



Ministry of
JUSTICE

Public Bodies Act 2011

Consultation on an order to give legal effect to the administrative merger of the Crown Prosecution Service and Revenue and Customs Prosecutions Office

Consultation Paper CP6/2012

February 2012



Public Bodies Act 2011
Consultation on an order to give legal
effect to the administrative merger of
the Crown Prosecution Service and
Revenue and Customs Prosecutions Office

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

February 2012

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This publication is available for download at www.official-documents.gov.uk and on our website at www.justice.gov.uk

ISBN: 9780101825023

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
ID 2477707 02/12

Printed on paper containing 75% recycled fibre content minimum.

About this consultation

- To:** Director Public Prosecutions/Director Revenue and Customs Prosecutions
- The Lord Chief Justice
- This consultation is also aimed at anyone with an interest in the provisions in the Public Bodies Act 2011 which relate to the merger of the Crown Prosecution Service and the Revenue and Customs Prosecution Office.
- Duration:** From 28/02/12 to 22/05/12
- Enquiries (including requests for the paper in an alternative format) to:** Guy Wilson
Ministry of Justice
Post Point 6.10
102 Petty France
London SW1H 9AJ
- Tel: 020 3334 6072
Fax: 020 3334 5518
Email: Guy.Wilson@justice.gsi.gov.uk
- How to respond:** Please send your response by 22 May 2012 to:
Guy Wilson
Ministry of Justice
Post Point 6.10
102 Petty France
London SW1H 9AJ
- Tel: 020 3334 6072
Fax: 020 3334 5518
Email: Guy.Wilson@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published by 22 August 2012 at:
<http://www.justice.gov.uk>

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Foreword

The Public Bodies Act 2011, which received Royal Assent on 14 December 2011, creates legislative powers to enable us to radically reform the system of arm's length bodies – organisations which are not traditional government departments but which nonetheless carry out the business of government. In July 2011 we launched a public consultation on a number of proposals (Consultation on reforms proposed in the Public Bodies Bill: Reforming the public bodies of the Ministry of Justice – Command 8116).

The consultation document indicated that separate consultation would take place in relation to the intention to give legal effect to the administrative merger of the offices of the Director of Public Prosecutions (ie the Crown Prosecution Service) and the Director of Revenue and Customs Prosecutions. The present document discharges that commitment.

We have commenced the present consultation separately from the earlier one because of the different nature of this merger. The earlier consultation sought views on the merger and/or abolition of various public bodies. However, an administrative merger of the two offices that are the subject of this consultation exercise took place some time prior to the introduction of the legislation and, although we welcome your comments on the underlying policy issues, the primary aim of this consultation is seek views on whether we should give legal effect to the administrative merger.

A handwritten signature in blue ink, reading "Crispin Blunt".

Crispin Blunt

Executive summary

1. The Public Bodies Act 2011 provides a legislative framework for the reform of public bodies, giving government ministers powers to enact changes by order to abolish, merge or transfer the functions of the public bodies listed in the appropriate schedules to the Act. The Act requires ministers to consult on their proposals before laying a draft order.
2. In particular, section 2 of the Act enables ministers to merge bodies listed in Schedule 2 to the Act. Schedule 2 (power to merge) includes a number of bodies which have previously been subject to an administrative merger and where there is a need to give legislative effect to the administrative changes.
3. The present consultation addresses the order that we propose to make under section 2 of the Act to give legal effect to the administrative merger of the Crown Prosecution Service (CPS) and the Revenue and Customs Prosecutions Office (RCPO). The order will merge the offices of the Director of Public Prosecutions (DPP) and the Director of Revenue and Customs Prosecutions (DRCP), abolishing the RCPO in the process.
4. Section 8 of the Act requires that a minister may make an order only if the minister considers that it serves to improve the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to ministers; and also that it does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Introduction

