the manager must be satisfied that the condition of likelihood of distress is present. There is not thought to be any power at present to impose restrictions on the mail of informal patients or patients detained at hospitals other than those at which high security psychiatric services are provided. Article 16 of the Mental Health (Northern Ireland) Order 2003 makes similar provisions for the responsible authority to act in such a way in Northern Ireland.

31. In Scotland, where the responsible Medical Officer considers restrictions on a patient’s correspondence are necessary, then they must take the action set out in the Mental Health (Care and Treatment) (Scotland) Act 2003, and associated regulations made under section 281 (The Mental Health (Definition of a Specified Person: Correspondence) Regulations 2005) and designate the patient a ‘specified person’. The mail sent to or by a ‘specified person’ may then be withheld on the grounds of potential distress to the addressee or any other person not on the staff of the hospital, or cause danger to any person, or that a postal packet might not be in the interests of the health and safety of the patient or might be a danger to any other person.

Controls in the Community: Life Licences

32. In England and Wales, all life sentence prisoners are subject on release to a life licence which contains conditions relating to their supervision by the probation service. The licence remains in force until the licensee’s death, although the conditions in it may be cancelled in due course if there have been no grounds for concern about the licensee’s behaviour. The purposes of licence conditions are to protect the public, prevent re-offending, and secure the reintegration of the prisoner into the community. The standard conditions in a life licence require the
licensee to submit to supervision as directed, to live and work where approved by the supervising probation officer and not to travel outside Great Britain without permission. Additional conditions may be added, for example to forbid attempts to contact named individuals, or to exclude the licensee from certain areas.

33. The current licensing powers are contained in sections 28 to 32 of the Crime (Sentences) Act 1997. Section 31(2) provides that a life prisoner subject to a licence shall comply with such conditions “as may for the time being be specified in the licence”. The Secretary of State has no power to include, vary or cancel any such condition, unless recommended to do so by the Parole Board. Similar provisions exist in Northern Ireland via Article 8 and Article 9 of the Life Sentences (Northern Ireland) Order 2001.

34. Standard conditions have been applied to the release of life sentence prisoners for many years. So far as we can ascertain, release has never been subject to a condition that the licensee should not publish any account of his offence for gain.

Scotland

35. The position is the same in Scotland except the arrangements are set out currently in the Prisoners and Criminal Proceedings (Scotland) Act 1993. These are being consolidated presently in the Custodial Sentences and Weapons (Scotland) Bill that is currently before the Scottish Parliament. The decision to release a life sentence prisoner on life licence is a matter for the Parole Board for Scotland. The Board will also set the conditions that the Scottish Ministers will attach to the licence. These can be cancelled, varied or suspended on the direction of the Board.

Press Self-Regulation

36. The Press Complaints Commission (PCC) forms part of a self-regulatory regime that has been set up by the press to ensure that it maintains high standards and retains public confidence in its probity.

37. Clause 16 of the PCC Code of Practice (annex D) provides that:

(i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamourise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues.

(ii) Editors invoking the public interest to justify payments or offers of payment would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

38. The public interest is defined in the Code as including: detecting or exposing crime or a serious misdemeanour; protecting public health and safety; preventing the public from being misled by some statement or action of an individual or organisation.

Statutory Regulation of broadcasters

39. Unlike the press, broadcasters are subject to statutory regulation under the Communications Act 2003. Within this framework the Office of Communications (OFCOM) has a duty to regulate content standards of all licensed television and radio services by way of statutory codes.

40. OFCOM's Programme Code (which came into force on and applies to programmes broadcast on or after 25 July 2005) sets out the rules and guidance for almost all broadcast content with which broadcasters must comply.

41. Section 3.3 of the OFCOM Code (which applies to all television and radio services, including the BBC) refers to payments and provides that:

- No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals whether
directly or indirectly for a programme contribution by the criminal (or any other person) relating to his/her crime/s. The only exception is where it is in the public interest.

42. In addition, Section 7 of the BBC’s Editorial Guidelines (Crime & Anti-Social Behaviour – Payments) sets out specific guidance for BBC programmes and provides that:

- The BBC does not normally make payments, promise to make payments or make payments in kind, whether directly or indirectly, to criminals, or generally to former criminals, who are simply talking about their crimes. In general the same should apply to families or relatives of criminals or former criminals. This is to protect our reputation, the credibility of our interviewees and sources, the integrity of the judicial process, as well as respecting the sensitivities of the victims of crime.

- Payment of a fee will only be approved for a contribution of remarkable importance with a clear public interest which could not be obtained without payment. In such cases, only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution will normally be reimbursed.
PROPOSALS FOR CHANGE

Human rights considerations

43. It is important that any consideration of how the current law and practice might be changed takes full account of the rights and freedoms in the European Convention of Human Rights (ECHR) to which the Human Rights Act 1998 gives legal effect in the UK. Of particular relevance in this context are the right to freedom of expression (Article 10.1) and the right to peaceful enjoyment of possessions (Article 1 of Protocol 1). Any new measure that may result from this consultation must be compatible with these rights.

44. The ECHR protects the rights of all citizens, even those who may be thought least deserving of its protection. But the enjoyment of the majority of the rights set out in the Convention may properly be restricted if the restriction meets the conditions of the Convention and is both necessary and proportionate to the mischief being addressed. Any interference with the right to freedom of expression can only be justified in terms of Article 10.2 which includes amongst the reasons for which such interference may be justified the protection of health and morals and the protection of the rights and reputation of others; factors which will clearly be relevant when considering proposals to restrict the scope for profiting from criminal memoirs.

45. It is the victims and their families who are most frequently and deeply affected by the publication of criminal memoirs. They may understandably feel that their needs for privacy and protection from the reawakening of their grief are being ignored. But it is important to remember that the right to freedom of expression includes the right to receive, as well as to impart, information. So it is not only the rights of convicted criminals and the rights of victims which must be considered in this context but also the right of other members of society to read or watch the relevant material.

46. The proposals set out in this paper are not intended to prevent publications about serious crimes or to restrict legitimate reporting for news purposes or information gathering for documentary programmes in the public interest. It is the profit from publications, rather than the publications themselves, which we seek to target. Some may argue that the money made from publication could be confiscated without any loss of freedom of expression but such confiscation could have an indirect effect on the right to freedom of expression. If criminals refuse to cooperate with legitimate publications without payment, there could be an inhibiting effect on the publishing of books or the broadcasting of films or documentaries which may serve an important public interest. So, to a greater or lesser extent, all of the proposals discussed in this paper may have some indirect impact on the media and publishing industries by making publication of some material less attractive to criminals. And some of them may have a direct impact in terms of criminal liability for making or assisting the receipt of payments to criminals.

47. The greater the restriction on freedom of expression, the greater the risk that it will be incompatible with Convention rights. We have considered carefully the implications of the proposals in this paper for our obligations under the ECHR. Our view is that both our domestic courts and the Strasbourg court will find even the most stringent of the proposals compatible with Article 10 (freedom of expression) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).

General principles

48. As the previous chapter illustrates, there is no one effective mechanism through which criminals’ profits from publications about their crimes can currently be seized. What we want to do is provide for a mechanism through which criminals’ profits from such
publications could be confiscated, if not prevented, regardless of whether they are serving their sentence in a prison or a high security psychiatric hospital and whether or not they are subject to licence conditions in the community. Providing for such a mechanism would require primary legislation involving the creation of a new criminal offence (of making and/or receiving payment for such publications) or of a new civil scheme.

49. But this is difficult to capture in legislation: in practice not all publications that may cause offence could be covered, it may not be possible to obtain all of the profits from publications that would be covered, and those that would be covered may not include the ones which cause the most offence.

Q1: In principle, do you think that a new measure is necessary? Please say why or why not.

50. If a new measure were to be introduced, whether criminal or civil, there are some fundamental questions as to its scope. These are addressed below:

What forms of publication should be covered?

51. Publication clearly covers the written word whether in a book or a newspaper. However, we propose that publication in this context should be given a very wide definition to cover all forms of media including newspaper or magazine articles, books, films, TV, radio and the internet. It should cover situations both where the criminal himself publishes something and where he is paid by someone else. For example, it should cover where the criminal writes an article or book; where he is paid to be interviewed for an article; where he is paid to provide information; where he is paid to star in or advise on a film; and where he is paid for the rights to his story. It should also cover personal appearances and public speaking where the criminal is paid to talk about his crime.

Q2: Do you think that any new measure should cover all forms of publication?

Would a new measure apply to all criminals?

52. In principle, if it is not acceptable for criminals to profit from publications about their crimes then a new measure to prevent such profit should apply to all criminals, regardless of the seriousness of their offence. But in practice profit is not made from publications about minor offences. The reality is that the greatest public interest in crime is usually in the most serious and horrific acts so it is only high profile criminals who are likely to be able to command a sufficient audience for profits to be worth preventing or pursuing, or indeed for any profit to be made. Arguably, therefore, any new measure should be limited to those convicted of more serious crimes. This could help to make the measure more proportionate to the mischief being addressed as it is the more serious cases, particularly those involving homicide offences, where the distress to victims or their families is likely to be most profound and the injustice of the profiting is more acute.

53. A way of limiting the measure to more serious cases would be to apply a threshold based on sentences for criminal offences. For example, the new measure could apply to individuals who have been convicted of a criminal offence for which the maximum penalty is a custodial sentence of, say, at least two years. This threshold would cover the most serious offences, such as murder and manslaughter, but would also include a wide range of other offences which may, in some cases, be less likely to be of sufficient interest to the public to generate profit, for example contempt of court, dangerous driving and vehicle document fraud.

54. Increasing the maximum penalty threshold would help to make any new measure more focused. But the higher the threshold, the greater the likelihood of excluding offences that some may feel should be included. For example, a maximum penalty threshold of five years would exclude certain offences under the Sexual Offences and Official Secrets Acts; and a maximum penalty threshold of 10 years would exclude certain firearms offences, some offences against the
person (e.g. in England and Wales unlawful wounding, assault occasioning actual bodily harm, perjury and child abduction).

55. Whatever the threshold in terms of the maximum penalty, the determining factor should arguably be the actual sentence imposed because that will reflect the seriousness of the crime. Coupling the maximum penalty threshold with a requirement for the actual sentence to be custodial could also help to make a new measure more focused. But it could mean that some serious crimes (including, in exceptional circumstances, manslaughter) would not be covered if a non-custodial sentence was given.

