

Title: Counterfeit Euros - UK enforcement measures Lead department or agency: HM Treasury Other departments or agencies:	Impact Assessment (IA)
	IA No:
	Date: 20/06/2011
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Secondary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The UK must comply with EU Regulation No 44/2009 and EU Regulation 45/2009 by **31st December 2011**. Regulation 44 introduces a new requirement on certain businesses to pro-actively check Euro notes and coins for counterfeits received before they put them back into circulation. Regulation 45 extends this requirement to non-euro zone members including the UK.

The UK must provide effective, proportionate and deterrent sanctions for breaches of Regulation 44. We propose to do this by introducing a criminal offence or criminal regulatory penalty. The former is the preferred approach in order to minimise regulatory burdens on businesses (details to follow).

(The UK does not need to implement the requirements in Regulation 44, because they apply automatically to the relevant UK institutions).

This impact assessment focuses on the impacts of the penalties required to enforce these regulations. It does not assess the costs and benefits of EU regulations 44 and 45 as both are directly applicable.

What are the policy objectives and the intended effects?

This is designed to ensure that UK businesses comply with the EU regulation by putting in place effective sanctions for failure to check for counterfeit before putting Euro notes and coins back into circulation. This measure will support wider efforts across Europe and beyond to protect the currency and will ensure that the UK is well placed to minimise the circulation of counterfeit currency.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The options are to adopt regulatory sanctions or criminal sanctions.

(To do nothing in this case would mean the UK would fail to comply with EU law and face action from the EU and associated reputational damage).

While apparently attractive in policy terms, regulatory sanctions require a wider system of regulation or supervision (appointment of regulators, possibly the payment of regulatory fees or charges, inspection arrangements, etc). To avoid those burdens our preference is to impose criminal sanctions to avoid introducing a new regulatory regime. We are consulting on whether this is the right approach to take.

Will the policy be reviewed? It will be reviewed in five years time. **If applicable, set review date:** N/A

What is the basis for this review? The review is in line with the government's Ministerial Duty to review new regulation implementing EU obligations. **If applicable, set sunset clause date:** N/A

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: Lawson Date: 29/6/11

Summary: Analysis and Evidence

Policy Option 1

Description:

Option one is to create new criminal penalties for those businesses that do not comply with the requirements of the EU Regulation. This measure creates a new offence of failure to check the authenticity of Euros in accordance with the requirements of the EU Regulation. The offences can be committed by either businesses (bodies corporate, partnerships etc) or individuals. The maximum sentences for summary conviction are a fine and / or three months imprisonment, and on conviction on indictment, a fine and / or two years imprisonment.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There is no cost for businesses associated with the introduction of a criminal sanction [Please note that the costs related to training staff and purchasing machines to check for counterfeit will be incurred independently from the sanction regime in place as Regulation 44 will apply automatically].

The consultation will enable us to clarify whether specific costs have been overlooked.

Costs may be generated if a business is facing legal actions for non-compliance i.e. traditional legal fees. On summary conviction, a business could face a fine of up to £5,000 and/or up to three months imprisonment. On conviction on indictment, an unlimited fine and/or imprisonment of up to two years may be imposed. We expect there to be very few, if any, prosecutions given evidence of compliance rates within existing regimes, therefore costs of legal actions are expected to be negligible.

Other key non-monetised costs by 'main affected groups'

There are potentially minimal costs for businesses, related to uncertainty about how to comply with the regulation and to avoid prosecution. Again, a number of businesses have been asked about such potential costs and have not identified any or have qualified them as 'minimal'.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

For the reasons explained in the accompanying narrative, we do not believe this measure has any significant quantifiable benefits.

Other key non-monetised benefits by 'main affected groups'

For the reasons explained in the accompanying narrative we do not believe this measure has any significant quantifiable benefits. The adoption of the proposed measure ensures the UK continues to be seen as a jurisdiction that takes the threat of counterfeiting seriously, and adopts appropriate steps to address it in line with EU standards. The approach is also consistent with previous transposition of EU regulations on counterfeit Euros in the UK.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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We assume that the introduction of criminal offences will not lead to additional prosecutions.

