EXPLANATORY MEMORANDUM TO

THE SERIOUS CRIME ACT 2007 (SPECIFIED ANTI-FRAUD ORGANISATIONS) ORDER 2008

2008 No. 2353

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order specifies the following anti-fraud organisations for the purposes of section 68 of the Serious Crime Act 2007:

(a) CIFAS;

(b) Experian Limited;

(c) Insurance Fraud Investigators Group;

(d) N Hunter Limited;

(e) The Insurance Fraud Bureau;

(f) The Telecommunications United Kingdom Fraud Forum Limited.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Under section 68 of the Serious Crime Act 2007 ("the SCA") a public authority may, for the purposes of preventing fraud or a particular kind or fraud, disclose information as a member of a specified anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation. Section 68 is a power for public authorities to disclose information, sometimes referred to as a "gateway".

4.2 An "anti-fraud organisation" is defined under section 68(8) as any unincorporated association, body corporate or other person which enables or facilitates any sharing of information to prevent fraud or a particular kind of fraud or which has any of these functions as its purpose or one of its purposes.

4.3 Under section 68(8) of the SCA an anti-fraud organisation is specified by an order made by the Secretary of State. This Order is an order under section 68(8).

4.4 The enabling power in section 68(8) was brought into force on 1st March 2008 (see SI 2008/219 (C. 5)) and a commencement order is being prepared to bring the other provisions of section 68 and the provisions associated with it into force on 1st October 2008.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government's consultation paper "New Powers Against Organised and Financial Crime" (Cm 6875) highlighted the lack of information sharing to prevent fraud within the public sector and between the public and private sector. The consultation paper suggested that information on suspected fraudsters should be shared more widely in order to prevent fraud, and that sharing information with anti-fraud organisations might be an appropriate mechanism to achieve this. Respondents to the consultation were almost uniformly in agreement with this proposal. The consultation highlighted that in order to give effect to the proposal steps needed to be taken to make sure that public authorities would have the legal power to share information with the private sector.

7.2 Section 68 of the SCA was introduced to provide a legal gateway, where one does not already exist, for public authorities to share data with a specified anti-fraud organisation in order to prevent fraud. It was agreed in Parliament that more than one anti-fraud organisation would be specified. All disclosures under section 68 must comply with the Data Protection Act 1998. Sections 69 and 70 of the SCA create an offence relating to disclosures through a specified anti-fraud organisation. At the moment the information protected by the offence is revenue and customs information, which reveals the identity of the person to whom it relates, and is disclosed by Her Majesty's Revenue and Customs. All public authorities sharing information through a specified anti-fraud organisation must have regard to the code of practice produced by the Secretary of State under section 71 of the SCA.

7.3 Once this order is in place and section 68 has been brought into force individual public authorities will be able to decide whether to rely on section 68 and sign up with one of the specified anti-fraud organisations. Public authorities are not obliged to participate; it will be for each public authority to make its own decision depending on its own circumstances.

7.4 The Home Office invited expressions of interest in being specified from members of the anti-fraud community. Application forms, drawn up by the Home Office in consultation with the Ministry of Justice and the Information Commissioner's Office, were sent to those organisations who had expressed an interest.

8. Impact

8.1 A Regulatory Impact Assessment was prepared for the Serious Crime Bill and the relevant extract relating to data sharing (Option 3) is attached.

8.2 The impact on the public sector is covered in the attached Regulatory Impact Assessment.

9. Contact

Michael Drew at the Home Office Tel: 0207 035 1569 or e-mail: Michael.Drew2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

EXTRACT FROM SERIOUS CRIME BILL REGULATORY IMPACT ASSESSMENT

DATA SHARING

Objective

1. To reduce the harm caused by fraud committed against the private and public sector. Greater data sharing can help by directly uncovering apparently fraudulent behaviour (for example, comparing mortgage records with housing benefit data) or through enabling organisations to share more information on high-risk individuals and activity.

Background

2. The consultation paper 'New Powers Against Organised and Financial Crime' set out a series of initiatives to encourage data sharing within the public sector and with the private sector.

Rationale for Government Intervention

3. The Government has a duty to protect all citizens, including the taxpayer and the private sector, from fraudsters. Fraud against the exchequer decreases the amount available for public expenditure or results in higher taxes. Fraud against the private sector harms commercial interests and ultimately leads to higher consumer prices.

