



Department of  
**Justice**

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An Roinn Dlí agus Cirt

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Máinnystrie O tha Laa

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# **Outcome of consultation on policy proposals for new provisions to tackle organised crime in Northern Ireland**

October 2022

## Section 1 - Purpose of Consultation

### Background

1.1 On 10 July 2020 the Department of Justice launched a consultation on policy proposals for new legislative provisions to tackle organised crime in Northern Ireland. The consultation closed on 2 October 2020. The consultation document can be read at the following link: <https://www.justice-ni.gov.uk/consultations/policy-new-provisions-tackle-organised-crime-ni>.

1.2 The overall purpose of the consultation was to seek views on proposals to reinforce the response to serious organised crime in Northern Ireland, through the introduction of specific legislative provisions.

### Summary of proposals consulted on

1.3 The key policy proposals for a new legislative approach as consulted on were:

- **Introduction of a statutory definition of serious organised crime**  
Defined as a crime involving two or more people acting together with one of their main purposes or activities being the commission or facilitation of a serious offence or a series of serious offences.
- **Introduction of a new offence of directing serious organised crime**  
Intended to criminalise behaviour where an individual has not themselves committed a serious offence, but where they have directed another person to do so.
- **Introduction of a new offence of participating in serious organised crime**  
A person would be guilty of this offence where they do, or agree to do, something that they know, suspect, or could be reasonably expected to know or suspect, is likely to enhance or facilitate the commission of serious organised crime.

- **Introduction of offences aggravated by serious organised crime**

Where an offence is committed as part of, or in furtherance of serious organised crime then, for the purposes of determining the sentence, this should be treated as an aggravating factor.

- **A robust sentencing framework**

To reflect the serious nature and impact of organised crime the proposed tariffs were:

- a maximum tariff of 14 years for directing serious organised crime; and
- a maximum tariff of ten years for participation in serious organised crime.

It was also proposed that:

- the offences should be specified as serious offences under Schedule 1 to the Criminal Justice (NI) Order 2008, with the effect that where a court was satisfied that an individual convicted of these offences was dangerous he or she could receive a discretionary life sentence, an indeterminate sentence or an extended custodial sentence;
- if convicted of these offences they would be subject to public protection sentences and to associated release arrangements, including supervision in the community on release (on licence);
- directing or participating in serious organised crime should be specified as criminal lifestyle offences under POCA and improve the court's ability to confiscate criminal assets; and
- the offences of directing and participating in serious organised crime would be added to the list of offences that can be referred to the Court of Appeal by the Director of Public Prosecutions where a sentence is considered too lenient.

## **Section 2 – Overview of Responses**

### **Overview**

2.1 A total of 15 responses were received. The majority of respondents provided qualitative responses across all questions, but in some cases, respondents chose not to answer particular questions or to provide any further comments. Three respondents submitted a response in narrative form rather than providing a response to each question in sequence. The responses in narrative form welcomed the strategic approach proposed and agreed with the principles set out in the consultation while also highlighting some key issues for further consideration.

2.2 In early 2021, the Department considered the responses to the consultation. There was a general expression of support for the policy intent and the particular proposals across all respondents. This included support for defining serious organised crime in law; introducing new offences of directing and participating in serious organised crime; and treating offences undertaken in furtherance of serious organised crime as an aggravating factor. While the consultation exercise demonstrated broad support for the policy proposals to bring forward bespoke organised crime legislation for Northern Ireland, there were a number of queries raised in relation to aspects of the proposals.

2.3 The Department concluded that further work was needed to respond to the specific issues raised by respondents and to strengthen the policy proposals to ensure that future legislation could deliver on the policy aim of protecting individuals, communities and businesses in Northern Ireland from organised crime. An initial analysis of the consultation responses was provided to the Justice Committee in May 2021, and at that time, the Department indicated that further work was required to address the queries raised and the proposals would be taken forward in the context of the Northern Ireland Organised Crime Strategy 2021 to 2024.

