

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF THE EURO AGAINST COUNTERFEITING (AMENDMENT)
REGULATIONS

2011 No. 2944

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

2. Purpose of the instrument

2.1 These Regulations amend the Protection of the Euro against Counterfeiting Regulations 2001 (S.I. 2001/3948), which provide for offences where a bank or other institution handling euros does not comply with the measures set out in Council Regulation (EC) No. 1338/2001 (“the Council Regulation”). Council Regulation (EC) No. 1338/2001 has been amended by Council Regulation (EC) No. 44/2009 to add an additional requirement on such institutions to check euro coins and notes for counterfeits. These Regulations amend the 2001 Regulations to add an additional offence of failure to comply with that requirement.

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

3.1 None

4. Legislative Context

4.1 These Regulations make provision related to the enforcement of amendments to Council Regulation (EC) No. 1338/2001 made by Council Regulation (EC) No. 44/2009. The application of Council Regulation (EC) No. 1338/2001 was extended to non-eurozone countries by Council Regulation (EC) No. 1339/2001. The amendments to Council Regulation (EC) No. 1338/2001 were extended to non-eurozone countries by Council Regulation (EC) No. 45/2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 In order to tackle ongoing counterfeit euro issues, the EU has amended existing legislation on the protection of the euro against counterfeiting. Council Regulation (EC) No 44/2009 introduces a requirement on banks and other institutions to pro-actively check euro notes and coins they receive for counterfeits before they put them back into circulation. The Regulation requires that these checks are carried out by either trained staff or 'approved' euro coins/notes machines.

7.2 The EU Regulations are directly applicable in the UK, but Council Regulation (EC) No 44/2009 requires the UK to put in place effective, proportionate and dissuasive penalties for breach of the requirements to check euro notes and coins.

7.3 The Regulations impose a criminal penalty for breach of the requirements. The Treasury considered regulatory penalties as an alternative but on balance concluded that a criminal penalty should be imposed, in line with the existing penalties under S.I. 2001/3948, and in order to avoid additional regulatory burdens on businesses.

7.4 A breach of the requirement to check euro notes and coins attracts, on summary conviction, a fine not exceeding the statutory maximum and on conviction on indictment an unlimited fine. This is consistent with the penalty under S.I 2001/3948 for failure to hand over to the relevant body a counterfeit euro note or coin. The penalty under that instrument for failure to withdraw a counterfeit euro note or coin from circulation includes a sentence of imprisonment, in addition to a fine.

7.5 The Council Regulation was cleared by the EU Scrutiny Committee on 5 November 2008, and by Sub-Committee A of the Lords Select Committee on the European Union on 11 November 2008, following correspondence between Treasury Ministers and both Committees.

- Consolidation

7.6 There are currently no plans to consolidate the relevant legislation

8. Consultation outcome

8.1 The Treasury consulted between 1st August and 1st November 2011 on two options for putting in place penalties for breach of the requirements of the EU Regulations: criminal penalties or regulatory penalties. The outcome of the consultation and of Government's engagement confirmed the preference for a new criminal offence, in line both with our previous approach in the 2001 Regulations and with the Government's aim to reduce regulatory burdens on businesses.

9. Guidance

9.1 There is no specific guidance issued on the new EU requirements. However the Government's Response to the consultation (available on the Treasury's website: hm-treasury.gov.uk) clearly sets out the requirements of the Council Regulation and which institutions are affected by them. The Treasury has also engaged with the affected sectors via the relevant supervisor and/or industry body including casinos, banks and bureaux de change.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. Charities and voluntary bodies do not fall under the scope of the new regulation. Given the amount of Euros in circulation in the UK and the nature of the new criminal offence, the impact on business is minimal, and arises from the directly applicable EU Regulations rather than from these Regulations, which only put in place penalties for breach of the requirements.

10.2 There is no impact on the public sector. The Treasury has carried out a Justice Impact Test cleared by the Ministry of Justice, which concluded that the impact of the new criminal offence on the UK judicial system is 'minimal'.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The Council Regulation applies to businesses of all sizes which are subject to the requirements of the Regulation. These are:

- Credit institutions (i.e. banks and building societies);
- Payment service providers within the limit of their payment activity;
- Bureaux de change and similar businesses;
- Transporters of funds;
- Other interested businesses (for example secure printers and businesses that design and produce equipment to check notes and coins); and
- Any other businesses (such as retailers or casinos) that distribute Euro notes and coins.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, firms have the option to select the method of checking which makes more operational sense for them.

12. Monitoring & review

12.1 The European Commission will review compliance by Member States with the requirements of the Council Regulation in the course of 2012.

12.2 The Treasury will review the requirements of these Regulations and publish a report within five years of the date the Regulations come into force, and at intervals not exceeding five years thereafter.

13. Contact

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