

Impact Summary: Review of Unclaimed Money Act

Section 1: General information

Purpose

Inland Revenue is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of final decisions be taken by Cabinet.

Key Limitations or Constraints on Analysis

Timing

To maximise the administrative efficiencies of the proposals, the implementation of changes needs to align with *Inland Revenue's* Business Transformation Release 5. This is currently scheduled to take place in April 2021.

However, this time constraint has not materially affected officials' ability to undertake consultation or provide the Minister with appropriate advice on the merits of the proposals.

Scope of review

The scope of the review of the Unclaimed Money Act 1971 focused on modernising the administration of the UCM system. Because of time constraints to ensure that any legislative changes were enacted to coincide with the deployment of BT release 5, the review did not undertake a first principles review of the scope of the Act including the holders and unclaimed money that could be covered by the Act. There are a number of pieces of legislation that cover unclaimed money and assets and the review did not consider the consolidation of this legislation.

Responsible Manager (signature and date):



Mike Nutsford
Policy Lead
Policy and Strategy
Inland Revenue
24 April 2020

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Inland Revenue

Quality Assurance Assessment:

The Quality Assurance reviewer at Inland Revenue has reviewed the *Review of Unclaimed Money Act* Regulatory Impact Assessment prepared by Inland Revenue, and considers that the information and analysis summarised in the Regulatory Impact Assessment meets the quality assurance criteria.

This RIA considers a large number of small changes to the unclaimed money rules to improve its overall efficiency. In comparison with a RIA that considers a single or small number of larger changes, this makes it practically difficult for the pros and cons of individual changes to be fully explained. The RIA provides a good explanation of why the changes should proceed and we consider the summarised detail on the individual proposals does not subtract from the overall conclusions reached.

Reviewer Comments and Recommendations:

The reviewer's comments on earlier versions of the Regulatory Impact Assessment have been incorporated into the final version.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

As part of Inland Revenue's business transformation (BT) programme, the administration of the Unclaimed Money Act 1971 will be integrated into our new technology platform (START). This is currently scheduled to take place in April 2021. Currently UCM is administered as a stand-alone product using paper based and spread-sheet information provided by a holder of UCM. Inland Revenue is unable to use information it holds as part of administering the tax and social policy system to assist in identifying owners of unclaimed money.

Our BT programme provides an opportunity to review the administration of the UCM system to modernise its administration to reduce compliance costs for holders of UCM and administration costs for Inland Revenue. The Act has not been reviewed since it was enacted in 1971 and that Act was very much based on the original 1908 Act.

Unclaimed money ("UCM") is the term applied to money subject to the regime established by the Unclaimed Money Act 1971 (the Act). Most often, this takes the form of deposits which have been left untouched by their owner in their bank accounts for some years, or even decades. UCM holders are not limited to banks, however, as UCM can arise in a variety of contexts and among other service providers (e.g. real estate agents, lawyers and utility providers) whose role is often to hold monies on trust. KiwiSaver contributions held by Inland Revenue that cannot be allocated to a KiwiSaver scheme or member are also treated as unclaimed money.

Eventually, in situations in which contact with the depositor is lost, these amounts become "unclaimed" and are transferred to Inland Revenue ("IR"). Such amounts are deposited into the Crown's bank account and can be used by the Crown. UCM is a contingent liability in the Crown's accounts. The Crown does not pay interest on UCM when it is paid out to its owner. As at November 2019, IR's UCM database had a total value of approximately \$199m (including amounts from KiwiSaver). In the period 1 November 2018 to 30 November 2019, IR received approximately \$13 million in transfers of UCM from UCM holders. IR then seeks to locate the owners of UCM, and makes information available so owners can contact IR, so their money can be returned to them. This is the regime's ultimate aim: the reunification of UCM owners with their money. In the period 1 November 2018 to 30 November 2019 IR returned approximately \$2.4 million to UCM owners.

However, aspects of the UCM regime have either become outdated or do not accommodate technological developments which have occurred since the enactment of the Act. This has resulted in the Act not meeting its policy objective of efficiently reuniting owners of UCM with their money. For example:

- The current definition of UCM within the Act does not take account of new financial products that are very similar to products currently covered by the Act. For example, cash-PIEs which are similar to a term deposit.
- The Act currently applies different "deeming" periods (i.e. the period which must elapse before money becomes UCM) to money based on its "product" category. For example, a deposit made for a fixed term and a deposit made for an unlimited term will be subject to different qualifying periods. The deeming period in the former case is six years, while in the latter case, it is 25 years. Other examples of such product distinctions can also be found within the Act. These product distinctions are somewhat artificial and relevant timeframes lengthy.