## **Further analysis of consultation responses**

2.4 Since May 2021, the Department has taken into consideration all of the responses and conducted further engagement with key Organised Crime Task Force (OCTF) stakeholders and officials in other jurisdictions to clarify the policy proposals and determine how the legislative definitions and range of offences should be drafted so that they:

- are clear and not duplicitous with other legislative provisions;
- robust and reinforce the response to organised crime in this jurisdiction;
- work well on a practical basis and ensure criminal justice outcomes are clear;  
and
- deliver on the strategic aim of protecting individuals, communities and business in Northern Ireland from organised crime.

2.5 Section 3 summarises the outcome of the consultation and sets out the Department's response to the issues raised.

## Section 3 – Analysis of Responses

3.1 As a summary of the consultation exercise this analysis does not reflect each view on every question but seeks to highlight both the support for and any opposition to the proposals.

3.2 A total of 15 responses were received. Most respondents provided qualitative responses across all 16 questions, but in some cases, respondents chose not to answer particular questions or to provide any further comments. The responses in narrative form generally welcomed the strategic approach proposed and agreed with the principles set out in the consultation, while also highlighting some key issues.

### Question 1

**Consultees were asked:** *Do you support the proposal that the definition of serious organised crime should relate to TWO or more people acting together with one of their main purposes or activities being the commission or facilitation of a serious offence or a series of serious offences?*

- All respondents who answered this question (13 respondents) indicated that they supported the proposal. Two respondents did not answer.

**Consultees were also asked:** *Have you other comments or suggestions regarding the definition of organised crime?*

- Some respondents made additional comments and some raised concerns about the proposed definition, including:

- While the definition is in line with Scottish legislation, it does not align with definition used in England and Wales (E&W) or the Republic of Ireland.
- Assurance was sought that the definition was in line with legislation in other European countries.
- Query why the definition diverged from the definition used by the UN Convention on Transnational Organised Crime; what is the rationale for diverging from the UN standard. There is a need to avoid practical and procedural difficulties in relation to the cross border element of organised crime.
- Suggest that the Department should also consider the US Racketeer Influenced and Corrupt Organizations Act (RICO) to check if the proposed definition for Northern Ireland is as all encompassing.
- Consideration should be given to organised crime which involves the breeding, selling and fighting of animals to make money.
- The definition should include gain or benefit. Definition too wide.
- Consideration should also be given to defining 'facilitation' to distinguish from 'directing' serious organised crime which is proposed to be defined.
- Concern about the broad definition of organised crime (i.e. 2 or more people) but as long as it only applies to the more serious offences listed it is an acceptable definition. It was suggested that it should not be applied to low-level crimes involving people who together may have e.g. shoplifted.
- The difference in definition between what is proposed for Northern Ireland and the existing definition for the Republic of Ireland would be important for a local council area sharing a border with Ireland.

### Response

Following an initial analysis, it was clear that a workable and accurate definition of serious organised crime is integral to effective legislation. The Department reviewed the definition in light of the comments raised, particularly given concerns that the proposed definition was too broad and may not specifically link to activities typically associated with serious organised criminality.

The Department worked with key Organised Crime Task Force (OCTF) partners to review the utility of legislation used to target organised criminality in other jurisdictions and internationally.

The proposed legislation will provide an interpretation clause where the definition of organised crime is linked to two central definitions:

(i) A structured group / criminal organisation whose primary purpose is to commit or facilitate the commission of one or more prescribed serious offences, for the purposes of obtaining benefit - directly or indirectly, financial, material or any benefit – to broadly align with definitions (UN, E&W and Ireland).

The definition of a group/organisation would be linked to involving three or more people – to broadly align with definitions (UN, E&W and Ireland).

