

**EXPLANATORY MEMORANDUM TO
THE PAYMENT SERVICES REGULATIONS 2009**

2009 No. 209

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations implement Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market (“the Directive”)¹. The Directive establishes an authorisation regime for non-bank payment service providers, such as money remitters and non-bank credit card issuers (known as “payment institutions”), and it sets out conduct of business rules (concerning information provision and liability) for all payment service providers, including banks, e-money institutions, and payment institutions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Treasury submitted an explanatory memorandum to Parliament dated 10 January 2006 on the legislative proposal for the Payment Services Directive (doc. 15625/05). The House of Commons Select Committee on European Scrutiny reported on the draft Directive in reports 16 (2005-06), para 8 (25 January 2006), 32 (2005-06), para 6 (21 June 2006) and 4 (2006-07), para 16 (14 December 2006), clearing it after Ministerial correspondence (letter from Ed Balls of 28 November 2006). The House of Lords European Union Committee considered the draft Directive in Sub-Committee B (Internal Market) and cleared it from scrutiny on 29 November 2006 after Ministerial correspondence (see report 1 (2006-07) of 1 December 2006).

4.2 The Treasury considered that the best way to transpose the Directive would be to ensure that the legal framework is closely based so far as possible on the provisions in the Community legislation. The Directive is a “maximum harmonisation” directive, which means that Member States cannot deviate from its terms other than where specifically provided for by the Directive. Such an approach also helps to ensure that the United Kingdom avoids costly burdens on UK industry.

4.3 Attached at Annex A is a Transposition Note detailing the UK’s implementation of the Directive.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Services Secretary to the Treasury, Paul Myners, has made the following statement regarding Human Rights:

¹ OJ L 319, 5.12.07, p.1.

In my view the provisions of the Payment Services Regulations 2009 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The aim of the Directive is to improve EU competitiveness by integrating national payment markets and creating a Single Payments Market, while ensuring adequate consumer protection. This is expected to improve economies of scale and competition, which will increase efficiency and reduce the total cost of electronic payments across the EU.

7.2 The Directive has three main components, all of which are implemented by the Regulations:

- a prudential authorisation regime for non-credit or non-electronic money (e-money) institutions, known under the Directive as “payment institutions”. Payment institutions which obtain authorisation in one EU Member State will be able to “passport” their business and operate in other Member States without having to comply with further licensing requirements in other Member States. Smaller providers operating below a certain threshold will also be able to be registered providing they do not intend to operate in other Member States;
- harmonised conduct of business rules covering information requirements, and rights and obligations for payment providers and end-users. These rules will apply to all payment service providers, including credit institutions, electronic money institutions and payment institutions, and will include provisions that are expected to support the industry-led Single Euro Payments Area initiative;
- provisions stipulating that rules governing access to payment systems should be non-discriminatory. This is aimed at supporting competition among payment service providers.

7.3 It is Government policy that Directives should be transposed into UK law in order to achieve the objectives of the agreed measure on time and in accordance with other UK policy goals, including minimising the burdens on business. The Government’s approach to implementation of the Directive has been guided by risk-based considerations, proportionality and workability.

7.4 As well as effectively targeting higher risk situations to ensure that the Regulations are proportionate, the Government has also taken advantage of the derogations offered by the Directive. A less onerous registration regime has been created to waive smaller firms, which meet certain criteria, from full authorisation.

7.5 The competent authority for most aspects of the regime established by the Regulations will be the Financial Service Authority (FSA) (with the Financial Services and Markets Tribunal as appellate body in relation to its decisions). However, other bodies will also have roles as follows:

- HM Revenue and Customs will retain responsibility for the anti-money laundering supervision of money service businesses (some of which will be payment service providers for the purposes of the Regulations), and will additionally be responsible for the anti-money laundering supervision of any mobile phone operators or bill payment service providers which fall into the scope of the Third Money Laundering Directive due to the Directive;

- the Office of Fair Trading (OFT) will be responsible for the implementation of Part 8 of the Regulations (access to payment systems), which has a competition objective, while the Competition Appeal Tribunal will be the appellate body for this purpose; and
- the Financial Ombudsmen Service will provide the out-of-court redress mechanism envisaged in Article 83 of the Directive.

7.6 Parts 7 and 8 of the Regulations provide enforcement powers for the FSA and for the Office of Fair Trading, respectively, in respect of the persons they supervise. The Government believes that these supervisors should have the powers to require information, undertake on-site inspection and impose administrative penalties where appropriate. Decisions by a supervisor whether or not to register a person or impose a civil penalty are subject to review and appeal according to the particular legislative framework applying to that supervisor.

7.7 The Government sees the Regulations as part of an implementation system that also includes supervisory rules (such as those in the FSA Handbook) and guidance to industry (for example guidance issued by the FSA and the principles set out in the Banking Code).

Consolidation

7.8 There are no plans to consolidate any of the legislation amended by these Regulations.

8. Consultation outcome

8.1 The Government undertook a three-stage consultation process:

- in July 2006, the Government consulted on the European Commission's proposal for a Directive. The consultation responses informed the Government's approach to the European-level negotiations;
- in December 2007, the Government published a consultation on its policy approach towards implementing the Directive, and a summary of responses with the revised approach to implementation was published in June 2008; and
- in July 2008, the Government consulted on draft Regulations.

8.2 About 40 responses were received for each consultation. The Government has had continued engagement with stakeholders including alerting them if any significant changes are to be made. Summaries of the responses to the first two consultations have been published on the Treasury's website (hm-treasury.gov.uk). A summary of responses to consultation on the draft Regulations will be published shortly.

9. Guidance

9.1 In early 2009, the FSA, as the regulator for most aspects of the Directive, will publish two documents (the Perimeter Guidance and the Approach Document) detailing the scope of the Regulations and the supervisory and enforcement approach of the regulators. The OFT will be contributing to these documents with respect to rules on fair and open access to those payment systems within scope of the Regulations.

10. Impact

10.1 An Impact Assessment is attached to this memorandum at Annex B.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 In order to minimise the impact of the requirements on small firms, the Government has implemented the waiver provision within the Directive, whereby firms that :

- are legal or natural persons;
- execute less than €3 million worth of payment transactions a month;
- do not wish to sell, or “passport” their services in other EU Member States; and
- can prove that none of the persons responsible for managing the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes,

will not be subject to the authorisation requirements. Smaller providers that meet the waiver criteria will only have to register with the FSA in order to become a small payment institution and provide payment services. This approach has been taken to ensure proportionality in the application of the Regulations.

11.3 The basis for the final decision on what action to take to assist small business was developed as part of the consultation process.

12. Monitoring and review

12.1 The European Commission is expected to undertake a review of the implementation and impact of the Directive no later than three years after the implementation deadline of 1 November 2009.

13. Contact

Angela van der Lem at HM Treasury (Tel: 020 7270 5260 or e-mail: angela.vanderlem@hm-treasury.x.gsi.gov.uk) can answer any queries regarding the instrument.

**Transposition note for Directive 2005/60/EC:
Payment Services Regulations 2009**

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|---|--|---|-------------------------|
| 1 | Sets out the subject matter of the Directive and the categories of payment service providers (i.e. permitted to provide payment services). | Regulations 110 and 111 and the definition of “payment service provider” in regulation 2(1) | HM Treasury |
| 2.1 | Sets out the scope of the Directive: it applies only to payment services provided within the Community and, with certain exceptions, Titles 3 and 4 of the Directive apply only where the payer’s payment service provider and the payee’s payment service provider are, or the sole payment service provider is located in the Community. | Regulations 33(1) and 51(1), (2) | HM Treasury |
| 2.2 | Provides that Titles 3 and 4 of the Directive only apply to payment services made in euro or the currency of a Member State outside the euro area. | Regulations 33(1) and 51(1) | HM Treasury |
| 2.3 | Enables Member States to disapply the provisions of the Directive to certain bodies. | Regulation 3 | HM Treasury |
| 3 | Sets out the negative scope of the Directive (i.e the activities excluded from the Directive’s scope). | Regulation 2(1) and Part 2 of Schedule 1 | HM Treasury |
| 4 | Sets out the definitions of terms used in the Directive. | Regulation 2 | HM Treasury |
| 5 | Sets out the requirements for applications for authorisation as a payment institution. | Regulation 5(1) and Schedule 2 | HM Treasury |
| 6 | Provides that Member States must require payment institutions to have a minimum amount of initial capital. | Regulation 6(3) and Part 1 of Schedule 3 | HM Treasury |
| 7 | Provides that Member States must require payment institutions to have a minimum amount of own funds. | Regulation 18 and Part 2 of Schedule 3 | HM Treasury |
| 8 | Provides for the permissible methods for calculating own funds. | Regulation 18 and Part 2 of Schedule 3 | HM Treasury |
| 9 | Sets out the requirements that payment institutions must meet in relation to the safeguarding of funds received from payment service users. | Regulation 19 | HM Treasury |
| 10 | Sets out the conditions that payment institutions must meet in order to be authorised. | Regulation 6 | HM Treasury |
| 10.5 | Provides that the competent authorities may require the establishment of a separate entity where a payment institution provides non-payment services as well as payment services. | Regulation 7(4) | HM Treasury |
| 11 | Provides that the competent authorities must communicate their decision to an application within 3 months of receipt of the application. | Regulation 9 | HM Treasury |
| 12 | Sets out the circumstances in which competent authorities can withdraw authorisation granted to a payment institution. | Regulation 10 | HM Treasury |

