

**Scottish Government  
Criminal Justice Directorate**

Making Sure That Crime Doesn't Pay

Analysis of responses to Consultation  
and Next Steps

January 2009

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## Making Sure That Crime Doesn't Pay

### Analysis of responses to Consultation and Next Steps

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## **ACKNOWLEDGEMENTS**

We are grateful to all the respondents who took the time to contribute their views on the proposals for a new measure to prevent convicted criminals profiting from published accounts of their crimes.

## **INTRODUCTION**

1. In November 2006, the Scottish Executive published a consultation paper on proposals for a new measure to prevent convicted criminals profiting from published accounts of their crimes. The consultation was published as a joint undertaking with the Home Office and the Northern Ireland Office.

2. This report contains:-

- a summary of the responses to the consultation received in Scotland;
- detailed responses to the specific questions raised; and
- the next steps following the consultation.

3. A report of the responses received in England and Wales and Northern Ireland and the response of UK Government Ministers has been published separately by the Ministry of Justice and is available on their website [www.justice.gov.uk](http://www.justice.gov.uk). Copies of the Ministry of Justice analysis report of the responses can be obtained by contacting the Criminal Law Policy Unit, Ministry of Justice, 2<sup>nd</sup> Floor number, Fry Building, 2 Marsham Street, London, SW1 4DF. Telephone: 020 7035 6958.

4. There is currently no effective mechanism where profits that convicted criminals receive through publications about their crimes can be seized. This is because the current law does not consider writing about a crime to be unlawful conduct and so any profit resulting from a publication about a crime is not unlawfully obtained.

5. The consultation paper wished to seek out views on whether the law should be changed in respect of this and set out the following four options:

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

6. The consultation paper was issued to 154 recipients comprising of individuals and a range of groups/organisations on 9 November 2006. The consultation was also made available on the (then) Home Office website with a link from the (then) Scottish Executive website. The consultation period ended on 9 February 2007.

7. Sixteen responses were received from individuals and groups in Scotland. A list of the 16 Scottish respondents is provided at **Annex A**. Of these 16 responses, 13 were from organisations and 3 were from individuals. The response from the Scottish Police Federation and the Association of Scottish Police Superintendents has been counted as one response, as has a joint response on behalf of various newspaper and press associations. Accordingly, the analysis has been conducted on the basis of 15 respondents.

8. Copies of the responses (except those that were marked confidential) are available from the Scottish Government library at Saughton House, Broomhouse Drive, Edinburgh EH11 3XD (telephone 0131 244-4565).

## **SUMMARY OF RESPONSES**

### **Number and type of respondent**

Academic	1	7%
Interest Group	2	13%
Justice of the Peace Group	1	7%
Law Organisation	1	7%
Legal Profession	1	7%
Local Government	4	27%
Member of the Public	2	13%
Other Organisation	1	7%
Police Group	2	13%
<b>TOTAL</b>	<b>15</b>	<b>100%<sup>1</sup></b>

9. A clear majority rejected the do nothing option, but there was no consensus of which of the positive options represented the best way forward, with none of the options attracting support from more than a third of the respondents. Listed below is an analysis on the individual options contained within the consultation.

### **Option 1 – Making receipt by and / or payment to convicted criminals of money for publications about their crimes a criminal offence**

In favour	4	27%
Against	7	47%
No comment	4	27%
<b>TOTAL</b>	<b>15</b>	<b>100%<sup>1</sup></b>

10. 47% of respondents were against this option being adopted with 27% in favour of it. The other 27% of respondents didn't make comment on this option.

11. The largest group of respondents were against this option being adopted, the most common reason being that going down this route would be difficult to enforce. Some respondents agreed that this option would have the greatest effect but there were concerns that making this a criminal offence was a disproportionate course of action and would lead to restrictions on freedom of speech and expression. We received a joint response on behalf of various newspaper and press associations who were particularly concerned that this option would “lead directly to the prosecution of journalists, editors, publishers and media organizations for criminal offences under option 1.” The Law Society of Scotland was of the view that “criminalising the receipt of payment for the publication about a criminal offence, together with the criminalisation of secondary participation offences, will prove problematic and difficult to enforce and disproportionate to the mischief should be addressed.”

12. Those in favour of this option felt that it is wrong for criminals to profit from stories of their crimes and that criminalisation was the best deterrent.

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<sup>1</sup> Percentages have been rounded up – so the tally of each individual line is in fact 101%.

South Lanarkshire Council thought that this option should be adopted “as this type of penalty should prevent payments being made in secret.”

