

EXPLANATORY MEMORANDUM TO
THE PAYMENT SERVICES REGULATIONS 2012

2012 No. 1791

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 require the persons responsible for the management, operation and ownership of small payment institutions (such as money remitters) to satisfy a fit and proper person test. They also give HM Revenue and Customs the power to strike a firm off its money laundering register where it is providing, or purporting to provide, payments services without the necessary authorisation from the Financial Services Authority. Consequential amendments are also made to the Payment Services Regulations 2009 (S.I. 2009/209) and the Electronic Money Regulations 2011 (S.I. 2011/99) to reflect the fact that the Auditing Practices Board has been dissolved, as part of a restructuring of the Financial Reporting Council.

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

3.1 None.

4. **Legislative Context**

4.1 These Regulations amend the Money Laundering Regulations 2007 (S.I. 2007/2157) which were laid, together with an explanatory memorandum, on 25 July 2007. The Money Laundering Regulations 2007 implement, in part, Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the Third Directive). The Third Directive builds on the obligations imposed on Member States by the First Directive (91/308/EEC) amended by the Second Directive (2001/97/EC). The Government submitted an explanatory memorandum dated 17 September 2004 on the draft Third Money Laundering Directive (doc. 11134/04). The House of Commons Select Committee on European Scrutiny reported on the draft Directive in reports 32 (2003-04), para 13 (13 October 2004), 1 (2004-05), para 14 (1 December 2004) and 1 (2005-06), para 50 (4 July 2005), clearing it after Ministerial correspondence. The House of Lords European Union Committee considered the draft Directive in Sub-Committee E (Law and Institutions) and cleared it from scrutiny on 22 June 2005 after Ministerial correspondence (see report 45 (2005-06)). The explanatory memorandum submitted with the Money Laundering Regulations 2007 sets out the Treasury's approach to implementing the Third Directive.

4.2 These Regulations also amend the Payment Services Regulations 2009 which were laid, together with an explanatory memorandum, on 9 February 2009. The Payment Services Regulations implement Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market (the Payment Services Directive). 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 the Economic Secretary to the Treasury 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). The explanatory memorandum submitted with the Payment Services Regulations 2009 sets out the Treasury's approach to implementing the Payment Services Directive.

4.3 Consequential amendments are also being made to the Payment Services Regulations 2009 and the Electronic Money Regulations 2011 to reflect the fact that, as part of a restructuring of the Financial Reporting Council, the Auditing Practices Board has been dissolved. These amendments are consequential on the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012.

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*

These Regulations address a concern that unfit persons may currently establish or manage a Small Payment Institution. These Regulations therefore require the Financial Services Authority to check the owners and managers of such businesses are fit and proper persons, and directors and managers must be of good repute and possess appropriate knowledge and experience to provide payment services.

These Regulations also give HMRC a power to strike firms from the money laundering register, if they are providing or purporting to provide a payment service without proper authorisation from the Financial Services Authority

under the Payment Services Regulations 2009. This mirrors provision in the Payment Services Regulations 2009 that requires applicants for authorisation or registration to obtain registration under the Money Laundering Regulations 2007 where required to do so.

Consequential amendments are also made to the Payment Services Regulations 2009 and the Electronic Money Regulations 2011 to reflect the fact that, as part of a restructuring of the Financial Reporting Council, the Auditing Practices Board has been dissolved.

- ***Consolidation***

There are no plans to consolidate any of the legislation amended by these Regulations. The European Commission is currently reviewing the Payment Services Directive. Once the outcome of that review is known, and any amendments to the Directive are adopted, it may be appropriate to consider consolidation of the Payments Services Regulations 2009.

8. Consultation outcome

8.1. The Treasury conducted an informal consultation on the draft Regulations with all registered Small Payment Institutions, the relevant trade bodies, and a consumer group between 22 February 2012 and 30 March 2012. Officials also addressed conferences for Small Payment Institutions on the issue. Given the demographic of small firms, including many sole traders, this directly targeted approach was more effective than a formal consultation in gaining exposure and attracting the views of those most likely to be affected.

8.2. All thirty nine respondents agreed with the proposals. The Treasury has published a summary of the responses to its consultation on the draft amending Regulations.

9. Guidance

9.1 The Treasury does not propose to produce any guidance in relation to the Regulations. However, the FSA has the power under the Payment Services Regulations 2009 to issue guidance on its functions under those 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.

11.2 In order to minimise the impact on firms employing up to 20 people, the Government will continue to apply the remaining waivers in the Payments Services Directive (such as capital requirements and conduct rules) to Small Payment Institutions. This approach will ensure proportionality in the application of the Directive.

12. Monitoring & review

12.1 The European Commission is currently undertaking a review of the Payment Services Directive. The Treasury will therefore review the policy objectives of these Regulations after the Commission's wider review of the Directive is complete, and any amending legislation has been adopted. The Commission's review is due to be concluded on 1 November 2012.

13. Contact

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