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|---|---|--|-------------------------|
| 13 | Requires Member States to establish a public register of authorised payment institutions and their agents and branches, and of persons benefiting from the waiver under Article 26 and the institutions referred to in Article 2(3). | Regulation 4 | HM Treasury |
| 14 | Provides that, where any change affects the accuracy of information provided under Article 5, the payment institution must inform the competent authority accordingly. | Regulation 16 | HM Treasury |
| 15 | Provides for the application of certain accounting and audit directives to payment institutions. | Regulation 20; Parts 15 and 16 of the Companies Act 2006 | HM Treasury |
| 16.1 | Sets out the activities which payment institutions are entitled to engage in. | Regulation 27(1) | HM Treasury |
| 16.2 | Provides that payment institutions may only hold payment accounts used exclusively for payment transactions. Also provides that funds received for the purposes of the provision of payment services do not constitute a “deposit” or “electronic money”. | Regulation 28 and amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 in paragraph 4 of Schedule 6. | |
| 16.3 | Places certain restrictions on the granting of credit relating to payment services. | Regulation 27(2) | HM Treasury |
| 16.4 | Prohibits payment institutions from conducting the business of deposit—taking. | Implemented through the Financial Services and Markets Act 2000: an institution must be an authorised person under FSMA in order to take deposits. | HM Treasury |
| 16.5 | Provides that the Directive is without prejudice to EU consumer credit legislation and to domestic consumer credit legislation not harmonised by the Directive. | Regulations 34 and 52 | HM Treasury |
| 17.1 to 17.6 | Sets out the regime for the use and registration of agents providing payment services on behalf of payment institutions. | Regulation 29 | HM Treasury |
| 17.7 | Provides that payment institutions must notify the competent authority before outsourcing operational functions. | Regulation 21 | HM Treasury |
| 17.8 | Provides that payment institutions must ensure that agents or branches acting on their behalf inform payment service users of this fact. | Regulation 29(14) | HM Treasury |
| 18.1 | Requires Member States to ensure that where payment institutions rely on third parties for the performance of operational functions, those payment institutions take reasonable steps to ensure that the requirements of the Directive are met. | Regulation 31(1) | HM Treasury |
| 18.2 | Requires Member States to provide that payment institutions remain fully liable for any acts of their employees or any agent, branch or entity to which activities are outsourced. | Regulation 31(1) | HM Treasury |

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|---|--|---|-------------------------|
| 19 | Provides that Member States must require payment institutions to keep certain records. | Regulation 22(1) | HM Treasury |
| 20 | Sets out the requirements in relation to competent authorities for Title 2 of the Directive, including their designation, independence and powers. | Part 7 | HM Treasury |
| 21 | Sets out requirements in relation to supervision by the competent authorities. | Regulations 7, 10, 11, 25, Part 7 and regulations 98 to 105 | HM Treasury |
| 22 | Requires Member States to ensure that the obligation of professional secrecy is respected and enforced. | The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, as modified by paragraph 10 of Schedule 5; regulation 107. | HM Treasury |
| 23 | Provides that Member States must ensure that decisions taken by competent authorities are contestable in the courts. | Regulation 95, Paragraph 1 of Schedule 5, 106 | HM Treasury |
| 24 | Requires co-operation and exchange of information between competent authorities. | Regulation 119 | HM Treasury |
| 25 | Sets out the procedure under which payment institutions can exercise their right of establishment and freedom to provide services. | Regulations 23 to 26 | HM Treasury |
| 26.1 to 26.3 | Provides for a waiver from the authorisation requirements of the Directive for “small” institutions. | Regulations 13 to 18 | HM Treasury |
| 26.4 | Enables Member States to provide that persons registered under the waiver provisions may engage only in certain of the activities listed in Article 16. | The UK has decided not to exercise this derogation | HM Treasury |
| 26.5 | Provides that waived firms must notify the competent authority of any change in their situation relevant to the fulfilment of the waiver conditions. | Regulation 15 | HM Treasury |
| 26.6 | Provides that the waiver cannot be applied in respect of provisions of the Third Money Laundering Directive. | The Money Laundering Regulations 2007 | HM Treasury |
| 27 | Provides that Member States must notify the Commission where they exercise the waived set out in Article 26 and must inform the Commission of the number of persons concerned and on an annual basis of the total amount of payment transactions executed in the year. | Not transposed into legislation. | HM Treasury |
| 28 | Provides that Member States must ensure that rules on access to payment systems are objective, non-discriminatory and proportionate. Provides for certain exceptions from the general provision. | Regulations 96 and 97 | HM Treasury |
| 29 | Requires Member States to prohibit persons who are not payment service providers or explicitly excluded from the scope of the Directive from providing payment services. | Regulations 110 and 111 and the definition of “payment service provider” in regulation 2(1) | HM Treasury |

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|---|---|---------------------------|-------------------------|
| 30.1 | Sets out the scope of Title 3 of the Directive and provides that where the payment service user is not a consumer, the parties may agree that any or all of the provisions of Title 3 do not apply. | Regulation 33(1) and (4) | HM Treasury |
| 30.2 | Enables Member States to apply the provisions of Title 3 to micro-enterprises in the same way as they apply to consumers. | Regulation 33(4) | HM Treasury |
| 30.3 | Provides that the Directive is without prejudice to EU consumer credit legislation and to domestic consumer credit legislation not harmonised by the Directive. | Regulation 34 | HM Treasury |
| 31 | Provides that the provisions of the Directive are without prejudice to other provisions of Community legislation requiring prior information; and disapplies certain provisions of the Distance Marketing Directive (2002/65/EC). | Paragraph 5 of Schedule 6 | HM Treasury |
| 32 | Makes provision in relation to the charges that can be applied by payment service providers for information provided by them. | Regulation 48 | HM Treasury |
| 33 | Provides that Member States may stipulate that the burden of proof lies with the payment service provider to prove compliance with Title 3. | Not implemented. | |
| 34 | Enables Member States to derogate from certain of the provisions of Title 3 of the Directive in respect of low-value payment instruments and electronic money. | Regulation 35 | HM Treasury |
| 35 | Provides for the application of certain provisions to single payment transactions and provides that where information has already been provided under a framework contract, there is no need to provide it again. | Regulations 33(2) and 35 | HM Treasury |
| 36 | Requires payment service providers to provide certain information to the payment service user prior to the conclusion of a single payment service contract. | Regulation 36(1) | HM Treasury |
| 37 | Sets out the information that must be provided under Article 36. | Regulation 36(2) | HM Treasury |
| 38 | Requires payment service providers to provide certain information to the payment service user after the receipt of the payment order. | Regulation 37 | HM Treasury |
| 39 | Requires payment service providers to provide certain information to the payment service user after the execution of the payment transaction. | Regulation 38 | HM Treasury |
| 40 | Provides for the application of certain provisions to framework contracts. | Regulation 33(3) | HM Treasury |
| 41 | Requires payment service providers to provide certain information to the payment service user prior to the conclusion of a framework contract. | Regulation 40 | HM Treasury |
| 42 | Sets out the information to be provided | Schedule 4 | HM Treasury |

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|---|--|--|-------------------------|
| | by the payment service provider. | | |
| 43 | Provides that payment service users are entitled to receive the terms of the framework contract and the information specified in Article 42 at any time during the contractual relationship. | Regulation 41 | HM Treasury |
| 44 | Sets out certain requirements in relation to the changing of any conditions of a framework contract. | Regulation 42 | HM Treasury |
| 45 | Sets out certain requirements in relation to the termination of a framework contract. | Regulation 43 | HM Treasury |
| 46 | Provides that certain information must be provided to the payment service user prior to the execution of an individual payment transaction under a framework contract. | Regulation 44 | HM Treasury |
| 47 | Sets out certain information to be provided to the payer on an individual payment transaction under a framework contract. | Regulation 45 | HM Treasury |
| 48 | Sets out certain information to be provided to the payee on an individual payment transaction under a framework contract. | Regulation 46 | HM Treasury |
| 49 | Sets out certain requirements in relation to currency and currency conversion. | Regulation 49 | HM Treasury |
| 50 | Provides for the provision of information on additional charges or reductions. | Regulation 50 | HM Treasury |
| 51.1 | Provides that where the payment service user is not a consumer, the parties may agree that certain provisions of Title 4 of the Directive do not apply. | Regulation 51(3) | HM Treasury |
| 51.2 | Enables Member States to disapply Article 83 where the payer service user is not a consumer. | To be transposed by rules made by the Financial Services Authority (FSA) | FSA |
| 51.3 | Enables Member States to apply the provisions of Title 3 to micro-enterprises in the same way as they apply to consumers. | Regulation 51(3) | HM Treasury |
| 51.4 | Provides that the Directive is without prejudice to EU consumer credit legislation and to domestic consumer credit legislation not harmonised by the Directive. | Regulation 52 | HM Treasury |
| 52 | Makes provision in relation to the charges which may be applied by payment service providers. | Regulation 54 | HM Treasury |
| 53 | Enables Member States to derogate from certain of the provisions of Title 4 of the Directive in respect of low-value payment instruments and electronic money. | Regulation 53 | HM Treasury |
| 54 | Sets out certain requirements in relation to consent to payment transactions, in particular, sets out the situations in which consent is given and withdrawn. | Regulation 55 | HM Treasury |

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|---|---|-----------------------|-------------------------|
| 55 | Makes provision in relation to any limits on the use of a payment instrument. | Regulation 56 | HM Treasury |
| 56 | Sets out the obligations of the payment service user in relation to payment instruments. | Regulation 57 | HM Treasury |
| 57 | Sets out the obligations of the payment service provider in relation to payment instruments. | Regulation 58 | HM Treasury |
| 58 | Provides for the notification of unauthorised or incorrectly executed payment transactions. | Regulation 59 | HM Treasury |
| 59 | Sets out requirements for the evidence on authentication and execution of payment transactions. | Regulation 60 | HM Treasury |
| 60 | Provides for the liability of the payment service provider for unauthorised payment transactions. | Regulation 61 | HM Treasury |
| 61 | Provides for the liability of the payer for unauthorised payment transactions. | Regulation 62 | HM Treasury |
| 62 | Sets out the requirements for and circumstances in which the payer is entitled to a refund from the payment service provider. | Regulation 63 | HM Treasury |
| 63 | Provides for circumstances in which the payer is to be able to request a refund of an authorised payment transaction. | Regulation 64 | HM Treasury |
| 64 | Sets out the point at which a payment order will be considered to have been received. | Regulation 65 | HM Treasury |
| 65 | Provides for the circumstances in which a payment order is refused. | Regulation 66 | HM Treasury |
| 66 | Sets out the circumstances in which a payment order may be revoked. | Regulation 67 | HM Treasury |
| 67 | Sets out the circumstances in which charges may be deducted from amounts transferred and amounts received. | Regulation 68 | HM Treasury |
| 68 | Sets out the scope of the provisions dealing with execution time and value dating. | Regulation 69 | HM Treasury |
| 69 | Sets out the time limits for the crediting of payment transactions to the payee's payment service provider's account by the payer's payment service provider. | Regulation 70 | HM Treasury |
| 70 | Provides for situations in which the payee does not have a payment account. | Regulation 71 | HM Treasury |
| 71 | Sets out the requirements to be met in relation to making available and value dating funds where cash is placed on a payment account. | Regulation 72 | HM Treasury |
| 72 | Provides that Member States may provide for shorter execution times than those set out in the Directive for national payment transactions. | Not implemented. | |
| 73 | Sets out certain requirements in relation to value dating and making funds available. | Regulation 73 | HM Treasury |
| 74 | Provides for circumstances in which an incorrect unique identifier has been | Regulation 74 | HM Treasury |

