

Title: New powers to allow law enforcement agencies to seize and detain drug cutting agents IA No: HO Lead department or agency: HOME OFFICE Other departments or agencies:	Impact Assessment (IA)		
	Date: 7 February 2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Frances Hardy			

Summary: Intervention and Options	RPC Opinion:
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
£8.4m	£0m	£0m	No	NA

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

The importation and supply of certain chemical substances, for use in adulterating ("cutting") illegal drugs is a matter of great concern. It impacts across the UK enabling organised crime groups to maximise their profits from the trade in illegal drugs. There are no current laws or regulations that specifically target the domestic trade in certain chemical substances used as cutting agents. Government intervention is necessary to help protect the public from the harms of drugs and the misuse of specific chemical substances to cut drugs.

What are the policy objectives and the intended effects?

The overall objective of this proposal is to strengthen the mechanisms currently used to restrict the supply of illicit drugs in the UK. We aim to provide law enforcement agencies with a range of new powers to enable the identification, seizure, detention and forfeiture of cutting agents that are suspected of being for use in drug trafficking. This will result in an increase in court costs which will be significantly outweighed by the potential savings in law enforcement storage costs.

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

Option 1 : Do nothing.

Option 2 : Introduce new powers to enable law enforcement agencies to enter and search premises for cutting agents, and to seize and detain any chemical substances that are reasonably suspected of being intended for use as a drug cutting agent. This option would provide a bespoke power for law enforcement agencies to seize suspicious cutting agents.


Option 2 is the preferred option- see evidence base for further details.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date:

Does implementation go beyond minimum EU requirements?	N/A				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0		

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs

Signed by the responsible Minister:



Date: 11 Feb 2014

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce new powers to seize chemical substances suspected of being used as drug cutting agents

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 8.0	High: 8.8	Best Estimate: 8.4

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		0.03	0.2
High		0.12	1.0
Best Estimate	NK	0.07	0.6

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

The Crown Prosecution Service (CPS) and HM Courts & Tribunals Service (HMCTS) are estimated to incur annual costs of £1,300 and £25,000-£120,000 respectively.

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

Compensation for legitimate traders whose goods are detained but no forfeiture order is subsequently made.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		1.1	9.0

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

The annual benefit of these new powers is estimated at £1.1m as a result of savings accrued from law enforcement storage costs for storing seized cutting agents.

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

None.

Key assumptions/sensitivities/risks Discount rate (%) 3.5

BUSINESS ASSESSMENT (Option 2)

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

Evidence Base (for summary sheets)

A. Problem under consideration

1. Drugs ruin lives and cause misery to families and communities and this Government is committed to breaking the vicious cycle of drug and alcohol dependency. There are however no quick fixes; simply focusing on reducing the harms caused by illicit drug use is not enough. Therefore the cross-government Drug Strategy, launched in 2010¹, has recovery, meaning freedom from dependence on drugs and alcohol, and helping individuals to re-build their lives, at its very core.
2. In addition, the strategy puts a strong emphasis on prevention to reduce demand for drugs, through an emphasis on improved information, education and early intervention with at-risk groups. This approach is enforced through scheduling harmful drugs, applying robust sanctions for supply and possession, while diverting individuals into appropriate tailored treatment to support, encourage and challenge their behaviour and enable their recovery.
3. The Home Office leads a cross-government programme of work to implement the strategy, which also includes a commitment to adopt a robust approach to stop criminals profiting from the trade in cutting agents, working with production countries, the legitimate trade and international partners.

Drug Cutting Agent Problem

4. Certain chemical substances, some of which may also be used in the manufacture of medicinal products for human or veterinary use, (active substances), can be used as cutting agents for bulking illegal drugs (predominantly cocaine), thereby maximising criminal profit margins.
5. The 'grey market' trade (with no apparent legitimate end use) in these substances has become a significant element of the UK illegal drugs trade over the last 5 years, but the importation and supply of these substances when used as cutting agents is not controlled by law. This trade impacts across the UK enabling organised criminals to maximise their profits by increasing the availability of illegal drugs and increases the risks posed to local communities.
6. The use of cutting agents by organised criminals to increase the volume of drugs is a matter of great concern. The enforcement response is led by National Crime Agency's (NCA) Project Kitley which includes activity to tackle the supply and import of known cutting agents. There are a number of different types of importers who supply the illicit drugs trade, from those who operate openly through internet advertising to organised criminals importing directly without the use of a middleman (grey market traders).
7. In the UK, raw powder benzocaine, lidocaine and phenacetin are the most common chemicals used to 'cut' illicit drugs and are legal to import and sell. This is because these chemicals mimic some of the effects, as well as resembling the drug in appearance, allowing a significant increase in adulteration of the illicit drug than would be possible with an inert substance such as glucose.