Options

Option 1: Do Nothing

Option 2: Grant the National Fraud Initiative Additional Powers

4. This gives additional statutory powers for the National Fraud Initiative (NFI) to enable them to expand into new areas, or back into areas which have moved outside the NFI's remit.

Option 3: Allow public sector organisations to share more information on suspected frauds between themselves and the private sector

5. This option requires legislation to clarify or amend the statutory vires of a number of public sector bodies.

6. One potential vehicle for delivering this in the short term would be for departments and public agencies to become members of CIFAS (the UK's Fraud Prevention Service). CIFAS is a non-profit-making body set up to share information about reported frauds. The threshold for inclusion on the CIFAS database is that sufficient evidence must exist for there to be reasonable grounds to press criminal charges – the grounds must be strong enough for a formal complaint to be made to the police. Members check this database when, for example, processing new applications. CIFAS is funded through member subscriptions.

7. An alternative vehicle may be the proposed National Fraud Reporting Centre, a recommendation of the Fraud Review. The cost-benefit analysis can be found on pages 292-309 of the Fraud Review[1].

8. HM Revenue and Customs (HMRC) information is protected by a statutory duty of confidentiality. The measures in the Bill ensure that the information is protected by a criminal sanction against wrongful disclosure. Where HMRC information is disclosed through any of these proposed data sharing options it will continue to be equally protected – anyone who receives HMRC information will be bound by the same confidentiality provisions and the same criminal sanction.

Option 4: Pursue options 2 and 3

Benefits

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[1] Available at http://www.lslo.gov.uk/pdf/FraudReview.pdf

Option 1: Do Nothing

9. Fraud causes huge harm to the UK every year. Economic consulting firm NERA[2] estimates that the total gain to fraudsters was between £4.5bn and £10.3bn in 1998-99, with a total economic cost of between £6.8bn and £13.8bn, once expenditure concerning prevention and investigation is accounted for. Even these sums are likely to understate the true scale of the problem: no allowance is made for undiscovered fraud; there are further knock-on costs as individuals and organisations are forced to change their behaviour because of the fear of fraud; and fraud is thought to have increased considerably since 1998-99. Fraud can also cause significant emotional harms if, for example, somebody is defrauded of their life savings. Deceased person's fraud can also be a particularly harmful crime to the deceased's family. Furthermore, much fraud is thought to be committed by organised criminals, and funds further activities by the criminal groups.

10. There are no reliable estimates concerning future trends in fraud, making it extremely difficult to understand the impact of no further government intervention. But our judgement is that fraud will almost certainly increase over time if the government does nothing more to try to stem it.

Option 2: Grant the National Fraud Initiative Additional Powers

11. This option allows the NFI to build on their existing success; in the last NFI cycle of 2004/05, they detected £111m worth of fraud. Reductions in fraud against the public sector saves the taxpayer money and take the profit out of crime.

12. To get the full benefits outlined below, all Central Government departments would need to sign up to providing the NFI with their data by 2008-09. It is not yet known whether this will happen, so the benefits stated below should be considered a maximum.

Mortgage Records

13. Allowing the NFI to match data from mortgage records with housing benefits will help reduce housing benefit fraud. The NFI will be better able to detect those who claim housing benefit and who are property-owners and therefore ineligible for housing benefit. The NFI conservatively estimates that it can identify additional fraud of **£7m** over an NFI cycle of two years. This is based on assuming it continues to identify around £3,500 worth of overpayments for every 1,000 records it is able to check.

14. Mortgage lenders will also benefit. They will be able to remove fraudulent landlords from their client portfolio, and be able to detect bank and building society staff involved in mortgage fraud. Mortgage providers will foreclose on fraudulent landlords thereby disrupting their activities.

Public and Private Sector Pension Records

15. The NFI collects 2.1 million public sector and 1.1 million private sector pension records. This option would allow them to disclose matches with housing benefits data. Assuming the NFI maintains its existing rate of return of identifying fraud worth about £1,400 per 1,000 cases suggests an additional housing benefit fraud saving of **£4.4m** over an NFI cycle. This would require all central departments to join and so should be considered a maximum.

16. In addition, the NFI will be able to access further private sector pension records. In the short term, the NFI estimates it can collect data on half of those in a pension scheme with over 5,000 members, generating a further **£7.5m** in benefit fraud reduction. In the longer term, this could rise to £17.5m.