(ii) serious offence – means any offence which is specified or which falls within a description specified in Part 2 of Schedule 1 to the Serious Crime Act 2007 or in Schedule 5 to the Proceeds of Crime Act 2002 or which, in the particular circumstances of the case, the Court considers to be sufficiently serious to be treated for the purposes of the application or a matter as if it were so specified.

The reference to the Terrorism Act 2000 will not be included in the interpretation as terrorism offences are listed in the Serious Crime Act 2007 and POCA 2002.

Further consideration will be given to adding relevant offences such as section 1 of the Protection of the Person and Property Act (Northern Ireland) 1969 (intimidation); an offence under section 47 of the Criminal Justice (Northern Ireland) Order 1996 (intimidation etc., of witnesses, jurors and others); and relevant legislation ensuring the welfare of animals.

The definition of serious offence will be kept under review.



## Question 2

**Consultees were asked:** *Do you agree with the proposed listed serious offences?*

- Respondents who answered this question agreeing with the proposed list also supported the discretionary power to make regulations to add to the list, should that be necessary.
- Two respondents did not agree with the proposed list, comments included:
  - Suggestion that the list should include offences aligned with or connected to political objectives achieved by illegal means.
  - Suggest the offence of Directing Terrorism should be excluded, as it is potentially duplicitous and could undermine the response.
  - Creeper and automotive burglaries should be considered for inclusion; and
  - The offences need to be specified in detail.

### Response

It is important to complement the existing legal framework for offences, and to ensure that any existing relevant offences are not duplicated.

The Department reviewed the list of proposed serious offences to ensure the proposed changes are necessary, clear and unambiguous. The proposed legislation will provide an interpretation clause where the definition of organised crime is linked to two central definitions – as set out in the response to Q1.

**Consultees were also asked:** *Are there other offences / activities / regulatory breaches that should fall under the proposed definition of organised crime?*

Responses included:

- Offences linked to or aligned with intimidating behaviour.

- Consider cybercrime, financial scams, illegal gambling/lottery, environmental crimes, false certification of goods and products, smuggling, fuel laundering.
- The unscrupulous sale of horses and dogs.

## Response

It is important that any legislation maintains a focus on serious organised crime. The inclusion of any additional offences under the definition of serious and organised crime must meet this threshold, and proposals have been considered in this context.

The Department recognises that serious organised criminality may include a wide range of criminal activities and has considered the views of respondents to ensure all relevant offences are captured, including those intended to exert coercive control on communities.

As per the response for Q1 & 2 - further consideration will be given to adding relevant offences such as section 1 of the Protection of the Person and Property Act (Northern Ireland) 1969 (intimidation); an offence under section 47 of the Criminal Justice (Northern Ireland) Order 1996 (intimidation etc., of witnesses, jurors and others); and relevant legislation ensuring the welfare of animals.

The definition of serious offence will be kept under review.

## Question 3

### Consultees were asked:

***Do you support the proposal to include a discretionary power to add to the list of relevant offences, should that be considered necessary, by regulations?***

All respondents who answered this question (12 respondents) supported the proposal. A few caveated their response with the need to ensure that any such amendments are subject to the appropriate scrutiny and oversight mechanisms.

## Response

Enabling provisions allowing the Department to amend the list of serious offences, linked to the interpretation of 'serious offence', are required and will be subject to the draft affirmative procedure.

**Consultees were also asked:** *Any other comments regarding discretionary power to add to the list of relevant offences?*

- Flexibility is important to add to the list of relevant offences going forward.
- Welcome the ability to 'future proof' this list of regulations to ensure that law enforcement keeps abreast of criminal activity.
- The Department should ensure that there are appropriate oversight mechanisms before any additions are made to the existing list of relevant offences.

## Response

Amending the list of relevant offences would require the approval of the Assembly. Any proposed change to the definition of 'serious offence' will be subject to the draft affirmative procedure.