¹ <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/drug-strategy/drug-strategy-2010>

8. In 2009/10 over 36 tonnes of cutting agents were imported into the UK. As a result of Serious Organised Crime Agency (SOCA) and wider law enforcement activity cutting agent importations have reduced significantly; in 2012 over 7 tonnes of raw powder benzocaine, lidocaine and phenacetin were seized, having been imported into the UK under suspicious circumstances. Benzocaine is the most popular cutting agent used in the UK, with over 7.5 tonnes identified by Project Kitley as being imported under suspicious circumstances over the last year compared to just over 1 tonne of legitimate importations. The legitimate trade in phenacetin was 0.3kg compared to the identified 151kg of suspicious importations. Over 0.14 tonnes of lidocaine were imported suspiciously (8 tonnes was imported for legitimate pharmaceutical use). It is worth noting that none of this legitimate trade was impeded by law enforcement activity in the UK.
9. The majority of cocaine available at street level contains one or more adulterants, the most common being benzocaine. From April to June 2012, the most recent reporting period, 55% of police samples of cocaine² seized and forensically tested contained benzocaine. The next most common adulterants were phenacetin and lidocaine. For the same reporting period the weighted mean purity of cocaine at border importation was 78%, with middle market street dealer purity averaging 30-40%. Street level cocaine purity ranged from 1-30%, but more often in the lower percentage ranges. As forensic testing cannot determine exact percentage ratio rates of adulterants we cannot provide an estimate of the criminal profits or the increase in availability of cocaine in the UK as a result of this adulteration. It is nevertheless likely to be significant.
10. Benzocaine and lidocaine are however legal to import and sell as bulk chemicals. They are used within the pharmaceutical industry as active substances in a number of medicinal products. However, they have limited legitimate use in the UK in raw powder form, requiring laboratory processes and licensing for manufacturing into an administrable form. Phenacetin, also legal to import and sell, is an analgesic that is no longer used in legitimate business because of its carcinogenic properties.
11. The Government regulates the possession, supply, production and import and export of drugs subject to control under the Misuse of Drugs Act 1971. It does so because of the harm misuse of these controlled drugs can cause to individuals and society.
12. The Misuse of Drugs Act 1971 is however only be used to impose controls on narcotic or psychotropic drugs if it is likely to be misused and is capable of causing harmful effects to an individual sufficient to constitute a social problem. Benzocaine, lidocaine and phenacetin are not primary drugs of misuse; they are not psychoactive and not attractive to misusers in themselves.
13. Medicines legislation, meanwhile, has been designed to ensure the safety, quality and efficacy of medicinal products. Directive 2001/83/EC on the Community Code relating to medicinal products for human use has recently been amended by the Falsified Medicines Directive (2011/62/EC) and now requires manufacturers, importers and distributors of active substances that supply active substances for processing by an authorised manufacturer to register with their competent authority for the control of medicines.

