

Title: Impact assessment of UK implementation regulations making amendments to the EU Prospectus Directive Lead department or agency: HM Treasury	Impact Assessment (IA)
	IA No: HMT1137
	Date: 16/06/2011
	Stage: Final
	Source of intervention: EU
	Type of measure: Secondary legislation
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Summary: Intervention and Options

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

In September 2009, the European Commission published a proposal to amend the Prospectus Directive (PD) which is the EU framework for the preparation of prospectuses in public offers of securities and where securities are admitted to trading on a regulated market. In November 2010 the European Parliament and Council adopted the "Amending Directive". The Government now has to implement the directive to meet the European deadline of 1 July 2012 and is proposing to do this by amending existing domestic legislation. The Government is proposing to introduce two measures early (before the implementation deadline), as this will provide cost-savings and support to companies seeking equity finance. Both the threshold for an offer of securities, and the minimum number of investors for which a prospectus is required, will be raised.

What are the policy objectives and the intended effects?

The Commission consulted on the operation of the PD in 2009 and concluded that the overall effect of the Directive has been positive. However, some improvements were identified. The objectives of the Amending Directive are to improve and simplify the application of the PD, principally by reducing the administrative burdens on issuers whilst maintaining investor protection and improving legal certainty.

The Government is proposing to introduce two measures of the Amending Directive early as these will be beneficial to companies, particularly smaller companies, by reducing the administrative burden on issuers and facilitating capital raising. The proposed UK implementation regulations bring this into effect so UK industry can benefit from these changes as soon as reasonably possible.

What policy options have been considered, including any alternatives to regulation?

- Early Implementation:** Bringing two deregulatory measures from amendments to the Prospectus Directive into force early, ahead of the EU implementation deadline of July 2012. This will allow more public offers to go ahead without requiring the production of a prospectus, thus lowering administrative costs.
- Baseline scenario:** Not to bring the two deregulatory measures into effect early, waiting until the EU implementation deadline of July 2012.

Option 1 is preferred in view of the benefits associated with introducing these two measures early, which industry has supported in the consultation process. These measures will reduce the administrative burden on companies, particularly smaller companies, and facilitate capital raising.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 01/2016

What is the basis for this review? PIR **If applicable, set sunset clause date:** N/A

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes
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SELECT SIGNATORY Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____

M 162

Date: 20/6/11

Summary: Analysis and Evidence

Policy Option 1

“Early implementation”: Bringing two deregulatory measures from amendments to the Prospectus Directive into force early, ahead of the EU implementation deadline of July 2012. This will allow more public offers to go ahead without requiring the production of a prospectus, thus lowering administrative costs.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 84	High: 141	Best Estimate: 112

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Cost
Low	0		0		0	
High	0		0		0	
Best Estimate	0		0		0	

Description and scale of key monetised costs by ‘main affected groups’

These changes widen existing exemptions that have already been implemented into UK legislation. They will reduce burdens on companies, so that fewer offers will need a prospectus. No monetised costs are envisaged. The consultation was warmly received by market participants who confirmed that early implementation would provide immediate support and greater flexibility for small companies seeking to raise equity finance. No additional costs were foreseen by implementing these measures early, only benefits.

Other key non-monetised costs by ‘main affected groups’

There could be indirect costs relating to the adjustment of industry and the FSA to these changes, as well as the updating of related guidance. These are expected to be negligible. The consultation process has supported this view, with no concerns raised about indirect costs and, instead, strong support expressed for enabling (typically small) issuers to access capital markets more efficiently and more quickly by implementing these deregulatory measures early.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	0		£9 million		£84 million	
High	0	n/a	£15 million		£141 million	
Best Estimate	0		£12 million		£112 million	

Description and scale of key monetised benefits by ‘main affected groups’

We estimate that the potential benefits for companies of increasing the current exemptions under which there is no requirement to produce a prospectus may amount to approximately £9 million to £15 million, representing a benefit of £350,000 to £600,000 for 26 public offers per year. **The total benefits of early implementation are therefore estimated to be £12 million**, as companies will benefit from a year of early implementation. No further, or differing, estimates resulted from the consultation process.