Justice for Victims Scotland were of the view that “Convicted criminals must be held criminally liable for any payments they receive from selling their accounts of their crimes for publication and all payments made to the convicted criminal must be secured by the court and go towards the cost of court proceedings.” They were also of the view that “Publishers and all forms of the mass media must be held criminally liable for payments they make to serious and violent criminals.”

**Option 2 – Introducing a new civil scheme for the recovery of profits based on the civil recovery provisions in the Proceeds of Crime Act**

In favour	5	33%
Against	4	27%
No comment	6	40%
<b>TOTAL</b>	<b>15</b>	<b>100%</b>

13. The largest group of respondents (40%) didn’t make comment on this option but there were more in favour of this option (33%) being adopted than there were against it (27%).

14. Those in favour were mainly of the view that this option was the most proportionate and flexible response. The Association of Chief Police Officers in Scotland favoured the civil route as “the civil degree of proof resting with the balance of probabilities and the many issues that surround the new measures, such as public interest and legal challenges with regard to human rights violations, it would be more difficult to enforce in the criminal domain.”

The Law Society of Scotland favoured the civil route as well but raised the issue that “civil recovery under the Proceeds of Crime Act 2002 would not be applicable and, accordingly, new measures require to be introduced.”

East Ayrshire Council were also in favour of this option and commented “If a civil structure were in place, the enforcement team could assess the effect of the seriousness and the impact on the public interest in dealing with each referral and a level of discretion can be applied subject to the application of clear guidelines.”

15. Some of the respondents who were against this option were of the view that they preferred option 1 being adopted as it had the greater effect. For example, Justice for Victims Scotland were particularly keen that “In the interest of clarity the proposed new legislation to stop convicted criminals profiting by selling their accounts of their crimes must be a criminal offence.”

The joint response from the various newspaper and press associations were of the view that “a civil scheme would still produce a chilling effect upon media organizations journalistic investigation and publication, exacerbated by the threat of burdensome litigation and costs.”

**Option 3 – Extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers**

In favour	2	13%
Against	7	47%

No comment	6	40%
<b>TOTAL</b>	<b>15</b>	<b>100%</b>

16. 13% of respondents favoured this option being adopted but the largest group (47%) were against it. The remaining 40% of respondents didn't make comment.

17. The largest group of respondents were against the idea of extending the self-regulatory approach but most didn't make comment on the proposal. Of those who did comment, Justice for Victims Scotland said "We are outraged at the suggestion that self-regulation of the press complaints commission is an effective body and does not pay convicted criminals to publish their accounts of their crimes for publications." The joint response from the various newspaper and press associations were concerned that if this option was adopted that "This would mark a very significant change of controls over non-press publication and a radical change over control over freedom of expression in the UK. We doubt that such changes can be justified."

18. Of the two respondents who favoured this option, only South Lanarkshire Council made comment on this proposal saying "Self-regulation measures should be extended to include newspapers, books and films."

#### **Option 4 – Do nothing**

In favour	3	20%
Against	9	60%
No comment	3	20%
<b>TOTAL</b>	<b>15</b>	<b>100%</b>

19. 60% of those who responded were against the idea of doing nothing. Only 20% favoured no changes to the law with the same number not making comment.

20. A majority of respondents were of the opinion that something had to be done about this issue and that a change in the law was necessary. Most thought that it was morally wrong for convicted criminals to profit from publications about their crimes and agreed that the law had to be changed to stop this happening.

The Scottish Police Federation commented that they "completely agree with the view that it is wrong for convicted criminals to profit from cashing in on their stories of their crime and would support measures to prevent this," however they were unable to reach agreement on how this should be done.

Angus Council were concerned that "Doing nothing would reinforce the commonly held perception that not enough importance is attached to victims rights." This was a view similarly held by Justice for Victims Scotland who said "To do nothing to stop convicted criminals profiting from selling their accounts of their crimes for profit would be unforgivable and cause innocent victims of serious violent crime no end of added pain and distress."

Victim Support Scotland was against the idea of doing nothing as "Reading accounts of the crime adds a risk of further re-victimisation. From our experience, we find that victims get distressed firstly by the publication in itself, and secondly by the payment of money to the criminal, this is seen as adding insult to injury."

21. The small number of respondents who favoured no changes to the law on this issue were mostly of the view that this was an over-reaction to a minor issue and that there were concerns about freedom of expression issues.

One of the individuals who responded said “A new law with its associated cost is unattractive, a disproportionate response to a minor issue of taste.”

