

CORPORATE CRIMINAL LIABILITY OPTIONS PAPER

- 1.1 The review will consider the challenges faced by the criminal justice system under the current law relating to corporate criminal liability and advise the Government on alternative options for an appropriate, principled, basis for attributing criminal liability for activities undertaken by and on behalf of non-natural persons that works regardless of the structure or size of the entity in question.
- 1.2 The review will consider options for reform of the law relating to criminal liability of non-natural persons, and in the light of these options consider the possibility of specific provision for particular offences.
- 1.3 This review will be guided by the need to ensure proper accountability of corporations which engage in criminal conduct, without imposing disproportionate burdens upon business. The Commission will ensure that the public interest in the prevention of crime, the ability of law enforcement and prosecution authorities to prosecute offending, and the legitimate interests of businesses are taken into consideration.

Proposed terms of reference

- 1.4 To review the law relating to the criminal liability of non-natural persons, including companies and limited liability partnerships
- 1.5 In particular, to consider
 - (1) whether the 'identification doctrine' is fit for purpose, when applied to organisations of differing sizes and scales of operation;
 - (2) the relationship between criminal and civil law on corporate liability;
 - (3) other ways in which criminal liability can be imposed on non-natural persons in the current criminal law of England and Wales;
 - (4) the relationship between corporate criminal liability and other approaches to unlawful conduct by non-natural persons, including deferred prosecution agreements and civil recovery of proceeds of unlawful conduct;
 - (5) approaches to criminal liability taken in relevant overseas jurisdictions;
 - (6) whether an alternative approach to corporate liability for crimes could be provided in legislation; and
 - (7) the implications of any change to the liability of non-natural persons for the liability of directors and senior managers (including under 'consent or connivance' provisions, such as those in s. 92 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

- 1.6 With reference to the options for corporate criminal liability in general, to consider what additional provision for particular offences, including economic crimes, may be necessary and to set out the options for reform.
- 1.7 To consult with relevant government and external stakeholders
- 1.8 To ensure that any recommendations comply with, and are conceptually informed by, human rights obligations, including under the European Convention on Human Rights.
- 1.9 To ensure that any recommendations are supported by an analysis of the impact they will have on non-natural persons
- 1.10 Excludes: the substance of existing corporate offences (other than changes consequent to reform of the general principles underlying corporate criminal liability)