

Implementation of the Payment Services Directive: a summary of consultation responses

June 2008



HM TREASURY



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a summary of
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CONTENTS

	Page
Executive Summary	3
Chapter 1 Introduction	5
Chapter 2 Overview of responses	7
Chapter 3 Consultation responses and Government conclusions	11
Chapter 4 Next steps	43
Annex A List of consultation respondents	45

EXECUTIVE SUMMARY

In December 2007 the Government published a policy consultation document on its proposed approach to implementing the Payment Services Directive in the UK. The document set out the flexibility the Government had with respect to implementation, and presented the policy options open to the UK. In particular, it included discussion of the following issues:

- the scope of firms that will be subject to the requirements of the Directive;
- the application of safeguarding requirements to different types of business;
- the conditions for waiving the application of the prudential authorisation requirements;
- the waiving of some of the conduct of business conditions in Titles III and Title IV for low-value payment instruments and electronic money; and
- the potential changes to payer liability for unauthorised use of payment instruments.

The policy consultation period spanned 13 weeks and closed on 18th March 2008. A total of 42 responses were received from a cross-section of interested stakeholders.

This document summarises the responses received and the Government's conclusions on its approach to implementation. These conclusions were further informed by 13 stakeholder meetings and an HM Treasury hosted workshop on the 26th February 2008, with representatives from both industry and end-users.

It should be noted that the conclusions reached in this document remain subject to further detailed analysis, which is being undertaken as part of the ongoing European transposition process led by the European Commission, and which runs until November 2008. The interpretation of specific provisions within the Directive will also ultimately be for the Courts to decide.

The Government plans to publish a further consultation document this summer on the proposed legislation to enact the PSD on 1st November 2009.

INTRODUCTION

1.1 The European Commission adopted a legislative proposal for a Payment Services Directive (PSD) on 1 December 2005, aiming to achieve a Single Market in retail payment services. Political agreement between the Council and the European Parliament was reached in April 2007, and the Directive was adopted on 13 November 2007 and published in the Official Journal of the EU on 5 December 2007. The PSD must be implemented into national law by 1 November 2009.

1.2 This document forms part of a three-staged consultation process, due to conclude in autumn 2008:

- 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. This document summarises the responses received and the conclusions reached; and
- in summer 2008, the Government will publicly consult on the draft HM Treasury regulations that will enact the PSD legislation on 1st November 2009 in the UK.

1.3 The aim of the PSD is to enhance competition and transparency across the EU, and to ensure that the level of consumer protection is sufficient and harmonised. The purpose of the consultation process has been to ensure that the payments industry, business and consumers are informed of the objectives of the PSD, have the opportunity to contribute to the negotiations of the Directive to benefit the UK; and are able to seek clarity on the Government's intended approach on the Directive's implementation, and that the legislation enacting the PSD in the UK is coherent.

1.4 The competent authority for most aspects of the PSD will be the Financial Service Authority (FSA). However, other bodies will also have roles. Namely:

- HM Revenue and Customs (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 phone operators or bill payment service providers which fall into the scope of the Third Money Laundering Directive due to the PSD;
- the Office of Fair Trading (OFT) will be responsible for the implementation of Article 28 (access to payment systems), which has a competition objective; and
- the Financial Ombudsmen Service (FOS) will provide the out-of-court redress mechanism envisaged in Article 83 of the PSD.

The aim of this document

1.5 This document summarises the responses to the December 2007 consultation on the implementation of the PSD in the UK¹. It also provides the Government's conclusions on its approach to implementation in light of the consultation responses. These conclusions are, however, subject to further detailed analysis being undertaken as part of the ongoing European transposition process led by the European Commission, which runs until November 2008. The interpretation of specific provisions within the Directive will also ultimately be for the Courts to decide.

1.6 This document:

- provides an overview of responses with associated changes in policy options (Chapter 2);
- explores specific points made during the consultation in more detail and sets out the Government's conclusions on its approach (Chapter 3);
- outlines the next steps in the process (Chapter 4)
- lists the respondents to the consultation (Annex A); and
- provides a revised impact assessment based on the inputs received (Annex B).

1.7 Businesses that will be affected by the PSD, representative bodies acting on their behalf, the competent authorities responsible for supervising compliance with the Directive, payment service consumers and their representative groups should find this document useful.