56. However, setting a threshold of seriousness could create uncertainty about whether or not it is appropriate to pay money to criminals or for them to receive it. Publishers, for example, would have to know the maximum penalties for the offences covered or the actual sentence that a criminal convicted of one of them had received. Without this it would not immediately be clear to them whether or not a payment to a criminal would constitute a criminal offence or could trigger civil recovery proceedings. And if, in practice, profit is only likely to be made from publications about more serious offences, then a seriousness threshold may well be an unnecessary complication. Neither the PCC nor the OFCOM Codes of Practice apply any such threshold in relation to payments to criminals.

What type of publication would be covered?

57. There is a range of material the profit from which any new measure could potentially target, including publications about a criminal's experience of imprisonment or that sell by virtue of the criminal's notoriety. A person's notoriety as a result of a crime is arguably the likeliest factor to push up sales. But the notoriety of the author could boost sales whatever the subject matter of a publication. Attempting to prevent criminals profiting from writing about anything other than their own crimes - or indeed profiting from anything as a result of their notoriety - could effectively amount to preventing them from earning an honest living. And we would not want any prohibition on profit to prevent publication of material that may provide valuable insight into or contribute to reform of the penal system.

58. The particular mischief we wish to address is the financial benefit the criminal obtains from being paid in return for writing, or contributing to, an account of his crime. We believe therefore that any new measure should be focused on profits from publications that contain accounts of a crime of which he has been convicted, or the criminal's thoughts, emotions and views on the crime or from the provision of information to the media or filmmakers that relates to the crime. This would not include any publication or information that does not relate to the crime itself. In particular, it would not include profits from:

- accounts of prison life;
- accounts of other criminal activity that the criminal was involved in but was not convicted of;
- publications that may sell by virtue of the criminal's notoriety including books about other people's crimes or truly fictional accounts of crime.

Q3: Do you think that a new measure should apply to all criminals, regardless of the seriousness of their offences? Please say why or why not.

Q4: (a) If you think that there should be a seriousness threshold, do you think that this should be based on the maximum penalties for offences? (b) If so, what do you think the maximum penalty threshold should be? (c) Do you think that there should also be a requirement for the actual sentence imposed to be custodial?

Q5: Is there a better way of applying a seriousness threshold?

Q6: (a) Do you think that any new measure should be limited to criminals writing, or contributing to, accounts of their own crimes? (b) If not, what other types of publication do you think should be covered?
59. A possible exception to this is where someone convicted of an offence which constituted a lesser part of a much more serious crime, then wrote an account of the more serious crime. For example, if someone convicted of assisting an offender (who committed a murder) wrote an account of the other person’s offence (i.e. the murder), it could be just as upsetting for the victim’s family as an account by the murderer would be. We believe that no-one who has played any part in a serious offence should be allowed to profit from their association with the principal offender.

60. We believe that a new measure should also cover other offences taken into account on sentencing. So, if a person is convicted of one major offence and has 10 others taken into account he should not be able to profit from publications about these other offences either.

Q7: (a) In principle, do you think that any new measure should extend to publications about lesser offences that are associated in some way with a much more serious crime and to other offences taken into account on sentencing? (b) If so, should any maximum penalty threshold as described above apply equally to the lesser offence(s) and others taken into account on sentencing?

Would there be exceptions?

61. Not all works by those convicted, even of the most serious offences, are universally unwelcome. For example, although *Cries Unheard* caused public outrage and great distress to the families of Mary Bell’s victims, it was nevertheless perceived in some quarters as a serious criminological work which provided valuable insights into the motivations and circumstances which encourage criminal behaviour. In such cases, it is arguable that there may be a public interest in criminals keeping profits they have made from their publication.

62. In principle, the Government believes that those public interests are outweighed by the public interest that criminals should not profit from their crimes. However, the absence of a public interest exception – which would allow no scope to take into account any legitimate aim in publication – might be seen as an overly strict approach. If criminals refused to cooperate without payment, it could, for example, prevent the publication of serious academic studies involving discussion with criminals about their crimes which might inform programmes of prevention and rehabilitation. On the other hand, a public interest exception might serve to create uncertainty and could make any new measure unenforceable.

63. We are satisfied that, even without a public interest exception, the proposals in this paper would be compatible with our obligations under the ECHR. On balance, however, we believe that there should be a public interest exception. It is difficult to establish hard and fast rules about what is or is not acceptable but we propose that any public interest exception could be defined in terms of:

- the purpose of the publication (i.e. whether it is intended as serious research, for educational, rehabilitative or reparative purposes or for the purpose of making serious comment about crime);
- whether the published material is only that which is necessary for the excepted purpose (so the exception should not cover purported criminological works that contain unnecessary and salacious descriptions of crime); and
- whether payment is genuinely necessary to allow publication in the public interest.

64. However it is defined, applying a public interest test will inevitably lead to some criminals being allowed to profit in circumstances where people may feel they should not and some criminals not being allowed to profit in circumstances where people believe that they should.

Q8: (a) Do you think that there should be a public interest test? (b) If so, how do you think it should be defined?
Alleged miscarriages of justice

65. Our criminal justice system is based on the presumption that the defendant is innocent until proved guilty. However, even with the best of systems, mistakes can happen. People convicted of a criminal offence have the very important right to continue to campaign on their own behalf; to protest their innocence and about what they see as a miscarriage of justice, and to do this by all legitimate means of campaigning.

66. Any new measure would apply to convicted criminals who profit from publications in which they claim to have suffered a miscarriage of justice. They would continue to be able to publish such claims but they would not be able to profit from the publication. Accordingly, we do not think that publications about alleged miscarriages of justice should explicitly be exempt from the scheme.

Q9: Do you think that publications about alleged miscarriages of justice should not explicitly be exempt?

The Options

67. There are four options under consideration:

1. Making receipt by and/or payment to convicted criminals of money for publications about their crimes a criminal offence;
2. Introducing a new civil scheme for the recovery of profits based on the civil recovery provisions in the Proceeds of Crime Act;
3. Extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers; and

These are discussed below and views are invited on all four options.

Option 1: criminal sanctions

Consequences of a new criminal offence for criminals and/or publishers

68. It is the profit from publications, rather than the publications themselves, that we seek to prevent. And it is only the criminal's profits that we want to target. We do not seek to prevent the publishing of books or the making of films from which others may profit. A new offence of making a payment to a convicted criminal could be seen as inconsistent with that aim because such an offence would criminalise those making the payment and leave the criminal receiving the payment unaffected. However, even a new offence of receiving payment (which would be committed by the criminal) would have consequences for publishers in terms of secondary participation because for any offence on the statute book it is automatically an offence to:

• aid, abet, counsel or procure the commission of that offence;
• attempt to commit that offence;
• conspire to commit that offence; or
• solicit or incite another to commit that offence.

69. In most cases, the maximum penalty for aiding, abetting etc, attempting or conspiring will be the same as the maximum penalty for the primary offence. As a common law offence, incitement is punishable by an unlimited fine and/or imprisonment for an unlimited period, except in Scotland where the penalty for incitement is, generally, the same as the penalty for the primary offence (section 293 of the Criminal Procedure (Scotland) Act 1995).

70. So, for example, if it were an offence for a convicted criminal to receive payment for any publication about his crime, the person making the payment to him (the publisher of a book say) could be guilty of aiding and abetting the offence and be liable to the same maximum penalty as the offender. Arguably, therefore, it would not be necessary to create a separate offence of making a payment to a convicted criminal for any publication about his crime because anyone doing so would already be guilty of a secondary participation offence attracting the same punishment as the principal offender.
71. A new offence or offences could also trigger the confiscation provisions in the Proceeds of Crime Act. If it were an offence for a convicted criminal to receive payment, it seems perfectly reasonable that the proceeds of his crime – i.e. the payment made to him – should be confiscated. Indeed that is the very mischief we are seeking to prevent. It would arguably be less reasonable to prevent the publisher (or anyone other than the offender) from profiting. But the effect of a publisher committing either:

- a secondary offence of assisting the receipt by a convicted criminal of payment for any publication about his crime; or
- a primary offence of paying a convicted criminal for any publication about his crime

would be that the publisher’s profits (which could be significantly greater than any payment made to the offender) become confiscatable. This could move the main focus from the offender which we do not think is right.

72. Against that background, and to avoid the effect of any new measure on publishers being disproportionate, we believe there are three varying degrees of a criminal law option:

a. to make it an offence for a convicted criminal to receive payment for any publication about his crime but disapply secondary offences so that those making the payment do not commit any offence; or

b. to make it an offence for a convicted criminal to receive payment for any publication about his crime leaving those who make the payments liable for secondary offences but disapply the Proceeds of Crime Act in respect of any benefits they obtain as a result of any offences that arise out of making payments; or

c. to make it: (a) an offence for a convicted criminal to receive payment for any publication about his crime; and (b) a separate offence for a person to pay him for this purpose but disapply the Proceeds of Crime Act in respect of any benefits obtained as a result of such offences by anyone other than the criminal. The publisher would therefore be liable to a penalty for the offence but would not be liable to have all his profits confiscated.

1a: targeting the criminal only

73. This offence would be committed by a person who received payment in connection with the publication or broadcast of an account of a crime of which he had been convicted. The offence would apply only to payments made to the criminal and not to anyone else. As set out above, it could apply to all criminals, regardless of the seriousness of their offences, or only to those convicted of more serious crimes; and there would be a public interest defence. An appropriate penalty for an offence of receiving payment could be an unlimited fine.

74. Using the criminal law to prevent criminals receiving payment for a lawful activity could be seen as disproportionate to the mischief being addressed but it would have greater deterrent effect than the possibility of civil forfeiture and might prevent payment being made in the first place. It could also trigger the confiscation provisions of the Proceeds of Crime Act. It would avoid criminalising and thus confiscating the profits of anyone other than the criminal and so might limit the effect that an offence that bites on the media might have. However, it might not deter the press or publishers from making or offering payments to criminals if they are not criminally liable for doing so.