² SOCA Project Endorse data

Legitimate Trade

14. Manufacture of active substances has become an increasingly global industry over the last 25 years. The Medicines and Healthcare products Regulatory Agency (MHRA) currently estimate that around 60% of UK authorised medicinal products use active substances sourced from outside the European Union, with China and India supplying the vast majority of those substances.
15. There are currently approximately 205 UK companies that have marketing authorisations from the MHRA that name a UK premises for the manufacture of medicinal products that incorporate benzocaine, lidocaine and phenacetin, the most common drug cutting agents. It is estimated that only a small number of these companies actually import and use these chemical substances in their UK manufacturing processes.
16. MHRA estimates that there are 65 active substance distributors in the UK. From spring 2013 the new EU Falsified Medicines Directive (FMD) was implemented in the UK, which requires all UK manufacturers, importers and distributors of active substances for human use to register with the MHRA.
17. These three chemicals are also used in the production of veterinary medicine; DEFRA have confirmed that there are five authorised veterinary medicines that contain lidocaine as an active substance; however there are no authorised veterinary medicines currently containing benzocaine or phenacetin. We will work closely with DEFRA and relevant industry partners to ensure these new measures do not impact on legitimate use of these products in the veterinary medicine industry.
18. The proposals which were put out to public consultation involved extending the powers only to particular chemicals specified in secondary legislation (initially benzocaine, lidocaine and phenacetin, with the option of adding more if necessary). 83% of correspondents (20 out of 24) believed that this would not negatively impact the legitimate trade in these substances. The main concern from respondents was that the market in cutting agents would shift to new substances. With these concerns in mind, we have amended the proposals such that law enforcement will have the power to seize any chemical they suspect of being used as a cutting agent, rather than only those listed in secondary legislation. This may lead to an increased impact on the chemical industry in the future if there is a move away from active pharmaceutical substances, which require MHRA registration, to other substances which do not. However, we believe that any future impact would be minimal for the reasons set out on page 8 below.

Enforcement

19. It is estimated that in 2012 there were over 23 criminal prosecutions undertaken by the police, SOCA (now NCA) and Border Force (BF) for cutting agents – either for conspiracy to supply Class A drugs, or assisting in the commission of an offence under the Serious Crime Act 2007³. In addition to these criminal prosecutions BF have wider powers under the Customs and Excise Management Act (CEMA) to seize mis-described goods. In 2012

³ Section 45 of the Serious Crime Act 2007 deals with the offences of encouraging or assisting the commission of other offence believing it will be committed.

Section 46 of the Serious Crime Act 2007 deals with the offences of encouraging or assisting the commission of other offence believing one or more will be committed.

this resulted in BF seizing over 154 mis-described importations of raw powder benzocaine, lidocaine and phenacetin.

20. Following a successful conviction at court for offences involving cutting agents, UK law enforcement agencies (police, NCA, BF) may apply for a Serious Crime Prevention Order (SCPO) to prevent the convicted prisoner resuming their criminal activities during their custodial sentence or following release from prison. Over the last 3-4 years between 15-20 SCPOs have been granted in which there are terms which relate to cutting agents. If the SCPO is breached, for example the person subject to the SCPO is found with cutting agents, the cutting agents would be seized and the person could receive a further custodial sentence.
21. In addition to BF seizures for CEMA offences in relation to importation declarations (mis-description), and in the absence of a successful criminal prosecution, SOCA has seized suspicious cutting agents on importation using their existing SOCPA powers. Over the last 3 years SOCA have detained over 40 seizures of benzocaine, lidocaine and phenacetin that were suspected of being intended for use in Class A drug supply. From October 2013 the NCA are able to do anything that a 'natural person' can do, including any action to seize and destroy cutting agents where it could be justified that returning it would be to facilitate the supply of Class A drugs and would be contrary to the NCA's purpose. This solution, like that of the powers that SOCA were previously using, is however far from ideal.
22. Neither NCA nor SOCA have explicit powers for tackling the domestic trade in cutting agents. In the absence of a successful prosecution for conspiracy to supply Class A drugs, or assisting in the commission of an offence under the Serious Crime Act 2007, it would be preferable for statute to provide for an express legal basis for the seizure and detention of cutting agents that are reasonably suspected of being intended for use in unlawful conduct. Bespoke new powers will ensure that law enforcement agencies can deal robustly with cutting agents, enabling law enforcement officers to enter and search premises for specified substances, suspected of being for use in unlawful conduct. It will also ensure that they do not have to return seized cutting agents to a dealer in circumstances where they will in all probability be used to facilitate the supply in illegal drugs.

A.1 Consultation

23. Within Government: the Home Office has consulted with a number of Government departments and agencies (MHRA, BIS, MoJ, DH, DEFRA), the police, SOCA (NCA) and BF in deciding its preferred option.
24. Public Consultation: an online consultation was agreed as the primary method to capture chemical and pharmaceutical industry, other key partners and public views. A 6 week publication consultation was launched on the dedicated Drug Strategy consultation page of the Home Office website on 28 May 2013 and ended on 7 July 2013.