5. The Public Bodies Act (PBA) 2011 establishes a framework for the abolition or merger of a range of public bodies. The Act provides that the actual reforms will be undertaken by means of secondary legislation. The Government is minded to use the powers in the Act to implement the proposals outlined in this consultation in relation to the CPS and RCPO. The PBA 2011 requires that ministers consult on their proposals before laying a draft order. On that basis, comments are invited on these proposals as measures that might be carried forward by an order under the Act, subject to the outcome of this consultation. All responses, including those which propose an alternative to the Government's preferred option, will be given due consideration.
6. The order giving legal effect to the administrative merger of the CPS and RCPO is to be made under section 2 of the Act (power to merge). The order itself will merge the offices of the DPP and DRCP.
7. Section 10 of the Act requires that a minister proposing to make an order under sections 1 to 5 of the Act must consult:
 - the body or the holder of the office to which the proposal relates;
 - such other persons as appear to the minister to be representative of interests substantially affected by the proposal;
 - Scottish ministers, if the proposal relates to any matter, so far as applying in or as regards Scotland, in relation to which Scottish ministers exercise functions (and where the consent of the Scottish Parliament is not required under section 9);
 - a Northern Ireland department if the proposal relates to any matter, so far as applying in or as regards Northern Ireland, in relation to which the department exercises functions (and where the consent of the Northern Ireland Assembly is not required under section 9);
 - Welsh ministers, if the proposal relates to any matter, so far as applying in or as regards Wales, in relation to which Welsh ministers exercise functions (and where the consent of the National Assembly for Wales is not required under section 9);
 - where the functions affected by the proposal relate to the administration of justice, the Lord Chief Justice; and
 - such other persons as the minister considers appropriate.
8. This consultation is being conducted in line with the Code of Practice on Consultation. The consultation criteria, which are set out on page 16, have been followed.

9. An impact assessment and an equality impact assessment have been published to accompany this consultation paper. These consider the impact of the proposal to give legal effect to the administrative merger.
10. The following groups have been notified of the publication of the consultation paper:
 - Bodies we are required to consult under section 10 of the Act – see paragraph 5 above.
 - Key representative groups identified by departmental officials.A full list of suggested stakeholders, by body, can be found at **Annex A**.
11. This list is not meant to be exhaustive or exclusive, however, and responses are welcomed from anyone with an interest in, or views on, the subjects covered by this paper.

The proposal

12. Unlike a number of the mergers and reforms proposed in the previous consultation exercise, the merger of the CPS and RCPO has already been achieved administratively. The two organisations, however, still remain legally distinct. It is desirable for them to be one organisation legally as well as operationally. An order under the Public Bodies Act 2011 is intended to achieve this objective.
13. This chapter provides background on the administrative merger of the CPS and RCPO. It then describes the specific benefits that the government considers will flow from making the two organisations a single legal entity. And thirdly, it discusses in general terms the proposed order which will give effect to the merger.

Background: Administrative Merger of the CPS and RCPO

14. The CPS was established by Part 1 of the Prosecution of Offences Act 1985 (the 1985 Act) as an independent prosecution service for police forces in England and Wales, headed by the Director of Public Prosecutions (DPP).
15. Her Majesty's Revenue and Customs (HMRC) is a government department created by the Commissioners for Revenue and Customs Act 2005 (the 2005 Act). This Act merged the Inland Revenue with HM Customs and Excise. The functions, powers and duties of the predecessor departments were transferred to HMRC. Among its many functions is the power to investigate suspected criminal activity involving any and all taxes. Other regimes for which HMRC has responsibility include the investigation of offences under the Money Laundering Regulations 2007.
16. The 2005 Act also created the RCPO, headed by a Director, to provide a separate independent prosecution function for HMRC investigations and, subsequently for Serious Organised Crime Agency (SOCA) investigations, in England and Wales¹. The UK Border Agency (UKBA) took over investigation of all non-fiscal smuggling offences in December 2009 and the ability to prosecute such cases in England and Wales was assigned to both the DPP and the DRCP at the same time.
17. The merger of the CPS and RCPO was announced on 2 April 2009 by the then Attorney General, Baroness Scotland, and work to consolidate the merger took place throughout the remainder of 2009. The main aspects of the merger were implemented on 1 January 2010, when the present DPP was also appointed DRCP.

¹ Scotland and Northern Ireland have their own independent prosecuting authorities for such offences.