Our preliminary engagement with key stakeholders suggests that there is already a high degree of good practice in the UK due to compliance with existing UK legislation. Under the Forgery and Counterfeiting Act 1981, it is a criminal offence to knowingly pass a counterfeit banknote, which includes all currencies, with a maximum prison sentence of 10 years (Crown Court) and 6 months for summary trial (Magistrates Court). So any money bureau or business which knowingly passes on counterfeit banknotes is liable to criminal prosecution under existing UK legislation. UK businesses are also liable for prosecution under the Proceeds of Crime Act 2002 for transferring criminal property [the counterfeit banknotes] which carries a maximum penalty of 14 years in prison. UK credit institutions and others involved in the processing and distribution of notes and coins in the UK are currently subject to the requirement imposed by EU Regulation 1338 to withdraw from circulation any euro notes or coins received by it which it knows or has sufficient reason to believe, to be counterfeit, and to hand them over to the relevant national authorities. The existing UK law, the Protection of the Euro against Counterfeiting Regulations 2001 (Statutory Instrument 2001 No. 3948) makes failure to comply with the existing EU requirements a criminal offence.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	0	Benefits:	0	Net:
			0	No
				N/A

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom				
From what date will the policy be implemented?		31/12/2011				
Which organisation(s) will enforce the policy?		Police				
What is the annual change in enforcement cost (£m)?		0				
Does enforcement comply with Hampton principles?		Yes				
Does implementation go beyond minimum EU requirements?		No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?		No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)		Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	15
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development	No	
Sustainable Development Impact Test guidance		

Summary: Analysis and Evidence

Policy Option 2

Description:

Policy Option 2 considers the introduction of regulatory measures (financial penalties) which would be applied by one or more regulatory bodies exercising regulatory or supervisory functions over the businesses covered.

Price Base 2011	PV Base 2011	Time Period 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low		0	0	0	
High		0	5	50	
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
<p>The costs to be incurred by affected businesses mainly relate to the introduction of a new regulatory regime and related payment of fees..</p> <p>Engagement with supervisors suggests that they could absorb additional operating cost by increasing incrementally their annual fees to cover for additional supervisory duties for Counterfeit Euros. The increment could range from 0 to £15 per premises. Several supervisory models operate a cap of 20 premises. Hence the possible minimum to be paid by businesses under that model is £0</p> <p>Appointing a single supervisor for all affected sectors for the purpose of counterfeit Euros will generate a new supervisory arrangement process which will warrant the creation of a single fee for this purpose only – adding to other fees paid by businesses for other supervisory arrangements. Based on early engagement with existing supervisors, we estimate that annual fee could range from £74 to £110 per premises (cap at 20 premises). The high estimate is obtained by multiplying by the maximum number of premises and the number of businesses estimated to be affected by the regulation to obtain the total annual fee. We assume that most business model will have more than one premise handling euros e.g. banks and bureau de change rarely have a single-premise operation.</p>					
Other key non-monetised costs by 'main affected groups'					
N/A					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low		0	Optional	Optional	
High			Optional	Optional	
Best Estimate		0	0	0	
Description and scale of key monetised benefits by 'main affected groups'					
N/A					
Other key non-monetised benefits by 'main affected groups'					
Non-monetized benefits would be avoiding more drastic criminal penalties for failure to comply which may be considered as more tolerant by affected businesses.					
Key assumptions/sensitivities/risks				Discount rate (%)	

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as			
Costs:	5	Benefits:	0	Net:	0	No	N/A

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom			
From what date will the policy be implemented?		31/12/2011			
Which organisation(s) will enforce the policy?		Supervisors			
What is the annual change in enforcement cost (£m)?		0			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A	Non-traded: N/A		
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	16
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development	Yes/No	

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	The UK specific 2001 measure is at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:181:0011:0011:EN:PDF
2	The UK Regulation from 2001 is at http://www.legislation.gov.uk/ukSI/2001/3948/pdfs/ukSI_20013948_en.pdf
3	The UK specific 2009 EU measure (regulation 45) is at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:181:0011:0011:EN:PDF
4	See also Regulation 44 is at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:017:0001:0003:EN:PDF