## Question 4

**Consultees were asked:** *Do you agree that the definition of organised crime should refer to the commission or facilitation of offences with the intention of obtaining a gain or a benefit?*

- All respondents who answered this question agreed the definition.
- Comments noted that focussing on the activity (organised crime) rather than the structures (organised crime groups) would most accurately reflect the nature of organised crime.
- Consideration should be given to defining “facilitation” to distinguish it from “directing” serious organised crime.

### Response

As noted in the response to Q1, a workable and accurate definition of serious organised crime is integral to effective legislation. The central definition of organised crime group will refer to the purposes of obtaining, directly or indirectly, financial, material or any benefit.

**Consultees were also asked:** *Should the definition include a clarification that it is not necessary for any gain or benefit to be financial in nature?*

The majority of respondents to this question were those who had agreed the definition but wanted to highlight that not all gains or benefits are financial and that the legislation should clarify that it is not necessary for the gain or benefit to be financial in nature. Comments included:

- Some activities are about power and control within a community;
- Gain, especially in NI can be about controlling a community through fear and intimidation. It can be about status and power.
- It could be to benefit by a preferential advantage or abuse of power by another.

## Response

While serious organised criminality is mainly for the purpose of financial gain, as noted in the response to Q3, the Department accepts that organised criminal groups – including paramilitary groups – seek to exert control on communities in order to undertake criminal activities.

The central definition of organised crime group will refer to the purposes of obtaining, directly or indirectly, financial, material or any benefit.

The definition of serious offence will cover intimidation offences.

### Question 5

**Consultees were asked:** *Do you agree with the overarching policy intent to create an offence of directing serious organised crime?*

All respondents who answered this question agreed with the overarching policy intent.

**Consultees were also asked:** *Have you any other comments or suggestions about the policy intent to create an offence of directing serious organised crime?*

- Comments included:
  - Vital, as young people are often drawn into these activities by those directing crime who keep their own hands clean.
  - It is hoped that this offence will place increased liability on those directing organised crime groups (OCGs) even though they may not have committed a serious offence themselves.
  - Strongly support this offence being on the statute book.

- Additional comments:
  - Propose including a clarification that for the purposes of this offence, doing or agreeing to do something should also include omitting, or agreeing to omit to do something.
  - Clarification needed that it is not necessary to establish that the activity that has been done, or agreed to, has actually enhanced or facilitated the commission of serious organised crime.
  - Propose that it should not be necessary that the direction results in the commission of an offence, for the offence of directing serious organised crime to have been committed.
  - Clarification, for the purposes of this offence, the meaning of “directs” should include “controls, supervises the activities, gives an order, instruction and guidance or makes a request with respect to participating in serious organised crime”.
  - The judiciary should enforce the maximum sentence more often.
  - The offence of directing serious organised crime is available across several other jurisdictions. Given the cross border element, it is of vital importance that there is cooperation and parity across both jurisdictions.

### Response

The Department accepts that the legislation should focus on those who direct serious organised criminality and who often use other people to conduct criminal activity on their behalf. A new offence of ‘directing’ serious organised crime will be introduced in the proposed provisions.

### Question 6

**Consultees were asked:**

***Do you agree with the proposal that the offence of directing serious organised crime should include a clarification that it is not necessary for any such direction to result in the***

***commission of an offence, for the offence of directing serious organised crime to have been committed?***

All respondents who answered this question agreed.

Some comments in relation to the previous question, above, provided similar views on the need for clarification.

**Consultees were also asked:** ***For any other comments or suggestions on the proposal that the offence of directing serious organised crime should include a clarification that it is not necessary for any such direction to result in the commission of an offence, for the offence of directing serious organised crime to have been committed?***

Comments included:

- Planning or intent should be treated with the same severity as committing an offence as it causes the victims the same injury.
- Important that the proposed legislation is aligned, as much as possible, with other countries to remove any ambiguities or anomalies that may be exploited by organised crime gangs.
- The offence of directing serious organised crime should include a clarification that it is not necessary for any such direction to result in the commission of an offence, for the offence of directing serious organised crime itself to have been committed. This is an important clarification which may have a positive impact in efforts to tackle serious organised crime.
- The offence of directing serious organised crime is one that is found across several other jurisdictions, including Scotland, Ireland and Canada.