Central Government and Private Sector Payroll

17. Extending the remit of the NFI to incorporate those employed in central government would lead to an estimated further **£0.8m** of housing benefit fraud being identified per cycle. This would require all central departments to join and so should be considered a maximum.

18. In the longer term, a move to include employment records from all 3,000 private sector organisations employing 500 or more staff would allow an estimated additional £11m of housing benefit fraud to be detected. However, this is unlikely to be deliverable in the next NFI cycle.

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[2] NERA, 2000, *The Economic Cost of Fraud*.

NHS Foundation Trusts

19. Inclusion of NHS foundation trusts in the NFI remit will prevent the NHS losing their protection and will allow them to continue to detect benefit fraud. For example, during the 2004-05 NFI exercise, 327 NHS employees committing housing benefit fraud were detected. The Foundation Trusts are also important for a parallel exercise on NHS Tourism where the NFI can detect those who should be denied services or who should pay for them.

Housing Associations

20. By identifying tenancy fraud, the NFI would allow social landlords to recover the properties and use them to re-house applicants on the waiting list or in temporary accommodation. The NFI conservatively estimates that this would lead to almost 5,000 properties being released back for re-let to genuine tenants.

Cross-border data matching

21. That the NFI can match data from, for example, Newcastle to Cornwall, but not from Newcastle to Scotland is clearly an anomaly, particularly as much of the fraud detection comes from matches between geographically close organisations. The NFI estimates that such cross-border matching, combined with powers to assist the NIAO, would result in the additional identification of fraud worth **£2.5m** per NFI cycle.

Central Government

22. The addition of Central government creditor and payroll data to the NFI would enable government departments to identify duplicate payments to suppliers and employees acting as directors of supplier companies without declaring their interests.

Former tenants arrears

23. Data matching to provide new contact details for former tenants allows recovery action to be undertaken if they are in arrears. In 2004-05 this matching enabled recovery action on debts worth over £1.3m to be commenced. Legal concerns mean clarification of the Commissions' powers are now needed – this option contains such clarification. This work can be extended to council tax arrears and unpaid court fines.

Non Fraud areas

24. The Bill provides capacity for the NFI to be used in non fraud areas in the future. Currently, funding does not exist for these options to be pursued, but the Bill allows the benefits from these areas to be delivered in the future.

25. Having access to the extra data described above, would provide potential for the NFI to work with the police in locating absconders from justice.

Student Loan fraud and immigration fraud

26. A recent pilot between the Student Loan Company and the Home Office Immigration and Nationality Directorate demonstrated a high level of matches between those fraudulently applying for student loans and those without indefinite leave to remain or permission to study in the UK. The results are still being investigated but the benefits to both departments are potentially valuable.

Identity Fraud

27. In the longer term, it is possible that the NFI databases will be extended to include information on central government systems, such as passports and driving licenses. As a result, it may be possible to combat some aspects of identity fraud through negative data matching. For example, a claimant on income support who is not known to the NHS or a range of other systems may be using a false identity. This type of matching can help identify false identities, preventing fraudulent benefit claims in the public sector and, for example, credit card losses in the private sector. Such negative data matching would require more regular data collection, and the addition of key central applications.

28. More regular data collection would cost about £1m per annum, largely because NFI databases would need to be updated annually to take advantage fully of this technique. This additional funding will not be in place for the next full NFI cycle of 2008-09. This legislation, however, allows for the benefits to be realised in the longer term, if the funding exists.

29. This would mean using techniques new to the NFI and, because of this, the benefits are extremely difficult to estimate. The NFI has, on average, typically detected £108 worth of benefits for every £1 spent. Given the uncertainties attached to benefits we have assumed conservatively that the rate of return attached to this form of negative matching would be only one tenth of what is normally achieved. Under this cautious assumption, the NFI would detect about £21.6m of identity fraud over a two-year cycle. However, this saving remains highly uncertain.

Deterrent benefits

30. Publicity and prosecutions following such data matches should provide a deterrent benefit. It has not been possible to quantify this.

Summary

Table 1. Estimated Maximum Increase in Fraud Detection Because of New Powers

	Next full NFI cycle (2008 and 2009)
Mortgage records	£7m
Pension records	£11.9m
Central government and private sector payroll	£0.8m
Cross-border data matching	£2.5m
Total additional fraud detected per NFI cycle	**£22.2m**

NB These savings assume that all central government departments provide the necessary data, and so should be considered a maximum.

