

Title: Criminal Finances Act – Forfeiture of Moveable Stores of Value
IA No: HO0286
RPC Reference No: N/A
Lead department or agency: Home Office
Other departments or agencies: National Crime Agency

Impact Assessment (IA)

Date: 20-06-2017

Stage: Enactment

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries:
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Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option

| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANDCB in 2014 prices) | One-In, Three-Out | Business Impact Target Status |
|-------------------------|----------------------------|---|-------------------|-------------------------------|
| £7.5m | £m | £m | Not in scope | Not a regulatory provision |

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

Criminals use property to transfer the proceeds of unlawful conduct, or property intended for use in such conduct. Law enforcement have the power to search for, seize and forfeit cash being used for these purposes. A further power has been provided to allow law enforcement agencies to search for, seize and forfeit types of movable property which store value. This power enables rapid seizure of items which do not fall within existing cash seizure schemes in the Proceeds of Crime Act 2002 (POCA) or the Anti-terrorism, Crime and Security Act 2001 (ATCSA), and covers high-value property, including precious metals and jewels. There is evidence that movable stores of value (MSV) are being used to move proceeds of crime, both domestically and across international borders.

What are the policy objectives and the intended effects?

- Improve ability to disrupt and prevent money laundering activity and terrorist financing.
- Improve and expand ability to recover the proceeds of crime.

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

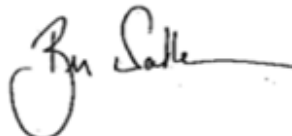
Option 1: Do Nothing. This will leave a gap in the UK's ability to seize and recover the proceeds of crime.
Option 2: Secondary Legislation. Consideration has been given to amending the existing definition of 'cash' in the POCA using secondary legislation, but this will not adequately capture all the relevant property used by criminals and this existing legislation may not have all the required safeguards to deal with other types of property. Thus we have considered this option not sufficient to meet policy requirements and have not provided analysis on it.
Option 3 (preferred): Primary Legislation. Create a new power in POCA and ATCSA, similar to the existing cash seizure and forfeiture power, which lists specific types of MSV and provides additional safeguards for the seizure and recovery of this type of property.

Will the policy be reviewed? It will be reviewed. If applicable, set review date:

| | | | | |
|---|-------------|-------------|--------------|-------------|
| Does implementation go beyond minimum EU requirements? | N/A | | | |
| Are any of these organisations in scope? | Micro No | Small No | Medium No | Large No |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | Traded: | | Non-traded: | |

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



Date:

20-06-2017

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

| 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 | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | |

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

Those involved in money laundering could continue to use MSV to move proceeds of crime quickly.

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

Those involved in money laundering could continue to use MSV to move proceeds of crime quickly.

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

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

No change.

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

No change.

| | | |
|--|---------------|--|
| Key assumptions/sensitivities/risks (%) | Discount rate | |
| Existing powers are inadequate to properly tackle use of MSV for money laundering purposes. Risk UK is considered a safe place in which to move MSV for money laundering purposes through. | | |

BUSINESS ASSESSMENT (Option 1)

| | | | |
|---|-----------|------|---|
| Direct impact on business (Equivalent Annual) £m: | | | Score for Business Impact Target (qualifying provisions only) £m: |
| Costs: | Benefits: | Net: | |
| | | | |

Summary: Analysis & Evidence

Policy Option 3

Description: Primary legislation to seize and recover MSV

FULL ECONOMIC ASSESSMENT

| Price Base Year 2015 | PV Base Year 2017 | Time Period Years | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|----------------------|---------------------------------------|------------|--------------------|
| | | | Low: 3.5 | High: 11.5 | Best Estimate: 7.5 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--|---|-------------------------------|
| Low | Optional | Optional | 2.2 |
| High | Optional | Optional | 3.7 |
| Best Estimate | | | 3.0 |

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

Law enforcement costs in obtaining permission to seize, obtain expert valuation (if necessary), store and insure, and recover MSV during proceedings are **£0.6m** present value over 10 years. This has been based on the assumption that the average case takes 10 hours to complete, the number of expected cases and the cost per hour of a Law Enforcement officer. Cost of court proceedings on **court systems** across the UK (England & Wales, Scotland and Northern Ireland) in regard to seizure and forfeiture of MSV (including dealing with issues of joint and associated property ownership) is **£2.4m** in present value over 10 years.