Given the cross-border element of serious organised crime, it is of vital importance that there is cooperation and parity across both jurisdictions in terms of the powers available to tackle serious organised crime.

### Response

While the legislation seeks to address serious organised crime in Northern Ireland, the Department acknowledges the cross jurisdictional nature of this type of offending. While broad alignment with neighbouring jurisdictions is helpful, it cannot restrict our ability to provide a more robust legal framework where appropriate.

A new offence of 'directing' serious organised crime will be introduced in the proposed provisions, clarifying that any direction relating to serious organised crime does not need to result in the commission of an offence, for the offence of directing serious organised crime to have been committed.

### Question 7

**Consultees were asked:**

***Are you supportive of the overarching policy intent to create a new offence of participating in serious organised crime?***

All respondents who answered this question (13) agreed with the overarching policy intent.

### Response

A new offence of 'participating in' serious organised crime will be introduced in the proposed provisions.



**Consultees were also asked:** *Have you any other comments or suggestions regarding the overarching policy intent to create a new offence of participating in serious organised crime?*

Comments highlighted that:

- This offence is viewed as being similar to preparatory acts contrary to section 5 of the Terrorism Act 2006. It is likely that this offence could be directed in conjunction/as an alternative with the substantive offences or as an alternative to inchoate offences. It would be useful to have examples in order to demonstrate the facts in which such an offence would be preferred/directed to other substantive offences.
- This element is in line with legislation in Scotland, England, Wales, ROI and Canada. The alignment is welcomed.
- Due legal process must determine if an individual is guilty of this offence.

#### **Response**

The Department engaged further with the Public Prosecution Service to consider any potential overlaps and ensure that and new legislation to tackle serious organised crime legislation does not replicate any existing provision. The Department has reviewed the list of offences; the proposed legislation will provide an interpretation clause where the definition of organised crime is linked to two central definitions – as set out in the response to Q1.

#### **Question 8**

**Consultees were asked:** *Do you agree with policy intent that a person should be guilty of this offence where they ‘do’ or ‘agree to do’ something that they know, suspect, or could be reasonably expected to know or suspect, is likely to enhance or*

***facilitate the commission of serious organised crime?***

All respondents who answered this question agreed with the policy intent.

**Consultees were also asked:** ***Have you any other comments or suggestions regarding the policy intent that a person should be guilty of this offence where they 'do' or 'agree to do' something that they know, suspect, or could be reasonably expected to know or suspect, is likely to enhance or facilitate the commission of serious organised crime?***

- Comments highlighted that:
  - There should be additional safeguards in place in the event of an individual or a group of individuals being coerced into participating in an act of serious organised crime; being forced to do something against their will or agreeing to something under duress. However the safeguard must not be open to exploitation.
  - Caution that the formulation of this offence does not criminalise anyone who has been put in a position where they have no choice but to act in a manner that enhances or facilitates serious organised crime due to coercion. This could include vulnerable adults, partners of OCG members who are victims of domestic abuse, victims of tiger kidnappings, victims of human trafficking who commit offences while under the control of their traffickers, or those who are threatened or intimidated into acting or omitting to act.
  - The proposed offence of participation in organised crime, which does not take these factors into consideration, may prevent those who could be

useful to the authorities from coming forward to report a crime, for fear of being criminalised themselves.

- In practical terms it may be very difficult to prove knowledge of this to a criminal standard.
- If by word or deed an action is associated with organised crime, then it should be treated the same as those who commit the act.
- Support the proposal to include a clarification that agreeing to do something should also include omitting, or agreeing to omit to do something, as well as clarification that it is not necessary to establish that the activity has been done, or agreed to, has actually enhanced or facilitated the commission of serious organised crime.