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Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs	5	5	5	5	5	5	5	5	5	5
Transition benefits										
Annual recurring benefits										
Total annual benefits	0	0	0	0	0	0	0	0	0	0

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

THE PROBLEM UNDER CONSIDERATION

Extent of the problem of counterfeit Euros in the UK

a) Counterfeit Euro Notes

The European Central Bank website gives an analysis of overall counterfeit euro notes detected. In the first half of 2010 a total of 387,000 counterfeit euro banknotes were withdrawn from circulation in the EU. This is a decrease of around 13% on the quantity recovered in the previous six months. When compared with the increasing number of genuine euro banknotes in circulation (on average 13.2 billion during the first half of 2010), the proportion of counterfeits remains very low. The €20 and €50 denominations continue to be the most counterfeited. The majority (more than 98%) of counterfeits notes recovered in the first half of 2010 were found in euro area countries, with only around 1% being found in EU Member States outside the euro area. The Serious Organised Crime Agency reports confirm that less than one per cent of all counterfeit euro notes recovered are recovered in the UK. The evidence suggests that a few thousand counterfeit euro notes are recovered each year in the UK. Those are mostly €20 and €50 denomination notes.

b) Counterfeit Euro Coins

As regards euro coins, the European Commission has reported that the number of counterfeit euro coins detected during calendar year 2009 was 172,100 pieces, down from 195,900 coins detected during 2008. This is a decrease of 12 percent. An extremely small number of counterfeit euro coins are recovered in the UK as euro coins do not circulate widely here.

Legislation and Rationale for Intervention

In order to tackle ongoing counterfeit Euros issues, the EU has enacted various legislation including in 2009 a requirement to *pro-actively* check Euro notes and coins for counterfeits received before they put them back into circulation [Council Regulations (EC) No 44/2009 or 'Regulation 44']. In order to limit the spread of Counterfeit Euro, the EU extended regulation 44 requirements to non-Eurozone Member States No 45/2009 ('Regulation 45').

The UK is not implementing the requirements in Regulation 44, because they apply automatically to the relevant UK institutions i.e. they will face the same costs in terms of implementing the required checks by trained staff of machines whether policy option 1 or policy option 2 are adopted. What the UK has to do is provide for effective sanctions for breaches of Regulation 44 by 31 December 2011. We propose to do this by introducing a criminal offence or a regulatory penalty. The former is a preferred approach in line with the government's objective to minimise regulatory burden on businesses.

This impact assessment does not assess the costs (machines, training of staff) and benefits of the EU regulations 44 and 45 since they are directly applicable, but instead focuses on the impacts of the penalties required to enforce these regulations. It conducts a preliminary review of costs entailed by both options and calls on affected businesses and supervisors to provide for further evidence of impact.

Effect of Regulation 44 in the UK

Regulation 44 amends Regulation 1338 to extend the list of institutions subject to the existing requirement to withdraw counterfeit notes and coins. The requirements apply to

- Credit institutions (ie banks and building societies),

- Payment service providers within the limit of their payment activity,
- Bureaux de change and similar businesses
- Transporters of funds
- Any other business (such as retailers or casinos) that distribute euro notes to the public using automated teller machines (ATMs).

Regulation 44 imposes a new requirement on these institutions to ensure that euro notes and coins which they have received and which they intend to put back into circulation are checked for authenticity. This means that in practice they would have to have in place procedures to selectively check euro notes and coins using an approved method. The approved methods are to check notes and coins using either equipment that complies with the specified standards, or staff trained to identify counterfeit Euros. (Generally we expect businesses will normally choose one method or the other, but businesses can use both methods where that makes good operational sense for them).

The UK has welcomed this flexibility because we believe it reflects the two principal business models of the businesses that are affected by Regulations 44 and 45. The use of machines (which can cost several thousand pounds) is likely to be appropriate in businesses that handle large volumes of cash; the use of trained staff will be appropriate in smaller businesses.