B. Rationale

25. The misuse of drugs imposes a cost on society greatly in excess of the perceived cost to the individual. Government intervention is necessary to help protect the public from the harms of drugs and their misuse.

26. The supply and importation of chemical substances for use in adulterating and bulking illegal drugs is a matter of great concern. It impacts across the UK enabling organised criminals to maximise their profits from the trade in illegal drugs and increases the risks posed to local communities. The 2010 Drug Strategy made a clear commitment to develop a robust approach to stop criminals profiting from the trade in cutting agents, working with production countries, the legitimate trade and international partners.
27. There are currently **no** laws or regulations that **specifically** target the domestic trade in cutting agents. We consider Government intervention is necessary to enable law enforcement agencies, in the absence of a criminal prosecution, to seize and detain any cutting agent which is reasonably suspected of being intended for use in unlawful conduct (ie drug trafficking).

C. Objectives

28. The overall objective of this proposal is to strengthen the mechanisms currently used to restrict the supply of illicit drugs in the UK. We aim to provide law enforcement agencies with a range of new powers to enable the identification, seizure, detention and forfeiture of cutting agents that are suspected of being for use in drug trafficking. This will result in an increase in court costs which will be significantly outweighed by the potential savings in law enforcement storage costs.

D. Description of options considered (including do nothing)

Option 1 : Status quo (or 'do nothing').

29. This option is to maintain the law as it stands, with no costs or benefits incurred.

Option 2 : Introduce new powers to enable law enforcement agencies to seize and detain specified chemical substances

30. The Government's preferred option is to introduce new powers to allow law enforcement agencies to enter and search premises for cutting agents, and to seize and detain any chemical substance that is reasonably suspected of being intended for use in unlawful conduct. We would envisage these powers being available to NCA, police forces and BF, and that they would include:
- A new power to enter and search premises for substances if a law enforcement officer has reasonable grounds to suspect they are intended for use as a drug cutting agent;
 - A new power to seize any such substances if a law enforcement officer has reasonable grounds to suspect they are intended for use as a drug cutting agent; and
 - A new power to detain any such substances for an initial period of 30 days
31. We would envisage that law enforcement officers would then be able to make an application to a magistrates' court for the continued detention of the seized substances for an initial period of 30 days. At a hearing to decide on the application for further detention, the applicant officer would need to make the application to the magistrates court. The standard of proof would be the civil standard. At any time after the making of the first detention order, the policy intention is that the law enforcement officer can then make an

application for forfeiture of the seized 'cutting agents'. The substances could then be destroyed or otherwise disposed of. We will also make provision for importers to apply for compensation in cases where their goods are detained but no forfeiture order is subsequently made.

32. We have drawn this process from existing cash seizure and forfeiture powers under section 289 to 303 of the Proceeds of Crime Act, which provides analogous civil powers for law enforcement agencies to confiscate cash which is recoverable property or intended for use in committing a criminal offence. As with these existing powers, we would envisage the detailed procedures for applications to a magistrates' court under the proposed new powers being covered by civil procedure rules.
33. It is proposed that the new powers would apply any chemical substance suspected of being for use as a drug cutting agent, although any use of the power is likely to focus on benzocaine, lidocaine and phenacetin, the three main chemical substances being used as cutting agents in the UK.