### Response

The Department has considered the issues raised and reviewed the list of offences; the proposed legislation will provide an interpretation clause where the definition of organised crime is linked to two central definitions – as set out in the response to Q1.

The Department will consider existing safeguards such as the common law defence of duress, which is available to those who consider that they have been coerced into criminal activity.

### Question 9

#### Consultees were asked:

***Do you agree that it should not be necessary to establish that the action in question (done or agreed to) has actually enhanced or facilitated the commission of serious organised crime, for the offence of participating in serious organised crime to have been committed?***

- Not all respondents who answered this question agreed.
  - 10 agreed.
  - 2 disagreed

**Consultees were also asked:** *Have you any other comments or suggestions regarding whether or not it should be necessary to establish that the action in question (done or agreed to) has actually enhanced or facilitated the commission of serious organised crime, for the offence of participating in serious organised crime to have been committed?*

Comments included:

- Prosecutions for actions that have not resulted in the commission of serious and organised crime could lead to a detrimental and negative response to the proposed policy and undermine confidence in law enforcement and the justice system, and could also afford organised criminal groups and paramilitaries the opportunity to portray themselves as victims and attempt to garner public support for the illegal activities.

### **Response**

The Department is mindful of the need to balance criminalisation of activity that furthers serious organised crime with confidence in the justice system.

The proposed legislation will provide an interpretation clause where the definition of organised crime is linked to two central definitions – as set out in the response to Q1.

## Question 10

**Consultees were asked:** *Do you agree that we should make provision for offences aggravated by connection with serious organised crime?*

All respondents who answered this question (13 respondents) agreed with the provision.

**Consultees were also asked:** *Have you any other comments or suggestions regarding making provision for offences aggravated by connection with serious organised crime?*

Comments highlighted:

- Slight concern that “connection” is a very broad term and must be specified further.
- An aggravation may not be suitable for lower-level offences that may fall within the serious crime chain despite being suitable where “an offence is committed as part of, or in furtherance of serious organised crime”, it may be more useful to align more closely with Section 29 of the Criminal Justice and Licensing (Scotland) Act 2010 which expressly notes the motivation of the offender: *“An offence is aggravated by a connection with serious crime if the person committing the offence is motivated (wholly or partly) by the objective of committing or conspiring to commit serious organised crime”*
- This new provision will allow the wider circumstances of the crime to be considered by the court and the appropriate sentencing will reflect this.
- Offences aggravated by serious organised crime should carry an additional sentencing levy of 75%.

- Agree subject to the definition of serious organised crime being amended (i.e. for the purposes of gain or benefit, including financial gain), otherwise the remit is too wide. Needs careful drafting to ensure the standard and burden of proof for the aggravating features is clear.

### Response

The Department has engaged with key stakeholders and considered learning from the implementation of other relevant legislation in Northern Ireland. The Department has reviewed the definition of organised crime following consultation with key partners. Further work is required to ensure that the standard/ burden of proof for aggravation is clear and timescales for implementation reflect the planning and preparation time required to update court processes and IT systems.

The Department will continue to engage with criminal justice partners in developing the provisions for offences aggravated in connection with serious organised crime.

### Question 11

**Consultees were asked:** *Do you agree that there should be recording requirements on the courts?*

All respondents who answered this question (13 respondents) agreed.

**Consultees were also asked:** *Have you any other comments or suggestions regarding recording requirements on the courts?*

Comments included:

- Details of the sentence imposed and the weight attributed to the aggravating factor should be recorded consistently to enable the effectiveness of these provisions to be demonstrated and assessed.
- There should be recording requirements on the courts where a sentence has been aggravated by serious organised crime. The Court should be required to: state on conviction that the offence is aggravated by a connection with serious organised crime; record the aggravation; and, (i) where the sentence is different from what the court would have imposed if the offence was not aggravated, the extent of any reasons for that difference, or (ii) otherwise, the reasons for there being no such difference.

