Opinion: final stage IA
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Criminal Finances Bill – seizure of bank accounts

Home Office

RPC rating: fit for purpose

The impact assessment (IA) is now fit for purpose as a result of the department's response to the RPC's initial review notice. As first submitted, the IA was not fit for purpose.

Description of proposal

The proposal is to provide law enforcement agencies (LEAs) with the power to seize the contents of bank accounts that have been frozen because they are suspected of holding illicit funds. At present, where there has been no conviction or an account's value is less than £10,000 (the civil recovery threshold), LEAs have no formal mechanism for seizing these funds. As a result, there is a stock of these frozen accounts, estimated at between £30 and £50 million and growing at a rate of about £2.5 million per year. For both banks and the Government there are reputational issues in not dealing with the proceeds of crime and terrorism, and an opportunity to use this money to benefit society.

Impacts of proposal

The impact assessment (IA) states that there would be transitional costs for banks arising from the need to review the current stock of frozen accounts and from transferring the funds to the LEAs. Having consulted the banking sector, the department estimates that the initial transition cost for the major high street banks is £3.3 million, based on staff salaries of £50,000 and teams of 6-10 people working together for a period of one year. In addition, the IA estimates that there would be a cost of £3.5 million over ten years in present value terms for managing the flow of frozen accounts. This gives a total present value cost to business of £6.8 million over ten years. This has been scaled up by a further two per cent to take account of banks other than major high street banks.

The IA also sets out the costs of the proposal that will be incurred by the courts system and LEAs. Court costs are expected to be significant, as all seized accounts will require a court order. The department has not quantified these costs, although costs to LEAs have been provided. These are estimated as transition costs of £2.8 million and ongoing costs of £1.5 million over ten years.

The IA argues that the legitimate economy will benefit from the injection of £30-50 million of suspended funds, either through their return to victims of crime or through the asset recovery incentivisation scheme. This scheme reinvests recovered funds into law enforcement and prosecuting agencies. Assuming that half of the total value of all suspended accounts will be seized, the IA's central scenario gives a transitional benefit of £20 million, followed by a discounted annual average benefit of £1.1 million over ten years based on the flow of additional frozen accounts.

Quality of submission

The RPC considered that the IA, as initially submitted, was not fit for purpose because it did not assess the business impacts properly. The department has submitted a revised IA that addresses this issue adequately, as well as further areas identified for improvement, as follows:

Business impacts

The IA did not properly consider the benefit to banks of having to maintain a smaller stock of suspended accounts. The department initially provided an estimate of £0.4 million, assuming that each of the eight main high street banks currently employs one individual, at £50,000 per year, to manage them. It has since consulted the banking sector further on this issue. This resulted in a wide range of costs, but no clear indication of a likely level. The department therefore considers that it does not have the evidence to support a particular estimate and now explains the benefit to business resulting from the proposal in qualitative terms. The value of the initial estimate of this benefit has been removed from the calculation of the equivalent annual net direct cost to business (EANDCB).

The original IA did not explain clearly how the department had combined the various costs and benefits to estimate the overall EANDCB. The revised IA provides a clear breakdown of the overall cost to business of £6.8 million. The department has also described in detail how the measure's total cost to business translates into the EANDCB, including a table setting out its business impact target calculations.

As the original IA did not address the possibility of costs to smaller banks within the regulated sector, these estimates have been scaled up to estimate the costs to smaller banks, assuming that the eight main high street banks occupy 98% of the sector. A 2014 study conducted by the Competition & Markets Authority into the personal current account market has been used as evidence for this assumption. The department explains that the additional costs, which make up the EANDCB, are broadly proportionate to sales and, therefore, reflective of banks' market share.

Overall, the department's EANDCB has been revised from £0.3 million to £0.8 million. This estimate appears to be reasonable.

Small and micro business assessment (SaMBA)

The revised IA provides an expanded SaMBA. This includes information on the number of businesses in the regulated banking sector by size, to support its assessment that the proposal will involve no significant burden on small businesses. The SaMBA is sufficient.

Non-business and wider impacts

As initially submitted, the IA did not quantify costs to LEAs. The department has since been able to estimate a transition cost for these agencies of £2.8 million, based on 30,000 accounts being seized and each transfer taking five hours of law enforcement officer time at a rate of £36.67 an hour. The ongoing cost of £1.5 million over ten years has been estimated by assuming an additional flow of suspended accounts of £2.5 million per year, equivalent to 1,875 accounts. Overall, the department estimates a net present cost of £4.3 million to LEAs. Combined with the increase in net costs to business referred to above, this reduces the estimated net present value of the proposal from £28.3 million to £19.6 million. The IA would be improved further by estimating the cost to the courts system in dealing with individual seizure orders.

The revised IA presents clearer evidence for its estimated wider economic benefits of £20 million (transition) and £1.5 million (average annual). The IA also provides further information on the asset recovery incentivisation scheme, and shows how it acts as an incentive to pursue further asset recovery work. The IA would benefit from an indication of the proportion of recovered funds that is returned to LEAs through the scheme, and whether this affects the net cost to LEAs of the measure.

Finally, the initial IA did not address the possibility of legitimate funds being seized mistakenly, which posed a risk to compliant businesses. The department has now explained the procedure to which LEAs must adhere when seeking forfeiture, including "…a standard cash seizure test, to which an LEA must demonstrate they have reasonable ground of suspecting the funds are illicit" (paragraph 42). To support this, the revised IA would benefit from providing evidence on the number of accounts which are seized by LEAs mistakenly and subsequently returned.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	£0.3 million (initial estimate) £0.8 million (final estimate)
Business net present value	-£2.4 million (initial estimate) -£6.8 million (final estimate)
Societal net present value	£28.3 million (initial estimate) £19.6 million (final estimate)

RPC assessment[i]

Classification	Qualifying regulatory provision (IN)
EANDCB – RPC validated	£0.8 million
Business impact target score	£4.0 million
Small and micro business assessment	Sufficient

Michael Gibbons CBE, Chairman

[i] For reporting purposes, the RPC validates EANDCB and BIT score figures to the nearest £100,000