31. We expect that the vast majority of detected fraud would be turned into fraud savings.

Option 3

32. Greater data sharing allows prevention and detection of fraudulent activity – the more information an organisation has, the more able it is to ensure the right public services go to the right people. Data sharing on specific fraudulent activity ensures other agencies can be on the look out for similar types of frauds being committed against them. Similarly, sharing information on who commits fraud can aid self-protection.

33. One way of delivering such sharing is through CIFAS. Their members treat an application with great care if the applicant appears on the CIFAS database. CIFAS has proved itself to offer large benefits to the private sector. Members reported savings of £682m in 2005.

34. To understand the potential benefits of public sector membership of CIFAS, the Identity Fraud Steering Committee undertook a data matching pilot project. The Her Majesty's Revenue and Customs, United Kingdom Passport Service, Driver and Vehicle Licensing Agency and the Department of Work and Pensions provided in total 1,636 records to match against the CIFAS database. It transpired that of the addresses contained in the records provided, 31% had an address match against an existing record in CIFAS. This demonstrates that many of those who commit fraud against one organisation, also commit fraud against another, meaning public sector membership of CIFAS is likely to lead to earlier detection of fraudulent activity.

35. The following public sector organisations could benefit from joining an organisation like CIFAS:

- Department for Health (DfH)
- Department for Work and Pensions (DWP)
- Her Majesty's Revenue and Customs (HMRC)
- Identity and Passport Service (IPS)
- Immigration and Nationality Directorate (IND)
- Local Authorities
- Student Loans Company
- Land Registry

36. Estimating potential fraud savings associated with public sector membership of CIFAS is extremely difficult. Based on the data matching pilot and existing members' experience, CIFAS estimates

potential savings to the public sector of between **£137m - £273m** per annum, assuming public sector resources are available to investigate suspected frauds fully and all departments join. The vast majority of these savings is likely to be split (roughly equally) between HMRC and DWP.

37. Note that this is (unavoidably) a very approximate estimate, and there is no guarantee that actual savings would be as high as CIFAS estimates. There will also be savings to the private sector, as it will benefit from a more comprehensive database.

38. As data is shared more widely, it becomes ever more important that, where appropriate, confidentiality is protected, and wrongful disclosure of data does not occur. This Bill introduces a criminal offence of unlawful disclosure of HMRC information by anyone who is in receipt of that information by virtue of the proposed information sharing provisions. Acting as a deterrent to unlawful disclosure, the criminal sanction represents a visible statement that confidentiality of HMRC information is treated seriously and shows that robust penalties (with the threat of imprisonment) are in place for any breach of that confidentiality. This measure ensures confidentiality is maintained for taxpayers' and other HMRC customers' affairs and that their information is appropriately protected from misuse.

39. The increased sanction for breach of section 55 of the Data Protection Act will also help to protect confidentiality by providing a greater deterrence against the wilful misuse of personal data. This will help increase the willingness of members of the public to share personal data in the interests of legitimate activity including efficient government. More details on the impact can be found in the partial regulatory impact assessment of this proposal[3].

Option 4: Pursue options 2 and 3.

40. The benefits of this option equal the sum of the benefits attached to options 2 and 3.

Costs

Option 1

41. No further costs.

Option 2

42. The cost of running the NFI is low – its great virtue is its simplicity. To achieve the full level of additional fraud detection set out above, the NFI will need an extra £2m over a two-year cycle – this will pay for the more regular updating of NFI databases to derive the benefits associated with reduced ID fraud and locating absconders from justice.

43. In some instances the NFI would charge the private sector to cover their costs. This will be very low relative to the fraud savings - usually between £2,000 and £13,000 per year. The direct costs associated with providing NFI with the data to all parties are very low. The maximum they are likely to charge a public agency participating voluntarily is £2,500.

44. The NFI's work is likely to lead to more investigations for Local Authorities (LAs). A "typical" benefit fraud case costs an LA around £1,000 to investigate (although costs do vary). Cases rarely go to court.