#### Response

The Department considers that where the charge for an offence, as well as the aggravation by a connection to a criminal organisation, is proved, the Court must consider the aggravating factors when determining the sentence.

Further work is required to ensure that the standard/ burden of proof for aggravation is clear and timescales for implementation reflect the planning and preparation time required to update court processes and IT systems.

#### Question 12

**Consultees were asked:**

***Do you agree that a maximum tariff of 14 years for the proposed offence of directing serious organised crime is appropriate?***

- Not all respondents who answered this question agreed.
  - 9 agreed.
  - 4 disagreed

**Consultees were also asked:** *Have you any other comments or suggestions regarding the appropriateness of the maximum tariff of 14 years for the proposed offence of directing serious organised crime?*

Additional comments were provided by both those who agreed and disagreed:

- It should be increased as, where the max sentence is imposed, the criminal may not serve that time – no deterrent.
- Judiciary should be lobbied to impose maximum tariffs.
- Support the strongest possible sentences as a meaningful deterrent. Essential that judges end the trend of failing to hand down maximum sentences.
- Too lenient, 20 years would suffice.
- The maximum tariff is too lenient. The US Racketeer Influenced and Corrupt Organisations Act includes a 20 tariff per racketeering count.
- There should be a minimum tariff, Judges never issue maximum tariffs.
- If matching Scottish definition of organised crime, it makes sense to match tariffs (14 years).
- This tariff is lower than that outlined in sections 71-74 Criminal Justice Act 2006 in the ROI where a person who directs, at any level, the activities of a criminal organisation, is guilty of an offence and liable on conviction to imprisonment for life, or a lesser sentence.
- The maximum tariff should be life, with a minimum of 25 years.
- The LCJ's Sentencing Group (or its successor) should be tasked with formulating appropriate sentencing guidelines within this framework.

#### **Response**

The proposed tariffs for directing serious organised crime are in line with those for other serious types of offending (such as directing terrorism).



It would be a decision for the Court to sentence an offender to life imprisonment, where certain conditions are met – see response to Q14. The Department will continue to engage with criminal justice partners in developing the provisions.

### **Question 13**

**Consultees were asked:** *Do you agree that a maximum tariff of ten years for the proposed offence of participating in serious organised crime is appropriate?*

- Not all respondents who answered this question agreed.
  - 9 agreed.
  - 4 disagreed

**Consultees were also asked:** *Have you any other comments or suggestions regarding the appropriateness of the maximum tariff of ten years for the proposed offence of participating in serious organised crime?*

- Comments included:
  - This tariff is lower than that outlined in the ROI legislation.
  - The maximum tariff should be life, with a minimum of 25 years.
  - If matching Scottish definition of organised crime, it makes sense to match tariffs (10 years).
  - There should be a mandatory minimum tariff.
  - The maximum tariff is too lenient. The US RICO legislation includes a 20 tariff per racketeering count.
  - Too lenient, 16 years would suffice.
  - Do not agree that those convicted of these offences should be subject to an indeterminate sentence and would advocate for the 2008 Order to be

amended to remove the provision for indeterminate sentences beyond the minimum term.

### Response

The proposed tariffs for participating in serious organised crime are in line with those for other serious types of offending.

The Department will continue to engage with criminal justice partners in developing the provisions.

### Question 14

#### Consultees were asked:

*Do you agree that the proposed offences of “directing serious organised crime” and “participating in organised crime” should be specified as Serious Offences under Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008?*

All respondents who answered this question (13 respondents) agreed.

#### Consultees were also asked:

*Have you any other comments or suggestions regarding the proposed offences of “directing serious organised crime” and “participating in organised crime” being specified as Serious Offences under Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008?*

Comments included:

- Would ensure that where a court considered an individual was dangerous, they could be subject to a sentence for public protection. The resulting licence conditions and other public protection arrangements would be an important safeguard.
- It must be categorised as such to demonstrate that we as a society take it seriously.