- In some cases, for the relevant deeming period to have expired on a deposit, the owner must not have operated on the account for the relevant period, by “deposit, withdrawal or instruction in writing”. This does not account for new forms of activity developed since the Act’s enactment such as telephone or internet banking. Accordingly, it is possible that some amounts of money may become UCM notwithstanding their owners taking an active interest in their administration.
- The Act currently requires a holder of UCM to keep a physical register of the UCM which has accrued in the current year, and to make this register available for inspection by the public. As modern data storage is largely digital, maintenance of a physical register does not take advantage of new technological developments, thereby imposing compliance costs on UCM holders. This requirement also raises privacy issues, as the physical register is required to record, among other things, the name, occupation and last known address of the owner.
- Once money has become UCM, UCM holders may end up holding it for almost months as they proceed through a somewhat convoluted statutory process. This in summary requires a holder of UCM to:
 - maintain a register of money which has become unclaimed in the period 1 June of the preceding year to 31 May of the current year (and to make this register available for inspection by the public);
 - by the end of June in the current year, write to the UCM owner’s last known address, and provide the particulars of money which has become UCM;
 - by the end of September in the current year, provide the Commissioner with a copy of the register of the money which has become UCM in the current year (the UCM holder must also advise the Commissioner of any amounts which have been paid to the owner since the end of June in the current year) and
 - by the end of October each year, pay any UCM which has been left unclaimed to the Commissioner.
- This process is both lengthy and administratively taxing for UCM holders. It also does not envisage new methods of information transfer (e.g. electronic data transmission in an agreed format).
- While UCM holders are required to provide IR with the occupation information of UCM owners, there is no requirement to provide any other information which they may hold (e.g. IRD numbers, date of birth and contact details such email address and the like) and which may be more helpful in locating owners of UCM.
- UCM holders are currently unable to transfer money to IR before the deeming period has expired. This would be beneficial in limited circumstances (e.g. as part of a routine remediation process). This means that UCM owners end up waiting much longer than is necessary for IR to have the opportunity to reunite them with their money.

- The Act is currently not listed as a revenue Act in Schedule 1 of the Tax Administration Act 1994. This means that IR is unable to use existing tax information to facilitate the more efficient matching of owners with their UCM.
- Currently, there is no limitation (or “time bar”) on the period during which UCM may be claimed by a prospective claimant from Inland Revenue. This means that there is an ongoing contingent liability on the part of the Crown for all UCM currently held. The reasoning for removing is as follows:
 - Installing a time bar recognises that there is a point in time beyond which owners are unlikely to ever make a claim for UCM. This reflects a judgment that the probably of an owner claiming UCM eventually becomes extremely remote. This makes retaining UCM as a contingent liability on the Crown’s accounts indefinitely impractical as there comes a point at which the liability ceases, for practical purposes, to exist;
 - From a cost-benefit perspective, it could be said that the cost and duties imposed on regulators (and regulated parties) outweigh the benefits to individual owners of UCM

2.2 Who is affected and how?

UCM holders

As noted in the examples above, UCM holders bear administrative costs in the form of outdated information collection and storage requirements. UCM holders are unable to take advantage of new methods of communication (e.g. email) when seeking to contact owners of UCM or transferring information to IR.

UCM owners

Owners of UCM are affected by the administrative requirements of the current regime which does not optimise their chances of being reunited with their money. The lengthy “deeming” period and requirement to use traditional methods of contact (i.e. post) means that some owners may miss out on being returned their UCM. The inability of IR to use existing tax data to match owners of UCM with their money makes IR’s matching processes less than optimal.

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Under the Act, IR is required to receive physical copies of UCM records kept by UCM holders. It also unable to use existing tax data to match owners of UCM with their money, which presents a source of administrative inefficiency and increased cost.

2.3 What are the objectives sought in relation to the identified problem?

The objectives of the proposals are to:

- modernise and update the Act to take advantage of new administrative practice;
- reduce compliance costs for holders and owners of UCM;
- reduce administrative costs for IR; and
- increase the likelihood of owners of UCM being reunited with their money (and more rapidly than is presently the case).

Section 3: Options identification

3.1 What options have been considered?

The following criteria were used to assess the options considered:

- *Compliance*: compliance costs should be minimised as far as possible.
- *Administration*: administrative costs should be minimised as far as possible.
- *Equity*: the option should ensure that UCM owners are, so far as possible, being reunited with their money.
- *Sustainability*: the option should be consistent with wider financial practice settings and utilise modern communication practices.

Option One: Maintain the status quo

Compliance: The cost of collating UCM and dispatching letters to the last known addresses of its owners can be costly for UCM holders both in time and in the resources required.