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|---|---|--|-------------------------|
| | used. | | |
| 75.1 | Sets out liability where a payment order is initiated by the payer. | Regulation 75 | HM Treasury |
| 75.2 | Sets out liability where a payment order is initiated by the payee. | Regulation 76 | HM Treasury |
| 75.3 | Provides that payment service providers will be liable to their respective payment service users for any charges and interest for which they are responsible. | Regulation 77 | HM Treasury |
| 76 | Provides that any financial compensation additional to that provided under the Directive may be determined in accordance with the law applicable to the contract. | Provided for in general contract law. | |
| 77.1 | Provides for a right of recourse for payment service providers to other payment service providers or intermediaries. | Regulation 78 | HM Treasury |
| 77.2 | Provides that further financial compensation may be determined in accordance with agreements between payment service providers and intermediaries and the law applicable to the contract. | Provided for in general contract law | |
| 78 | Provides that there is no liability in cases of force majeure and where a payment service provider has obligations under other Community law. | Regulation 79 | HM Treasury |
| 79 | Provides that personal data may be processed by payment service providers in accordance with Directive 95/46/EC in order to prevent payment fraud. | The Data Protection Act 1998 | |
| 80.1 | Provides that there must be procedures in place to allow payment service users and other interested parties to make complaints to competent authorities. | Regulation 91(1) | HM Treasury FSA |
| 80.2 | Provides that where appropriate, the reply from the competent authorities must inform the complainant of the availability of out-of-court redress mechanisms. | Regulation 91(2) | HM Treasury FSA |
| 81 | Provides that Member States must lay down rules on penalties for infringements. | Regulations 84, 85 and 105 | HM Treasury |
| 82.1 | Provides that complaints procedures and penalties must be administered by competent authorities. | Regulations 80 to 84, 88 and 95 | HM Treasury |
| 82.2 | Provides that where the provisions of Titles 3 and 4 are infringed the competent authorities responsible for enforcement are those of the home Member State of the payment service provider, other than for agents and branches conducted under the rights of establishment where the competent authority is the host Member State. | Regulations 33(1) and 51(1) | HM Treasury |
| 83.1 | Provides that Member States must ensure that out-of-court redress mechanisms are in place. | Regulation 91; paragraph 1 of Schedule 6 and rules made by the FSA | HM Treasury FSA |

| Articles of Directive 2007/64/EC | Objective | Implementation | Body Responsible |
|----------------------------------|--|---|------------------------|
| 83.2 | Provides that in the case of cross-border disputes, bodies co-operate in resolving them. | Section 410 Financial Services and Markets Act 2000. Not otherwise transposed into legislation. Established practice. | FSA |
| 84 | Provides for the adoption by the Commission of implementing measures. | Not transposed into legislation. | |
| 85 | Provides that the Commission may be assisted by a Payments Committee | Not transposed into legislation. | |
| 86 | Provides that, subject to the derogations, the Directive contains fully harmonised provisions; and that Member States must inform the Commission of the exercise of any of the derogations. Also provides that Member States must ensure that payment service providers do not derogate to the detriment of payment service users from the provisions of national law but that payment service providers may decide to grant more favourable conditions to payment service users. | Not transposed into legislation. The Regulations implement these requirements generally | HM Treasury FSA |
| 87 | Provides for the review of the Directive by the Commission by no later than November 2012. | Not transposed into legislation. | |
| 88 | Makes transitional provision. | Regulations 122 to 125 | HM Treasury |
| 89 | Makes amendments to Directive 97/7/EC | Regulation 126 and paragraph 3 of Schedule 6 . | HM Treasury |
| 90 | Makes amendments to Directive 2002/65/EC. | Regulation 126 and paragraph 5 of Schedule 6 | HM Treasury |
| 91 | Makes amendments to Directive 2005/60/EC. | Regulation 126 and paragraph 6 of Schedule 6 | HM Treasury |
| 92 | Makes amendments to Directive 2006/48/EC. | Regulation 126 and paragraph 6(i) of Schedule 6 | HM Treasury |
| 93 | Repeals Directive 97/5/EC. | Regulation 126 and paragraph 2 of Schedule 6 | HM Treasury |
| 94 | Provides that Member States must implement the Directive by 1 November 2009 and must communicate to the Commission the main provisions of national law which implement the Directive. | Not transposed into legislation. | HM Treasury |
| 95 | Provides for the entry into force of the Directive. | Not transposed into legislation. | |
| 96 | Provides that the Directive is addressed to the Member States. | Not transposed into legislation. | |

Summary: Intervention & Options

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|--|---|------------------------------|
| Department /Agency: HM Treasury | Title: Impact Assessment of the Implementation of the Payment Services Directive on business | |
| Stage: Consultation | Version: Implementing | Date: 5 February 2009 |
| Related Publications: A summary of responses to the consultation on the draft legislation to implement the Payment Services Directive (February 09) | | |

Available to view or download at: <http://www.hm-treasury.gov.uk>

Contact for enquiries: Meenakhi Borooh/Angela van der Lem **Telephone:** 020 7270 5234/ 5920

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

The goal of the Payment Services Directive (PSD) is to improve the EU's competitiveness by integrating national payment markets and supporting the creation of a Single Market in retail payment services. This is expected to improve economies of scale, which should increase competition, efficiency and reduce the total cost of payments across the EU.

The PSD aims to provide the legislative support necessary for the EU payments industry to build the infrastructure for a Single Euro Payments Area, within which cross-border euro payments can be made as easily, safely, efficiently and inexpensively as within national borders.

What are the policy objectives and the intended effects?

The Directive has three main objectives. These are:

- to enhance competition between national payment markets by opening up markets and ensuring a level playing field amongst payment service providers;
- to increase market transparency for both providers and users; and
- to standardise the rights and obligations of providers and users of payment services in the EU, with a strong emphasis on customer protection.

What policy options have been considered? Please justify any preferred option.

- The IA that accompanied the summary of responses to the December 2007 policy consultation on the PSD concluded on the following derogations: scope of the PSD (A2(3)); scope of the safeguarding requirements for payment institutions (PI) (A9); waiver criteria for small PIs (A26); low-value payment instruments & e-money waiver of conditions in Titles III and Title IV for (A34), (A 53); and user's liability for unauthorised use of payment instruments (A61). This impact assessment concludes on introducing a £50 safeguarding threshold (A9).

- The authorisation cost of the regime (with no provision to waive small payment service providers) has been estimated to be £28.0m one-off and £36.2m p.a.. The implementation cost of the PSD (which includes the authorisation cost and safeguarding costs (assuming all money remitters are hybrid firms) has been estimated to be £328.1m one-off & £186.2m pa. By applying the derogations as concluded the estimated cost to business might be around £44.1m one-off & £29.4m p.a..

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The European Commission is expected to undertake a review of the implementation and impact of the adopted Directive no later than 3 years after 1 November 2009.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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 Minister:

Paul Myners.....Date: 5 February 2009

Summary: Analysis & Evidence

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|---------------------------|---|
| Policy Option: N/A | Description: Payments Service Directive taken at basic implementation level for business i.e. authorisation cost due to fees |
|---------------------------|---|

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| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' Key affected groups-credit institutions (382); e-money issuers (16 licenced & 50 certified); non-bank payment service providers (2667); credit unions (699); & other (5). Please see pg 8 for details on the estimated fees used in these calculations. Operational cost in establishing the regime to the banking industry & relevant authorities has been estimated to be £20m one-off. |
| | One-off (Transition) | Yrs | |
| | £ 28.0m* | 1 | |
| | Average Annual Cost (excluding one-off) | | |
| | £ 36.2m* | | Total Cost (PV) £ 104.8m |
| Other key non-monetised costs by 'main affected groups' | | | |

| | | | |
|--|---|------------|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Efficiency gains reaped by UK business as a proportion of the estimated total £6.6 billion EU savings derived from the Commission's cost/benefit analysis and £33-66 billion ongoing mainly derived from end-to-end processing. This UK apportionment is weighted by the UK share of EU GDP (16.5%). |
| | One-off | Yrs | |
| | £ 1,089.0m | 1 | |
| | Average Annual Benefit (excluding one-off) | | |
| | £ 8,167.5m | | Total Benefit (PV) £ 23,683.3m |
| Other key non-monetised benefits by 'main affected groups' UK non-bank payment providers can use their licence to passport into and compete within other payment markets across the EU. The introduction of a transparent conduct of business regime will allow small business and consumers to understand and easily keep track of their payments. | | | |

Key Assumptions/Sensitivities/Risks The development of more standardised payment service products through SEPA & the consolidation of payments infrastructure across the EU, according to C'ion, will result in efficiency savings of around £6.6 bn. By applying the derogations as suggested the estimated cost to business should fall to £28.3m one-off & £4.8m p.a..