### Response

The new provisions will specify any offences of ‘directing’ serious organised crime and ‘participating in’ organised crime as ‘serious offences’ under Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008.

This would mean that offenders would be liable to life imprisonment where they pose a significant risk of serious harm to the public by the commission of further specified offences.

### Question 15

**Consultees were asked:**

***Do you agree that the proposed offences of “directing serious organised crime” and “participating in organised crime” should be specified as criminal lifestyle offences under the Proceeds of Crime Act (POCA), thereby improving the court’s ability to confiscate criminal assets?***

All respondents who answered this question (13 respondents) agreed.

**Consultees were also asked:** ***Have you any other comments or suggestions regarding proposed offences of “directing***

***serious organised crime” and “participating in organised crime” being specified as criminal lifestyle offences under POCA, thereby improving the court’s ability to confiscate criminal assets?***

Comments included:

- Financial gain is one of the key drivers for organised crime, and the ability to remove criminal assets under POCA is a valuable tool in deterring and disrupting organised criminals.
- Welcome moves to deprive criminals of their ill-gotten gains.
- Agree any assets seized in NI should be redistributed and reinvested through ARCS [Assets recovery Community Scheme].
- Seizing assets impacts on credibility and loosens the coercive control that they exert on communities.
- Should extend to family assets.

### **Response**

Financial gain is the main driver of most serious organised crime. The new offences of directing organised crime and participating in organised crime will be added to Schedule 5 ‘Lifestyle offences: Northern Ireland’ of the Proceeds of Crime Act 2002 (POCA).

This will specify the offences as criminal lifestyle offences under POCA for Northern Ireland and improve the Court’s ability to confiscate assets following a criminal conviction and help to undermine the economic motivation that fuels most serious organised crime.

### **Question 16**

**Consultees were asked:**

***Do you agree that the offences of “directing serious organised crime” and “participating in***

***organised crime” should be added to the list of offences that can be referred to the Court of Appeal by the Director of Public Prosecutions where a sentence is considered unduly lenient?***

All respondents who answered this question (13 respondents) agreed.

**Consultees were also asked:** ***Have you any other comments or suggestions regarding the offences of “directing serious organised crime” and “participating in organised crime” being added to the list of offences which can be referred to the Court of Appeal by the Director of Public Prosecutions where a sentence is considered to be unduly lenient?***

Comments included:

- The unduly lenient sentence scheme remains an important issue for victims and communities to ensure justice is delivered.
- There should be flexibility in the system to ensure lenient sentences can be appealed.

### **Response**

The offences of ‘directing’ and ‘participating in’ serious organised crime will be added to the list of offences, which can be referred to the Court of Appeal by the Director of Public Prosecutions where a sentence is considered unduly lenient.

## **Section 4 – Next Steps**

4.1 The Department has fully considered all queries and comments received in response to the consultation. It is clear that there is broad support for the new provisions. The revised approach addresses the issues raised as part of the consultation and seeks to clarify the policy aim underpinning the legislative proposals, namely preventing crime, protecting victims and pursuing offenders.

4.2 The revised definition of serious organised crime for the purposes of ‘directing’ and ‘participating in’ serious organised crime will be set out clearly in terms of the seriousness of the offences and the purpose of obtaining, directly or indirectly, financial, material or any benefit to organised crime groups. Work will begin to develop legislative drafting instructions for primary legislation for the proposals to reinforce the response to organised crime in Northern Ireland and further engagement with key stakeholders will continue as required. This work will be taken forward in the context of strategic commitments in the Organised Crime Strategy 2021-2024.

4.3 It is intended that the provisions will be included in a relevant Justice Bill, which will be subject to the legislative process and cannot be taken forward in the absence of the NI Executive and Assembly.