1b: targeting the criminal as a principal offender and the publisher as a secondary participant

75. Under this option the offence would be the same as for option 1a. But, additionally, those who aided and abetted the receipt of the money by the criminal would be liable for secondary participation offences and could receive the same penalty as the person.
receiving the payment. This could include those who make the payment to the criminals, such as publishers and other media organisations and those who work for them, as well as those who advise and assist the criminals in obtaining payment, such as journalists and agents.

76. This option goes further than option 1a by making the press and/or publishers criminally liable as secondary participants in an offence of receiving payment. It is therefore likely to be seen as more disproportionate but would have potentially greater deterrent effect and be more likely to prevent payment being made in the first place. Like option 1a this option could trigger the confiscation provisions of the Proceeds of Crime Act. Criminalising and imposing a financial penalty on publishers and others as secondary participants could increase the inhibiting effect of the provision and make publication less likely. But secondary participants would still be allowed to retain the profits from any publication or broadcast. The Proceeds of Crime Act would not be applied to the publisher or broadcaster.

1c: targeting both the criminal and the publisher as principal offenders

77. Under this option an offence would be committed both by a person who received payment in connection with the publication of an account of a crime of which he had been convicted and by the person making the payment. The latter could include media organisations and journalists. This offence would apply to the same payments as option 1. However, both those who aided and abetted the receipt of the money by the criminal and those who aided and abetted the making of the payment by the media organisation would be caught under secondary participation. Accordingly, publishers might be criminally liable both as secondary participants in an offence of receiving payment and as principal offenders who commit an offence of making a payment.

78. This option would not catch much behaviour that would not anyway be caught by option 1b. It is likely to be seen as the most disproportionate but it would have the greatest possible deterrent effect and be most likely to prevent payment being made in the first place. As with options 1a and 1b the Proceeds of Crime Act would apply only to the criminal’s profits. Secondary participants, and principal offenders other than the criminal, would still be allowed to profit from any publication.

Q10: (a) Do you think that receiving a payment should be a criminal offence? (b) If so, do you think that those who assist the receipt of the payment should be liable for secondary participation offences and to receive the same penalty as the person receiving the payment?

Q11: (a) Do you think that making a payment should be a criminal offence? (b) If so, should this be instead of or in addition to an offence of receiving a payment? (c) If both, do you think that those who make such payments (e.g. publishers) should be criminally liable both as secondary participants in an offence of receiving payment and as principal offenders who commit an offence of making a payment?

Q12: Do you think that secondary participants, and principal offenders other than the criminal, should still be allowed to profit from any publication?

Option 2: a new civil scheme

79. Alternatively, we could introduce a new civil scheme for the recovery of profits based on the civil recovery scheme in Part 5 of the Proceeds of Crime Act. In England, Wales and Northern Ireland that scheme empowers the Director of the Assets Recovery Agency to bring civil proceedings in the High Court to recover property that is or represents property obtained through unlawful conduct. In Scotland it empowers the enforcement authority, the Scottish Ministers, to take proceedings in the Court of Session against any person who the authority thinks holds recoverable property. Civil recovery is subject to a number of safeguards and restrictions to ensure fairness and compatibility with relevant civil law principles. For example, parties have
the same rights of appeal as in other High Court actions and there is a 12-year limitation period on when civil recovery proceedings can be brought, starting at the time the original property was generated by unlawful conduct.

80. A new scheme would apply the same basic principles to profits obtained by criminals from publications about their crimes. This is our preferred option as we believe it offers the greatest flexibility and is more proportionate to the mischief being addressed. It would also be consistent with the approach taken in other countries where legislation has been introduced to prevent profit from publications about crime (see Annex C).

Q13: In principle, do you think that a civil scheme would be preferable to introducing new criminal offences? Please give reasons.

Against whom would civil proceedings be taken?

81. The existing civil recovery scheme allows the Assets Recovery Agency and the Scottish Ministers, acting through the Civil Recovery Unit, to take proceedings against any person who they think holds recoverable property. We believe that, under a new scheme, proceedings should only be brought against convicted criminals who have profited from publications about their crimes. So proceedings could not be taken against anyone else who profits from such publications such as a newspaper or a publisher. Similarly, they could not be taken against a friend of the criminal or a member of his family who may have benefited financially.

Q14: Do you think that civil proceedings under a new scheme should only be taken against the criminal and not anyone else?

82. However, whilst a recovery order should only be obtainable in respect of profits that the criminal has received, we wish to prevent criminals being able easily to escape a potential order by having the payment made to family members or others within their sphere of influence. Accordingly, we wish to cover both direct and indirect benefits to the criminal. For example, if a criminal contracts with a newspaper to tell the story of his crime in exchange for a payment to his wife then we would want the payment to be recoverable on the basis that the criminal has indirectly benefited. But we would not expect the order to cover payments from which there is no benefit, direct or indirect, to the criminal. For example, if a criminal contracts with a newspaper to tell the story of his crime in exchange for a payment to a charity the payment would not be recoverable.

Q15: Do you think that a recovery order should extend to payments from which criminals have received indirect benefits?

Q16: Do you think that, if there is no direct or indirect benefit to the criminal, payment should not be recoverable?

Who would initiate civil proceedings?

83. Currently, civil recovery proceedings may only be initiated in England, Wales and Northern Ireland by the Assets Recovery Agency and in Scotland by the Scottish Ministers through the Civil Recovery Unit. We believe that the same should apply to a new civil recovery scheme. This would be consistent with current practice and is in keeping with our belief that such proceedings should be brought not by or on behalf of individual victims but on behalf of society in general on the basis that it is not acceptable in public policy terms for a criminal to profit from his crime.

Q17: (a) Do you think that the Assets Recovery Agency and the Civil Recovery Unit should bring any civil proceedings to recover profits from publications about crime? (b) If not what person or agency do you think should be able to bring such proceedings?

Would there be a financial threshold for proceedings?

84. Under the existing civil recovery scheme, proceedings for a recovery order are not taken unless the total value of the recoverable property is £10,000 or more. We would not
want the cost of court proceedings (at public expense) under a new scheme to outweigh the benefit that may result from them, although if the Assets Recovery Agency or Civil Recovery Unit were to litigate and win their case, they would be able to seek to recover their costs (as civil litigants normally do) as well as the profits that were the subject of the proceedings.

Q18: (a) Do you think there should be a limit below which a criminal’s profit should not be pursued? (b) If so, what do you think the limit should be?

How would cases be referred?

85. Under the existing civil recovery scheme, cases are normally referred to the Assets Recovery Agency and Civil Recovery Unit by the law enforcement and prosecution authorities, primarily the Police and HM Revenue & Customs. That reflects the fact that the cases concerned involve unlawful conduct about which such authorities can be expected to have or obtain information. However, publishing information about a crime is not unlawful conduct and there is no formal mechanism through which knowledge of publications about crime and criminals’ profits from them can be expected to emerge. Such knowledge could for example come from press reports or from victims’ families.

86. In the United States, legislation generally requires publishers to inform a State Board of any contract which allows an accused or convicted person to profit from the publication of a book or other work describing his crime. In Canada, legislation enacted in the province of Ontario requires each party to a contract for recounting crime to notify the Attorney General. A similar provision here might be desirable so that the Assets Recovery Agency and Civil Recovery Unit would be aware of potential cases but would represent an additional burden on publishers. There would also be the issue of any sanction for non-compliance.

criminal which allows him to profit from the publication of a book or other work describing his crime? (b) If so, who do you think should be required to inform the Agency or Unit of such a contract, the publisher or the criminal? (c) What, if any, sanction do you think should apply for failure to inform?

87. However potential cases come to their attention, and whatever financial threshold may apply, we propose that, in keeping with how they exercise their existing functions, the Assets Recovery Agency and the Civil Recovery Unit should have some discretion as to when to bring civil proceedings. In deciding whether to exercise that discretion, they would need to consider:

- the likelihood of proceedings being successful; and
- whether, having regard to the likely cost of proceedings, it is in the public interest to pursue the profit made.

It would be open to the criminal to raise the public interest defence in contesting any proceedings.

Q20: (a) Do you think that the Assets Recovery Agency and Civil Recovery Unit should have discretion as to when to bring recovery proceedings? (b) If so, do you agree with the suggested criteria?

What would a new recovery order do?

88. The recovery order would require that the criminal pay an amount equivalent to all or part of the profit that he made from a publication about his crime. So, if a criminal is paid £30,000 to spend 6 months writing a book all but the cost (to him) of publishing and any other legitimate expenses should potentially be recoverable. However, this is difficult territory as it is important that the net profit criterion does not prevent publication itself but rather only ensures the criminal does not profit in any way. So we would welcome views on how best this should be achieved.

Q21: How do you think net profits should be defined?

89. The court should be able to make an
apportionment if not all the benefit the criminal obtains is derived from an account of his crime. For example, if an individual writes a book about his life that includes a chapter on a murder he has committed, the court should have discretion to decide what percentage of the profit is derived from the fact that the book contains details of his crime and what percentage is derived from the other aspects in his book.

90. However, this is a particularly difficult area on which views are sought. We want to ensure all net profits, directly or indirectly for the offender, are effectively caught and leave no technical ways for him or her to avoid this. But we do not want to penalise the offender beyond this or render it impossible for him to publish at all, as opposed to receiving benefit from this.

Q22: Do you think that the court should be able to determine what proportion of the benefit the criminal obtains is derived from an account of his crime?

Procedural Considerations

91. As with the existing civil recovery scheme, court proceedings would be held in the High Court and governed in England and Wales by the Civil Procedure Rules and in Northern Ireland by the Rules of the Supreme Court. In Scotland proceedings would be held in the Court of Session. In addition, the Assets Recovery Agency and the Civil Recovery Unit would be able to use the investigation powers in Part 8 of the Proceeds of Crime Act to obtain the information required to bring proceedings.

Limitation period

92. As is normal in civil proceedings, a new civil scheme would need to have a limitation period. This would mean that recovery proceedings against a convicted criminal could not be taken after the limitation period has expired.

93. Under the Limitation Act 1980, and the Limitation (Northern Ireland) Order 1989, the limitation period for most civil actions in England, Wales, and Northern Ireland is currently 6 years. As indicated above, the limitation period for the recovery of the proceeds of unlawful conduct is 12 years, starting from the time the original property was generated by unlawful conduct. This limitation period was introduced by the Proceeds of Crime Act 2002. Different time limits for raising proceedings apply in Scotland depending on the type of action involved.