| | | | |
|-------------------------|------------------------|-------------------------------------|---|
| Price Base Year 2007 | Time Period Years 3 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ 23,629.2m |
|-------------------------|------------------------|-------------------------------------|---|

| | | | | | |
|---|---|------------------|-----------------|------------------|-----------------|
| What is the geographic coverage of the policy/option? | UK | | | | |
| On what date will the policy be implemented? | November 2009 | | | | |
| Which organisation(s) will enforce the policy? | FSA | | | | |
| What is the total annual cost of enforcement for these organisations? | £ 300k** | | | | |
| Does enforcement comply with Hampton principles? | Yes | | | | |
| Will implementation go beyond minimum EU requirements? | No | | | | |
| What is the value of the proposed offsetting measure per year? | £ | | | | |
| What is the value of changes in greenhouse gas emissions? | £ n/a | | | | |
| Will the proposal have a significant impact on competition? | Yes | | | | |
| Annual cost (£-£) per organisation (excluding one-off) | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Micro £7000*</td> <td style="width: 25%;">Small £7000*</td> <td style="width: 25%;">Medium £7000*</td> <td style="width: 25%;">Large £7000*</td> </tr> </table> | Micro £7000* | Small £7000* | Medium £7000* | Large £7000* |
| Micro £7000* | Small £7000* | Medium £7000* | Large £7000* | | |
| Are any of these organisations exempt? | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">No</td> <td style="width: 25%;">No</td> <td style="width: 25%;">N/A</td> <td style="width: 25%;">N/A</td> </tr> </table> | No | No | N/A | N/A |
| No | No | N/A | N/A | | |

| | | |
|---|---------------|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) |
| Increase of £ | Decrease of £ | Net Impact £ |

Key: Annual (Net) Present Value

Summary: Analysis & Evidence

| | |
|--------------------|--|
| Policy Option: N/A | Description: Total costs and benefits of flexibility of preferred policy options |
|--------------------|--|

| | | |
|--|---|--|
| COSTS | ANNUAL COSTS | Description and scale of key monetised costs by 'main affected groups' The total costs cover concluded & preferred policy options relating flexibilities offered under: PSD scope (A2(3)); scope of safeguarding requirements, including threshold, for PIs (A9); PI waiver criteria (A26); low-value payment instruments waiver of conditions in TIII & TIV (A34), (A 53); & user's liability for unauthorised use of payment instruments (A61). |
| | One-off (Transition) Yrs | |
| | £ 320.1m 1 | |
| | Average Annual Cost (excluding one-off) | |
| £ 160.8m | Total Cost (PV) | £ 466.4m |
| Other key non-monetised costs by 'main affected groups' See individual summary sheets. | | |

| | | |
|---|--|--|
| BENEFITS | ANNUAL BENEFITS | Description and scale of key monetised benefits by 'main affected groups' The total benefits cover concluded & preferred policy options relating flexibilities offered under: PSD scope (A2(3)); scope of safeguarding requirements, including threshold, for PIs (A9); PI waiver criteria (A26); low-value payment instruments waiver of conditions in TIII & TIV (A34), (A 53); & user's liability for unauthorised use of payment instruments (A61). |
| | One-off Yrs | |
| | £ 303.9m 1 | |
| | Average Annual Benefit (excluding one-off) | |
| £ 167.6m | Total Benefit (PV) | £485.9m |
| Other key non-monetised benefits by 'main affected groups' See individual summary sheets. | | |

Key Assumptions/Sensitivities/Risks The development of more standardised payment service products through SEPA & the consolidation of payments infrastructure across the EU, according to C'ion, will result in efficiency savings of around £6.6 bn. By applying the derogations as suggested the estimated cost to business should fall to £28.3m one-off & £4.8m p.a..

| | | | |
|-------------------------|------------------------|-------------------------------------|---|
| Price Base Year 2007 | Time Period Years 3 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ 21.0m |
|-------------------------|------------------------|-------------------------------------|---|

| | | | | | |
|---|--|------------------|-----------------|------------------|-----------------|
| What is the geographic coverage of the policy/option? | UK | | | | |
| On what date will the policy be implemented? | November 2009 | | | | |
| Which organisation(s) will enforce the policy? | FSA | | | | |
| What is the total annual cost of enforcement for these organisations? | £ | | | | |
| Does enforcement comply with Hampton principles? | Yes | | | | |
| Will implementation go beyond minimum EU requirements? | No | | | | |
| What is the value of the proposed offsetting measure per year? | £ | | | | |
| What is the value of changes in greenhouse gas emissions? | £ n/a | | | | |
| Will the proposal have a significant impact on competition? | Yes | | | | |
| Annual cost (£-£) per organisation (excluding one-off) | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black;">Micro £400*</td> <td style="width: 25%; border: 1px solid black;">Small £400*</td> <td style="width: 25%; border: 1px solid black;">Medium £7000*</td> <td style="width: 25%; border: 1px solid black;">Large £7000*</td> </tr> </table> | Micro £400* | Small £400* | Medium £7000* | Large £7000* |
| Micro £400* | Small £400* | Medium £7000* | Large £7000* | | |
| Are any of these organisations exempt? | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black;">No</td> <td style="width: 25%; border: 1px solid black;">No</td> <td style="width: 25%; border: 1px solid black;">N/A</td> <td style="width: 25%; border: 1px solid black;">N/A</td> </tr> </table> | No | No | N/A | N/A |
| No | No | N/A | N/A | | |

| | | |
|---|---------------|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) |
| Increase of £ | Decrease of £ | Net Impact £ |

Key: Annual costs (Net) Present Value

Summary: Analysis & Evidence

| | |
|--|--|
| Policy Option: 3 [Concluded] | Description: All payment institutions (PIs) to safeguard user funds above a £50 safeguarding threshold. |
|--|--|

| | | | |
|--|--|------------|---|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' A proportion of the 167 large & 2500 small hybrid & non-hybrid PIs may need to install new software to disaggregate payments below a safeguarding threshold. The estimated cost of this technology is £40 to £200k one-off & ranging from £35k to £85k p.a. ongoing for technical & maintenance support. Firms might, however, choose to simply safeguard all user funds. |
| | One-off (Transition) | Yrs | |
| | £ 319.7m | 1 | |
| | Average Annual Cost (excluding one-off) | | |
| £ 159.8m | | | Total Cost (PV) £ 463.5m |
| Other key non-monetised costs by 'main affected groups' | | | |

| | | | |
|---|---|------------|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Payment institutions that primarily transact low value payments would not need to invest in this technology. These are likely to be predominately hybrid firms. The quantity of the monetised benefits is currently unknown. |
| | One-off | Yrs | |
| | £ | | |
| | Average Annual Benefit (excluding one-off) | | |
| £ | | | Total Benefit (PV) £ |
| Other key non-monetised benefits by 'main affected groups' | | | |
| This threshold should help protect the innovative environment for low-value payment instruments whilst ensuring that the majority of high value payment transactions (both in terms of monetary and social value) are safeguarded | | | |

Key Assumptions/Sensitivities/Risks Predominately small hybrid payment institutions will use this flexibility and large firms will safeguard all of their transactions, meaning that only a small proportion of firms will invest in the technology to disaggregate low- and high- value transactions.

| | | | |
|-------------------------|------------------------|-------------------------------------|---|
| Price Base Year 2007 | Time Period Years 3 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ -463.5m |
|-------------------------|------------------------|-------------------------------------|---|

| | | | | | |
|---|--|--------|-------|--------|-------|
| What is the geographic coverage of the policy/option? | UK | | | | |
| On what date will the policy be implemented? | November 2009 | | | | |
| Which organisation(s) will enforce the policy? | FSA | | | | |
| What is the total annual cost of enforcement for these organisations? | £ 0 | | | | |
| Does enforcement comply with Hampton principles? | Yes | | | | |
| Will implementation go beyond minimum EU requirements? | No | | | | |
| What is the value of the proposed offsetting measure per year? | £ | | | | |
| What is the value of changes in greenhouse gas emissions? | £ n/a | | | | |
| Will the proposal have a significant impact on competition? | Yes/No | | | | |
| Annual cost (£-£) per organisation (excluding one-off) | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table> | Micro | Small | Medium | Large |
| Micro | Small | Medium | Large | | |
| Are any of these organisations exempt? | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table> | No | No | N/A | N/A |
| No | No | N/A | N/A | | |

| | | |
|---|---------------|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) |
| Increase of £ | Decrease of £ | Net Impact £ |

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

| | |
|--|--|
| Policy Option: 2 [Concluded] | Description: Fully exempting credit unions from the scope of the Directive (Article 2(3)) |
|--|--|

| | | | | | | |
|--|---|---|-----------------------------|------------|-----|--|
| COSTS | ANNUAL COSTS | Description and scale of key monetised costs by 'main affected groups' | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">One-off (Transition)</td> <td style="width: 30%; text-align: center;">Yrs</td> </tr> <tr> <td style="text-align: center;">£ 0</td> <td></td> </tr> </table> | | One-off (Transition) | Yrs | £ 0 | |
| | One-off (Transition) | | Yrs | | | |
| | £ 0 | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Average Annual Cost (excluding one-off)</td> </tr> <tr> <td style="text-align: center;">£ 0</td> </tr> </table> | Average Annual Cost (excluding one-off) | £ 0 | | | | |
| Average Annual Cost (excluding one-off) | | | | | | |
| £ 0 | | | | | | |
| Total Cost (PV) | | £ 0 | | | | |

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

| | | | | | | |
|---|--|--|----------------|------------|---|--|
| BENEFITS | ANNUAL BENEFITS | Description and scale of key monetised benefits by 'main affected groups' In the UK, there are approx 699 credit unions (CU). By applying the full derogation - i.e. exempting CU sector from the entirety of the PSD - the sector will benefit from not having to comply with the conduct of business requirements. At present information on the cost savings for CU not needing to comply with the Directive is not known. | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">One-off</td> <td style="width: 30%; text-align: center;">Yrs</td> </tr> <tr> <td style="text-align: center;">£</td> <td></td> </tr> </table> | | One-off | Yrs | £ | |
| | One-off | | Yrs | | | |
| | £ | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Average Annual Benefit (excluding one-off)</td> </tr> <tr> <td style="text-align: center;">£</td> </tr> </table> | Average Annual Benefit (excluding one-off) | £ | | | | |
| Average Annual Benefit (excluding one-off) | | | | | | |
| £ | | | | | | |
| Total Benefit (PV) | | £ | | | | |

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

Credit unions would continue to provide basic financial services to low-income consumers to serve individuals that are unbanked.