The proposed new powers

34. The EU Falsified Medicines Directive 2011/62/EU (FMD) was implemented in the UK on 20 August 2013; the legislation is contained in SI 2013/1855. All UK manufacturers, importers and distributors of active substances for human use are now required to register with the MHRA. The requirement to register with the national competent authority is an EU-wide requirement; therefore UK companies will be at no disadvantage compared with those in other EU Member States.
35. This registration process will enable UK law enforcement agencies to ensure that only shipments of benzocaine, lidocaine and phenacetin from 'grey market' (unregistered) importers are targeted. If a company holds a marketing authorisation or is registered under the FMD as a manufacturer, importer or distributor of active substances for the pharmaceutical industry, their shipments should not be inhibited at importation, meaning that there should be no interruption to legitimate pharmaceutical trade and no resultant cost implication.
36. The sale of cutting agents for 'research' or non-human use falls outside the requirement to register with the MHRA, as does use in veterinary medicine. We sought information in the public consultation to identify wider legitimate trade in benzocaine, lidocaine and phenacetin. The only legitimate business identified was the production of veterinary medicine. DEFRA have confirmed that there are five authorised veterinary medicines that contain lidocaine as an active substance; however there are no authorised veterinary medicines currently containing benzocaine or phenacetin. We will work closely with DEFRA and relevant industry partners to ensure these new measures do not impact on legitimate use of these products in the veterinary medicine industry. The public consultation did not identify any other legitimate use for these substances.
37. As stated above, the proposed powers now involve a general power for law enforcement to seize any chemicals suspected of being cutting agents, rather than only those chemicals listed in secondary legislation. While this has the potential to impact businesses who do not deal in active substances (and therefore are not registered with the MHRA), we believe that any future impact will be minimal. This is because the initial proposals have also been developed such that the burden of proof will fall to the prosecuting authority to show that the chemical is intended for use as a cutting agent, rather than to the owner of the substance to prove that it is not. Thus law enforcement agencies are unlikely to seize a chemical without strong suspicion that it will be used in unlawful conduct.

38. In a worst case scenario that a legitimate importer/owner has their chemical substance seized as it is believed to be for use as a cutting agent, the owner/importer will have the opportunity to demonstrate a legitimate end-use by providing the seizing agency with evidence of the purpose for which the goods are in their possession. This evidence can then be considered in reference to the legitimate market for that purpose, for example whether the quantity, format and source are commensurate, or where relevant that suitable authorisations are held. However it is important to note, as explained in the Appraisal section below, that we do not expect the new powers to result in an *increase* in enforcement activity above current levels because of the limited number of cutting agents shipments and importers which NCA currently deal with.
39. If evidence is provided to law enforcement officers at the point the owner is made aware that the goods have been seized, the goods can be released in a timely manner, preventing escalation to the point of a forfeiture hearing. It is likely that the majority of cases in which law enforcement (NCA, BF, police) would seek to use the new detention power would be highly targeted; where no evidence of a legitimate end-use can be shown; or where other evidence is more compelling, indicating that the chemical substance is destined for use by organised criminals to cut illegal drugs.

E. Monetised and non-monetised costs and benefits

Option 2

40. The introduction of new powers to allow law enforcement agencies to seize and detain chemical substances suspected of being intended for use as a drug cutting agent will create a new set of civil proceedings in the magistrates' court. As the search power is new there is some uncertainty regarding the number of civil proceedings likely to arise. This is primarily due to a lack of evidence regarding 'grey market' traders and scale of illicit supply of cutting agents in the UK.
41. It is difficult to estimate the approximate number of new civil cutting agents cases that will be brought following the introduction of the new powers, as it is not clear as to what extent the police and BF will utilise the new seizure power. We have calculated a cautious estimate of **50 new proceedings brought per annum due to the new powers**, based on the maximum number of suspicious cutting agent cases that SOCA have undertaken in a year (2010 – 20 cases), in addition to the current estimate of SCPOs (20).
42. There are a number of different types of importers who supply the illicit drugs trade, from those who operate openly through internet advertising to organised criminal groups importing directly without the use of a middleman. It is estimated that the size of the illicit market in the UK is limited to a small number of overt 'grey market' suppliers operating over the internet, none of which are involved in the supply to the licit pharmaceutical industry.

COSTS

43. The detailed cost estimates have been produced on the basis that the 50 new proceedings will replace those cutting agents seizure cases that SOCA would have dealt with using their existing SOCPA powers, resulting in a minimal impact on law enforcement resources. That is, we have assumed that the workload and resource required from whichever enforcement agency is involved in the proceedings is approximately equal to that required by NCA currently (in the baseline). Additional costs, described below, result from the additional involvement of the Criminal Justice System. The impact on the Criminal Justice system will be uneven as the distribution of cases is likely to be focused on some magistrates' courts in police force areas near ports and major airports.