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

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|----------------------------------|
| Low | Optional | Optional | 5.7 |
| High | Optional | Optional | 15.2 |
| Best Estimate | | | 10.5 |

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

Realised proceeds are paid into the relevant consolidated fund (after costs and any payments to joint or associated property owners). **£10.5m** present value over 10 years.

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

Significantly strengthens law enforcement ability to tackle use of listed MSV that is the proceeds of unlawful conduct or intended for use in such conduct
Sends a clear message to those that seek to use listed MSV to move proceeds of crime through UK.

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

Assumption the types of MSV listed are used to move the proceeds of crime.
Risks and sensitivities for items that are not MSV, not proceeds of crime (including innocent joint or associated owners), or do not reach the value threshold are seized.
Risks the courts cannot adequately adjudicate and resolve disputes where there are joint or associated owners to the property.

BUSINESS ASSESSMENT (Option 3)

| | | | |
|---|-----------|------|---|
| Direct impact on business (Equivalent Annual) £m: | | | Score for Business Impact Target (qualifying provisions only) £m: |
| Costs: | Benefits: | Net: | |

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

1. Financial profit is the driver for almost all serious and organised crime, and other lower-level acquisitive crime. The UK drugs trade is estimated to generate revenues of nearly £4bn each year and HMRC estimate that over £5bn was lost to attacks against the tax system in 2012/13. Criminals launder their money – moving, using and hiding the proceeds of crime – to fund their lifestyles and to reinvest in their criminal enterprises. The best available estimate¹ of the amounts laundered globally are equivalent to 2.7% of global GDP, or US\$1.6 trillion in 2009, while the National Crime Agency assesses that billions of pounds of proceeds of international corruption are laundered into or through the UK. This threatens the integrity and reputation of our financial markets.
2. In October 2015, the Government published the National Risk Assessment for Money Laundering and Terrorist Financing (NRA), identifying a number of risks and areas where the regimes that combat those threats could be strengthened. The Action Plan for anti-money laundering and counter-terrorist finance, published in April 2016, contained a range of measures to build on the UK's risk-based approach to addressing these areas. The Criminal Finances Act is a core part of our approach to achieving that objective.
3. The proceeds of crime are held in a variety of forms which act as a store of value, and as a means through which such value can be transferred. Some such as cash, gold and diamonds, and pre-paid cards, are physically movable. Others, such as contents of bank accounts, or online virtual currencies, are not.
4. POCA provides a number of mechanisms through which law enforcement agencies can seize and seek forfeiture of the proceeds of crime.
 - Restraint provisions allow any property held by an individual to be restrained pending potential confiscation proceedings. This applies to any property.
 - Civil recovery powers can be used to restrain property, including bank accounts, with a value over £10,000.
 - Cash seizure provisions can be used to seize cash of a value over £1000, under Part 5, Chapter 3 of POCA.
5. Cash seizure was designed to prevent cash being easily moved in the time that it would take to seek a restraining order. This is a widely used provision, both domestically, and at entry / exit points to and from the UK. Significant cash seizures take place each year.

A.2 Groups Affected

6. The groups affected by this legislation include:
 - a) **Courts:** Where a power to search is sought and where forfeiture of the property is sought. The court may also have to adjudicate on issues of associated and joint property ownership.
 - b) **Law Enforcement:** Law enforcement will be required to make applications to the court, they will also have to consider issues of associated and joint property ownership. Law enforcement will also be responsible for expert valuation (if necessary), storage and insurance of any seized items.
 - c) **The general public:** whose safety and security is impacted by the threat of serious and organised criminals.

¹ *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes*, UNODC 2011

A.3 Consultation

Within Government

7. Law enforcement and prosecution agencies have been consulted on types of MSV, this includes NCA, police, and Crown Office and Procurator Fiscal Service.

Public Consultation

8. The private sector, and members of the public have been consulted as part of the Action Plan for anti-money laundering and counter-terrorist finance. The regulated sector and the main regulators and supervisors were consulted through existing fora. The responses fed into the development of this policy.
9. Views were also sought from civil society on types of MSV used internationally.
10. Following the introduction of the Bill, consultation with law enforcement agencies and the private sector was maintained to ensure that they could continue to provide their views during the Bill's passage.

B. Rationale

11. The existing POCA powers in this area only allowed law enforcement to take action against cash. There is some evidence that the following types of property are also being used by criminals to move value, both domestically and across international borders:
 - Precious metals;
 - Precious stones;
 - Watches
 - Artistic works;
 - Gift vouchers (not cards);
 - Postage stamps.
12. We wanted to ensure that we can disrupt such activity where it is a means of moving criminal assets or of storing their value, and therefore these items are listed in the Act.

C. Objectives

13. The policy aims are to:
 - Improve ability to disrupt and prevent money laundering activity and terrorist finance.
 - Improve and expand ability to recover the proceeds of crime.
14. A successful outcome would be demonstrated by the volume of seizures and forfeitures, and an overall increase in forfeiture receipts. There may also be a dissuasive effect, with criminals ceasing to use items on the list. This latter point would not be measurable.

D. Options

15. Two policy options were considered:
 - Option 1 is to make no changes (do nothing). MSV will continue to be used to move the proceeds of unlawful conduct or move MSV intended for use in such conduct.

- Option 2 use secondary legislation to amend the definition of cash in existing primary legislation. This will limit the types of item that can be added to the list and/or will not include all the safeguards required for different types of property. This option could be used for property that is directly used as a medium of exchange of cash, but not for many other MSVs. Items such as watches or artistic works which due to their high liquidity are often used as MSVs would therefore not be covered by this option. Therefore, after this further exploration of the option, Option 2 was discounted due to being considered not sufficient to meet the policy objectives and no analysis performed upon it.
- Option 3 amend primary legislation to create new power to search, seize and forfeit MSV. MSV will be defined by a list that could be amended by secondary legislation. The amended legislation will replicate cash powers to seize MSV. Forfeiture of MSV and the rights of associated and joint property will be subject to judicial oversight (there will not be a power of administrative forfeiture).

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

16. The items on the MSV list have been selected because:

- law enforcement have provided evidence of these items and/or there are credible reports in media of these items being as *movable* stores of value for proceeds of crime internationally,
- an officer can realistically identify (with the help of an expert if necessary) that the minimum value threshold is reached at the time of seizure,
- existing powers to recover the property were inadequate/too slow given the ability to move and transfer the items quickly.

17. It is assumed that the number of cases will be between 150 and 250 per year. This estimate is subject to uncertainty, since this is a new power not tried in practice. However if the number of cases is greater than assumed, we would simply expect to see a proportional increase in benefits as per our appraisal methodology. The value of these items are estimated to be between £5,000 and £8,000 on average. The lowest value will be £1000 (the minimum threshold), but on average it is expected to be higher than this. The presence or absence of large forfeitures will vary the annual cash forfeiture revenue from year to year to a great extent. We have not made any assumptions to the degree of this variation.

18. These assumptions form the range for the costs and benefits. The central estimate is taken as the midpoint of the range.

| | <i>Low</i> | <i>High</i> |
|----------------------|------------|-------------|
| <i>Volume</i> | 150 | 250 |
| <i>Average Value</i> | £5,000 | £8,000 |

19. The power is not expected to deliver forfeitures immediately. As part of the learning curve, it is assumed that it will take one year before forfeitures occur.

OPTION 3 – Amend primary legislation to create new power to search, seize and forfeit MSV

COSTS

20. There will be costs to the courts (in England & Wales, Scotland and Northern Ireland) in obtaining permission to seize, obtaining expert valuation (if necessary), storing and insuring, and recovering MSV. This includes dealing with issues of joint and associated property ownership. Most cases will be heard in the Magistrates court, with an option of referral to the High Court, which we expect to be a small number of cases. We do not have expectations about the length of time between seizure and forfeiture of MSV (the maximum length of time the MSV may be detained is 2 years). We have

assumed that all cases are heard at the Magistrates court and are subject to 8.1 to 8.3 of the Magistrates' Court Fees Order. This gives a cost per hearing, as we assume they are contested, of £793 per hearing². We further assume there are 2 hearings per case, an initial hearing to confirm further detention of the seized MSV and a secondary hearing to forfeiture said MSV as LEA's currently have no administrative power to do so. The cost in the central scenario is £317k per annum or £2.4m in present value over 10 years. This is likely to understate costs as we have not modelled the cases that will escalate to the High Court as there is no indication of the number of cases which will have issues surrounding ownership.

21. There will be opportunity cost to **law enforcement**. This has been estimated at 10 hours per case of officer time, or between £60k and £90k per year.³ Consultation with law enforcement reveals cash seizure take about 5 hours – a higher estimate has been prudently assumed to account for the potential for mobile stores to be more complex than cash, including issues such as joint ownership and determination of value. The central cost estimate is £75k per year or **£0.6m** in present value over 10 years.
22. Total monetised costs in present value over ten years are between £2.2m and £3.7m. The central estimate is **£3.0m**.

BENEFITS

23. Money laundering is a global threat. This power significantly strengthens the law enforcement response to tackle the use of MSV for money laundering linked to the most serious threats including drugs, fraud and modern slavery and as an enabler of serious and organised crime and grand corruption. This will send a clear message and deter those seeking to use listed MSV to move proceeds of crime through UK. The deterrence effect has not been quantified.
24. Realised proceeds are paid into the relevant consolidated fund (after costs and any payments to joint or associated property owners). The forfeiture amounts are expected to be £0.75m pa in the low scenario and £2m pa in the high scenario. This has been calculated by taking the volume of cases in that scenario multiplied by the average value in that scenario (these can be found above in paragraph 18). The policy will not be operational until 2017.
25. A MSV of significant value would make a large difference to the total benefit, and this will depend on particulars of cases. The central estimate is the midpoint, at £1.375m per year.
26. Total monetised benefits in present value over ten years are between £5.7m and £15.2m. The central estimate is £10.5m.

F. Risks

27. The risks are:
 - The list of items is too widely drawn or ill-defined, creating legal uncertainty (and risk of challenge) in regard to what can be lawfully seized;
 - The list of items is too narrow and does not have a significant impact on criminal activity.
28. Both these risks can be mitigated by providing a power to amend the list of items in the future.

² The Civil Proceedings, First-tier Tribunal, Upper Tribunal and Employment Tribunals Fees (Amendment) Order 2016

³ LEA cost per hour uses police officer hourly costs. The estimated cost of a police officer includes salary, expenses, regional allowance, training and employer contributions to pension and national insurance. The calculation takes into account recent changes to pensions and national insurance. The estimates were calculated using the Annualised Survey of Hours Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) Police Actuals and The National Police Chiefs Council (NPCC) Mutual Aid Rates. As the estimates use the latest figures available for the various inputs, some are from 2014/15 while others are from 2015/16

29. There is also risk that the approach to joint or associated joint owners is too complicated and dissuades law enforcement from pursuing seizure in the first place or leads to protected disputes about ownership and dividing interest (e.g. joint ownership of a work of art).

G. Enforcement

30. To operate the policy a statutory Code of Practice will be required (as is the case with the cash seizure provisions). There will be a need to develop training for the law enforcement agencies, probably through building on the cash seizure training, as the process will be very similar.

H. Summary and Recommendations

31. The table below outlines the costs and benefits of the proposed changes.

| Option | Costs | Benefits |
|---------------|--------------------------|---|
| 3 | £3.0m (PV over 10 years) | £10.5m (PV over 10 years) |
| | £0.6m LEA costs | Deterrence to those seeking to use mobile stores of value to move the proceeds of crime |
| | £2.4m Court Costs | |

32. Option 3 is preferred.

I. Implementation

33. The powers will be commenced by order subject to operational needs and the passage of any necessary secondary legislation/publication of statutory guidance. Where appropriate, this will be on a common commencement date.

J. Monitoring and Evaluation

34. We will review the use of the power, and in particular the applicability of the list to the needs of law enforcement agencies in being able to detain property that is suspected of being the proceeds of crime. We will seek Parliamentary approval to amend the list as required.

K. Feedback

35. We will work with operational partners to identify how effective the power is, and where necessary, seek Parliamentary approval to amend it.