94. HM Government has accepted the Law Commission’s 2001 recommendation that the Limitation Act should be reformed. When this recommendation is implemented the normal limitation period for most civil actions will be 3 years from the date on which the claimant is aware that he or she has a right of action, subject to a long stop of 10 years from the date on which the cause of action accrued. (The long stop period will be extended for so long as the defendant dishonestly conceals the existence of the cause of action from the claimant.) The Law Commission did not make any recommendation in relation to the 12-year period applicable to the recovery of the proceeds of unlawful conduct because its report pre-dated the creation of this cause of action by the Proceeds of Crime Act so the 12-year period in this respect will remain.

95. A relevant factor in looking at the right limitation period for a new civil scheme could be whether there was a duty on the publisher (or the criminal) to notify the Assets Recovery Agency or Civil Recovery Unit of a contract and the time limit for notifying them. If such a duty existed and the publisher (or the criminal) notified the Agency or Unit, a shorter limitation period could perhaps be justified than if no such duty existed or the publisher failed to comply. (Under the Canadian legislation referred to above - the Prohibiting Profit from Recounting Crimes Act 2002 - the limitation period for bringing proceedings, notwithstanding the requirement to notify the Attorney General of contracts for recounting crime, is 15 years.)

96. Whatever the limitation period of a new scheme, we believe it should apply from the date on which the Assets Recovery Agency or
Civil Recovery Unit becomes aware that there is a possible cause of action (i.e. they become aware of a publication about a crime from which the person convicted of the crime may have profited); or (if there is a requirement to notify) the date on which they are informed of any contract with a convicted criminal which allows him to profit from the publication of a book or other work describing his crime.

97. As a new scheme will be concerned with the recovery of the proceeds (albeit indirect proceeds) of crime, we believe that the limitation period should be consistent with the limitation period for the recovery of the proceeds of unlawful conduct, i.e. 12 years.

Q23: (a) Do you think that the limitation period should be 12 years from the date on which the Assets Recovery Agency or Civil Recovery Unit becomes aware of the cause of action? (b) If not, what do you think the limitation period should be?

Retrospectivity

98. The possible criminal offences under option 1 would not cover any payments made to or received by convicted criminals before the legislation creating the new offences came into force. Similarly, under this option, the Assets Recovery Agency or Civil Recovery Unit would not be able to bring civil proceedings in respect of any material published prior to a new civil scheme coming into force. But whatever option is introduced we want it to cover all future publications regardless of when the crimes that are the subject of the publications were committed. Indeed, any provision will lose much of its force if it does not apply to some of the most notorious crimes committed over the last 50 years.

Q24: (a) Do you think that any new provision should cover all future publications about crimes regardless of whether the crimes were committed before the provision came into force or afterwards? (b) If not, how would you limit the coverage?

Option 3: extend self-regulation

99. As set out above, the press already has a self-regulatory regime - the PCC Code of Practice - which is intended to prevent payment to criminals for accounts of their crimes unless an important public interest is served. There is a similar statutory provision in the Office of Communication (OFCOM) Programme Code which applies to broadcasters.

100. Although, in certain circumstances, the publication of a book or the screening of a film can be prevented – for example where the act of publishing or screening would constitute an offence under the Obscene Publications Act - there is no regulation of payments to criminals for books or films about their crimes, both of which have the potential to generate considerable profit for criminals and cause distress to victims and their families.

101. Arguably, self-regulation is an effective means of ensuring that criminals do not receive unjustified payment for newspaper stories about their crimes and should be extended to other forms of publication such as books and films. Bodies such as the UK Film Council and the trade associations for the publishing industry may be willing to assist in establishing self-regulatory regimes in these other areas.

Q25: (a) Do you think that self-regulation is an effective means of preventing profit? (b) If so, do you think that extending self-regulation to other media is preferable to options 1 and 2?

Option 4: do nothing

102. The underlying principle of these proposals - that criminals should not profit from publications about their crimes - is simple. But, as the above illustrates, identifying a satisfactory solution that balances the conflicting public policy requirements is extraordinarily difficult. Arguably, the small number of cases does not justify what could be complex and expensive mechanisms for prohibiting profits and it may be perceived to be more proportionate to leave things as they are.

103. But the fact that criminals can cash in
on their criminal offences, causing further pain and distress to victims in the process, seems to us inherently wrong. Doing nothing risks sending out the message that it is acceptable for criminals to benefit in this way and could be considered to undermine public confidence in the concept of justice. Despite the small number of cases, we believe that the moral case against allowing criminals to profit is sufficiently strong to make this option unattractive.

Q26: In practical terms, do you think doing nothing is justified?

**Issues of jurisdiction**

**Would it matter where accounts of the crimes were published or where conviction of the crime took place?**

104. This would depend to some extent on the nature of any new legislation (whether criminal or civil), how it is framed and its territorial scope. The territorial scope of any legislation resulting from this consultation will be assessed when the appropriate way forward has been decided. Ideally, we would want it to apply as widely as possible. But it is not possible to cover all possible scenarios that may arise in terms of criminals profiting from publications about their crimes given that:

- the conviction of the crime;
- a publication about the crime and
- the payment for the publication

may not all occur in the same jurisdiction. Indeed, each of the above could conceivably occur in different jurisdictions. For example, a criminal could receive payment in France in connection with the publication in America of a book about a murder of which he was convicted in England.

**Criminal offences**

105. In framing any new criminal offences, we would take a similar approach to the money laundering offences in the Proceeds of Crime Act. These relate to things done in the UK in respect of the proceeds of:

- criminal conduct committed in the UK; and
- conduct elsewhere that would constitute criminal conduct if it occurred in any part of the UK.

106. In terms of the criminal offences proposed in this paper (options 1a-c above), the conduct that would constitute an offence is the payment to and/or receipt by a criminal of money for a publication about his crime. For an offence to be committed the payment or the receipt of the payment would need to take place in the UK. Applying the principles of the money laundering offences, such payments could be in respect of publications about:

- crimes of which criminals were convicted in the UK; or
- crimes of which criminals were convicted abroad provided that the conduct concerned would also constitute an offence in any part of the UK.

107. So, under the criminal options, the key issue would be where the payment was made or received. It would not matter where the account of the crime was published or what the nationality of the criminal was; and the place of conviction would also be irrelevant unless it was a conviction abroad for something that would not constitute an offence here (e.g. holocaust denial).

**Civil recovery**

108. The civil recovery provisions in the Proceeds of Crime Act are concerned with the recovery of property that is or represents property obtained through “unlawful conduct”. Conduct occurring in any part of the UK is unlawful conduct if it is unlawful under the criminal law of that part. Conduct occurring outside the UK is unlawful conduct if it is:

- unlawful under the criminal law of the country or territory where it occurred and,
- if it occurred in a part of the UK, would be unlawful under the criminal law of that part.
109. Civil recovery is a proprietary remedy focused on the property rather than on an individual. The Assets Recovery Agency or Civil Recovery Unit may take proceedings against any person who they think holds recoverable property. A claim form is servable on a person wherever he is “domiciled, resident or present” so, provided the ‘unlawful conduct’ test is met, the person’s nationality and location are irrelevant. If the person is in the UK and the money is abroad, the court can require the money to be repatriated to the UK. If both the person and the money are abroad, the court can still allow a claim form to be served on the person abroad if there is some UK connection to the proceedings as a whole.

110. Section 286 of the Proceeds of Crime Act provides that proceedings in Scotland may not be taken in relation to a persons moveable property where (a) the person is not domiciled, resident or present in Scotland and (b) the property is not situated in Scotland, unless the unlawful conduct took place in Scotland.

111. Applying these principles to a new civil recovery scheme (option 2) would mean that criminals’ profits from publications about their crimes would be recoverable regardless of:

- where the crime was committed (provided it is criminal in both jurisdictions) or the account of the crime published;
- the nationality of the offender; and
- whether or not the offender was in the UK.

112. We would draft any legislation to ensure that recovery of criminals’ profits from publications about their crimes could be pursued if:

- the criminal was in the UK (regardless of the location of the money); or
- the money was in the UK (regardless of the location of the criminal); or
- both the criminal and the money were abroad.

113. Any proceedings brought would be at the discretion of the Assets Recovery Agency or Scottish Ministers through the Civil Recovery Unit and would be subject to the public interest test and the relevant financial threshold and limitation period.

114. If, as suggested above, there was a ‘seriousness’ threshold for offences committed here to limit the application of any new legislation, we would also need to make provision for equivalent criteria where offences were committed abroad.
ANNEX A
Partial Regulatory Impact Assessment

1. Title of proposal
Making sure that crime doesn’t pay: proposals for a new measure to prevent convicted criminals profiting from publications about their crimes.

2. Purpose and intended effect

(i) Objective

The objective of these proposals is to prevent convicted criminals being unjustly enriched by profiting from accounts of their crimes. The effect would be that payments made to criminals for published accounts of their crimes, including in books, in the press, in films, on TV and on the internet, could be prevented through extended self-regulation; or recovered either through criminal confiscation or a civil order requiring them to pay an amount equal to all or part of the profit they have made. It is not part of the objective to prevent the publishing of books or the making of films from which others may profit: it is only the criminal’s profits that we seek to target.

(ii) Background

Society in general, and victims and their families in particular, are understandably outraged when convicted criminals profit from published accounts of their crimes. The most recent re-examination of the law in this area was prompted by the public outcry that occurred in 1998 when Gitta Sereny published her book *Cries Unheard* about the life of Mary Bell. This was then serialised in the Times newspaper which described it as a searching book on the most difficult of crimes – the story of a girl who was convicted of killing two young boys when she was aged 11. Public concern was fuelled by the allegation that Mary Bell had received the sum of £50,000 for her contribution towards it.

In the light of these concerns, the then Home Secretary announced that he had asked officials to consider whether the scope of existing powers to prevent offenders profiting from their crimes might sensibly be strengthened. This review was carried out by an Interdepartmental Working Group chaired by the Home Office. The Working Group did not recommend changing the law relating to the publication of such material but did recommend that consideration should be given to preventing criminals profiting from such publications.