18. Since 1 January 2010 there has been a single management structure and all members of RCPO staff have become CPS employees. Cases investigated by HMRC are now prosecuted by a specialist casework division within CPS.
19. The merger took place against a background of criminals operating increasingly across both functional and national boundaries, with a consequent need for prosecutors to be able to operate more collaboratively and more internationally. The aim was to provide an enhanced international capability, a specialist tax prosecution service and a joint prosecution approach to cross-border crime, together with efficiencies achieved by minimising duplication and driving economies of scale.

Placing the Merger on a Legislative Basis

20. This section of the paper discusses our reasons for placing the merger on a legislative basis, and has regard to the requirements set out in section 8 of the Public Bodies Act 2011. Section 8(1) provides that:

“(1) A Minister may make an order under sections 1 to 5 only if the Minister considers that the order serves the purpose of improving the exercise of public functions, having regard to—

 - (a) efficiency,
 - (b) effectiveness,
 - (c) economy, and
 - (d) securing appropriate accountability to Ministers.”
21. No legislation was necessary to give effect to the administrative merger of the CPS and RCPO. In effect the DPP, who as noted above is now also the DRCP, has been running two offices under one umbrella. Operational measures have, however, been implemented to ensure that full effect continues to be given to the distinct legal regimes governing the two organisations.
22. The coalition government considers that it is desirable to place the merger on a statutory basis for a number of reasons. These are set out below.

Confirmation of the coalition government’s position on the merger

23. The coalition government believes that the decision taken by the previous administration to merge these two organisations administratively was consistent with its own wider approach to public bodies, as set out in the Public Bodies Bill (now the Public Bodies Act) 2011. By placing the merger on a statutory basis, we make clear our confidence in the soundness of the change.

Strengthening the identity of the merged organisation

24. The continuing existence of two legally distinct organisations under one administrative umbrella is inherently unsatisfactory. The order provides a single legal identity for the two organisations, and so underlines the permanence of the merger.

Clarifying the role of the CPS

25. Giving legislative effect to the administrative merger will make it clearer that prosecutorial responsibility for HMRC, SOCA and UKBA investigations in England and Wales is now held by the CPS.
26. Turning to the four tests set out in section 8(1) of the PBA 2011 recited above:

Efficiency

27. Simplifying the legal regime will help the combined organisation to operate more efficiently by allowing greater flexibility in the allocation of resources.

Effectiveness

28. The two separate, parallel legal regimes which currently govern CPS and RCPO activity are complex. Placing the merger on a statutory basis will make for a simpler legal landscape now and in the future and so enable the combined organisation to operate more effectively.

Economy

29. Simplifying the legal regime will help the combined organisation to operate more flexibly, encouraging further gains in addition to those which are already being derived from minimising duplication and making economies of scale.

Accountability to ministers

30. Under the legally combined organisation, the DPP will account to the Attorney General and via him to Parliament for one organisation, rather than two.

Protections, Rights and Freedoms

31. The draft order neither removes any necessary protection, nor prevents any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The proposed order

32. As explained above, the CPS and RCPO are currently governed by two separate legal regimes. In the main the CPS is governed by the Prosecution of Offences Act 1985 (the 1985 Act) and the RCPO by the Commissioners for Revenue and Customs Act 2005 (the 2005 Act). Many of the provisions in the two regimes are very similar.
33. To give effect to the merger of the RCPO and the CPS, **an order would abolish both the individual role of Director of Revenue and Customs Prosecutions (DRCP) and the RCPO** as an organisation. This would entail the repeal of sections 34 to 39 and 41 to 42 of, and Schedule 3 to, the 2005 Act.
34. The order would also **transfer to the DPP any functions of the DRCP which the DPP currently does not have**. The policy intention is that all functions and powers would transfer to the DPP or to the CPS as an organisation. This would include those in section 35 of the 2005 Act and those contained in other legislation (such as the Corporation Tax Act 2009, the Serious Crime Act 2007, and the Serious Organised Crime and Policing Act 2005).
35. The most important of these provisions are those requiring the consent of the DRCP to prosecute an offence. Such consents are required under a range of legislation such as the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994.
36. Other powers which will be transferred to the DPP by the order include, for example, the power to apply for a disclosure order in relation to an HMRC confiscation investigation under section 357(8)(d) of the Proceeds of Crime Act 2002, as amended.
37. The order would **establish a gateway for the transfer of information held by HMRC to the CPS**. HMRC handles sensitive taxpayer information, and the disclosure of such information is tightly controlled. Section 21 of the 2005 Act provides a specific gateway for the disclosure of HMRC information to the RCPO, and the transfer of prosecution functions to the CPS means it is necessary to replicate this. It is also proposed to amend section 21(1)(b) of the 2005 Act so as to clarify that the purposes for which HMRC may disclose information includes enabling the DPP to “take over and have conduct of” HMRC prosecutions.
38. As a safeguard to counterbalance the extension of the gateway, the order would similarly **extend the existing offence of unlawful disclosure in section 40 of the 2005 Act so that it applies to the CPS**.
39. Unless one of the exceptions in the section apply, section 40 currently prohibits the RCPO from disclosing any information it holds in connection with its functions where that information relates to a person whose identity is specified in the disclosure or can be deduced from it. To do so is a criminal offence, however there are statutory defences.

40. It is, however, necessary to make one change to the way in which section 40 operates. Whereas the prohibition currently relates to all material held by RCPO, including material that is not received from HMRC, the new prohibition would be restricted only to HMRC material received through the section 21 gateway. This is in line with the original purpose of sections 21 and 40, which were designed to protect information held by, or originating from, HMRC² and recognises the especial confidential nature of information held by Revenue and Customs. To extend the offence to all information held by the CPS, irrespective of which organisation provided the information, would therefore be unnecessary and inappropriate.
41. The order will also **repeal or delete unnecessary references to the DRCP in other legislation**, and **provide transitional arrangements**, including for proceedings commenced by DRCP but not yet completed at the date the legal merger takes effect.

² At the time RCPO was created, it was envisaged that it would only prosecute cases on behalf of HMRC, and so it would only receive information from HMRC. It was therefore not necessary to specify in the 2005 Act that the offence applied only to information originating from HMRC.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper. Please quote the relevant question numbers in your response.

Question 1: Do you agree that we should give legal effect to the administrative merger of the Crown Prosecution Service and the Revenue and Customs Prosecutions Office?

Question 2: If yes, are you content that the approach we are proposing will achieve the desired effect?

Question 3: Do you have any other comments on the proposal?

Question 4: Are there any equalities impacts of these proposals on those with protected characteristics under the Equality Act 2010? If so, what are they? Please supply evidence of impact and how it affects the proposals.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 22 May 2012 to:

Guy Wilson
Ministry of Justice
Post point 6.10
102 Petty France
London SW1H 9AJ
Tel: 020 3334 6072
Fax: 020 3334 5518
Email: Guy.Wilson@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from Guy.Wilson@justice.gsi.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published by 22 August 2012. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

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

Confidentiality

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 Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, 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 the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact the Ministry of Justice consultation co-ordinator at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ**

Annex A: Stakeholders being notified of the publication of the consultation document

Please note that these stakeholders have been identified as having a specific interest in the merger of the offices of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions. Responses are not limited to those listed here, however: views from others with an interest in this merger are welcomed.

Statutory consultees

The Director of Public Prosecutions/Director of Revenue and Customs Prosecutions Office

Such other persons appearing to the minister to be representative of interests substantially affected by the proposal (see other consultees below)

The Lord Chief Justice

Such other persons as the minister considers appropriate (see other consultees below)

Other consultees

Association of Chief Police Officers	Legal Services Commission
Attorney General's Office	National Audit Office
Cabinet Office	Senior Presiding Judge
Council of Circuit Judges	Serious and Organised Crime Agency
Council of District Judges (Magistrates' Courts)	The Bar Council
HM Courts and Tribunal Service	The Law Society
HM Crown Prosecution Service Inspectorate	The Magistrates' Association
HM Revenue and Customs	Relevant Trade Unions
HM Treasury	UK Border Agency
Information Commissioner	Welsh Office
Justices' Clerks' Society	Whitehall Prosecutors



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ISBN 978-0-10-182502-3



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