Key Assumptions/Sensitivities/Risks The extra burden of even partially complying with the PSD could generate a significant social cost, impact negatively on the Government's financial inclusion agenda and greatly reduce the availability of affordable credit. CU will continue to be regulated and authorised under the Financial Service and Markets Act.

| | | | |
|-------------------------|------------------------|-------------------------------------|---|
| Price Base Year 2007 | Time Period Years 3 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ 0 |
|-------------------------|------------------------|-------------------------------------|---|

| | | | | | |
|---|---|-------------|------------|-------------|------------|
| What is the geographic coverage of the policy/option? | UK | | | | |
| On what date will the policy be implemented? | November 2009 | | | | |
| Which organisation(s) will enforce the policy? | N/a | | | | |
| What is the total annual cost of enforcement for these organisations? | £ 0 | | | | |
| Does enforcement comply with Hampton principles? | Yes | | | | |
| Will implementation go beyond minimum EU requirements? | No | | | | |
| What is the value of the proposed offsetting measure per year? | £ | | | | |
| What is the value of changes in greenhouse gas emissions? | £ n/a | | | | |
| Will the proposal have a significant impact on competition? | No | | | | |
| Annual cost (£-£) per organisation (excluding one-off) | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro 0</td> <td style="width: 25%; text-align: center;">Small 0</td> <td style="width: 25%; text-align: center;">Medium 0</td> <td style="width: 25%; text-align: center;">Large 0</td> </tr> </table> | Micro 0 | Small 0 | Medium 0 | Large 0 |
| Micro 0 | Small 0 | Medium 0 | Large 0 | | |
| Are any of these organisations exempt? | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Yes</td> <td style="width: 25%; text-align: center;">Yes</td> <td style="width: 25%; text-align: center;">Yes</td> <td style="width: 25%; text-align: center;">Yes</td> </tr> </table> | Yes | Yes | Yes | Yes |
| Yes | Yes | Yes | Yes | | |

| | |
|---|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | (Increase - Decrease) |
| Increase of £ | Decrease of £ |
| Net Impact £ | |

Key:

Annual costs and benefits:

(Net) Present Value

Summary: Analysis & Evidence

| | |
|--|--|
| Policy Option: 3 [Concluded] | Description: Introducing the waiver criteria conditions for payment institutions waiving application for prudential requirements (article 26) |
|--|--|

| | | | |
|--|---|------------|---|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' Payment institutions (PIs) that meet the criteria of the derogation - approximately 2500 firms - will need to pay registration fees. Please see page 9 for details on the estimated fees used for these calculations. |
| | One-off (Transition) | Yrs | |
| | £ 0.4m* | 1 | |
| | Average Annual Cost (excluding one-off) | | |
| £ 0.1m* | Total Cost (PV) | | £ 2.9m |
| Other key non-monetised costs by 'main affected groups' | | | |

| | | | |
|--|--|------------|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' PIs exempt from full authorisation fees & safeguarding costs if : legal or natural persons; execute less than €3m worth of payment transactions a mth; do not wish to passport their services in other EU MS; & can prove that none of the persons responsible for managing the business has been convicted of ML or other financial offences. |
| | One-off | Yrs | |
| | £ 303.9m | 1 | |
| | Average Annual Benefit (excluding one-off) | | |
| £ 167.6m | Total Benefit (PV) | | £ 485.9m |
| Other key non-monetised benefits by 'main affected groups' The policy intentions behind both the Third Money Laundering Directive and the International Financial Action Task Force recommendation on Money Laundering and Terrorist Financing will continue to be met. | | | |

Key Assumptions/Sensitivities/Risks It was assumed that the PSD would go wider than the 3MLD requirements - money transmission or remittances offices to be licensed or registered in order to operate their business legally. However, its now clear that the PSD inadvertently removes the "fit and proper" requirement for registered (waived) PIs.

| | | | |
|-------------------------|------------------------|-------------------------------------|--|
| Price Base Year 2007 | Time Period Years 3 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ 484.4m |
|-------------------------|------------------------|-------------------------------------|--|

| | | | | | |
|---|--|----------------|----------------|-----------------|-------|
| What is the geographic coverage of the policy/option? | | | | UK | |
| On what date will the policy be implemented? | | | | November 2009 | |
| Which organisation(s) will enforce the policy? | | | | FSA | |
| What is the total annual cost of enforcement for these organisations? | | | | £ 0 | |
| Does enforcement comply with Hampton principles? | | | | Yes | |
| Will implementation go beyond minimum EU requirements? | | | | Yes | |
| What is the value of the proposed offsetting measure per year? | | | | £ | |
| What is the value of changes in greenhouse gas emissions? | | | | £ n/a | |
| Will the proposal have a significant impact on competition? | | | | Yes/No | |
| Annual cost (£-£) per organisation (excluding one-off) | | Micro £400* | Small £400* | Medium £400* | Large |
| Are any of these organisations exempt? | | No | No | N/A | N/A |

| | | | |
|---|---------------|-------------------|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | | (Increase - Decrease) |
| Increase of £ | Decrease of £ | Net Impact | £ |

Key: Annual costs and benefits: (Net) Present

Summary: Analysis & Evidence

| | |
|--|---|
| Policy Option: 2 - increase threshold [Concluded] | Description: Waiving the application of the Title III and Title IV for low-value payment instruments and electronic money (article 34), (article 53) |
|--|---|

| | | | | |
|---|---|--|---|--|
| COSTS | ANNUAL COSTS | Description and scale of key monetised costs by 'main affected groups' Firms may have to invest in technology to differentiate low-value payments, however it is assumed that these firms would have invested in this technology when implementing the safeguarding derogation. To avoid double counting these costs relate to those stated on page 4. | | |
| | One-off (Transition) Yrs | | | |
| | £ | | | |
| | Average Annual Cost (excluding one-off) | | | |
| | £ | Total Cost (PV) | £ | |
| Other key non-monetised costs by 'main affected groups' Different thresholds across the EU may undermine the PSD objectives to promote cross-border competition. | | | | |

| | | | | |
|---|--|--|---|--|
| BENEFITS | ANNUAL BENEFITS | Description and scale of key monetised benefits by 'main affected groups' Payment institutions that regularly transact low value payments, which are defined in the Directive as: <ul style="list-style-type: none"> - used to make individual transactions not exceeding €30; - have a spending limit of €150; or - have stored funds which do not exceed €150 at any time. | | |
| | One-off Yrs | | | |
| | £ | | | |
| | Average Annual Benefit (excluding one-off) | | | |
| | £ | Total Benefit (PV) | £ | |
| Other key non-monetised benefits by 'main affected groups' Existing innovative products in the UK can benefit from a lower, more proportionate administrative burden; low value instruments can continue to perform rapid transaction times, increasing the ease and convenience of use. | | | | |

Key Assumptions/Sensitivities/Risks If MSs exercised this flexibility, some providers could withdraw products from some countries. However, increasing the UK threshold would allow providers (domestic & EU) to maintain their current product offering in the UK and sustain innovation.

| | | | |
|-------------------------|------------------------|-------------------------------------|---|
| Price Base Year 2007 | Time Period Years 3 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ 0 |
|-------------------------|------------------------|-------------------------------------|---|

| | | | | |
|---|---------------|------------|-------------|------------|
| What is the geographic coverage of the policy/option? | UK | | | |
| On what date will the policy be implemented? | November 2009 | | | |
| Which organisation(s) will enforce the policy? | FSA | | | |
| What is the total annual cost of enforcement for these organisations? | £ 0 | | | |
| Does enforcement comply with Hampton principles? | Yes | | | |
| Will implementation go beyond minimum EU requirements? | No | | | |
| What is the value of the proposed offsetting measure per year? | £ | | | |
| What is the value of changes in greenhouse gas emissions? | £ n/a | | | |
| Will the proposal have a significant impact on competition? | Yes/No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | Micro 0 | Small 0 | Medium 0 | Large 0 |
| Are any of these organisations exempt? | No | No | N/A | N/A |

| | | |
|---|------------------|------------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) |
| Increase of £ | Decrease of £ | Net Impact £ |

Key: Annual costs and benefits: (Net) Present

Summary: Analysis & Evidence

| | |
|--|--|
| Policy Option: 3 – mirrors current UK legislation [Concluded] | Description: Payer’s liability for unauthorised use of payment instruments (article 61) |
|--|--|

| | | | | | | |
|--|---|---|-----------------------------|------------|-----|--|
| COSTS | ANNUAL COSTS | Description and scale of key monetised costs by ‘main affected groups’ Cost will be minimal as this application of the derogation would mirror existing UK law and industry practice, as set out in the Consumer Credit Act 1974 and the Banking Code. | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;">One-off (Transition)</td> <td style="width: 30%; text-align: center; padding: 2px;">Yrs</td> </tr> <tr> <td style="padding: 2px;">£ 0</td> <td></td> </tr> </table> | | One-off (Transition) | Yrs | £ 0 | |
| | One-off (Transition) | | Yrs | | | |
| | £ 0 | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;">Average Annual Cost (excluding one-off)</td> <td></td> </tr> <tr> <td style="padding: 2px;">£ 0</td> <td></td> </tr> </table> | Average Annual Cost (excluding one-off) | | £ 0 | | | |
| Average Annual Cost (excluding one-off) | | | | | | |
| £ 0 | | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;">Total Cost (PV)</td> <td style="padding: 2px;">£ 0</td> </tr> </table> | | Total Cost (PV) | £ 0 | | | |
| Total Cost (PV) | £ 0 | | | | | |
| Other key non-monetised costs by ‘main affected groups’ | | | | | | |