Action to be taken with known or suspected counterfeits

The new EU regulations make no changes to the steps that need to be taken if counterfeit euros are found or are suspected: existing legislation already requires counterfeit notes to be reported to the Bank of England or the Serious Organised Crime Agency (SOCA) and counterfeit coins to the Royal Mint or SOCA.

Numbers of Affected Businesses - Preliminary Estimates

Engagement with existing supervisors have allowed for a first rough estimates of affected businesses:

- Banks handling Euros - around 500
- Licensed Casinos with land-based premises – 149
- Bureau de Changes – 1,500
- Payment Service Providers – The Payment Council estimated that numbers of businesses handling Euros would be minimal within its regulated/membership population. We call for evidence of business models of Payment Service Provides who handle Euros and would be concerned by the regulation.
- Transporters of Funds – As of 13 June 2011, 10,910 individuals were licensed for Cash and Valuable in Transit purposes. However this does not give a clear picture of the number of businesses which carry out transporter of funds activities. The licensed individuals are essentially vetted to work in the sector but this does not mean they are currently working in transporters of funds activities (or even working full-stop), whether they are hired by a company or working independently. Our key assumption is that transporters of funds would be minimally impacted by the legislation as they will not re-introduce notes and coins back into circulation themselves, the institution the funds are delivered to will be responsible for this.

UK-based Credit institutions mainly handle UK Sterling. The public consultation will seek to identify and estimates whether segments of the credit institution population would be affected.

Micro-businesses falling in the categories of affected businesses would not be exempted as they will have to comply with the EU regulations.

Our initial engagement with established supervisors and businesses suggest that large companies are mostly affected e.g. large bureaux de changes, but the consultation will seek to raise awareness and visibility of smaller businesses that may have been overlooked.

Raising Awareness Amongst Affected Businesses

Along with gathering essential information about the costs and benefits of policy options 1 and 2, the Consultation Document will raise awareness on Regulation 44 and 45 and its requirements, including on approved methods for checks.

THE POLICY OBJECTIVE

Given the rarity of counterfeit euros in the UK our objective is to ensure that the UK is legally compliant while minimising the impact on UK businesses.

The new offence

Our specific proposal is to create an additional offence of failing to comply with the checking requirements of the EU Regulation in line with our previous approach to ensuring compliance with EU regulations on counterfeit matters (see above section on 2001 legislation).

Our proposal is that this offence should carry the same penalties as the existing offence (Statutory Instrument 2001 No. 3948) of failing to hand over to the relevant bodies counterfeit notes and coins, including, following conviction on indictment, a fine, or up to two years imprisonment, or both¹.

OPTIONS CONSIDERED

We have considered three main options:

0. Do nothing;
1. Criminal penalties.
2. Regulatory penalties; and

COSTS AND BENEFITS OF EACH OPTION

General comments on existing UK compliance

We are advised by the Serious Organised Crime Agency that UK businesses that handle euros are already operating thorough checks and controls, however there will be a need to some adjustment under the new Regulation.

There are compelling commercial incentives in place to ensure firms are already incentivised to apply those checks:

- A business will not wish to accept counterfeit Euros in good faith only to discover they are counterfeit, as they will stand the loss; and
- A business will not wish to pass counterfeit Euros to a customer because of the potential commercial and reputational harm.

¹ On summary conviction the maximum sentences are a fine not exceeding the statutory maximum, or three months imprisonment, or both.

Given the reported good existing compliance and the existing commercial incentives that favour appropriate scrutiny we do not expect OPTION ONE to have significant cost impacts either in terms of raising recurring costs or causing significant transitional costs.

As highlighted above, Regulation 44 and its trained staff/machines requirements will apply to businesses affected by the regulation though these costs will be equally incurred under option policy 1 or 2.

OPTION ZERO – DO NOTHING

This option would create no costs for businesses but is legally unsustainable as it would mean the UK failing to implement the requirement to put in place effective, proportionate and deterrent sanctions. It would leave the UK open to legal proceedings and ultimately financial penalties from the EU. It may also cause reputational damage for the UK and undermine public confidence in the authenticity of Euros in circulation in the country.

OPTION ONE – CRIMINAL PENALTIES

This is the recommended option.