Other key non-monetised benefits by ‘main affected groups’

Early implementation will allow companies more efficient access to capital. The consultation confirmed this is likely to be most significant for further fundraisings by smaller companies, which will benefit from the increased total consideration threshold. It also suggested VCTs would benefit, which themselves provide an important source of non-bank finance to small companies. The exemption is also widened for companies to offer securities to a wider set of investors. Consultees welcomed this, but could not monetise the benefit.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The key assumption is that the positive, deregulatory impact still stands in view of the fact that the UK is implementing *early* (ahead of other Member States). The risk is that this might cause confusion or have other unforeseen consequences. In particular, if cross-border offers of this size are typical, the cost saving would be much smaller, as companies would not benefit from the increased thresholds. The consultation confirmed that the likelihood of cross-border capital raising of this size was highly unlikely as the size is too small for this to be economic (pp. 9). Additionally, it is worth considering the loss of a prospectus to the end-investor (pp.10). **The consultation confirmed the risks considered do not significantly alter the benefits envisaged, and there are compelling reasons to proceed with early implementation.**

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 12	Net: 12	Yes	OUT

Summary: Analysis and Evidence

Policy Option 2

"The baseline scenario": Not to bring the two deregulatory measures into effect early, waiting until the EU implementation deadline of July 2012.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best estimate: £100m

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Cost
Low	0		0		0	0
High	0		0		0	0
Best Estimate	0		0		0	0

Description and scale of key monetised costs by 'main affected groups'

There are no costs incurred; this issue is identical to policy option 1.

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

These are exactly the same as for policy option 1, and are unaffected by the timing of implementing the particular measures proposed.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	Optional		Optional		Optional	Optional
High	Optional		Optional		Optional	Optional
Best Estimate	0		£12 million		£100 million	

Description and scale of key monetised benefits by 'main affected groups'

As explained in policy option 1, the annual cost-saving for issuers of the higher thresholds (before production of a prospectus is required) is approximately £12 million. Delaying the implementation of these measures by a year would therefore deprive industry of this saving for the period July 2011-July 2012. Consequently, over a 10 year period, companies would lose the benefit of one year's early implementation (policy option 1), reducing the total benefit over 10 years from £112 million to £100 million.

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

The consultation indicated that companies derive an indirect benefit of increased liquidity from the second exemption – raising the threshold for the number of investors from 100, to 150. Delaying the implementation of these measures by a year would therefore deprive industry of this benefit for the period July 2011-July 2012.

Key assumptions/sensitivities/risks

Discount rate (%)

There are no assumptions or sensitivities for this policy option, which represents the baseline scenario today. The key risk is depriving companies, and small companies in particular, from the policy alternative of increased ease of access to the capital markets for the period July 2011-July 2012 (an estimated cost saving of £12 million).

We note the UK is committed to avoiding gold plating, and thus early transposition of EU regulation. This does not apply in this circumstance as the proposal is to implement measures which provide *cost-savings* to business. **Positive consultation feedback on policy option 1 indicates that policy option 1 ought to be adopted.**

Direct impact on business (Equivalent Annual) (£m):			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	N/A

Enforcement, Implementation and Wider Impacts – preferred policy option (1)

What is the geographic coverage of the policy/option?	United Kingdom				
From what date will the policy be implemented?	31/07/2011				
Which organisation(s) will enforce the policy?	UK courts/FSA				
What is the annual change in enforcement cost (£m)?	0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	p.7
Small firms Small Firms Impact Test guidance	Yes	p.6
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

References

[Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.]

No.	Legislation or publication
1	EU Impact Assessment http://ec.europa.eu/internal_market/securities/docs/prospectus/proposal_240909/impact_assessment_en.pdf
2	EU Amending Directive http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:327:0001:0012:EN:PDF
3	Prospectus Directive 2003/71/EC http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF
4	Transparency Directive 2004/109/EC http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0057:EN:PDF
5	The Prospectus Regulation 2005 Impact Assessment http://www.hm-treasury.gov.uk/d/20050519_Final_RIA.pdf
6	Matching IN: Financial Services Authority regulation of the second charge mortgage market (attached)