Administration: The status quo requires IR to use its resources less than optimally by attempting to match UCM with its owners using information which may be limited or outdated.

Equity: Some owners of UCM are not being reunited with their money due to a lack of information. Another factor is the inability of IR to reconcile information collected from UCM holders with current tax data held by Inland Revenue.

Sustainability: The current UCM regime settings were doubtless intended to promote best administrative practice when originally enacted, but now pose a burden for UCM holders who are required to undertake a process which is no longer in keeping with current business practice.

Option two: Administrative refinements and reforms

Option two would use the opportunity created by Business Transformation Release 5 (“BT 5”) to update the Act and modernise the UCM regime. BT 5 is the final step in the modernisation of IR’s computer systems. The proposals which address the issues noted above by making the following changes to the administration of the UCM Act:

- The definition of unclaimed money could be refined to ensure it is wide enough to deal with new financial products such as cash-PIEs and to make the definition clearer.
- The “qualifying” or “deeming” period which must elapse before money is deemed unclaimed could be reduced from six or 25 years (depending on the UCM category) to five years for all UCM categories. (This would not, however, encompass deposits made for a term of five years or more, as the “deeming period” would not begin until the deposit reached maturity).
- The definition of unclaimed money should be amended to allow new forms of activity on an account (e.g. online activity) to prevent an amount of money being deemed UCM.
- UCM holders could in limited circumstances (e.g. where a service provider seeks to refund money to a former client who cannot be located as part of a

remediation process), be permitted to transfer money to Inland Revenue *before* the requisite period for deeming unclaimed money has elapsed.

- UCM could be able to be transferred to Inland Revenue immediately upon being classified as unclaimed money, provided that reasonable efforts have been made to contact the UCM owner over the intervening period. Where reasonable efforts have not been made to contact the owner, the UCM holder should retain the funds for an additional three-month period during which the holder must seek to contact the UCM owner before transferring the UCM to IR.
- The requirement for UCM holders to maintain a physical register of UCM at their head office or place of business could be removed. As UCM could be paid to IR immediately upon qualifying as such, record keeping requirements could be limited to retention of a record evidencing the *transfer* of the UCM to IR, for seven years.
- The requirement for UCM holders to provide occupation information could be removed. Instead, UCM holders should provide IR with other identifying information (e.g., IRD numbers, date of birth and contact details) where collected in the ordinary course of their business (IR would still accept occupation information if available and provided, however).
- The UCM threshold should be retained where it is presently (i.e., \$100), while also giving the Commissioner the discretion to accept smaller amounts if necessary.
- A 60-year time bar on a prospective claimant's ability to claim UCM would be introduced. A prospective claimant would have 60 years within which to claim money to which they are entitled from IR. This will allow the Crown to gradually remove¹ its contingent liability for UCM at the end of a sufficiently long period to enable claimants to access those funds. As mentioned above, this a judgment that the probably of an owner claiming UCM becomes extremely remote. Retaining UCM as a contingent liability on the Crown's accounts indefinitely is impractical Compared to the status quo the introduction of time bar removes a property right in that if the money is not claimed within the 60 year period, it will become the Crown's money.
- The Unclaimed Money Act 1971 would be listed within Schedule 1 of the Tax Administration Act 1994 in order to define it as an "Inland Revenue" Act. The application of Parts 4A (Disputes), 7 (Penalties) and 8 (Interest) of the Tax Administration Act would be excluded as they are not applicable to UCM. This would allow IR to use its existing tax data to more efficiently match owners of UCM with their money. It is not intended that UCM be permitted to offset tax debts.
- It could be clarified that the Act does not apply to unclaimed money covered by the Public Finance Act 1989. This is in order to remove any confusion created by the UCM regime for organisations such as the Public Trust, which operate under the Public Finance Act 1989. While money covered by the Public Finance Act 1989 does not fall within jurisdiction of the Unclaimed Money Act 1971, there is potential for UCM holders to be confused as to which regime applies to the UCM which they hold.

¹ This time bar would apply only to UCM after the application of the new rules so the time bar would never apply to existing UCM. As a consequence the contingent liability for existing UCM would never be removed unless the money was claimed.

- UCM holders could be required to provide information and UCM to Inland Revenue electronically and in a standard format.

Administration: the option proposed above would increase administrative efficiency and reduce administrative costs.

Compliance: the changes above would reduce ongoing compliance costs for holders of UCM overall. However, the requirement to provide information to IR in a standard format may result in an increase in upfront compliance costs for some holders of UCM to comply with the new requirements, although this should be mitigated through ongoing consultation and dialogue with stakeholders in the legislative design process.

Equity: the additional information received from accounts holders and new ability to use existing tax data will assist IR in matching owners of UCM with their money, and more rapidly than is presently the case.