| | | | | | | |
|---|--|---|----------------|------------|-----|--|
| BENEFITS | ANNUAL BENEFITS | Description and scale of key monetised benefits by ‘main affected groups’ Zero - current UK status quo maintained. | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;">One-off</td> <td style="width: 30%; text-align: center; padding: 2px;">Yrs</td> </tr> <tr> <td style="padding: 2px;">£ 0</td> <td></td> </tr> </table> | | One-off | Yrs | £ 0 | |
| | One-off | | Yrs | | | |
| | £ 0 | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;">Average Annual Benefit (excluding one-off)</td> <td></td> </tr> <tr> <td style="padding: 2px;">£ 0</td> <td></td> </tr> </table> | Average Annual Benefit (excluding one-off) | | £ 0 | | | |
| Average Annual Benefit (excluding one-off) | | | | | | |
| £ 0 | | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 2px;">Total Benefit (PV)</td> <td style="padding: 2px;">£ 0</td> </tr> </table> | | Total Benefit (PV) | £ 0 | | | |
| Total Benefit (PV) | £ 0 | | | | | |
| Other key non-monetised benefits by ‘main affected groups’ UK customer protection standards are maintained i.e. status quo | | | | | | |

| |
|-------------------------------------|
| Key Assumptions/Sensitivities/Risks |
|-------------------------------------|

| | | | |
|-------------------------|------------------------|-------------------------------------|---|
| Price Base Year 2007 | Time Period Years 3 | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ 0 |
|-------------------------|------------------------|-------------------------------------|---|

| | | | | | |
|---|---|--------|-------|--------|-------|
| What is the geographic coverage of the policy/option? | UK | | | | |
| On what date will the policy be implemented? | November 2009 | | | | |
| Which organisation(s) will enforce the policy? | FSA | | | | |
| What is the total annual cost of enforcement for these organisations? | £ 0 | | | | |
| Does enforcement comply with Hampton principles? | Yes | | | | |
| Will implementation go beyond minimum EU requirements? | No | | | | |
| What is the value of the proposed offsetting measure per year? | £ | | | | |
| What is the value of changes in greenhouse gas emissions? | £ n/a | | | | |
| Will the proposal have a significant impact on competition? | Yes/No | | | | |
| Annual cost (£-£) per organisation (excluding one-off) | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table> | Micro | Small | Medium | Large |
| Micro | Small | Medium | Large | | |
| Are any of these organisations exempt? | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table> | No | No | N/A | N/A |
| No | No | N/A | N/A | | |

| | |
|---|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | (Increase - Decrease) |
| Increase of £ Decrease of £ | Net Impact £ |

Key:

Annual costs and benefits: (Net)

Evidence Base (for summary sheets)

Notes:

*Fee estimates provided on page 2,3 and 6 are based on the FSA's latest estimates of fees for PSD firms. The FSA is undertaking further work on its fees proposals and will provide full details and finalised proposals in its Regulatory Fees and Levies consultation in February. For the purposes of this impact assessment, an estimated application fee of around £500 for firms requiring registration has been assumed, and an application fee of around £1,500 for firms seeking authorisation and permission to undertake activities (f) and/or (g) only in Schedule 1 Part 1 of the (draft) regulations. Estimated application fees for firms seeking authorisation and permission to undertake one or more of activities (a) to (e) of Schedule 1 Part 1 of the regulations are around £5,000. The FSA is considering charging an estimated application fee of £25,000 to any firm with more than 5,000 agents, regardless of the type of activities it wishes to undertake. In the December 2007 consultation document, the FSA estimated average annual ongoing costs to be around £7,000 and £200 for authorised and small payment institutions respectively. There is no update yet on the average ongoing costs for authorised firms, however the proposed annual fee for small payment institutions is likely to be £400. Further work is currently underway to estimate the FSA's ongoing supervision costs and the size and population of firms, so estimates are likely to change as more information becomes available. It should be noted that the fee values listed here are not concrete and are subject to public consultation by the FSA. The FSA fee estimates do not include any one-off costs for developing the authorisation, registration and supervisory regimes, or any IT development costs.

**While other bodies have roles under the Payment Services Directive, the competent authority for most aspects of the Payments Service Directive will be the FSA and this figure is for FSA costs only. The FSA estimated cost of enforcement is likely to change as it does not take into account the costs to supervisory areas in the preparation of cases for enforcement referral.

The Payments Service Directive

1. The goal of the Payment Service Directive (PSD) is to improve the competitiveness of the EU by integrating national payment markets and to support the creation of a Single Market for retail payment services. This is expected to improve economies of scale and competition, which should increase efficiency and reduce the total cost of payments in the EU. To achieve this, the Directive has three main objectives:
 - to enhance competition between national payment markets by opening up markets and ensuring a level playing field amongst payment service providers;
 - to increase market transparency for both providers and users; and
 - to standardise the rights and obligations of providers and users of payment services in the EU, with a strong emphasis on customer protection.
2. When implemented, the PSD will apply across the United Kingdom.
3. The European Commission's aim is that the Directive should provide the legislative support necessary for the EU payments industry to build the infrastructure for a Single Euro Payments Area (SEPA), which aims to make cross-border Euro payments easy, safe, efficient and inexpensive as within national borders.

Background to intervention

4. Facilitating payments within the EU by harmonising the relevant legal provisions has been a priority for the European Commission's Directorate General for the Internal Market (DG MARKT). In 1997, a Directive on consumer protection rules for cross-border credit transfers (Directive 97/5/EC) was agreed. In 2001, the EU implemented Regulation 2560 on Cross-Border Payments in euro. This Regulation stipulates that cross-border payments in euro should be the same price as an equivalent domestic payment in euro within any EU Member State, and was intended to provide industry with an incentive to build the payments infrastructure necessary for the creation of SEPA.

5. In 2003, the Commission published a consultation document that acknowledged that these pieces of legislation have, to some extent, made it easier and cheaper to make euro payments across the EU and have also encouraged industry to start the process of building the payments infrastructure necessary for SEPA. The document, however, concluded that an internal market in payments had not yet been delivered and identified 21 potential barriers to the development of SEPA. Following detailed analysis of the responses to the consultation, the Commission, in 2005, decided to proceed with a proposal for a Directive to address the issues identified.
6. The PSD establishes a prudential licensing regime for a non-bank payment services provider, known in the Directive as a 'payment institution'. This allows such institutions to provide payment services across the EU on the basis of a licence obtained in any one EU Member State.
7. The Government has undertaken a three-staged consultation process:
 - in July 2006 the Government consulted on the European Commission's proposal for the Directive. The consultation responses informed the Government's approach to the European-level negotiations;
 - in December 2007 the Government published a consultation on the policy approach for implementing the PSD in the UK. A summary of the responses received and the conclusions reached was published in June 2008; and
 - in July 2008, the Government publicly consulted on the draft HM Treasury regulations implementing the PSD in the UK.
8. All published documents can be found at: http://www.hm-treasury.gov.uk/documents/financial_services/payment_services/payment_servindex.cfm.

Rationale for intervention – facilitating SEPA and an EU internal market in payments

9. The method by which payments are made can have a significant impact on the productivity of an economy. Studies have suggested that gains in efficiency, particularly by taking advantage of economies of scale and by moving to electronic products, can increase a country's GDP by several percentage points.
10. The efficiency of payment systems in the UK was raised in the Cruickshank Report on Competition in UK Banking of March 2000. This noted that "given the fundamental importance of payment systems to economic life, any inefficiency in these systems will have a significant impact on economic welfare". Following the publication of the Cruickshank Report, work was undertaken in the UK to improve the efficiency of the UK's payment systems and this was primarily undertaken by the Payment Systems Task Force, which comprised stakeholders from the banking industry, consumer and business groups and Government, and chaired by the Office of Fair Trading. The Task Force has since been superseded by the independent Payment Council, established in 2007, which is responsible for establishing a strategic direction for the development of UK payment systems².
11. The view of the Commission is that the current fragmented state of payment systems among EU Member States is imposing significant costs on the EU as a whole. A study completed for the Commission by McKinsey & Company in 2005 suggests that there are currently around 231 billion payments per year in the EU, representing a total value of €52 trillion. Moving to more efficient payment services could bring significant savings to business and consumers. Opening up national payment markets to providers from across the EU should encourage this, by increasing competition and facilitating the cross-border marketing and provision of payment services. For example, introducing an EU-wide direct debit scheme should improve the ease and efficiency with which bill payments are made across the EU, generating benefits for cross-border trade and mobility.

² The Payments Council's remit excludes the card schemes, which are international in nature.

12. Currently, there is great variation in the efficiency of payment markets in different EU Member States. In some countries, electronic payments take at least three days to execute, whereas in other countries the execution of a payment transaction is on the same day. If the price of payments in all EU countries were to fall to the level of the best performer huge savings could be achieved. For example, some merchants have reported that if they were able to source payment services from the most competitive providers in the EU they could, in some cases, pay up to 20 times less for card payments.
13. The development of more standardised payment service products through SEPA and the consolidation of payments infrastructure across the EU, according to the European Commission, should result in efficiency savings of around £6.6 billion. The European Commission also estimates that if standardised, end-to-end automated payments were introduced through the integration of electronic payments with established business processes, such as e-invoicing, the EU as a whole could make further savings of around £33–£66 billion per annum.
14. It is difficult to identify the UK's share of any such aggregate benefits. Clearly, however, benefits would accrue if UK customers and business were able to make payments more easily and at a lower cost. For the purpose of this impact assessment, the apportioned costs and benefits to the UK have been weighted by the UK share of the EU GDP.