+ Add another row

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0									
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0									
Annual recurring benefits	12	12	12	12	12	12	12	12	12	12
Total annual benefits	12	12	12	12	12	12	12	12	12	12

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Background to the Amending Directive (2010/73/EU)

On 24 November 2010 the European Parliament and Council adopted Directive 2010/73/EU (the "Amending Directive"), which amends the Prospectus Directive (PD) (2003/71/EC) on the prospectus to be published when securities are offered to the public or admitted to trading and the Transparency Directive (TD) (2004/109/EC) on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. Member States have until 1 July 2012 to adopt and publish the laws, regulations and administrative provisions, necessary to comply with this Directive, which will apply from 31 December 2010.

The PD was adopted in 2003 and is the EU framework for the preparation of prospectuses for public offers of securities and where securities are to be admitted to trading on a regulated market. Its objectives are to enhance investor protection and to improve the efficiency of the single market. Its key innovation is that a prospectus approved in one Member State is valid across the EU, giving issuers a 'passport' across the EU capital markets. The PD was implemented in the UK via the Prospectus Regulation 2005, which came into force on 1 July 2005.

Article 31 of the PD required the European Commission to review the application of the Directive five years after its entry into force and to present, where appropriate, proposals for its review. The Amending Directive is the outcome of consultations carried out on the operation of the PD. The Commission consulted on the operation of the PD in 2009 and concluded that the overall effect of the Directive has been positive. However, the need for some improvements was identified. This focused on the need to improve and simplify the application of the PD, to reduce administrative burdens on issuers whilst maintaining investor protection, and to improve legal certainty.

The Government is proposing to introduce two measures early (before the implementation deadline), as this will provide cost-savings and support to companies, particularly small companies, seeking equity finance. Both the threshold for an offer of securities, and the minimum number of investors for which a prospectus is required, will be raised, to enable these issuers to access the capital markets more efficiently and cost-effectively.

These implementation regulations seek to amend the prospectus provisions of the Financial Services and Markets Act (2000) in order to comply with the European Amending Directive (2010/73/EU) and so that UK industry can benefit from the early implementation of these changes as soon as reasonably possible.

Small Firms Impact Assessment Test

The Directive captures those companies which have securities admitted to trading on regulated markets and these tend to be substantial businesses which are generally required to have more than 25% of the business owned by third parties. In addition, in relation to public offers of securities, small companies are likely to be able to use the exemptions within the Directive designed to help smaller issues avoid production of a prospectus where this is unnecessary. This includes making an offer to fewer than 100 persons or an offer of less than €2.5 million.

The Amending Directive made amendments to these specific exemptions by i) increasing the number of persons to whom an offer may be directed before it ceases to be an exempt offer from 100 to 150 persons per Member State; and ii) increasing the limit for the total consideration of the offer in the EU below which a prospectus is not required from €2.5 million to €5 million.

We are proposing to introduce these two measures of the Amending Directive early, as they will be beneficial to companies, particularly smaller companies. These changes widen existing exemptions and their effect is to lift the regulatory burden, as fewer offers will need a prospectus. Discussions held between HM Treasury and a number of organisations that represent the views of small companies and the markets on which they are admitted suggest that implementing these amendments early will allow companies more efficient access to capital on public markets. This view was confirmed, unanimously, in feedback to the consultation. The benefit of introducing this measure at this particular time, when the

current economic climate is still fragile, was especially highlighted by participants as providing an invaluable boost to the wider economy.

Prior to the consultation, we were unable to grasp the full extent of the benefit to be derived by companies being able to approach a 50 per cent larger pool of investors (rising from 100, to 150) before the requirement to produce a prospectus was triggered. While it remains impossible to monetise this benefit, analysis provided by the London Stock Exchange in its consultation response, indicated that small companies stood to benefit from the greater liquidity of being able to access a wider pool of investors.

Based on some brief analysis of AIM companies, the LSE shows that companies with 100 to 150 registered shareholders (in short, reflecting the new higher threshold) experienced 76% higher average daily trading volumes in 2009, compared to smaller companies with less than 100 registered shareholders (reflecting the existing threshold). The LSE concludes that the potential diversification of companies' shareholder base will directly improve liquidity, and lower the cost of capital for these companies. In short, there may be important indirect benefits associated with early implementation *in addition* to the monetised saving of £12 million for 2011-2012, from companies enjoying a higher threshold for the total consideration (size) of the offer.