Option one is to create new criminal penalties for those businesses that do not comply with the requirements of the EU Regulation.

This approach:

- Discharges the legal obligation on the UK and therefore avoids either legal action against the UK or reputational damage for non-compliance;
- Is consistent with the precedent set in the existing UK legislation, which imposed criminal penalties for the failure to comply with the initial EU Regulations;
- Does not require the creation of new regulatory or supervisory arrangements;
- Does not create new obligations on businesses to be regulated or to fund new regulatory arrangements; and
- Does not impose the costs associated with supervision or regulation on businesses or regulators.

Is a criminal sanction appropriate or proportionate?

The UK is legally obliged to adopt effective, proportionate and deterrent sanctions.

This measure creates a new offence of failure to check the authenticity of Euros in accordance with the requirements of the EU Regulation

The offences can be committed by either businesses (bodies corporate, partnerships etc) or individuals. The maximum sentences for summary conviction are a fine of a *maximum* £5,000 and / or three months imprisonment, and on conviction on indictment, a fine (no statutory maximum applicable) and / or two years imprisonment.

We recognise these are significant maximum sentences and are designed to deter negligence or more serious conduct, and to punish criminal behaviour. In our view they are necessary to be effective and to deter negligent or more serious behaviour, and are therefore appropriate and proportionate.

These new offences are quite separate from the sentences for any principal forgery offences, where for serious offences the maximum sentence is 10 years.

Costs for Businesses

This option will *not generate direct costs for businesses*. There may be potential costs related to uncertainty on how to comply with Regulation 44 and avoiding prosecution.

Costs for Judicial System and the Police

We assume that prosecution will be limited given scale of Euros in circulation in the UK and high degree of compliance with existing legislation. The Crown Prosecution Service confirmed that it had not instigated any proceedings involving charges under the existing Counterfeit Euros regime dating back from 2001 (Period available for data search April 2002 to June 201. We do not expect a significant increase in prosecutions as a result of the SIs passing into legislation.

Police and courts currently responsible for the 2001 regime will also be responsible for this new criminal offence. It will not be necessary to train additional staff

The consultation on this option will be the main way to ensure that affected businesses are aware of the new regulation. Awareness raising activities on the part of the MoJ and the Police are not necessary.

While it is not possible to estimate a total cost to the police of the new offence due to a lack of precedence, we can provide, based on engagement with HO, an average police cost per case. Similar estimates for other impact assessments have assumed 6 hours of police time for evidence gathering and 8 hours for arrest enquiries and arrests (4 hours each for 2 officers). Using figures from 2008 for police sergeant costs uprated to 2011/12 this would be an average cost of investigation (evidence gathering) of £220.80 and an average cost of arrest and related enquiries of £294.40. This is based on the assumption that the police are informed of any potential contraventions of the regulation which they then investigate, it does not account for any police time spent proactively checking compliance. For the reasons stated above we do not expect any prosecutions and therefore these costs are unlikely to be incurred in the judicial system.

OPTION TWO – REGULATORY PENALTIES

The introduction of regulatory measures (financial penalties) would be applied by one or more regulatory bodies exercising regulatory or supervisory functions over the businesses covered.

The regulatory regime could potentially be costly and intrusive with costs related to:

- The creation and appointment of Counterfeit Euros supervisor(s);
- A possible increase in supervisors' fees to cover costs emerging from the training of staff, onsite visits and inspections and training and raising awareness activities;
- The introduction of new arrangements and procedures for supervisors to issue and enforce penalties.

Similarly businesses would potentially face a range of costs or burdens related to paying the costs of supervision, implementing any measures that supervisors required including training staff and/or buying ECB-approved machines and time taken up by visits and inspections from supervisors.

Costs of Adopting a Regulatory Penalty Regime – Two approaches

1. Costs associated with appointing a new supervisors for the purpose of Regulation 44 and 45 are substantial:
 - For the Private Sector:
 - i. There are currently no supervisors for counterfeit euros in the UK. Reviewing current supervisory arrangement and fee system provides an estimate of the fee that could be applicable to businesses in order for supervisors to cover their operating costs. Based on existing supervisory models, the annual fee applicable could range from £74 for each business premises - capped at 20

premises (so a maximum of £1,480 per business) or 110 per premises capped at 20 (so a maximum of £2,200 per business)

- ii. This means a minimum of £74 and a maximum of £2,200 for a single business to bear.
 - iii. For the whole of the business population considered (2294), the annual fee will range from £169,756 to £5,046,800.
 - iv. This is a *minimum rough* estimate given that the consultation seeks to firmly establish unknown numbers in the area of transporters of funds and identify unaccounted for sectors.
 - v. Based on current modus-operandi of supervisors, the fee would cover the supervisor cost structure, including recruiting and training staff, put in place supervisory process, conducting on-site visits, etc.
2. Costs could be minimised by ensuring that existing supervisors add on the Regulation of Counterfeit Euros to existing supervising arrangements.
- o The costs associated with supervising the new measures will be incrementally added to existing fees paid by businesses which are already regulated;
 - o Based on engagement with existing supervisors, it is estimated that this increase in existing annual fees would range from £0 to £15 per premises- an additional annual cost to be borne either by specific businesses handling Euros or by all regulated businesses (blanket increase to all members). There again the principle of the fee applied on a "per premises" basis.
 - o This would thus result in a minimum annual increase of 0 to £34,410 (2294x15) for a single premise or £688,000 - if it is assumed that all businesses have at least 20 premises.

For businesses already supervised for the purpose of Money Laundering Regulation or other regulation, the prospect of their existing supervisors taking on the role of Counterfeit Euro supervisors will be attractive, especially if cost incurred are nil or close to nil. However, the EU regulation does not have any exemption and will apply to micro-businesses or other businesses not necessarily already supervised for the purpose of another regulation. The consultation aims to identify these and to establish more precise figures. It is assumed that these non-regulated businesses would have to pay fees in full.

Non-Monetized Considerations

Introducing a new regulatory sanction to comply with the EU regulations would be at variance with the approach previously taken in the existing UK law (2001) and would be disproportionate given the scale of Euro circulation within the UK. It would however be less threatening than the prospect of criminal sanction, including jail sentences.

Risks and assumptions

There has not been any prosecution under the existing national legislation on counterfeit Euros (2001). Given existing level of compliance and flexibility in adjusting to the new regulation by means of approved machines or trained staff, we expect that compliance level will be high.

There are risks that in practice not all relevant businesses will be aware of, or comply with the EU Regulation. HM Treasury, working with other interested parties, will take the opportunity of a consultation on these proposals to raise business awareness of the measure.

Justice Impact

This measure creates new criminal penalties, and in theory could create greater demand on the courts and other justice services as a result. However we do not expect an increase in cases from the new regulation given current extent of compliance and the history of no known prosecutions under the existing 2001 measure, material impact would be minimum. Courts responsible for the 2001 regime will also be responsible for the potential new criminal offence. No new tribunal or court systems are required. Transitional costs would thus be negligible. The new added focus on training and machines does not warrant.

Wider impacts

We do not expect this measure to have any wider impacts.

Summary and preferred option

The rationale behind recommending the adopting of a criminal offence rests on:

- The need to comply with EU Regulations 44 on Counterfeit Euros;
- The need to avoid undue supervisory burden to businesses and established supervisors;
- The need to avoid costs associated to regulatory burdens;
- The need to adopt a proportionate deterrent to combat counterfeit for a currency which is not widely used and circulated in the UK;
- The need to adopt a consistent approach to 2001 precedent and the need to be consistent in our approach to EU counterfeit Euros regulations.

Implementation plan

Steps will be taken to ensure there is appropriate awareness of the adoption of the penalty regime, using the support of SOCA, trade associations and others with regular dealings with the affected parties.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a review: <u>We do not propose to carry out a PIR of this measure.</u> This measure is designed to implement an enforcement regime using criminal penalties. It does not itself create new regulatory requirements, and is not expected to create or add to costs on businesses. If there are significant issues drawn to HM Treasury's attention as a result of the adoption of the measure its impact can be reassessed.</p>

Add annexes here.