

EXPLANATORY MEMORANDUM TO
THE PAYMENTS IN EURO (CREDIT TRANSFERS AND DIRECT DEBITS)
REGULATIONS 2012

2012 No. 3122

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

2. Description

2.1 The Payments in Euros (Credit Transfers and Direct Debits) Regulations 2012 (“the 2012 Regulations”) implement enforcement obligations required by Regulation (EU) No. 260/2012 of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009 (“the 2012 European Regulation”) and those required by Regulation (EC) No 924/2009 on cross-border payments in the Community and repealing Regulation 2560/2001 (“the 2009 European Regulation”).

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

3.1 None.

4. Legislative Context

4.1 The Single Euro Payments Area (SEPA) is a project to make paying in euros a seamless experience across the EEA. The 2012 European Regulation is a measure to support the development of the Single Euro Payments Area. As part of the SEPA project, this Regulation sets common standards for banks handling direct debits and credit transfers in euro. It will enable euro payments made by direct debit and credit transfer to flow electronically from one account to another anywhere in the EEA.

4.2 The 2012 European Regulation is the latest in a series of legislative acts concerning payment services across the EU, the previous being the 2009 European Regulation which set down a number of facilitating measures for SEPA such as the extension of the principle of equal charges to cross-border direct debits and reachability for direct debits.

4.3 The enforcement obligations of the 2009 Regulation were implemented in the UK by the Cross-Border Payments in Euro Regulations 2010 (“the 2010 Regulations”). As the enforcement obligations required by the European Regulations are practically identical, in the interests of better regulation, the 2012 Regulations appoint and empower the Financial Services Authority to enforce the requirements of both the 2012 and the 2009 European Regulations, and revoke the 2010 Regulations.

4.4 Both European Regulations have direct legal application in the UK, but certain enforcement elements i.e. appointing a competent authority for monitoring and enforcement, setting penalties for non-compliance and making provision for out of court complaint and redress procedures must be implemented by domestic legislation.

4.5 The new 2012 Regulations also allow the UK Government to take advantage of derogations from certain deadlines permitted by the 2012 European Regulation.

5. Territorial Extent and Application

5.1 These Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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 As part of the ongoing SEPA project, the 2012 European Regulation-

- mandates a common electronic format and computer language (ISO 20222, XML) for electronic messages used by payment service providers when handling payments in Euros.
- lays down the information that must be provided with a payment instruction, including obligations on consumers to use the International Bank Account Number only.
- mandates that banks' systems are 'interoperable' so that payments in euros can be processed electronically from start to finish anywhere in Europe by automated systems.

The 2009 European Regulation-

- mandated the non-discrimination between corresponding domestic and cross border payments in euro, up to EUR 50,000, on the basis of price.
- facilitated automation of payments, through the disclosure of International Bank Account Numbers and Bank Identifier Codes.

7.2 The 2012 Regulations establish the FSA as the competent authority to monitor compliance and enforce the requirements of the European Regulations. They give the FSA information gathering and investigative powers, the power to impose fines, disciplinary measures, seek injunctions and impose consumer redress measures akin to those it uses to enforce the requirements imposed by the Financial Services and Markets Act 2000.

7.3 This is in line with existing payments legislation imposing requirements on payment service providers. Operators of payment systems are being brought into scope for the first time due to the requirement imposed on them by Article 4.2 of the 2012 European Regulation.

7.4 The 2012 Regulations also ensure that the jurisdiction of the Financial Ombudsman Service under Part 16 of the Financial Services and Markets Act 2000 (as amended by the Payment Services Regulations 2009) is able to deal with

complaints linked to credit transfers and direct debits in euros where the payment service provider has breached requirements imposed by the European Regulations .

7.5 The 2012 Regulations also exercise the maximum permitted derogations from the timetable allowed by the 2012 European Regulation in line with the Government's policy on European legislation to avoid gold plating. The principal derogation is to defer the application of the new payment formats from February 2014 to 31st October 2016.

7.6 As part of the derogations:

- Articles 3-5 of the 2012 European Regulation are to be applied in the UK by 31 October 2016.
- Article 8 of the 2012 European Regulation is to be applied in the UK by 1 February 2016.

- *Consolidation*

The 2012 Regulations revoke the Cross-Border Payments in Euros Regulations 2010, therefore consolidating the FSA's enforcement powers over the requirements of the European Regulations into the one statutory instrument.

8. Consultation outcome

8.1. The Treasury carried out an informal consultation targeted on those affected by the Regulations between the 8 October 2012 and 1 November 2012. This included a small number of banks handling euro traffic; the British Bankers Association and the Building Societies Association; and large firms via the Association of Corporate Treasurers, the FSA and the Financial Ombudsman Service.

8.2. All respondents agreed with the draft Regulations and the domestic implementing measures.

9. Guidance

9.1 The Treasury does not propose to produce any guidance in relation to the Regulations. However, the Payments Council will be publishing guidance on how to comply with the Regulations.

