

DRAFT

Regulatory Impact Assessment

1. Title of Proposal

VIOLENT CRIME REDUCTION BILL - MOBILE PHONE RE-PROGRAMMING

2. Purpose and intended effect of measure

(i) The objective

The aim of the clause on mobile phone re-programming is to reduce mobile phone theft by tackling the re-programming that drives it.

This Regulatory Impact Assessment considers the options for achieving these objectives. The options are set out in section 3 and are discussed more fully in section 4.

(ii) The background

Mobile phone theft is often a violent crime and this clause seeks to reduce mobile phone theft by tackling the re-programming that drives it. It aims to make the Mobile Telephones (Re-programming) Act 2002 a more effective law enforcement tool by introducing a new offence under the 2002 Act of 'offering or agreeing to re-programme' mobile phones.

Home Office figures show that mobile phone theft accounts for a significant proportion of robberies: over half of all robberies involve the theft of a mobile phone, and in around one third of robberies it is exclusively a mobile phone that is stolen [HORS 235, December 2001]. Mobile handsets are attractive to thieves because they are valuable, easy to steal and to sell on, and they are likely to become even more attractive as handsets become more sophisticated (to include information that could be used for identity theft purposes) and as mobile phone ownership continues to grow (ownership in the UK has risen by 226% in the past six years from 19 million in 1999 to 62 million in 2005).

The Government is committed to working with the mobile phone industry and the Police to protect the public and reduce the number of mobile phone thefts, as part of its broader crime reduction strategy. In Autumn 2002, the mobile phone industry set up a database of lost and stolen phones so that lost or stolen handsets could be blocked across the UK. The aim of the database was to reduce the incentive for mobile phone theft by making stolen phones useless to thieves. The database operates by reference to a mobile phone's International Mobile Equipment Identity (IMEI number), which is a 15-digit unique device identifier present in every handset. The database therefore relies on this IMEI number not being interfered with. Unfortunately, it is possible for a person with the right knowledge and software to change the IMEI, thus circumventing the database and making a stolen phone usable again.

Re-programming – the act of changing the unique device identifier of a phone¹ – is therefore a serious driver for the market in stolen phones and incidents of violent street crime. In order to tackle re-programming, the Government passed the Mobile Telephones (Re-programming) Act 2002. The 2002 Act made it an offence to re-programme a mobile phone, or to knowingly possess or supply equipment for that purpose. While the 2002 Act was welcomed as an important step in tackling mobile phone theft, it is now widely recognised among key stakeholders that it requires updating to reflect experience gained over the past three years.

Under the current provisions in the Act, expensive police surveillance operations are often necessary and as a result the Act is underused. To prove offences under Section 1 (Re-programming a mobile telephone), police usually have to deploy undercover officers in several intelligence led operations. During the first phase of a typical operation, the undercover officer uses covertly marked phones to establish whether a suspect is willing to re-programme handsets. This usually requires the undercover officer to hand the phone over to the suspect, agree to pay for it to be re-programmed and then return at a later date to collect it. However, the current provisions also require the police to prove that the suspect performed the actual re-programming. This can be difficult because most re-programming takes place in the backrooms of small mobile phone retail outlets, which are difficult for the police to gain access to without compromising the investigation. As a result, many forces find such operations to be disproportionately costly and choose not to use the legislation.

The clause seeks to address this issue by adopting the approach already taken in drugs and ticket touting legislation, and introducing a new offence under the 2002 Act of ‘offering or agreeing to re-programme’ a mobile phone. The new offence would allow the police to prosecute a re-programmer as soon as they offered to re-programme the handset or accepted money for doing so.

(iii) Rationale for Government Intervention

The increases in mobile phone crime have begun to stabilise, and in some areas to decrease slightly following joint action by government, the police and the mobile phone industry since 2002. The level of mobile phone crime is still high, however, and further action needs to be taken to protect mobile phone users.

The Government, the police and the mobile phone industry run a joint programme to tackle mobile phone crime. One of the main interventions under this programme is the database of lost and stolen phones that enables the network operators to block phones reported as lost or stolen across all UK networks, thus reducing the incentive for stealing phones. In order to maximise its effectiveness as a crime reduction tool, the database needs to be underpinned by a regulatory framework that punishes re-programmers and deters would-be re-programmers. Controls must therefore be robust, enabling those who enforce the law to do so efficiently and effectively.

3. Options

Option 1: Do nothing – leave the 2002 Act unchanged

¹ Re-programming does not include SIM unlocking, which is a legal activity.

Option 2: Leave the 2002 Act unchanged but seek to deliver the objectives through voluntary action by mobile phone retailers

Option 3: Leave the 2002 Act unchanged but seek to deliver the objectives through regulation

Option 4: Amend the 2002 Act as proposed in the Violent Crime Reduction Bill 2005

4. Costs and Benefits

Option 1: Do nothing – leave the 2002 Act unchanged

Maintaining the status quo would not help to tackle the problem of mobile phone theft. Law enforcement agencies will continue to be reluctant to prosecute criminals under the Mobile Telephones (Re-programming) Act 2002 due to the disproportionately high costs involved, and re-programmers will not be deterred or caught due to the low level use of the Act. This will undermine the effectiveness of the database that is used to block lost and stolen phones, thereby fuelling the market for stolen handsets and resulting in a higher number of phone related robberies.

Option 2: Leave the 2002 Act unchanged but seek to deliver the objectives through voluntary action by mobile phone retailers

This option would require mobile phone retailers to tackle re-programming in their outlets by putting in place measures such as training courses and spot-checks, which could be set out in a voluntary code of conduct.