Sustainability: This option enhances the current UCM administrative settings. Implementing all the above changes as a “package” would maximise efficiency and compliance cost reduction.

This approach is compatible with the Government’s *Expectations for the design of regulatory systems*.

3.2 Which of these options is the proposed approach?

Option Two is officials’ preferred option. This option addresses the issues outlined in section 2.1 above by updating the UCM Act to take advantage of technological developments in data storage and transmission. It reduces compliance costs for UCM holders by removing many outdated administrative requirements and allows for the faster transfer of money to IR. It also reduces administrative costs for IR by allowing it to use existing tax data to match owners of UCM with their money. In this way, owners of UCM are more likely to be reunited with their money, and more quickly.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Regulated parties <i>(holders of UCM)</i>	Minor costs in form of UCM holders being required to update their systems in order to account for changes to the existing UCM regime. There may also be some small costs for UCM holders in being required to supply information in a standard format. Officials will continue to consult with stakeholders in order to keep these costs to a minimum and ensure that stakeholders have sufficient time to upgrade their systems.	Low
Regulators <i>(Inland Revenue)</i>	IR will bear some cost in amending its systems to incorporate the changes required by the proposals. These system changes and the associated cost will be undertaken as part of Inland Revenue's BT release 5 deployment and will not require additional funding.	Low/Med
Wider government	None	None
Other parties	None	None
Total Monetised Cost		None
Non-monetised costs		Low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	Compliance cost savings for UCM holders who are who will no longer be required to conform to a range of outdated regulatory requirements.	Low/Med
Regulators <i>(Inland Revenue)</i>	Cost savings arising from operating a simplified regime.	Low
Wider government	None	None
UCM Owners	Compliance cost savings for owners of UCM who will have an increased chance of being reunited with their money, and of receiving it more rapidly.	Med

Total Monetised Benefit	None	None
Non-monetised benefits	Reduced compliance costs for UCM holders and administrative benefits for Inland Revenue.	Med

4.2 What other impacts is this approach likely to have?

While the purpose of the change is to improve the efficiency of Inland Revenue's administration and reduce compliance costs for holders and claimants, there is a risk that deposit takers may not prioritise efforts to reunite monies with beneficial owners by instead relying on Inland Revenue to fulfil the role of the Act. Officials consider this risk is low as industry regulations on deposit takers generally impose certain duties and obligations in respect of taking that deposit.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Consultation with stakeholders occurred following the release of IR's consultation document *Unclaimed money: A tax policy consultation document* on the public tax policy website in January 2020.

Officials either met with (or received submissions from) 16 individuals, organisations or businesses. These included Business New Zealand, the New Zealand Law Society, the New Zealand Bankers' Association and the Office of the Privacy Commissioner.

Stakeholders were generally supportive of the proposals, but eager for consultation to continue on matters that could present compliance costs (e.g. movement toward a new definition of UCM and standard format for the supply of information, etc). Stakeholders also sought sufficient time to allow them to transition their systems to the new regime.

Some minor changes to the proposals have occurred following consultation. These include:

- Clarifying that the Unclaimed Money Act 1971 will not apply to money covered by the Public Finance Act 1989;
- formalising IR's ability to accept smaller amounts of money (which fall below the current, \$100 threshold); and
- allowing UCM holders to, in limited circumstances, transfer money to IR *before* it becomes UCM.

These changes have been developed in response to information gathered in the course of consultation.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

It is intended that the preferred option be included as a Supplementary Order Paper (“SOP”) to the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill (“Bill”). The SOP would be referred to the Finance and Expenditure Committee for their consideration and calling of submissions on the proposed law changes, if the Committee so decides.

Inland Revenue will be responsible for the operation of this preferred option, which will form part of its business as usual function.

It is proposed that compliance with legislative reforms become compulsory two years after the enactment of the Bill. However, the Bill will provide for a transitional period to allow UCM holders to transition to the new rules.

This transition period is necessary to allow stakeholders sufficient time to incorporate the necessary changes into their systems and gradually account for UCM where the time period reduces through the changes noted above.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Inland Revenue would monitor the effectiveness of the proposed reforms to the UCM legislation on an ongoing basis. In the event IR should identify any issues in the operation of the new regime, IR would undertake a review of the legislation in order to assess whether further amendments or reforms may be required.

7.2 When and how will the new arrangements be reviewed?

Officials will be kept apprised of operational developments as they arise by the IR team responsible for operating the UCM regime and for liaising with UCM claimants. Officials will also maintain contact with the IR team responsible for implementing the systems changes necessary as part of BT5, who will also keep officials updated of developments.