There are various measures in place, from the Proceeds of Crime Act 2002 to the Press Complaints Commission’s Code of Practice which may help to prevent criminals exploiting their crimes for financial gain. But there is nothing in law designed to prevent this. The underlying premise of this consultation is that this is unacceptable in public policy terms and that there should be a mechanism through which profits from publications about crime can be confiscated.

(iii) Rationale for government intervention

Since the Mary Bell book was published in 1998, no other publication has attracted quite the same degree of public outrage. But payments have continued to be made to criminals in circumstances about which some people have expressed concern. For example, following his release from prison in 2003 Tony Martin reportedly received £125,000 for an exclusive interview with the Daily Mirror about his conviction for killing one burglar and injuring another who broke into his home. And in 2005 the BBC paid £4,500 to the surviving burglar Brendan Fearon for his contribution to a documentary about the Martin case. The Press Complaints Commission upheld the decision to pay Tony Martin because he “had a unique insight into an issue of great public concern”. The BBC said that Brendan Fearon would only give his side of the story if he received money and so payment had been the only way to obtain information that they felt it was in the public interest to broadcast.
In a society in which celebrity, however it is achieved, is increasingly sought after, and valued for its own sake, it seems likely that opportunities for criminals to exploit their crimes for financial gain will increase. Indeed, press reports suggest that a number of offenders – including some high profile killers – are writing or considering writing books. Arguably, allowing this situation to continue unchecked could encourage glorification of crime or the implication that crime and profiting from it is acceptable; and it will do nothing to mitigate the additional pain and distress that such exploitation can cause to victims and their families.

However, whilst the objective of these proposals – to prevent criminals profiting from publications about their crimes – is simple, identifying a satisfactory solution that balances the conflicting public policy requirements is extraordinarily difficult. And there is a question whether it is proportionate to introduce a potentially complex and expensive new mechanism for prohibiting profits in what may be a small number of cases.

The Working Group which considered the issue in 1998 cited three books and eight complaints on which the PCC had adjudicated about breaches of their Code of Practice in relation to payments to criminals. (Only three of these complaints were upheld: four of the five remaining were not upheld because publication was deemed to be in the public interest.) Since then, we are aware of at least six other cases where criminals have published work about their crimes, their prison experiences or the crimes of others. Only the first category (into which three of the six cases that we know of fall) would come within the scope of the present proposals.

Public attention inevitably focuses on high profile cases involving particularly notorious crimes. But these may not be representative of the scale of the problem: there could be other cases that we do not know about. Part of the purpose of this consultation is to seek to establish a more complete evidence base from which to judge the proportionality of any new measure.

3. **Consultation**

(i) **Within Government**

The following departments have been actively involved in the development of these proposals:

- Department for Constitutional Affairs
- Department for Culture Media and Sport
- Department of Trade and Industry
- Office for Criminal Justice Reform
- Scottish Executive
- Northern Ireland Office

As part of the consultation exercise, we also intend to seek views from:

- HM Courts Service
- HM Prison Service
- Scottish Prison Service
- Northern Ireland Courts Service
- Northern Ireland Prison Service
- HM Revenue and Customs
- Crown Prosecution Service
- Public Prosecution Service (NI)
- National Assembly of Wales

(ii) **Public consultation**

A number of stakeholders have been identified for involvement in the public consultation process. A list of the various bodies to which copies of the consultation document have been sent is at Appendix 1. These include media associations and representative bodies, victims organisations and legal and other professional bodies.

4. **Options**

The options we have considered are:

1. Making receipt by and/or payment to criminals of money for publications about their crimes a criminal offence;
2. Introducing a new civil scheme for the recovery of profits based on the civil recovery provisions in the Proceeds of Crime Act;
3. Extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers;
It is not our intention to prevent publications about serious crimes or to restrict legitimate reporting for news purposes or information gathering for documentary programmes in the public interest. It is the profit from publications, rather than the publications themselves, which we seek to target. To varying extents, however, there is a risk that options 1 and 2 may have some indirect impact on freedom of expression and prevent publication.

Option 1: criminal sanctions

A new offence of making a payment to a convicted criminal would be committed by those paying money to the criminal which could include media organisations and journalists. A new offence of receiving payment (which would be committed by the criminal) would also have consequences for publishers in terms of secondary participation offences because, if it were an offence for the criminal to receive payment, it would be an offence to aid and abet the receipt of the payment. A new offence (whether of making or receiving payment) could also trigger the confiscation provisions in the Proceeds of Crime Act.

However, we wish to avoid the effect of any new measure on publishers being disproportionate. With that in mind, there are three varying degrees of a criminal law option:

a. to make it an offence for a convicted criminal to receive payment for any publication about his crime but disapply secondary offences so that those making the payment do not commit any offence; or

b. to make it an offence for a convicted criminal to receive payment for any publication about his crime leaving those who make the payments liable for secondary offences but disapply the Proceeds of Crime Act in respect of any benefits they obtain as a result of any such offences that arise out of making payments; or

c. to make it: (a) an offence for a convicted criminal to receive payment for any publication about his crime; and (b) a separate offence for a person to pay him for this purpose but disapply the Proceeds of Crime Act in respect of any benefits obtained as a result of such offences by anyone other than the criminal. The publisher would therefore be liable to a penalty for the offence but would not be liable to have all his profits confiscated.

In each case, the penalty for an offence would be an unlimited fine.

Option 1a would have greater deterrent effect than the possibility of civil forfeiture and may prevent payment being made in the first place. It could also trigger the confiscation provisions of the Proceeds of Crime Act 2002. This option would avoid criminalising and thus confiscating the profits of anyone other than the offender and so might limit the effect that an offence that bites on the media may have. However, it may not deter the press or publishers from making or offering payments to offenders if they are not criminally liable for doing so.

Option 1b goes further by making the press and/or publishers criminally liable as secondary participants in an offence of receiving payment. It would therefore have potentially greater deterrent effect than option 1a and be more likely to prevent payment being made in the first place. Like option 1a this option could trigger the confiscation provisions of the Proceeds of Crime Act 2002. This option would criminalise and impose a financial penalty on publishers and others as secondary participants and so could increase the inhibiting effect of the provision and make publication less likely. But disapplying the Proceeds of Crime Act in respect of any benefits obtained by those making the payments would mean that publishers’ profits could not be seized.

Option 1c would not catch much behaviour that would not anyway be caught by option 1b but it would have the greatest possible deterrent effect and be most likely to prevent payment being made in the first place. As with options 1a and 1b the Proceeds of Crime
Act would apply only to the criminal’s profits. Secondary participants, and principal offenders other than the criminal, would still be allowed to profit from any publication.

Option 2: a new civil scheme

This is our preferred option. It would not criminalise anyone, is more proportionate to the mischief being addressed than a criminal regime, and could also offer greater flexibility in recovering profits. For example, if only one chapter of a book contained an account of the crime, the court could decide what proportion of the profit should be forfeit. However, a civil scheme is less likely to prevent payments being made in the first place. There would also need to be a time limit for recovery of profits so some profits may not be recoverable.

Option 3: extending self-regulation

This option would go some way to achieving the desired aim. Although the PCC Code of Practice for the press is already well established, setting up similar self-regulatory regimes for other forms of media may not be straightforward. The scale of the problem is probably not such as would justify the cost of setting up completely new regulatory bodies but existing bodies such as the UK Film Council and Trade Associations for the publishing industry might be prepared to administer self-regulatory regimes in the film and sector and those publishing sectors not already covered by the PCC. The Government will look carefully at any proposals for self-regulation that such existing bodies might want to submit for consideration.

Option 4: doing nothing

Doing nothing would avoid incurring possibly significant time and expense in trying to define the very difficult boundary of what material about crime it is in the public interest to publish and thus for criminals to profit from. But it would not achieve the desired aim and risks sending a message that it is acceptable for criminals to benefit in this way.

5. Costs and benefits

(i) Sectors and groups affected

Citizens

The proposals should have a positive impact on victims of crime and their families who can suffer huge distress as a result of some publications and for whom the knowledge that criminals have profited from publication adds insult to injury.

They would have a direct impact on criminals who seek to profit from publications about their crimes. To the extent that a prohibition on profit might prevent publication, they may also have an indirect impact on those who would wish to read or see the material in question. However, criminals would continue to be allowed to profit from material about their crimes which it is in the public interest to publish.

Business

Some of the options would have a direct impact on the media and publishing industries in terms of criminal liability for making or assisting the receipt of such payments. And to a greater or lesser extent they may all have some indirect impact on the media and publishing industry by making publication of some material less attractive to offenders and reducing the number of potential authors. In theory, as it is only the criminal’s profit, not anyone else’s, that would be forfeit, there is nothing to prevent the publishing of books or the making of films from which others may profit. But the likelihood is that criminals will seek payment and without such payment we accept that in practice there could be an inhibiting effect on the publishing of books or the making of films about their crimes. We believe that a new civil scheme (option 2) would have the least inhibiting effect. The effect of criminal sanctions would be greater, particularly if publishers were criminally liable.

For newspapers and magazines following the PCC Code of Practice and broadcasters following the OFCOM Programme Code, any additional burden resulting from these
proposals should not be significant. Book publishers and film-makers, which do not have a similar self-regulatory or statutory regime, will be more affected.

**Public sector**

If a new criminal or civil measure is introduced, there could be some impact on law enforcement and criminal justice agencies, the courts and the judiciary. But, given the small number of cases, we would expect any such impact to be minimal.

**Economic impact**

Options 1 and 2 could result in receipts to the Government through fines and criminal confiscation or civil recovery. Such receipts would be offset by administrative and enforcement costs. To the extent that a prohibition on profit might prevent publication, there could be an effect on the production of books or films. We would expect the number of books or films affected to be small but there may be specific cases where the effect would be to prevent the production of a particular book or film which could otherwise have been a commercial success.

**Social impact**

Option 1 (criminal offences) would create a new opportunity for crime. But such opportunity, and the number of offences committed, seem likely to be low.

**Environmental impact**

None of the proposals would have an environmental impact.

**Rural impact**

None of the proposals would have an impact on rural communities.

**Health impact**

None of the proposals would have a health impact.

**Legal aid impact**

Options 1 and 2 could have a direct impact on legal aid expenditure in terms of the provision of advice, assistance and representation in criminal or civil proceedings; and the workload of the courts in terms of hearing cases. But the number of cases is likely to be small so we would not expect any impact to be significant.