Self-regulation is unlikely to work in this case because reputable retailers already work in partnership with the police to ensure that their staff do not get involved in re-programming activity, and there would be little incentive for the criminal dealers (who are generally small, independent retailers) to change their practices or comply with a voluntary code of conduct.

Option 3: Leave the 2002 Act unchanged but seek to deliver the objectives through regulation

This option would require a licensing system that would require dealers to comply with minimum standards before they could buy and sell mobile phones. Imposed standards would include spot checks conducted by specially appointed inspectors or by the police to ensure that retailers are registered and acting within the law.

However, compulsory regulation would result in a disproportionate financial burden on smaller retailers and the risk that government will seek similar regulation for every 'hot product' that enters the marketplace. Such regulation would go against Government policy of delicensing the telecommunications industry and it would be difficult to enforce the regulations on internet retailers.

Option 4: Amend the 2002 Act as proposed in the Violent Crime Bill 2005

This would involve making the existing legislation a more effective law enforcement tool.

Under the 2002 Act, it is an offence to re-programme a phone; to possess equipment with the intent of using it for re-programming; and to supply, or to offer to supply, equipment in the knowledge that it will be used for re-programming. To prove offences as currently defined can be prohibitively resource intensive and as a result police forces have been reluctant to use the legislation (see 'background' above). In a recent case, a team of eight officers had to be deployed six times in order to fully investigate a suspected re-programming ring. The operation cost over £7,000, excluding the cost of examining the items seized, engaging other agencies such as Trading Standards and the core pay for the police officers. Police forces are unlikely to view such costs as proportionate and the Act is likely to remain underused until this issue is addressed.

The clause proposes to make the Act more effective by adding a new offence of 'offering or agreeing to re-programme a mobile telephone'. If this offence was introduced, the police would be able to disrupt re-programming operations more quickly, more frequently, and at a fraction of the current cost. Thus, although the proposals would, in the short term, increase the number of cases investigated, the financial and manpower resources in each one would be significantly lower than at present. Furthermore, amending the Act as proposed would lead to better enforcement, which would in turn act as a greater deterrent to would-be re-programmers and ultimately drive down the number of prosecutions. If enacted, it is considered that the amendment will result in more re-programmers being brought to justice, fewer mobile phones being re-programmed and fewer mobile phones being stolen.

The proposal is informed by the approach taken in other Acts that deal with illicit crimes strongly linked to wider street crime. For example, under the Misuse of Drugs Act 1971 it is an offence to offer drugs or to be concerned with the production of drugs. The provisions under the Misuse of Drugs Act 1971 are proven to work in an existing framework of law enforcement, and are considered to be effective, necessary, and proportionate.

5. Equity and Fairness

The likely burden on small businesses of the proposed legislative changes to the Mobile Telephones (Re-programming) Act 2002 is not considered to be any more onerous, in relation to size, than it would be for larger businesses.

6. Small Firms Impact

No serious impact on smaller retailers is anticipated.

7. Competition Assessment

No serious competition related issues anticipated.

8. Enforcement and Sanctions

An amended version of the Mobile Telephones (Re-programming) Act 2002 would carry the same penalties (a maximum 5 year prison sentence and/or fine), and would be enforced by the same agencies as present (the police) but would be more prevalent.

9. Consultation

(i) Within Government

DTI, DCA, CPS.

(ii) Public Consultation

We have consulted with a number of key stakeholders on these proposals, including:

- The National Mobile Phone Crime Unit (the police)
- The Mobile Industry Crime Action Forum (which represents the main operators and networks)
- The Telecommunications United Kingdom Fraud Forum

They have all commented that the current legislation requires amendment.

10. Monitoring and Review

The Police would enforce changes to existing legislation. Law enforcement agencies and industry bodies would continue to monitor the effectiveness of the legislation through their work.

11. Summary and Recommendation

Option 1: Do nothing – leave the 2002 Act unchanged

Costs: Continued high costs of covert surveillance operations, likely under-usage of the Mobile Telephones (Re-programming) Act 2002, more mobile phone related robberies.

Benefits: Nil

Option 2: Leave the 2002 Act unchanged but seek to deliver the objectives through voluntary action by mobile phone retailers

Costs: Some costs incurred by industry to enforce any code of conduct.

Benefits: Nil, as most retailers already work in partnership with the police and criminal dealers would have little incentive to adhere to good practice or a voluntary code of conduct.

Option 3: Leave the 2002 Act unchanged but seek to deliver the objectives through regulation

Costs: Some registration costs for retailers, including disproportionate burden on smaller, independent retailers. Substantial costs of enforcement incurred by police.

Benefits: Better enforcement of Act depending on nature of the police inspection regime, though it will remain difficult and expensive to use the Act.

Option 4: Amend the 2002 Act as proposed in the Violent Crime Bill 2005

Costs: The number of prosecutions under the Act is likely to increase in the short-term, as the legislation would be more widely used, but the cost per case would be

significantly lower because fewer undercover operations would be required. In the medium term, the number of prosecutions under the Act is likely to decrease because more effective legislation will pose a greater deterrent to would-be re-programmers. Retailers may incur a small cost in updating their staff training to clarify the potential consequences of offering to re-programme mobile phones.

Benefits: Ability to deal with re-programming offences more easily and effectively, savings on police operations to disrupt re-programming Police, and wider usage of the Mobile Telephones (Re-programming) Act 2002, which is likely to deter re-programmers, reduce mobile phone theft and deliver significant savings in the costs of crime.

It is recommended that Option 4 be adopted as it offers by far the most effective way of tackling re-programming and reducing the number of mobile phone related robberies.