Competition Assessment

Given that the Regulations will introduce largely incremental changes to the existing regime, they should not have a significant effect on competition. We anticipate that the early implementation of these measures of the Amending Directive will not significantly alter the competitive positions of the regulated and exchange-regulated markets. Introducing these measures early is likely to be beneficial for UK companies in terms of competitiveness compared to other Member States which have not implemented these measures early.

Specific analysis of policy option 1 and policy option 2 is provided overleaf.

Option 1 - “Early implementation”: Bringing two deregulatory measures from amendments to the Prospectus Directive into force early, ahead of the EU implementation deadline of July 2012. This will allow more public offers to go ahead without requiring the production of a prospectus, thus lowering administrative costs.

Benefits

Option 1 would provide additional benefits associated with introducing two measures of the Amending Directive early. The threshold for an offer of securities in the EU for which a prospectus is required will be raised from €2.5 million to €5 million. Furthermore, the minimum number of investors for which a prospectus is required will increase from 100 to 150 investors per Member State.

Implementing these amendments early will allow companies more efficient access to capital on public markets. These changes widen existing exemptions and their effect is to lift the regulatory burden, as fewer offers will need the production of a prospectus. Responses to the Government’s Green Paper consultation *Financing a Private Sector Recovery* outlined the costs involved with producing a prospectus. Respondents estimated that the cost of producing a prospectus can range from 7 to 12 percent of the funds raised for consideration levels below £10 million, where a prospectus is required. For example, for an offer of £5 million, preparing a prospectus could cost in the range of £350,000 to £600,000.

Using evidence¹ from the last ten years (2000-2010) on the number of public offers² requiring a prospectus on both the London Stock Exchange’s Main Market and AIM, 1,783 public offers benefitted from the €2.5 million limit for the total consideration of the offer (below which no prospectus is required). The number of issues that would have benefitted from a higher fundraising threshold of €5 million (i.e. those with total public issues between €2.5 million and €5 million between 2000 and 2010) is an additional 256.

Using these statistics we can estimate the benefits of increasing the fundraising threshold from €2.5 million to €5 million. The benefits are estimated to be in the range of £9 million to £15 million, representing a benefit of £350,000 to £600,000 for 26 public offers per year. The total benefits of early implementation are therefore estimated to be in the range of £9 million to £15 million, as companies will benefit from a year of early implementation.

We believe the benefits to be towards the higher range, as it is likely that the cost of producing a prospectus has impacted upon those fundraisings below €5 million but above €2.5 million. This is because once an issuer is required to produce a prospectus it is often more cost effective to undertake a higher fundraising. In addition, we have not been able to monetise the quantitative benefits associated with increasing the number of persons to whom an offer may be directed before it ceases to be an exempt offer from 100 to 150 persons, which will also contribute to the benefits. However, we note on this point the highly positive impact the new threshold may have on the liquidity of smaller companies, following the LSE’s consultation response (as outlined above in the impact on small business).

The European Commission’s impact assessment for the proposals found that the evidence gathered indicated that the preparation costs of prospectuses particularly impact upon small and medium-sized issuers, which raise capital less frequently and for smaller amounts. Small companies are likely to be able to use the exemptions within the Directive that enable them to avoid production of a prospectus. The measures will enable unquoted companies and companies on both exchange-regulated markets, such as AIM and PLUS Quoted, and the main markets to offer securities to a wider set of investors (from 100 to 150 investors) more cost effectively. They will also help companies to raise capital through further issues more cost efficiently, as they will be able to raise larger amounts of capital (from €2.5 million to €5 million) at a time.