**Equality impact**

The proposals have been screened for impact on equalities. On the evidence available, we do not consider that any of the options mentioned above impact differentially on individuals or groups within the population according to their ethnicity, religion, disability, age, gender or sexual orientation. Accordingly, it is our belief that no full equality impact assessment is required.

(ii) **Benefits**

To varying extents, options 1 to 3 should help to:

(a) deter criminals from exploiting their crimes for commercial gain;
(b) deter them from publishing material about their crime in an offensive way that is of no benefit to society;
(c) protect victims and their families from additional pain and distress; and
(d) benefit society in general by discouraging glorification of crime or any implication that crime and profiting from it is acceptable.

It is difficult to estimate the number of cases in which profits may fall to be forfeited under these proposals. There is no mechanism through which knowledge of publications about crime and criminals’ profits from them can be relied upon to emerge. Such knowledge as we do have tends to come from media coverage, victims families or public correspondence.

We understand that the average sum obtainable from a book is an advance of around £10,000 plus 10% of the cover price of printed volumes, which might amount to at least a further £7-8,000. In addition, newspaper serialisation of books could boost
revenue. Subject to any further evidence that may emerge from the consultation, and bearing in mind that there may be less high profile cases which have not come to public attention, our best estimate is that there will be at most 3-4 cases a year each leading to confiscation/forfeiture of around £18 - £20,000. This amounts to around £54,000 - £80,000 a year. Some cases, however, will be well known and could attract much more in the way of payment. In England, Wales and Northern Ireland, the money confiscated would help to fund further asset recovery work. In Scotland the Scottish Legal Aid Board could incur costs in civil and criminal proceedings.

Q27: (a) Has your organisation ever contracted to pay a convicted criminal in connection with a book, article, film or other work describing their crime? (b) If yes, in how many cases was such payment made, what type of crime had been committed and what were the sums involved? (c) Was payment necessary to secure the criminal’s cooperation?

(iii) Costs

Option 1a should not involve any compliance costs for publishers or film-makers. Legal costs for businesses could arise under options 1b and 1c in defending a criminal charge or appealing against a conviction. They would also receive a financial penalty if found guilty of an offence. The level of fine would be a matter for the courts to determine but we would not expect it to be such as to have a disproportionate effect on business capability.

There may also be costs for criminal defence services as some offenders may be eligible for public funding to defend any criminal charge brought against them or appeal against a conviction. But the principal costs would be those of: the police and the CPS (PPS in Northern Ireland) in enforcing the law; the criminal courts in hearing cases; and the Assets Recovery Agency in administering criminal confiscation procedures. In Scotland the Crown Office and Procurator Fiscal Service prosecute crime and administer criminal confiscation proceedings.

In England, Wales and Northern Ireland, the costs for the enforcement agencies and the courts would be offset by the recovery of fines. Under an incentive scheme, a proportion of the money recovered through criminal confiscation is returned to the agencies involved so they would benefit from at least some of the profits confiscated from criminals in this way.

Option 2 could involve legal costs for businesses if publishers or broadcasters sought to challenge the right to issue a recovery order or seek some way round the restrictions (e.g. making payments to a spouse, friend or charity). There may also be costs for the community legal services as some offenders may be eligible for public funding to defend any civil action brought against them. In Scotland, respondents can apply to the Scottish Legal Aid Board for civil legal aid funding. However, the 2005 amendments do not apply in Scotland, i.e. respondents’ legal fees are not payable from the recoverable property.

But the principal costs would be those of the Assets Recovery Agency, Civil Recovery Unit and HM Courts Service in administering and enforcing a new civil scheme; and the civil courts in hearing cases and applying the law.

Some cases may be settled out of court and would not therefore generate further significant legal or court costs.

Option 3 would involve the cost of setting up and running one or more new self-regulatory regimes. The cost of setting up and administering wholly new bodies is difficult to quantify but seems likely to be disproportionate to the scale of the problem. The cost for existing bodies, such as the UK Film Council and Trade Associations for the publishing industry, of setting up and administering self-regulatory regimes in the film and publishing sectors is also difficult to quantify but would probably be more proportionate. Initial set-up costs may be high but given the small number of cases, we would expect running costs to be low.
8. Enforcement, sanctions and monitoring

Options 1a-c would require primary legislation and the enforcement of any legislation will be the responsibility of the UK enforcement agencies. Sanctions would be non-custodial but non-payment of fines could result in imprisonment. Non-payment of confiscation orders could also result in a default sentence.

Option 2 would also require primary legislation. Under this option, applications for a recovery order would be governed in England and Wales by the Civil Procedure Rules and in Northern Ireland by the Rules of the Supreme Court. These include provisions on appeals and the enforcement of judgements. Any offender failing to comply with an order would be guilty of contempt of court which is punishable by up to 2 years’ imprisonment. In Scotland recovery actions would be in the Court of Session and consequently governed by the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443).

Under option 3, the enforcement of any new regulations, and the sanctions applied, would be a matter for the regulatory bodies concerned.

Under option 4 no further enforcement would be required.

Statistics on criminal proceedings for any new offences (option 1) would be collected and published as part of the annual publication by the Home Office of statistics on court proceedings and cautions in England and Wales. In Scotland the annual Scottish Executive Justice Department (SEJD) publication ‘Criminal Proceedings in Scottish Courts’ and the SEJD court proceedings database would be the sources for information on any new offences. In Northern Ireland, this information would be available on request to the Northern Ireland Office.

In England, Wales and Northern Ireland, the Assets Recovery Agency is required to prepare an annual report on how it has exercised its functions. So if the Agency becomes

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Q28: What do you think would be the likely cost of establishing and administering a completely new self-regulatory body in the film or publishing sector?

Q29: What do you think would be the likely cost to your organisation of establishing and administering a self-regulatory regime in the film or publishing sector?

Option 4 would have no additional cost but there is a risk of sending a message that it is acceptable for criminals to benefit in this way and of undermining public confidence in the concept of justice. In addition, the benefits from the proposals would not be realised which carries a human cost for individuals and society.

6. Small firms impact test

We do not expect that any of the options discussed in this paper would have a significant impact on small business.

7. Competition Assessment

The markets affected by these proposals are the publishing (books, magazines, newspapers), film-making and broadcasting sectors. We do not know the precise market share of the firms involved but, given that the number of cases is likely to be small, we do not believe that the cost of any new measure would affect some firms substantially more than others. Nor would it be likely to affect the market structure or lead to higher set-up or ongoing costs for new or potential firms than for existing firms. To the extent that it involves publication on the internet, the relevant market sector is characterised by rapid technological change. But a new measure would not restrict the ability of firms to choose the price, quality, range or location of their products.

Q30: Do you think that any of these proposals would affect your organisation substantially more than others? If yes, please explain how.
responsible for the administration of a new civil scheme (option 2) relevant details would be included in the annual report. In Scotland, the Civil Recovery Unit is part of the Crown Office and Procurator Fiscal Service and is, therefore, included in their annual report.

9. Summary and recommendation

There is no simple solution to the problem of criminals profiting from published accounts of their crimes and no measure that we introduce will capture all conceivable circumstances in which such profit is made. But we believe it is right that there should be a mechanism for recovering profits from publications about crime where appropriate. Of the options summarised below, option 2 seems to us to balance the conflicting requirements in a way that is proportionate to the mischief being addressed.

<table>
<thead>
<tr>
<th>Option</th>
<th>Benefits</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Criminal offences</td>
<td>Greatest deterrent effect but less proportionate. Confiscation of profits and/or recovery of fines.</td>
<td>Legal costs for businesses if criminally liable. Possible cost to criminal defence service funds. Enforcement costs for police, prosecutors and criminal courts and the Assets Recovery Agency; and in Scotland for the Crown Office and Procurator Fiscal Service, the Financial Crime Unit and Scottish Legal Aid Board.</td>
</tr>
<tr>
<td>2. Civil scheme</td>
<td>Deterrent effect. More proportionate. Recovery of profits. More flexible approach.</td>
<td>Legal costs for businesses if affected by civil recovery process. Possible costs to HM Courts Service and civil courts and to community legal services funds. Enforcement costs for the Assets Recovery Agency; and in Scotland to the Civil Recovery Unit and the Scottish Legal Aid Board.</td>
</tr>
<tr>
<td>3. Self-regulation</td>
<td>May go some way to achieving desired aim but possibly less effective than options 1 and 2.</td>
<td>Costs for film and book-publishing industries of setting up and running new self-regulatory regimes.</td>
</tr>
<tr>
<td>4. Do nothing</td>
<td>Would save time/money in setting up a scheme which may only apply to a few cases. No additional benefit for victims.</td>
<td>No additional financial cost.</td>
</tr>
</tbody>
</table>

This partial RIA will be subject to further development, taking account of stakeholders’ views on these questions and further Government consideration of the issues following the consultation.
Appendix 1

Comments are welcome from anyone but copies of this paper have been sent to the following persons or bodies in view of their previous or anticipated interest.