44. We do not anticipate an increase in the overall volume of cases because there are only a limited number of cutting agents and a limited number of importers. Project Kitley, the SOCA (now NCA) –led national response to suspicious drug cutting agents is already targeting these cutting agents and importers and so, while the new powers may lead to a redistribution of effort between enforcement agencies, it is unlikely to lead to any *additional* effort. Any significant variation in the number of cases would have an impact on the estimated costs, however sensitivity analysis shows that, holding other costs and quantities constant, approximately 710 new civil cases would have to be brought each year (compared to the estimate of 50 new civil cases) in order to make the NPV negative.

Familiarisation costs

45. There are expected to be a small number of one-off costs for the Criminal Justice System and the police and wider law enforcement agencies arising from the practical implementation of these new powers, including familiarisation costs for magistrates and court staff. The development and roll-out of written guidance on the new procedures for law enforcement personnel is estimated to be approximately 100 hours which will be subsumed into the existing enforcement response to illicit drugs.

Annual costs

46. The new offence is assumed to operate in the same manner as the existing Proceeds of Crime Act 2002 cash seizure and forfeiture powers. Given the similarity between these powers and the new proposals we have assumed the costs to be similar. Table 1 demonstrates the costs incurred by the Criminal Justice System for each detention case in England and Wales. The cost to HMCTS for each case will depend on the number of hearings per case and the duration of each hearing. We have assumed that half of all cases will consist of a hearing and an application for forfeiture, and the other half of cases will require a second hearing. MoJ and HMCTS have estimated that the duration of each hearing and application will be between 1 and 3 hours. This gives a cost to HMCTS per case of between £500 and £2,400. Based on these assumptions, and 50 cases per year, we estimate that the total annual cost to HMCTS would be between £25,000 and £120,000.
47. CPS estimate that the cost to the CPS per case will be approximately £109.50, based on the duration of the hearing (estimated at 1.5 hours) and the hourly wages of a Crown Advocate (approximately £51) and an administrative assistant (£22). On the basis that CPS appear in 12 cases a year, the total cost to the CPS is approximately £1,300 per year in 2012 prices. The costs for the CPS per case are estimated to be approximately £1,300 per year in 2012 prices. These are initial indicative estimates based on assumptions about the number of cases in which the CPS and HMCTS would be involved, 12 for the former and 50 for the latter, and the time needed for each case in court.

Table 1: Unit cost- Criminal justice

	Description	2012 Price and Values
HMCTS- Magistrates court	Cost per case at Magistrates court	£500-£2,400
CPS- Magistrates court	Cost per case in a Magistrates court	£109.50

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Total annual costs are estimated to be **£26,000-£121,000 per year, with a best estimate of £74,000.**

48. We are intending to make provision for persons to whom the drug cutting agents belong or from whom it was seized, to make an application to the magistrates' court or (in Scotland) the sheriff for compensation in cases where their goods are detained but no forfeiture order is subsequently made. If the court or sheriff is satisfied that the applicant has suffered loss as result of the detention of the suspected drug cutting agent and that the circumstances are exceptional, the court or sheriff may order compensation to be paid to him. The estimated amount of compensation to be paid will depend on the loss suffered and any other relevant circumstances. Given that the proposal is not expected to affect any legitimate businesses, it is assumed that the possible number of compensation cases would be a very small proportion of the overall number of proceedings. Also we envisage that the destruction of goods could only occur after the magistrates' court had agreed to a forfeiture order and therefore we do not expect compensation to be required in respect of the destruction of goods. It is therefore not possible to quantify the cost to law enforcement agencies from possible compensation cases, but it is expected to be minimal.
49. As the expected impact of the policy is a redistribution of activity amongst law enforcement agencies (to include the police and BF), but not an increase in overall enforcement activity, we do not expect there to be any additional costs imposed on importers, including grey market traders.
50. Similarly we do not estimate any effect on drug supply and consumption in the UK because the level of enforcement activity is expected to remain the same. The risks section below highlights some of the potential costs and benefits of changes to UK drug supply or consumption.