Feedback from the consultation confirmed that it is difficult to assess in any more detail the benefits, in quantitative terms, with no further statistical analysis provided for the number of issues that would be affected. In *qualitative* terms, the consultation confirmed that the benefits are likely to be most significant in the case of further fundraisings by smaller public companies, and also highlighted that venture capital trusts which make use of the thresholds will also stand to benefit – in short, providing another (indirect)

¹ <http://www.londonstockexchange.com/statistics/new-issues-further-issues/new-issues-further-issues.htm>

² ‘Total Further Public Offers’ includes the following offer types: further rights shares, offer for subscription, open offer, placing & open offer, placing and offer for subscription, public offering, rights issue.

fillip to equity finance for SMEs. The consultation also noted that early implementation would provide an important source of capital at this time in particular, in a credit-constrained environment, and help increase the attractiveness and viability of equity finance for small companies in place of private finance.

Due to the costs involved in producing a prospectus, smaller companies often choose to raise funds through private placements. Since the implementation of the PD in July 2005, the London Stock Exchange has estimated that AIM companies have raised approximately £28 billion through further fundraisings, the majority of which (approximately 98%) was through private placements. However, private placements, rather than public offers, can result in dilution of the shares of existing shareholders. These changes should therefore help to encourage smaller companies to conduct rights issues, which will help to protect minority shareholders.

Risks

In the case of cross-border offers, issuers may not be able to take advantage of the early implementation of these measures. This is because it is left to the discretion of Member States whether they transpose the Amending Directive into their domestic law in advance of the implementation date. As we intend to introduce two measures into UK legislation early, issuers will need to take care when undertaking cross-border offers when using these measures. This is because Member States may have yet to implement the same measure.

Particular care will need to be taken when using the fundraising threshold, as the limit applies to the total consideration of the offer in the EU³. For example, where an offer, of say €3 million, is made in the UK and in another Member State that has not yet implemented the measure, in this case the offer may not be exempt under the domestic law of the other Member State. This will not be applicable where offers are made entirely in the UK.

Where a prospectus is required in another Member State, issuers should consider electing to have a prospectus in the UK which could then be passported into that other Member State so as to avoid the issuer infringing the laws of the other Member State. This should be borne in mind in relation to both the increase in the funding threshold to €5 million and the increase to 150 of the minimum number of investors for which a prospectus is required. It is important that issuers have a clear understanding of these points and we shall be working with the FSA to ensure this explanation is brought to the attention of industry.

There is a key, wider point here, underpinning the analysis of this impact assessment: namely, the extent to which cross-border offers are typical for capital raisings of this size (€5 million, i.e. the new threshold). If cross-border offers of this size are typical, the cost saving envisaged would be much smaller, as companies would not necessarily benefit from the new thresholds brought into effect through early implementation. It is also important to assess whether any other unforeseen consequences might arise from the UK implementing these measures early ahead of other Member States.

The feedback from the industry consultation was clear: although there may be a 'mismatch' in exemptions available to issuers across Member States (if other Member States do not follow the UK's lead), these difficulties are clearly outweighed by the benefit to issuers of the UK implementing the measures earlier. In addition, it is worth bearing in mind that this is a review of the existing EU prospectus framework, with which industry will already be familiar, reducing the likelihood of uncertainty or lack of clarity.

Of most importance, the consultation confirmed that the likelihood of cross-border capital raising of this size was highly unlikely and, indeed, unrealistic. The London Stock Exchange has indicated the considerable cost involved in cross-border offers, particularly in relation to the marketing and promotion of these activities in order to attract a global shareholder base. For offers of €5 million (the new threshold), it would simply be uneconomic. Cross-border issues would be reserved for much larger public offers, and typically bigger companies, than those which stand to benefit from the threshold increases provided by amendments to the Prospectus Directive. This position was confirmed by the Quoted Companies Alliance, which believed the analysis and assumptions of this Impact Assessment

³ If European Free Trade Association countries decide to adopt the Amending Directive this will apply within the European Economic Area.

still stand in this scenario. **We conclude that the benefits outlined of early implementation still stand with respect to cross-border offers.**

The consultation also considered the issue of early implementation from the perspective of *investors* in the event of a prospectus not being issued. The consultation response pointed out that, as is the case today, issuers will weigh up for a capital raising whether or not to produce a prospectus dependent on their investor base. It would not be in the interests of a successful capital raising not to do so. Set against the fact that the consultation confirmed the benefit of the increased threshold will typically benefit much smaller (typically AIM-listed) companies, in secondary fundraisings, it is also fair to assume that the investor base will comprise more sophisticated investors, who typically do not rely on a prospectus. Responses to the consultation also drew attention to the fact that investors will continue to be protected through the UK's financial promotion regime (which continues to apply where a prospectus is not required). These are also measures which come into effect in any event in one year's time, across the EU.