Option 3

45. Again we use CIFAS membership as an example. Costs of membership are low because the infrastructure already exists. CIFAS currently costs around £2.4m to operate. Subscriptions for public sector organisations will be calculated in the same way as for existing CIFAS Members, resulting in the smallest, such as Identity and Passport Service and Driver and Vehicle Licensing Agency needing to pay approximately £10,000 per annum and the largest, such as HMRC, having their subscriptions capped in 2007 at £105,000 per annum. If all the public sector organisations who took part in the data matching pilot became members of CIFAS, the total subscription cost would be about £250,000 per year, plus a one-off £125,000 joining fee.

46. Sharing data with CIFAS may require some public bodies to notify clients of the use which may be made of information supplied to them. This could be achieved by amending existing documentation

[3] Available at http://www.dca.gov.uk/consult/misuse_data/consultation0906.pdf.

with the costs varying depending on the department. For the DWP, for example, the costs are likely to be low, as old leaflets can be phased out before introducing leaflets with the new notifications. And the cost of providing the appropriate data to CIFAS is also likely to be small. No new technology would be required to participate, providing agencies have access to a web browser.

47. In the event of more people being denied benefit, there may be some very small legal aid costs attached to those people seeking legal advice.

48. There will be some small Criminal Justice System costs associated with greater sanctions attached to breach of section 55 of the Data Protection Act. More details are included in the partial regulatory impact assessment of this proposal.

Option 4: Pursue options 2 and 3.

49. The costs of this option equal the sum of costs attached to options 2 and 3.

Box 1. Summary of key benefits and costs

Benefits

Option 2

Public sector:	Reduction of fraud worth an estimated £22.2m per NFI cycle of two years, plus potential for a share of identity fraud savings in the future.
	Allows almost 5,000 properties every two years to be released for genuine tenants.
Private sector:	Potential for share of identity fraud savings in the longer term.
	Better enables mortgage lenders to remove fraudulent landlords from their portfolio and helps landlords recover former tenancy arrears.

Option 3

Public sector:	Estimated fraud savings could be worth up to £137m - £273m per year, if sufficient resources exist for investigations and all relevant public organisations join.
	Better prioritisation of Suspicious Activity Reports.
Private sector:	Some fraud savings as a result of having access to more data concerning suspected fraudsters.

Costs

Option 2

Public sector:	Greater costs associated with more investigations by LAs, of about £1,000 per case.
Private sector:	If private sector firms wish the NFI to help them, they will be liable for fees of usually between £2,000 and £13,000.

Option 3

Public sector:	If we follow the CIFAS membership route, total subscription costs of membership of up to £250,000 per year if all relevant public organisations join, plus one-off joining fees of up to £125,000.
	Some costs associated with changing forms to notify clients and providing CIFAS with necessary data.

The costs and benefits of option 4 are the sums of those of options 2 and 3.

Small firms

50. These proposals were included in the green paper 'New Powers Against Organised and Financial Crime'. This consultation lasted for 3 months and generated more than 110 responses, a large number of which were from the financial sector, other businesses and bodies representing the interests of small businesses. The majority of respondees were in favour of the proposals within the green paper and saw the benefits of the new measures.

51. The Home Office has contacted the Small Business Service who were given the opportunity to comment on these measures.

52. We do not anticipate that these proposals will have a disproportionately negative impact on small firms.

Competition Assessment

53. We do not anticipate that these proposals will have an adverse impact on competition.

Enforcement and Sanctions

54. It is the responsibility of the defrauded body to follow up a potential fraud detection. Fraud is a criminal offence, punishable by up to ten years in prison.

Post Implementation Review

55. The proposals will be judged by the levels of fraud savings. Participants in the NFI are required to complete a proforma at regular intervals to give details of frauds detected and savings achieved. These "savings returns" assist in the monitoring of progress by individual authorities and are used as the basis for a national report produced by the NFI.

56. CIFAS regularly monitors estimated annual fraud savings attributed to membership of CIFAS.

Consultation

57. We have consulted the following:

- Attorney General's Office
- Audit Commission
- Department for Communities and Local Government
- Department for Constitutional Affairs
- Department for Education and Skills
- Department for Health
- Department for Trade and Industry
- Department for Transport
- Department for Work and Pensions
- Driver and Vehicle Licensing Agency
- Financial Services Authority
- Her Majesty's Revenue and Customs
- Her Majesty's Treasury
- Northern Ireland Office
- Scottish Office
- Wales Office
- Land Registry
- Defra

Recommendation

58. That option 4 is pursued.