Flexibility in the Directive

15. As the PSD is a maximum harmonisation directive, flexibility for Member States to deviate from the PSD requirements in implementation is limited. The consultation impact assessment (IA), however, set out the key options (with associated costs and benefits) where the UK has flexibility over implementation of the Directive and where quantitative impacts could be assessed. The IA analysed the cost and benefits of the PSD regime over and above the application of the money laundering 'fit and proper' test and considered policy options on:
 - the scope of the Directive (Article 2(3));
 - the safeguarding requirements for payment institutions (Article 9);
 - the conditions for payment institutions waiving application for prudential requirements (Article 26);
 - the waiver of conditions in Titles III and Title IV for low-value payment instruments and electronic money (Article 34), (Article 53); and
 - the payer's liability for unauthorised use of payment instruments (Article 61).
16. The impact assessment that accompanied the summary of responses to the December 2007 policy consultation set out the options that the Government intended to take forward in implementing the Directive. These decisions were made in the light of responses received. The conclusions have been summarised in pages 13 to 18 of this document.
17. This impact assessment concludes on the Government's proposal of introducing a safeguarding threshold, i.e. the threshold above which firms would have to safeguard users' funds, of £50, while giving firms the choice of safeguarding all users' funds. This impact assessment should be read in conjunction with the summary of responses to the July consultation on the draft legislation, which is due to be published shortly

Safeguarding threshold (Article 9(4))

18. At the time of publishing the December 2007 policy consultation, the Government consulted on the derogation in Article 9(4) which permits Member States or the competent authority to apply the safeguarding requirements in Article 9(1) only to payment service users whose funds exceed €600. As the Government concluded in the June 2008 summary of responses document, safeguarding provisions will apply to funds paid into both hybrid and non-hybrid payment institutions. The safeguarding threshold will also apply to funds paid into both types of payment institutions. However, firms might choose to simply safeguard all user funds. In the course of the European-level transposition discussions, it has been clarified that Member States have the flexibility to set a threshold lower than the €600 limit referred to in the Directive.
19. In consulting on the €600 safeguarding threshold respondents had mixed views on whether to apply the safeguarding provisions only to users' funds that exceed €600. Respondents were generally in favour of applying a safeguarding threshold, as they believed a blanket safeguarding provision might inhibit the development of low-value payment instruments. However, as the average remittance is around £324, some respondents raised concerns that a €600 limit might be too high, and would not protect the most vulnerable and financially excluded, and those most likely to be affected by a firm becoming insolvent.
20. Taking the responses into account, the Government proposed introducing a safeguarding threshold of £50 to be applied to all payment institutions, while giving firms the choice of safeguarding all users' funds. A £50 threshold would also be consistent with the user's liability threshold.
21. The Government consulted on three options with regards to implementation:
 - Option 1: do not apply safeguarding threshold;
 - Option 2: Apply €600 safeguarding threshold; or
 - Option 3: Apply £50 safeguarding threshold.
22. There could be a potential impact of not applying safeguarding threshold to firms that regularly transact low-value payments, as the cost of ring-fencing may render the institution's business model as unsustainable. Mobile phone payment firms typically offer low-value payments of not more than £5 to £10 per transaction; the cost of ring-fencing each payment could therefore be deemed too expensive, prompting providers to withdraw low-value payment services from the market.
23. As the Directive also includes an option for simplifying conduct of business rules for low-value payments (article 34 and 53) up to a variety of thresholds – all of which are below €600 – a decision not to apply the ring-fencing derogation for low-value payments might appear inconsistent.
24. In the December 2007 policy consultation document, the Government estimated, based on early industry indications that the safeguarding cost to a firm would consist of cost of compliance for a payment institution, as well as investing in systems to track payments above the minimum threshold. This cost was estimated to be £50k-£200k per firm, dependant on the size of the firm. From one response received with input pertinent to these estimates, the lower end of the estimated range has been revised downwards to £40k, so that the range is now estimated to be £40k-£200k per firm. Potential ongoing costs associated with the need for extra resources to maintain the safeguarding process, and ongoing technical and operational support costs could range from between £35k and £85k.
25. The operational cost for the firm could also increase, as it would have to comply with different thresholds for conduct of business and safeguarding.
26. The average remittance is around £324. A €600 threshold might be too high, and would not protect the most vulnerable and financially excluded, and those most likely to be affected by a firm becoming insolvent.
27. The application of a safeguarding threshold on all payment institutions should help protect the innovative environment for low-value payment instruments while ensuring that majority

of remittance transactions are safeguarded. A £50 limit would also be consistent with the user's liability threshold, simplifying the legislative landscape. The Government therefore concludes to apply a safeguarding threshold of £50.

Summary of the UK conclusions on the key policy options in the December 2007 policy consultation

Sectors and groups affected by the Payment Service Directive

28. Article 1 of the Payment Services Directive (PSD) sets out the organisations that are in scope of the Directive and will have an impact on all businesses currently offering payment services as defined by the Directive. As part of the EU transposition discussions and consultation processes these have been confirmed to be:

- credit institutions;
- e-money issuers;
- post office giro institutions;
- payment institutions that offer payment services identified in the Directive:
 - money transfer companies;
 - bill payment services providers;
 - mobile operators; and
 - non-credit institution credit card issuers;
- national central banks; and
- public authorities.

29. Article 2(3) of the Directive allows the UK to exercise a derogation to waive all or parts of the Directive to certain institutions. These include:

- the Crown Agents for overseas governments and administrations;
- the Agricultural Mortgage Corporation Limited (AMC);
- the Scottish Agricultural Securities Corporation PLC (SASC);
- the Commonwealth Development Finance Company Limited (CDFC);
- the National Savings Bank (NSB);
- municipal banks; and
- credit unions.

30. This derogation mirrors a parallel derogation in the Capital Requirements Directive (CRD). From the responses received and based on discussions with the institutions in question the Government has concluded that:

- the exemption should not be applied to the Crown Agents Bank as the institution is now regulated by the FSA as an UK credit institution;
- the exemption is not applicable for the AMC and the SASC, as these institutions do not undertake payment services in scope of the Directive;
- the CDFC, according to the Companies House register, was dissolved in 1994, and so the exemption is not applicable for this institution;
- it would not be appropriate to apply Title II provisions to the NSB as the institution is underwritten by Government and does not hold any of the user funds on its balance sheet, as these funds are transferred daily to the Government's consolidated fund.

The NSB should be exempt from Titles III and IV of the PSD for legal reasons the PSD, but should comply with the conduct of business provisions on a voluntary basis to the products that are in scope of the Directive. To note National Savings and Investment is an executive agency of the Chancellor of the Exchequer and provides a brand name for the products offered by the Director of Savings through the NSB; and

- municipal banks and credit unions will be exempt from the Directive.
31. In the case of **credit unions**, this derogation is an important and useful provision for the UK, and has already been assessed through a Regulatory Impact Assessment in July 2006. Informed by the evaluation consultation responses to the December policy consultation and cost-benefit analysis, the Government concluded that it would fully exempt credit unions from the provisions of the PSD. It believes that the Directive would impose a disproportionate regulatory burden on the sector, which might result in the sector not being able to offer basic financial services to low income consumers. This exemption would not restrict credit unions from offering payment services in the UK but would prohibit UK credit unions from passporting their services to other Member States. The credit union sector will continue to contribute an estimated £500m to the UK economy.
32. Credit unions will continue to be authorised and regulated under the Financial Service and Markets Act and maintain the redress protection currently provided by the Financial Ombudsman Service. The Government will continue to engage with the credit union movement on financial services legislation, especially in the light of changes to business models, which the Government recently consulted on, to ensure that the regulatory approach towards the sector remains proportionate, risk-based and workable.

Scope of the safeguarding requirements for payment institutions (Article 9)

33. Article 9 of the Directive requires hybrid payment institutions that also engage in a non-payments business activity (for example telecommunications services), to safeguard or ring-fence any funds received from payment service users to protect the users' funds in the event of the payment institution becoming insolvent. At present, there is no legal requirement for non-bank payment service providers to safeguard payment service users' funds against the risk of insolvency. Under Article 9(1), Member States have the option of applying safeguarding requirements to hybrid and/or non-hybrid firms.
34. In the December policy consultation, the Government consulted on three options:
- Option 1: Do not apply the derogation;
 - Option 2: Apply the derogation to hybrid payment institutions only; or
 - Option 3: Apply the derogation to hybrid and non-hybrid payment institutions.
35. The Government concluded that it would apply the safeguarding provisions to both hybrid and non-hybrid firms as it recognises that a two-tiered system for payment institutions in relation to safeguarding would create inconsistent levels of consumer protection in payment services.

Conditions for payment institutions waiving application for prudential requirements (Article 26)

36. Article 26 allows Member States to waive the application of all or part of the Title II prudential requirements for firms that:
- are legal or natural persons;
 - execute less than €3 million worth of payment transactions a month;
 - do not wish to sell, or "passport" their services in other EU Member States; and
 - can prove that none of the persons responsible for managing the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.