10. Impact

10.1 The impact on charities and voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The 2012 European Regulation itself imposes a review requirement on the Commission which must be completed by 1 February 2017. It is anticipated that annual reporting to the European Commission and the Commission review of the application of the Regulation will in any case provide an effective and administratively efficient means of enabling Ministers regularly to review UK implementation within the five year period set out in the guiding principles for EU regulation

13. Contact

Michael Forrest at HM Treasury (Tel: 020 7270 4779 or e-mail: michael.forrest@hm-treasury.gsi.gov.uk) can answer any queries regarding this instrument.

Implementing Regulation (EU) No 260/2012 – A Transposition Note

Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14th March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009

The articles to be implemented are the requirements of Articles 10 to 12, and certain derogations contained in Article 16.

Abbreviations:

A: Legislation

2013 Regs	The Payments in Euros (Credit Transfers and Direct Debits) Regulations 2013 (draft)
SEPA Regulation	Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 th March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009
FSMA	The Financial Services and Markets Act 2000

B: Sourcebooks made by the FSA under FSMA

FSA Rules [FSA to advise]

Article/ paragrap h	Provision of the Regulation	Relevant domestic provision(s)
Article 10/1	Designation of the competent authority	Regulations 3 and 4 and 13 of the 2013 Regs
Article 10/3 (and 10/4)	The competent authority to have all powers necessary for the performance of their duties: to monitor compliance by payment service providers in order to be able to take all necessary measures to ensure such compliance	Regulations 5 (public censure), 6 (financial penalties), 8 (injunctions), 9 (power to require restitution) and 7 and 10 (warning and decision notices) of the 2013 Regs; also (by virtue of regulation 21 of the 2013 Regs), the disciplinary powers set out in section 66, the powers to gather information and hold investigations set out in sections 165 to 177 of FSMA, and other provisions ancillary to these powers in sections 67 to 70, 348, 349 and 352, and 387 to 396 of FSMA.
Article 11/1	Rules laid down on the penalties applicable to infringements of this	Regulation 6 of the 2013 Regs and section 66(3) of FSMA (as applied by regulation 21 and the Schedule to the

	Regulation	2013 Regs); sections 210 (statements of policy and 211 (statements of procedure) of FSMA apply in respect of the imposition of penalties under regulation 6 as they do to the imposition of penalties under section 66. Paragraphs 1(c) and 3(2) of the Schedule make provision for transitional arrangements
Article 11/1	To take all measures necessary to ensure that they (penalties) are implemented	Regulations 4(3) and 6 of the 2013 Regs.
Article 11/2	To not apply the penalties laid down in Article 11/1 to consumers	Regulations 4 and 6 of the 2013 Regs (by applying the penalties only to payment service providers).
Article 12/1	Out-of-court complaint body and redress body designated under Article 12(1)	Regulation 12 and Part 16 of FSMA as amended by regulation 126 and Schedule 6 of the Payment Services Regulations 2009
Article 16/1	BBAN – IBAN conversion facilities for consumers	The derogation in Article 16/8 means that the requirements of Article 5 of the SEPA Regulation do not apply until 31 st Oct 2016 for non Euro member states.
Article 16/3	Niche products	Regulation 19 as regards the derogations in 16/3 and 16/4 in respect of Article 8/2 and 8/3 ¹ . The derogations in Article 16/8 means that the requirements of Articles 4 and 5 of the SEPA Regulation do not apply until 31 st Oct 2016 for non Euro member states.
Article 16/4	One-off direct debits generated by using a payment card at the point of sale, Article 16(4);	Regulation 19 as regards the derogations in respect of Article 8/2 and 8/3 ² . The derogations in Article 16/ 8 means that the requirements of Articles 4 and 5 of the SEPA Regulation do not apply until 31 st Oct 2016 for non Euro member

¹ The derogations in Arts 16/3 and 16/4 allow member states not to apply the requirements referred to in Articles 6/1 and 2 until 1st Feb 2016. The requirements referred to in Articles 6/1 and 6/2 are those set out in Article 5(1), (2) and (4) and points 1 and 2 of the Annex (Article 6(1)), and those set out in Articles 8/2 and 3, and Articles 5(1), (3), (5) and (6) and (8) and points 1 and 3 of the Annex. The automatically- applicable derogation to 31st Oct 2016 for non- euro member states in Article 16/8 applies to all these requirements save for those applicable to direct debits in Article 8/2 and 8/3.

² See footnote 1.

		states.
Article 16/5	Delayed usage of standard message format ISO 20022 XML	The derogation in Article 16/8 means that the requirements of Article 5 of the SEPA Regulation do not apply until 31 st Oct 2016 for non Euro member states.
Article 16/6	Delayed BIC elimination for national payment transactions	The derogation in Article 16/8 means that the requirements of Article 5 of the SEPA Regulation do not apply until 31 st Oct 2016 for non Euro member states.
Article 16/7	Usage of Member State options	Regulation 19 as regards the derogations in 16/3 and 16/4 in respect of Article 8/2 and 8/3. The derogations in Article 16/2 and 8 means that the requirements of Articles 3,4 and 5 of the SEPA Regulation do not apply until 31 st Oct 2016 for non Euro member states ³ .

³ See footnote 1.