The Press Association
Newspaper Society
Newspaper Publishers Association
The Society of Editors
The Publishers Association
The Periodical Publishers Association
The UK Association of Online Publishers
Office of Communication (Ofcom)
BBC
ITV
Channel 4
S4C
Five
Sky
Satellite and Cable Broadcasters Group
The Booksellers Association
Independent Publishers Guild
Welsh Books Council
The UK Film Council
The Arts Council
The National Union of Journalists
Campaign for Press and Broadcasting Freedom
The National Association of Citizens Advice Bureaux
The National Association of Probation Officers
UNISON National Probation Committee
The Trades Union Congress
The Federation of Small Businesses
The Confederation of British Industry
The Society of Authors
NACRO
The POW Trust
Howard League for Penal Reform
Prison Reform Trust
The Charity Commission
Association of Chief Police Officers
The Police Federation
Assets Recovery Agency
The Lord Chief Justice
The Master of the Rolls
HM Council of Circuit Judges
Association of District Judges
Magistrates’ Association
The General Council of the Bar
Criminal Bar Association
The Law Society of England and Wales
The Law Commission
The Parole Board
Justice
Liberty
Legal Action Group
The Institute of Legal Executives
Whitehall Prosecutors Group
The Victims Advisory Panel
Support after Murder and Manslaughter (SAMM)
Victims Voice
Victim Support
Victims of Crime Trust
North of England Victims Association (NEVA)
Miscarriages of Justice Association (MOJO)

Northern Ireland

The Belfast Bureau of the Press Association of Ireland
Ulster Television
Irish Book Publishers Association
Northern Ireland Film and Television Commission
Arts Council of Northern Ireland
The Northern Ireland Citizen’s Advice Bureaux
Northern Ireland Committee of the Irish Congress of Trade Unions
Community Foundation for Northern Ireland
NIACRO
EXTERN
The Institute of Directors Northern Ireland
The Institute of Business Advisors
Association of Chief Officers of Voluntary Associations
Community Relations Council
The General Consumer Council for Northern Ireland
The Superintendents’ Association for Northern Ireland
The Police Federation for Northern Ireland
The General Council of the Bar of Northern Ireland
The Law Society of Northern Ireland
The Law Centre (Northern Ireland)
Northern Ireland Human Rights Commission
The Equality Commission for Northern Ireland
Victim Support Northern Ireland

Scotland
The Scottish Press Association
Scottish Newspaper Publishers Association
Scottish Daily Newspaper Society
The Scottish Publishers Association
The Scottish Periodicals Publishers Association
Scottish Print Employers Federation
Scottish Television
Scottish Screen
The Scottish Arts Council
Scotland's Screen Industries Summit Group
Citizens Advice Scotland
The Scottish Trades Union Congress
SACRO
Office of the Scottish Charity Regulator
Convention of Scottish Local Authorities (COSLA) & all Scottish Local Authorities
Association of Directors of Social Work
Association of Chief Police Officers in Scotland
Association of Scottish Police Superintendents
Scottish Police Federation
Scottish Prison Service
UNISON National Probation Committee
Civil Recovery Unit, Scottish Executive
Financial Crime Unit, Scottish Executive
Scottish Court Service
Faculty of Advocates
The Law Society of Scotland
Scottish Law Commission
Sheriffs' Association
Association of Sheriffs Principal
Procurators Fiscal Society
Parole Board for Scotland
Scottish Legal Action Group
Scottish Legal Aid Board
Scottish Law Agents Society
Edinburgh Bar Association
Glasgow Bar Association
Aberdeen Bar Association
The WS Society
Solicitors to the Supreme Court
District Courts Association
Judicial Studies Committee
School of Law, University of Glasgow
Faculty of Law, University of Edinburgh
Faculty of Law, University of Dundee
Law School, Strathclyde University
Victim Support Scotland
Barnardos Scotland
Families of Murdered Children
Justice for Victims
Kingdom Abuse Survivors Project
Open Secret
Positive Action in Housing
Scottish Campaign Against Irresponsible Drivers
Rape Crisis Scotland
Scottish Refugee Council
Shakti Women's Aid
The Moira Anderson Foundation
West Lothian Domestic Abuse Forum
Scottish Women's Aid
PETAL
Scottish Civic Forum
Equal Opportunities Commission
Commission for Racial Equality Scotland
Disability Rights Commission Scotland
Scottish Council for Development and Industry
Federation of Small Businesses (Scotland)
Institute of Directors (Scotland)
Scottish Chambers of Commerce
Confederation of British Industry (CBI) Scotland
Forum for Private Business
Cruse Bereavement Care Scotland
Equality Network
Nil by Mouth
SEMPERScotland
The Scottish Inter Faith Council
Scottish Association for Mental Health
EVA Project
ANNEX B
RESPONSE PROFORMA

Thank you for taking time to read the consultation paper and to complete this questionnaire. The information you provide will be attributed to you and/or your organisation and made publicly available unless you specifically indicate that you want your response to be treated confidentially.

Would you like this response to be kept confidential?

Yes ☐ No ☐

Section A - About You

Name:

Address:

Email:

Are you replying on behalf of an organisation?

Yes ☐ No ☐

No (go to Section C) ☐

If you would like us to acknowledge receipt of your response, please tick this box ☐

Section B – Your Organisation (if applicable)

Name of your organisation:

Is your organisation a:

Registered Body ☐ Yes ☐ No ☐

Umbrella Body ☐ Yes ☐ No ☐

Other (Please Specify):


What is your position in this organisation?
General Principles

Q1: In principle do you think that a new measure is necessary? Please say why or why not.

Yes ☐ No ☐

Comments:

Q2: (a) Do you think that any new measure should cover all forms of publication?

Yes ☐ No ☐

Comments:

Q3: Do you think that a new measure should apply to all criminals, regardless of the seriousness of their offences? Please say why or why not.

Yes ☐ No ☐

Comments:

Q4: (a) If you think that there should be a seriousness threshold, do you think that this should be based on the maximum penalties for offences?

Yes ☐ No ☐

(b) If so, what do you think the maximum penalty threshold should be?

☐ Years

(c) Do you think that there should also be a requirement for the actual sentence imposed to be custodial?

Yes ☐ No ☐

Comments:
Q5: Is there a better way of applying a seriousness threshold?

Yes  ☐  No  ☐

Comments:

Q6:  (a) Do you think that any new measure should be limited to criminals writing, or contributing to, accounts of their own crimes?

Yes  ☐  No  ☐

(b) If not, what other types of publication do you think should be covered?

Comments:

Q7:  (a) In principle, do you think that any new measure should extend to publications about lesser offences that are associated in some way with a much more serious crime and to other offences taken into account on sentencing?

Yes  ☐  No  ☐

(b) If so, should any maximum penalty threshold as described above apply equally to the lesser offence(s) and others taken into account on sentencing?

Yes  ☐  No  ☐

Comments:

Q8:  (a) Do you think that there should be a public interest test?

Yes  ☐  No  ☐

(b) If so, how do you think it should be defined?

Comments:
Q9: Do you think that publications about alleged miscarriages of justice should not explicitly be exempt?

Yes [ ]  No [ ]

Comments:

Options

Q10: (a) Do you think that receiving a payment should be a criminal offence

Yes [ ]  No [ ]

(b) If so, do you think that those who assist the receipt of the payment should be liable for secondary participation offences and to receive the same penalty as the person receiving the payment?

Yes [ ]  No [ ]

Comments:

Q11: (a) Do you think that making a payment should be a criminal offence?

Yes [ ]  No [ ]

(b) If so, should this be instead of or in addition to an offence of receiving a payment?

Yes [ ]  No [ ]

(c) If both, do you think that those who make such payments (e.g. publishers) should be criminally liable both as secondary participants in an offence of receiving payment and as principal offenders who commit an offence of making a payment?

Yes [ ]  No [ ]

Comments:
Q12: Do you think that secondary participants, and principal offenders other than the criminal, should still be allowed to profit from any publication?

Yes ☐ No ☐

Comments:

Q13: In principle, do you think that a civil scheme would be preferable to introducing new criminal offences? Please give reasons.

Yes ☐ No ☐

Comments:

Q14: Do you think that civil proceedings under a new scheme should only be taken against the criminal and not anyone else?

Yes ☐ No ☐

Comments:

Q15: Do you think that a recovery order should extend to payments from which criminals have received indirect benefits?

Yes ☐ No ☐

Comments:
Q16: Do you think that, if there is no direct or indirect benefit to the criminal, payment should not be recoverable?

Yes ☐ No ☐

Comments:

Q17: (a) Do you think that the Assets Recovery Agency or Civil Recovery Unit should bring any civil proceedings to recover profits from publications about crime?

Yes ☐ No ☐

(b) If not, what person or agency do you think should be able to bring such proceedings?

Comments:

Q18: (a) Do you think there should be a limit below which a criminal's profit should not be pursued?

Yes ☐ No ☐

(b) If so, what do you think the limit should be? £

Comments:

Q19: (a) Do you think there should be a requirement for the Assets Recovery Agency or Civil Recovery unit to be informed of any contract with a convicted criminal which allows him to profit from the publication of a book or other work describing his crime?

Yes ☐ No ☐

(b) If not, what person or agency do you think should be able to bring such proceedings?

Publisher ☐ Criminal ☐

(c) What, if any, sanction do you think should apply for failure to inform?

Comments:
Q20: (a) Do you think that the Assets Recovery Agency or Civil Recovery Unit should have discretion as to when to bring recovery proceedings

Yes [ ] No [ ]

(b) If so, do you agree with the suggested criteria?

Yes [ ] No [ ]

Comments:

Q21: How do you think net profits should be defined?

Comments:

Q22: Do you think that the court should be able to determine what proportion of the benefit the criminal obtains is derived from an account of his crime?

Yes [ ] No [ ]

Comments:

Q23: (a) Do you think that the limitation period should be 12 years from the date on which the Assets Recovery Agency or Civil Recovery Unit becomes aware of the cause of action?

Yes [ ] No [ ]

(b) If not, what do you think it should be? [ ] Years

Comments:
Q24: (a) Do you think that any new provision should cover all future publications about crimes regardless of whether the crimes were committed before the provision came into force or afterwards?

Yes  □  No  □

(b) If not, how would you limit the coverage?

Comments:

Q25: (a) Do you think that self-regulation is an effective means of preventing profit?

Yes  □  No  □

(b) If so, do you think that extending self-regulation to other media is preferable to options 1 and 2?

Yes  □  No  □

Comments:

Q26: In practical terms, do you think doing nothing is justified?

Yes  □  No  □

Comments:
Partial Regulatory Impact Assessment

Q27: (a) Has your organisation ever contracted to pay a convicted criminal in connection with a book, article or other work describing their crime?

- Yes □  - No □

(b) If yes, in how many cases was such payment made, what type of crime had been committed and what were the sums involved?

<table>
<thead>
<tr>
<th>Number of cases</th>
<th>Type(s) of crimes</th>
<th>Amounts(s) £</th>
</tr>
</thead>
</table>

(c) Was payment necessary to secure the criminal’s cooperation?

- Yes □  - No □

Comments:

Q28: What do you think would be the likely cost of establishing and administering a completely new self-regulatory body in the film or publishing sector?

Comments:

Q29: What do you think would be the likely cost to your organisation of establishing and administering a self-regulatory regime in the film or publishing sector?

Comments:
Q30: Do you think that any of these proposals would affect your organisation substantially more than others? If yes, please explain how.