37. Such persons would be treated as payment institutions, but would not have the right to passport into other EU Member States. Member States would have to establish a registration regime for waived payment institutions. Firms waived from PSD authorisation are not exempt from compliance with PSD conduct of business requirements (Titles III and IV). In the UK, it is expected that the majority of firms falling within the waiver criteria set out on the Directive would be money transfer operators (MTOs).
38. MTOs are currently supervised by HMRC for compliance with the Money Laundering Regulations and will continue to be supervised by HMRC for these purposes following implementation of the PSD. The 2007 Money Laundering Regulations (MLR07) entered into force in December 2007 and require MTOs to meet an objective “fit and proper” standard before they can be registered with HMRC.
39. In deleting the provision of the Third Money Laundering Directive which required the offices of MTOs to be licensed or registered in order to legally operate their business, the PSD also removed the requirement under the Third Money Laundering Directive for such businesses to meet the “fit and proper” test for licensing or registration. Following the conclusion of the Money Service Business Review as set out in the Government’s Financial Crime Strategy, the Government believes that the fit and proper test outlined in the MLR07 should be retained. The test ensures HMRC is equipped to identify those associated with organised crime or terrorism and those consistently non-compliant with the Money Laundering Regulations. This satisfies the policy intentions behind both the Third Money Laundering Directive and the international Financial Action Task Force recommendation on Money Laundering and Terrorist Financing. To ensure that wider Government objectives are not compromised, the Government will maintain this more stringent form of “fit and proper” test for all waived firms under the PSD.
40. In practical terms, even if the waiver from full authorisation was in place for firms meeting the criteria above, Article 26(1) offers Member States with the flexibility to apply some of the Title II provisions to waived institutions. Article 5 outlines the information required from firms wishing to obtain full authorisation as a payment institution, and contains three criteria that appear to be consistent with the intention of the MLR07 “fit and proper” test and these would be applied to the waived firms.
41. As well as the need to ensure that the waiver criteria matches existing UK obligations in other legislation affecting the payments market, the Government consulted on a broader question of the derogation should be exercised and suggested three potential options:
- Option 1 - do not apply the derogation;
 - Option 2 - exercise a partial derogation and apply provisions that might further enhance customer protection; or
 - Option 3 - exercise the derogation either applying only those provisions that enable the UK to continue to apply a fit and proper test to money transfer companies, or, where the fit and proper test continues to be applied under the Money Laundering Regulations, in full.
42. Within its conclusions, the Government stated that it understood the concerns raised about creating a two-tiered system. However, to impose regulatory burdens on smaller firms that transact low value payments would be disproportionate and might result in firms being priced out of the market or moving to the informal sector. Page 9 outlines the FSA estimations relating to the average cost to firms seeking full authorisation. These estimates have been based on roughly 100 firms seeking full authorisation. If an additional 2500 small firms (which currently meet the waiver criteria) were to seek authorisation, albeit a partial authorisation, the cost to FSA would increase, which could result in higher licence fees. In contrast, it has presently been estimated by the FSA that the fee for registering waived firms is expected to be £200 initial and £400 ongoing.
43. The Government concluded that it will use the flexibility provided by Article 26 and will create a separate registration regime for smaller and non-passporting payment institutions, and to continue to apply the ‘fit and proper’ test currently in place. The Directive does not

prohibit firms that are eligible for the waiver from applying for authorisation as a payment institution.

Please note that all licence fees are estimates and are subject to further analysis.

Waiving the application of the Title III and Title IV for low-value payment instruments and electronic money instruments (Article 34), (Article 53)

44. Titles III and IV of the Directive contain the conduct of business rules applicable to all payment service providers. Title III establishes the conditions for the information provision to payment service users, while Title IV establishes the rights and obligations of both payment service providers and users. At present credit institutions and e-money issuers comply with a variety of legislations and voluntary codes of practice, including the Banking Code, the Banking Consolidation Directive and the E-Money Directive.
45. Article 34 (Title III) and Article 53 (Title IV) allow providers of low value payment instruments, to provide users with information on only the main characteristics of the payment service. Providers can agree with their users that some of the Title IV requirements will not apply in certain circumstances. Many low-value and/or e-money payment instruments are designed to facilitate quick and convenient transactions, for instance in a crowded urban environment. The Directive defines the thresholds for low-value instruments as:
 - being used to make individual transactions not exceeding €30; or
 - having a spending limit of €150; or
 - having stored funds which do not exceed €150 at any time.
46. It will be for providers to decide whether they wish to exercise the flexibility offered by Article 34(1). For example, 34(1)(b) gives payment service providers the option to change contractual conditions on a low-value payment instrument more quickly than in the context of traditional framework contracts. This would seem proportionate and more workable (for instance in the case of “anonymous” payment instruments, where the provider does not have a regular and/or systematic way of communicating with the customer).
47. It is understood that the derogation in Article 34(1) applies to both national and EU cross-border transactions made on payment instruments which are used within the context of a framework contract and satisfy the values set out above. However, under Article 34(2), Member States or their competent authorities may reduce or double the amounts referred to in Article 34(1) for national payment transactions. Member States may also increase the thresholds under Article 34(1) to €500 for pre-paid instruments.
48. Article 53(1) enables providers of low-value instruments to agree with their users that some of the Title IV requirements will not apply in certain circumstances. With this flexibility, providers may agree with their users that Article 56(1)(b), Article 57 (1)(c), Article 61(4 and 5) shall not apply, if the instrument does not allow blocking or prevention of further use. Articles 56 and 57 relate to user notification of an instrument being lost, stolen or misappropriated, as long as the provider ensures both that the means are available at all times for the user to notify the provider of a problem, and prevents all further use upon such notification. Article 61 stipulates that the provider shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated instrument after notification, except where he or she has acted fraudulently.
49. Articles 60 and 61 will apply to e-money (of all values) unless the provider cannot freeze the account or the instrument or provisions in article 53(1)(b) apply. Member States have the option to limit this derogation to accounts/instruments of a certain value.
50. During the process of negotiating the Directive, it became evident that different models of low-value payment instruments exist within and across different Member States. Many UK-based pre-paid card products currently have a £1,000 stored value limit, but no limit per

transaction. The market offering for low-value and e-money payment products is very variable across Member States, which can pose challenges in the context of a maximum harmonisation Directive.

51. Although the derogation in Article 34(1) is separate from that under Article 53, consistency and simplicity argue for applying the derogation to both Titles. The advantage of this derogation is that Member States will have the flexibility to reduce or increase the thresholds under Article 34(1) and Article 53 in accordance with the characteristics of their national payment markets. In the December policy consultation the Government consulted on the following three options:

- Option 1 – do not apply the derogation;
- Option 2 - increase the thresholds; or
- Option 3 – reduce the threshold.

52. The aim of the PSD is to promote a Single Market in payment services, in order to improve the competitiveness of national, as well as cross-border, payment products. The Government understands that there is a risk that, if Member States exercised this flexibility and impose different thresholds, some providers could withdraw some products from certain Member States. Providers may take a commercial decision to operate only in Member States where the thresholds are at similar levels or higher. Increasing the UK threshold would, however, allow providers operating in the UK to maintain their current product offering and sustain innovation. The Government concluded that it would therefore apply the highest possible thresholds for national payment transactions. This means that that the threshold in Article 34(2) and Article 53(2) will be implemented at the maximum of €500 for pre-paid instruments, and service providers will not have to comply with all of the information provisions in Title III for payment instruments and e-money instruments which:

- are used to make individual transactions not exceeding €60;
- have a spending limit of €300; or
- have stored funds that did not exceed €300 at any time.

53. The thresholds for cross-border payments will be half of those mentioned above.

User's liability for unauthorised use of payment instruments (Article 61)

54. In the event of an unauthorised transaction, the PSD states that both the payment service provider and users are expected to shoulder some level of liability for losses involved; a €150 maximum is set in cases where the payer has not acted fraudulently; but where the payer has been grossly negligent, the payer will be subjected to unlimited liability. The PSD user's liability provision, however, provides Member States with the option of deciding whether to reduce the liability faced by payment service users at national level.

55. In practical terms, where a payment service user has failed to keep his or her PIN number safe, Member States have the option of reducing the €150 maximum, derogating from Article 61(1). In cases where users have acted in gross negligence, e.g. writing down a PIN number and attaching this to the payment instrument, Member States have the option of providing a lower level of liability. This would be a derogation from Article 61(2).

56. Current UK liability standards can be compared with the EU-wide standards set by the PSD, as summarised in the following table:

| | Current standard in UK | PSD provision |
|--|------------------------|---------------|
|--|------------------------|---------------|

| | | |
|---|---|--|
| Lost or stolen payment card, or card misused without permission, before card issuer has been notified | Maximum £50 | Maximum €150, but option to reduce maximum liability to below €150 |
| Lost or stolen payment card, or card misused without permission, once card issuer has been notified | No liability | No liability |
| Payment card misused with permission (broadly equivalent to fraud or failure with intent) | Unlimited | Unlimited |
| Payment card lost, stolen or misused because of holder's gross negligence | Broadly equivalent to "without reasonable care" – unlimited, unless the card was used as a credit token (e.g. credit card), in which case £50 limit applies | Unlimited, but option to retreat from this and to set a quantitative maximum cap |

57. The Government consulted on the three options available to Member States:

- Option 1- do not apply the derogation;
- Option 2 – apply the derogation to reduce limit for lost or stolen cards' or negligence; or
- Option 3 - apply the derogation to mirror existing UK law (as set out in the Consumer Credit Act 1974 and the Banking Code).

58. The Government concluded in favour of maintaining existing UK standards of customer protection, while guarding against the risk of moral hazard. In cases where payers have lost their payment instruments or have had them stolen perhaps by acting negligently, the Directive provides for a higher maximum liability (€150) than existing UK law (£50). The Government will exercise the derogation to reduce the €150 liability limit to £50, to ensure that existing UK standards of customer protection are kept. The Government considers the risk of compromising the Single Market objectives is minimal. The Government will further reduce the liabilities threshold to nil for payments made online. This will further simplify the legislative landscape, keeping the threshold that was in the Distance Selling Directive.

Implementation Timetable

59. The deadline for implementing the PSD is 1 November 2009. This means that the UK must bring forward the legislation necessary to comply with the provisions of the PSD by that date. In order to ensure that UK providers have adequate time to adapt their procedures before the implementation deadline, regulations implementing the Directive were laid before Parliament in February 2009.

Monitoring, enforcement and sanctions

60. The competent authority for most aspects of the PSD will be the FSA. However, other bodies will also have roles. Namely:
- HMRC will retain responsibility for the anti-money laundering supervision of money service businesses and will additionally be responsible for the anti-money laundering supervision of any mobile operators and bill payment service providers which fall into scope of the Third Money Laundering Directive due to the PSD;
 - the OFT will be responsible for Article 28 (access to payment systems) of the PSD, which has a competition objective; and
 - the FOS will provide the out-of-court redress mechanism envisaged in Article 83 of the PSD.

Post implementation review

61. The European Commission is expected to undertake a review of the implementation and impact of the adopted Directive no later than three years after the implementation deadline of 1 November 2009.

Specific Impact Tests: Checklist

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | Yes/No | No |
| Small Firms Impact Test | Yes/No | No |
| Legal Aid | No | No |
| Sustainable Development | No | No |
| Carbon Assessment | No | No |
| Other Environment | No | No |
| Health Impact Assessment | No | No |
| Race Equality | No | No |
| Disability Equality | No | No |
| Gender Equality | No | No |
| Human Rights | No | No |
| Rural Proofing | No | No |