Another individual who responded said “I think doing nothing is justified because very few criminals will have the opportunity to publish and/or likely to receive significant sums for doing so.” This respondent also made the point “I am concerned that in the wish to prevent a criminal profiteering that we lose our right to freedom of thought and expression.”

## **Conclusion and Next Steps**

22. The purpose of this consultation was to seek views on the options put forward in the consultation paper and on any other possible solutions. We are grateful to those who took the time and trouble to respond and have considered carefully the views expressed.

23. The Scottish Government considers that there is no simple solution to the issues of criminals profiting from published accounts of their crime and that no legislative measure that is introduced could ever capture all conceivable circumstances in which such profit is made. It also recognises that the number of cases involved is very small and may not justify what could be complex and expensive mechanisms for prohibiting profits.

24. Support for option 1 (new criminal offences) was limited (27% of respondents) and came mainly from victims' groups. The Scottish Government understands their strength of feeling and desire for the strongest possible deterrent. However, we believe that imposing criminal sanctions on publishers either as secondary participants in an offence and/or principal offenders (options 1b and 1c) could be disproportionate to the scale of the problem and shift the main focus from where it ought to be - on criminals who are profiting. Option 1a (targeting the criminal only) would be less disproportionate but we are not persuaded that criminalising the receipt of payment for conduct that is not of itself unlawful is the best approach if an option that does not involve the criminal law is workable.

25. Option 3 (extending the self-regulatory approach governing the press to other groups such as book publishers and film-makers) received little support (13% of respondents). The joint response from the various newspaper and press associations did not favour this proposal. Both respondents who favoured this option were local authorities. We did not receive any response from book publishing companies or from the film-making sector. As any self-regulation initiative would have to be voluntary, this does not provide a sound basis for pursuing option 3.

26. Maintaining the status quo – option 4 (do nothing) elicited the highest percentage of respondents against (60%). It should be noted however that the joint response on behalf of 6 newspaper and press associations was counted as 1 response. They were in favour of maintaining the status quo and were of the opinion that “any new measure would have serious consequences for freedom of expression and wider public interests”. Most of the other respondents agreed that something should be done about this issue; that it was morally wrong for convicted criminals to profit from publications about their crimes; and that the law had to be changed to stop this happening. The Scottish Government agrees with the issues raised and we are of the opinion that allowing the situation to continue unchecked could encourage glorification of crime or the implication that crime and profiting from it is acceptable.

27. Of the options proposing action, option 2 (a new civil recovery scheme) had the highest percentage of respondents in favour (33%). The Scottish Government

agrees that this option is the best way forward. It offers the greatest flexibility and is more proportionate to the point being addressed. We are conscious of the views of some legal practitioners that the more complex such a scheme, the less workable, and consequently, the less effective it may be in practice. In developing the proposal further we will endeavour to introduce a scheme which is as straightforward to operate as possible.

28. The Civil Recovery Unit (CRU) of the Crown Office will take on the function of civil recovery and will be involved in the further development of a civil scheme.

29. For any scheme to be effective we consider that legislative action should be co-ordinated across UK jurisdictions. We are engaged in further technical examination of the proposal with the CRU and have sought to secure appropriate legislation at an early opportunity, co-ordinated with other parts of the UK. The UK Government is undertaking similar work with the Serious Organised Crime Agency (SOCA).

30. The consultation paper set out in broad terms how a civil scheme for the recovery of profits in this context might operate. The precise detail will be considered by both the UK and Scottish Parliaments during the Parliamentary progress of the Coroners and Justice Bill, introduced to the UK Parliament on 14 January 2009. In essence, the scheme:

- is limited to convicted criminals only;
- is limited to such criminals writing, or contributing to, accounts of their own crimes (and not accounts of prison life or publications that may sell by virtue of their author's notoriety);
- applies to all criminals, regardless of the seriousness of their offences (although in practice profit is only likely to be made from publications about serious offences, in particular murder and culpable homicide);
- covers all forms of publication (books, films, internet etc);
- has a public interest test; and
- follows existing guidelines and limits for asset recovery in other cases.

## **Annex A**

### **List of Respondents**

Aberdeen Justices Committee  
Angus Council  
Association of Chief Police Officers in Scotland  
East Ayrshire Council  
Faculty of Advocates  
Justice for Victims (Scotland)  
Law Society of Scotland  
Moray Council  
Newspaper Society & Newspaper Publishers Association  
Scottish Police Federation/Association of Scottish Police Superintendents  
South Lanarkshire Council  
Victim Support Scotland

3 Individuals

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