BENEFITS

51. The power to apply to a magistrates' court to forfeit the seizure of cutting agents will assist in reducing the storage costs associated with retaining large volumes of cutting agents. The average storage costs for cutting agents differ according to the size of the seizure however, these storage costs can be substantial; in the three most recent SOCA criminal prosecutions the storage costs for each case were in excess of £120,000. If BF takes on more of these cases then we would expect the cost to be lower because they are able to use their own premises (though this may still involve some opportunity cost).
52. There is therefore a large degree of uncertainty around the precise cost that could be saved in these cases and what fraction of that cost would realistically be saved given that storage costs would still have to be incurred for, in general, 30-60 days (following the initial period of detention). We have therefore assumed a rounded cost saving of £50,000 per case. Based on current estimates of 50 cases per annum to be undertaken by the police and NCA, (see paragraph 40), storage costs savings are estimated at £1.0m per annum. Sensitivity analysis performed to account for uncertainty around the figure of £50,000 for storage costs shows that costs would need to be below £3,500 for the NPV of the policy to become negative.

53. In addition there will be savings accrued from law enforcement storage costs for storing cutting agents seized from defendants who have breached the terms of their SCPO. We estimate there to be approximately 1 breach of a SCPO for cutting agents per annum, resulting in **additional** annual storage cost savings of around £50,000.
54. As the expected impact of the policy is not to increase overall activity, we do not estimate any effect on drug supply and consumption in the UK. The risks section below highlights some of the potential costs and benefits of changes to UK drug supply or consumption.
55. Storage cost savings account for the majority of the total benefits of this option, approximately **£1.1m per annum**.

NET

56. The net present value of the new powers is estimated to lie between £8.0m and £8.8m with a best estimate of **£8.4 million**, see table 2. The total annual cost is estimated at between £26,000 and £121,000. The total annual benefit is estimated at £1.1m.

One-in-one-out (OIOO)

57. Option 2, the preferred option, is not in scope for OIOO; it is estimated that there will be no direct cost to business as it does not introduce any new regulatory burden.
58. We do not expect there to be an increase in enforcement activity as a result of this policy.

Table 2: Outlines the costs and benefits of the proposed changes.

Costs and Benefits		
Option	Costs	Benefits
2	Costs to the police, CJS and wider enforcement agencies from new detention and forfeiture cases. Estimated at £0.2-1.0 million (PV over 10 years)	There is expected to be a benefit as a result of savings accrued from law enforcement storage costs for storing seized cutting agents. Estimated at £9.0 million (PV over 10 years)
	Costs (not quantified)	Benefits (not quantified)
	Costs to the police, CJS and wider enforcement agencies from familiarisation costs.	There could be a potential deterrent effect in terms of reducing the number of suspicious importations of cutting agents into the UK.

F. Proportionality, risks and assumptions

59. It is our assessment that the new civil power should have a minimal impact on legitimate trade and therefore result in no additional cost to business, above and beyond that which will already have been introduced as part of the FMD implementation. The public consultation did not identify any additional burdens that would fall to businesses

investigated by enforcement agencies given that the burden of proof will continue to lie with the enforcement agencies.

60. If, in fact, **enforcement activity** was to increase as a result of the new powers, it is possible that there would be subsequent effects on the supply of drugs to the UK, and hence on drug consumption. Whether this would be net beneficial or not is unclear. If increased activity by law enforcement agencies reduces the supply of cutting agents to the UK, either through an increase in the volume of seizures of cutting agents or through a deterrent effect, then there are various potential outcomes. Increased costs to society could occur if the purity of drugs increases, leading to more severe health harms (the Advisory Council on the Misuse of Drugs are considering the harms of cutting agents as part of their cocaine review, due to be published later this year). Equally, if the impact was to reduce the overall consumption of illicit drugs then this could lead to considerable savings from improved health, fewer drug related deaths and reduced drug related crime associated CJS costs.

G. Enforcement

61. Enforcement of the proposed legislation will be undertaken by police forces, NCA, BF and other relevant agencies responsible for enforcing the legislative and regulatory framework in the UK. Police enforcement will form part of their wider approach to tackling drugs controlled under the Misuse of Drugs Act 1971.

H. Specific Impact Tests

See Annex 1.

Annex 1. Specific Impact Tests

Economic Impacts

Small firms

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

Competition assessment

We do not anticipate that this proposal will have an adverse impact on competition.