As is the case at present, investors may also choose not to take up an offer where a prospectus is not produced. On the assumption of implementing these measures approximately 12 months early, we have estimated that there will be the option of not producing a prospectus for 26 more offers. Investors may choose not to invest in these offers (although this is not expected to be significant).

In view of this analysis, and the response provided through industry consultation, we conclude that investor protection issues do not arise in going ahead with early implementation.

Costs

These two changes widen existing exemptions and their effect is to lift the regulatory burden, so that fewer offers will need a prospectus. No monetised costs are envisaged. There could be indirect costs relating to the adjustment of industry and the FSA to these changes, as well as the updating of related guidance. The associated costs are expected to be negligible, and no concerns were raised in this area during consultation.

The impact assessment prepared by the European Commission to accompany its proposed amendments to the PD indicated that widening these existing exemptions could have indirect costs through a possible increased risk to investor protection. This was on the basis that widening the exemption would mean a prospectus would not be required for a greater number of offers, thereby potentially reducing the information available to investors. As set out above, our analysis suggests that early implementation of these measures in the UK will mean issuers have the option of not producing a prospectus for 26 more offers. However, we consider the risk to investor protection to be minimal. Investors do not have to take up an offer where a prospectus is not produced. And, for example in the case of companies quoted on AIM, they are also subject to AIM's rules on disclosure of periodic financial information. Investors are also protected by the financial promotion regime which continues to apply, as helpfully pointed out during consultation.

Based on the positive feedback of the consultation, we conclude that proceeding with early implementation of these measures, as proposed here, is the preferred policy option. We also note the synergy this provides in terms of wider policy objectives of the Government with respect to: deregulation and the reduction of regulatory burdens for business and SMEs in particular; and supporting access to finance for SMEs, including the promotion of equity finance.

Option 2 - “The baseline scenario”: Not to bring the two deregulatory measures into effect early, waiting until the EU implementation deadline of July 2012.

Benefits

The proposed UK implementation regulations (policy option 1) seek to amend the prospectus provisions of the Financial Services and Markets Act 2000 in order to comply with the European Amending Directive 2010/73/EU. However, they only bring into effect two specific, deregulatory measures so UK industry can benefit from the cost-saving of early implementation of these changes. The Government will consult industry separately on proposals for implementation in the UK of the remaining elements of the Amending Directive, which will set out the costs and benefits of implementing these changes. These are not considered here.

The benefits associated with introducing these two measures will be reduced under policy option 2, as their implementation will have been delayed. On the basis that the delay in implementation is 12 months, the total present value of the benefits associated with introducing these measures will be £100 million, £12 million less than under option 1.

Costs

As set out above, the Government will consult separately on proposals for implementation in the UK of the remaining elements of the Amending Directive, which will set out the costs and benefits of implementing these changes. These are not considered here.

As above, based on the positive feedback of the consultation, we conclude that proceeding with early implementation of these measures (policy option 1) is the preferred policy option. We also note the synergy this provides in terms of wider policy objectives of the Government with respect to: deregulation and the reduction of regulatory burdens for business and SMEs in particular; and supporting access to finance for SMEs, including the promotion of equity finance.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review:

Within 5 years of the implementation of the statutory instrument the Treasury will review the implementing regulations.

Review objective:

To ensure that the regulations remain an appropriate method of implementing the Amending Directive.

Review approach and rationale:

Treasury officials will seek views of relevant stakeholders, such as issuers, intermediaries, investors and the FSA.

Baseline:**Success criteria:**

The Treasury and stakeholders consider that the implementing regulations continue to satisfactorily implement the provisions of the Amending Directive.

Monitoring information arrangements:

Treasury officials are in regular contact with affected stakeholders.

Reasons for not planning a review: