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**Response of the Home Office Reform of the
Information Order Powers Government
Engagement Exercise**

October 2025

Response of the Home Office Reform of the Information Order Powers Government Engagement Exercise

This response has been prepared by the Professional Regulation Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members from all branches of the legal profession and practising in all aspects of law. The response represents the collective views of the Professional Regulation Committee whose members include specialist lawyers practising in all aspects of professional regulation and compliance for the legal profession.

Introduction

We thank the Home Office for providing the opportunity to comment on its proposals to seek amendment to the way in which the UKFIU (which sits within the National Crime Agency) can obtain an Information Order.

Currently the Information Order powers are contained within POCA s.339ZH and TACT s.22B and were introduced by the Criminal Finances Act 2017 as an investigative tool to allow the UKFIU to compel businesses in the AML regulated sector who had submitted a money laundering or terrorist financing disclosure to provide specific further information about their customer or client. The powers were amended by the Economic Crime and Corporate Transparency Act 2023 (ECCTA) so that they could be used to compel information for analysis purposes in non-disclosure contexts.

Under the current framework, for the UKFIU to obtain an Information Order it must make an application to the Magistrates Court. The Home Office engagement exercise document sets out that the UKFIU ‘has not felt able to use’ the power to apply to court for an Information Order due to high volume of court applications that would be needed to meet current information demands, the pace at which the UKFIU is expected to respond to international requests, the existing Code of Practice’s requirement to consider less intrusive means plus ‘expertise and resource challenges to prepare court applications’ has meant that UKFIU consider the current powers not operationally practicable or sustainable.

UKFIU do utilise a voluntary gateway (under Section 7 Crime and Courts Act 2013) to obtain information from regulated entities, in addition to information that is provided to UKFIU via SARs. UKFIU report, however, that many regulated entities decline requests for certain types of information through the S7 gateway for a combination of legal, regulatory and operational reasons.

In addition, the government engagement document sets out that equivalent government departments in other countries have administrative powers to compel information without having to obtain a court order.

The document proposes three options as follows:

- a. Amend the IO Code of Practice to remove the requirement to consider less intrusive means before UKFIU applies to court for an IO, in order to streamline UKFIU's process before applying for a court order.
- b. Remove the requirement for court approval and replace it with an alternative independent approval mechanism.
- c. Remove the requirement for court approval and create a new statutory power to issue "Information Notices", granted to authorised NCA officers, with oversight provided by an independent person or organisation who would carry out an inspection of Information Notices and report on whether the use of powers is in keeping with the legislation, codes of practice and relevant guidance. Ministers to publish the report and lay it in Parliament.

It is suggested that option A would not be effective in addressing the operational issues of having to make an application to court.

It is suggested that option B would limit the ability of UKFIU to compel information autonomously and an approval process would potentially cause the same operational issues with having to make an application to court.

The government engagement exercise document sets out that option C is preferred as it would allow information to be compelled at a pace needed by UKFIU. It is proposed that each authorised officer would hold a certificate which certifies their status as an authorised officer who can issue such notices. Oversight would come from an independent person or organisation who would inspect the use of information notices and report findings to Ministers.

Questions

5.1. What views do you have on the proposed operation of the new information notices regime?

Of paramount importance to the public and the legal profession is the preservation of legal privilege. Privilege is a fundamental right that a client can expect when seeking advice from a lawyer and can only eroded by waiver by the privilege holder or by an Act of Parliament.

As privilege is fundamental between client and lawyer, Information Orders must be drafted in a way which preserves that privilege and allows the lawyer to respond to the Information Order. It is our view that this is why there is judicial oversight of such orders.

It is foreseeable that Information Orders may request privileged information whilst still having a clause setting out that privileged material should not be disclosed, making the Information Order impossible to comply with.

The government engagement exercise document sets out that the UKFIU does not have 'expertise' 'to prepare court applications' which would include a draft Information Order. It therefore recognises that it does not have expertise to draft Information Orders.

It must have been parliamentary intent that there be court oversight of the content of Information Orders for this reason, possibly amongst others.

The government engagement exercise document sets out that UKFIU have not felt able to utilise the court process laid down by Parliament under the relevant legislation, but there is no information indicating that they have tried to do so. It is not clear therefore how it can be suggested that the court process is not fit for purpose.

Our view is that judicial oversight is important to the production of Information Orders and without that there is a risk they will be written in a way that is not capable of compliance. We therefore are of the view that judicial oversight by way of court application for an Information Order should remain. In the alternative option B could address the oversight concerns as long as the alternative independent approval mechanism understood and considered privilege issues when issuing Information Orders.

5.2. What challenges, if any, could you foresee arising from the proposed operation?

Please see above.

5.3. If these proposals were implemented, what would be the expected impact on your business?

Please see above. We consider it possible that Information Orders would be drafted in a way that would not be possible to comply with for reasons of privilege. This will create a burden on law firms and lawyers to seek advice as to the wording of the Information Order and may require discussion between the recipient of the Information Order and UKFIU and potentially lead to appeals/requests for review.

5.4. If these proposals were implemented, do you anticipate any change in how your business complies with requests from the NCA via the Section 7 Crime and Courts Act 2013 gateway?

If option B or C is implemented then we cannot see why this gateway would be used as it would become redundant. If a request is made through this gateway before any other

steps then we cannot see how responses to such a request under the gateway will be any different. It is very likely in our view that lawyers will request a formal Information Order be provided.

5.5. Are there any other issues or considerations that you wish to express?

No.

5.6. Are you content for us to contact you further regarding

Yes.

Birmingham Law Society Professional Regulation Committee

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