Yes ☐ No ☐

Comments:
ANNEX C
THE LAW IN OTHER COUNTRIES

Findings of the 1998 Working Group

The Interdepartmental Working Group which considered the law in this area in 1998/9 looked at the experience of other countries to see what could be learned from them. They considered developments in Europe, Canada, the US and Australia. Of those legislative measures introduced in other countries, none criminalised payment to or receipt by criminals of money for publications about their crimes or banned such publications in themselves. Rather, they were civil measures intended to confiscate the benefits to the criminal.

2. The Working Group found that many other countries had wrestled with this problem. One problem identified at an early stage was that countries such as France and Germany had a very different tradition of protecting privacy which affected the way the law had developed and was operated in relation to what the press and books could publish about individuals. These very different approaches and the different legal structures and traditions made comparisons with Europe more difficult and less relevant than those with other common law jurisdictions. Consequently, the Group looked most closely at other common law jurisdictions where the legal system was closest to ours.

3. Many US states had some kind of legislation relating to criminal memoirs based on the twin principles of confiscating the assets of crime and paying damages to victims. The original statute in New York (the so-called “Son of Sam” law) was overturned by the New York Supreme Court on grounds that confiscating the assets of criminal memoirs was an infringement of the constitutionally guaranteed right of freedom of expression. Since then the law has developed to require those who enter a contract to pay money to convicted criminals for their memoirs to make payment of that money into a central fund. This money was then set to one side for a period of time (often five years) during which the victims of those crimes could apply to the courts for damages. The fund would be used to pay costs, and any damages awarded by the court. If no application was made in the time-limit, or there was money left in the fund, then different schemes had developed different arrangements. In some states the money went back to the author, in others it went to pay other costs (such as those of incarceration) or other debts.

4. All these provisions operated however within a legal system where victims can sue for damages far more widely that they can in this country, and where the award of damages is in general much higher than here. The Working Group was not persuaded that such a system could translate to this country without the creation of public bodies to administer and operate the system and the development of the civil law in a way that would be disproportionate to the mischief.

5. There had been very careful consideration of the issues in Canada with various options papers being prepared by the Uniform Law Committee. No action had been taken at the federal level and the Senate had rejected a Private Member’s Bill to amend the law of copyright for criminal memoirs on the ground that it would be an unacceptable restriction on freedom of expression under the Canadian Charter of Human Rights. One Canadian province, Ontario, had legislation (the Victims’ Right to Proceeds of Crime Act 1994) which adopted a similar approach to the US legislation.

6. Some Australian states had laws in place, and regarded them as useful statements of public policy, although they had proved of little practical benefit. Tasmania enabled benefits from a publication relating to an offence or commercial exploitation of criminal notoriety to be confiscated under a pecuniary penalty order and paid into the Criminal Injuries Compensation Fund.
However no such order had been made although there were a number of instances of notorious criminals writing very successful books. Similar provisions existed in South Australia, and Queensland. Again, they had not been used but were regarded as providing an important statement of legal principle. New Zealand had considered introducing such a law, but decided there were significant difficulties of definition, and no action had been taken.

**More recent developments**

**Canada**

7. In the Canadian province of Ontario the Victims’ Right to Proceeds of Crime Act 1994 has been repealed by the Prohibiting Profiting from Recounting Crimes Act 2002. The purpose of the 2002 Act is to use proceeds of contracts for recounting crime to compensate persons who suffer pecuniary or non-pecuniary loss as a result of designated crimes and to assist victims of crime.

8. A contract for recounting crime is defined as a contract under which money or other consideration is to be paid to a person convicted of a designated crime or the agent of a person convicted of a designated crime for:

- the use of recollections of the convicted person that relate to the crime, including the use of those recollections in a publication, interview or appearance, but not including the use of those recollections in an appearance to address a victims’ group or imprisoned persons; or
- the use of documents or other things that relate to the crime and that are or have at any time been in the possession of the convicted person.

9. A ‘designated crime’ includes an act or omission that:

- is an indictable offence under the criminal law of Canada for which the maximum penalty is 5 years’ imprisonment or a more severe punishment and that involves, (i) the use or attempted use of violence against another person, or (ii) conduct that endangered or was likely to endanger the life or safety of another person or that inflicted or was likely to inflict severe psychological damage on another person;
- is an offence under the criminal law of a jurisdiction outside Canada and would, if it were committed in Canada, be an offence within the relevant category.

10. Each party to a contract for recounting crime is required, within 15 days of the contract being signed, to give the Attorney General written notice of the names and addresses of all parties to the contract, a copy of the contract if it is in writing and the terms of the contract if it is not in writing. Failure to comply with this requirement is an offence punishable with a fine of up to $50,000.

11. In a proceeding commenced by the Attorney General, the Superior Court of Justice is obliged, except where it would clearly not be in the interests of justice, to:

- (a) make an order requiring a person who is required to pay money or other consideration to another person under a contract to instead pay it to the Crown in right of Ontario, if the court finds that the money or other consideration is payable under a contract for recounting crime to a person convicted of a designated crime or to the agent of a person convicted of a designated crime; and

- (b) (subject to protecting the interests of any party who can prove that they are the legitimate owner of the property) make an order forfeiting property that is in Ontario, if the court finds that the property is proceeds of a contract for recounting crime under which money or other consideration is payable to a person convicted of a designated crime or to the agent of a person convicted of a designated crime.

There are provisions very similar to the above in respect of persons charged with a designated crime. The time limit for bringing proceedings under the legislation is 15 years from the date of the first payment under the contract for recounting crime.
Australia

12. In Australia, Queensland’s Crimes (Confiscation) Act 1989 has been repealed and replaced by the Criminal Proceeds Confiscation Act 2002. Chapter 4 of the 2002 Act provides that benefits derived from certain contracts are to be forfeited. These are contracts for:
   - Depiction of the confiscation offence in a movie, book, newspaper, magazine, radio, or television production, or in any other electronic form or live or recorded entertainment of any kind; or
   - An expression of the person’s thoughts, opinions or emotions about the confiscation offence.

13. The State may apply to the Supreme Court for a special forfeiture order that the person convicted of a confiscation offence pay to the State all or a part of the person’s benefits under the relevant contract.

14. The Governor in Council may direct that an amount paid to the State under a special forfeiture order must be applied to satisfy a restitution or compensation order under the Penalties and Sentences Act 1992 or an order requiring the convicted person to pay damages to a person for injury suffered by the person because of the confiscation offence. A person in whose favour such an order is made has five years to apply to the Attorney-General for the order to be satisfied out of the money paid to the State. However, after five years, the money paid to the State under a special forfeiture order must be paid to the consolidated fund.

15. As far as we are aware, no confiscation proceedings under Chapter 4 of the 2002 Act have been commenced in Queensland since enactment.

16. South Australia’s Criminal Assets Confiscation Act 1996 (which provides for the forfeiture of benefits obtained from the publication of material about the circumstances of a criminal offence but under which there have been no such cases) has been replaced by the Criminal Assets Confiscation Act 2005.

17. The 2005 Act provides for literary proceeds orders. Literary proceeds are defined as any benefit that a person derives from the commercial exploitation of the person’s notoriety resulting from the person committing a serious offence, or the notoriety of another person involved in the commission of the serious offence resulting from the first-mentioned person committing the offence.

18. Under the 2005 Act, a court may, on application by the DPP, make an order (a literary proceeds order) requiring a person to pay an amount to the Crown if the court is satisfied: that the person has committed a serious offence (whether or not the person has been convicted of the offence); and has derived literary proceeds in relation to the offence. A person who would be subject to a literary proceeds order if it were made may appear and adduce evidence at the hearing of the application.

19. In determining whether to make a literary proceeds order, the court may take into account any matter it thinks fit, and must take into account:
   - the nature and purpose of the product or activity from which the literary proceeds were derived; and
   - whether supplying the product or carrying out the activity was in the public interest; and
   - the social, cultural or educational value of the product or activity; and
   - the seriousness of the offence to which the product or activity relates; and
   - how long ago the offence was committed.

20. There have been no applications for literary proceeds orders since the 1995 Act came into force on 2 April 2006.

21. The South Australian approach seems broadly comparable with the civil recovery scheme that is our preferred option except that their legislation extends to notoriety resulting from the commission (and not just an account) of the offence and (like the Canadian law) applies even if there has been no conviction.
ANNEX D
Consultation Code of Practice

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department’s effectiveness at consultation, including through the use of a designated consultation coordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:
http://www.cabinet-office.gov.uk/regulation/Consultation/introduction.htm

Consultation Coordinator

England and Wales
If you have any complaints or comments about the consultation process, for England and Wales you should contact the Home Office consultation coordinator Christopher Brain by email at:

Christopher.Brain2@homeoffice.gsi.gov.uk
Alternatively, you may wish to write to:
Christopher Brain
Consultation Coordinator
Performance and Delivery Unit
Home Office
3rd Floor Seacole
2 Marsham Street
London SW1P 4DF

Northern Ireland
For Northern Ireland you should contact the Northern Ireland Office’s consultation coordinator:

Miss Donna Knowles
Central Management Unit
Northern Ireland Office
Stormont House
Stormont Estate
Belfast
BT4 3SH

Email: donna.knowles@nio.x.gsi.gov.uk
Tel: 028 90 327 015

Scotland
For Scotland you should contact the Scottish Executive Civic Participation and Consultation Research branch at:

Scottish Executive
4th Floor West Rear
St Andrews House
Regent Road, Edinburgh
EH1 3DG
consultationqueries@scotland.gsi.gov.uk
http://www.scotland.gov.uk/Consultations/About
ANNEX E
Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the Northern Ireland Office, HM Government, the Scottish Executive or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the (UK-wide) Data Protection Act 1998; in England and Wales the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; and in Scotland the Freedom of Information (Scotland) Act 2002 and the Environmental Information Regulations (Scotland) 2004.

We will ensure that personal data is protected in accordance with the Data Protection Act 1998. If we considered releasing personal information we would either inform you we were doing so, or fully seek your consent. Under the Data Protection Act if you refuse consent for your personal information to be released we would carry out a balancing exercise to determine if favour lay in releasing or withholding that information; you would be informed of the outcome.

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on us.

Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

We will process your personal data in accordance with the Data Protection Act. In the majority of circumstances this will mean that your personal data will not be disclosed to third parties. If personal data was considered for disclosure you would be informed or consulted.