¹ The implementation of the Payment Services Directive: a consultation, December 2007, www.hm-treasury.gov.uk

2

OVERVIEW OF RESPONSES

2.1 On the 19th December 2007 HM Treasury published, *'Implementation of the Payment Services Directive: a consultation document'*. This document set out how the Government proposed to implement the Directive in an effective, proportionate, and risk-based manner. It discussed the Government's proposed approach to implementing each Title of the Directive. It also explained where the Government has flexibility in implementation and presented the policy options open to the UK.

Analysis of responses **2.2** The consultation closed on the 18th March and the Government received 42 responses from a cross-section of interested stakeholders, which included:

- Industry trade bodies;
- Credit institutions;
- E-money issuers;
- Credit card issuers;
- Mobile phone operators;
- Money service businesses;
- Independent ATM operators; and
- Consumer groups.

Annex A provides a full list of respondents.

2.3 In addition to the inputs received, the conclusions reached in this document were further informed by 13 stakeholder meetings and an HM Treasury hosted workshop on the 26th February 2008 attended by a range of payment service providers and end-users. The meetings and workshop provided an opportunity to discuss the objectives of the PSD and its policy options in more detail, as well as providing an opportunity for Government to hear views and concerns on how to best implement the PSD in the UK.

2.4 The Government is grateful to everyone who responded to the consultation in writing or participated in any of the meetings.

Proposed policy approach

2.5 The responses received indicated broad support for the Government's approach to implementing the PSD as set out in the consultation document. The majority of respondents understood and supported the Government's policy interpretation of the PSD and what it would mean for them.

2.6 On some policy options, however, changes in approach are planned as a result both of the consultation responses received, and in view of the European transposition work that is occurring in parallel to this process. These changes are summarised in Table 2.1 below. The rationale for these changes and a more detailed response to the conclusions are set out in Chapter 3.

Table 2.1: A table to summarise the changes to the policy approach

Article	Proposed approach (19 December 2007)	Changes to proposed approach
1	<p>There are six category of provider covered by the PSD:</p> <ul style="list-style-type: none"> • credit institutions; • e-money issuers; • post office giro institutions; • payment institutions that offer payment services identified in the Directive: <ul style="list-style-type: none"> - money transfer companies; - bill payment services providers; - mobile operators; and - non-credit institution credit card issuers; • national central banks; and • public authorities. 	<p>As part of the EU transposition discussions and consultation process it has been clarified that:</p> <ul style="list-style-type: none"> • the Post Office Limited will be considered as a post office giro institution under the PSD (paragraph 3.8); • some bill payment service providers in the UK are not to be considered as providing money remittance services nor providing any other payment services within the meaning of the PSD and therefore fall out of scope of the Directive (paragraph 3.9 to 3.11); and • many of UK mobile phone operators add value to the payment services they currently offer their customers and so the majority are expected to fall out of scope of the PSD (paragraph 3.29 to 3.32).
2(3)	<p>The Directive allows Member States to exercise a derogation to waive all or part of the Directive for certain institution. The Directive allows the UK Government to exempt the following institutions from the PSD:</p> <ul style="list-style-type: none"> • 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; • municipal banks; and 	<ul style="list-style-type: none"> • 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, the SASC and the CDFC Ltd since they do not do payment services; • the National Savings Bank will be legally exempt from 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; and • based on previous analysis, credit unions will be exempt from the Directive. This exemption will be extended to municipal banks on the same basis and rational.

	<ul style="list-style-type: none"> • credit unions. 	(Paragraph 3.47 to 3.71)
4(4)	The Government proposed to copy out the text in relation to the term ‘payment instrument’.	During EU-level discussions it has been clarified that a payment instrument in the PSD refers to an instrument that verifies a transaction and should, therefore, be read as a ‘payment verification instrument’ (paragraph 3.43 to 3.44).
4 (14)	It was initially interpreted that the term ‘payment account’ would capture only current accounts and e-money accounts.	<p>During EU transposition discussions it has become apparent that the definition of the terms ‘payment account’ is wider than initially expected.</p> <p>Flexible, easy access savings accounts, for example, where no penalties are awarded to customers for withdrawing their funds on a regular basis either via a debit card or transferring to another account, should be captured by the scope of the payment account. On the other hand, fixed term deposit and similar restrictive savings accounts should fall outside scope. The mortgage element of a payment account would also be out of scope (paragraph 3.39 to 3.42).</p>
4(25)	The Government proposed to copy out the text in relation to the term ‘durable medium’.	During the EU transposition process it has been underlined that term ‘durable medium’ could refer to emails, and text messages to mobile phones, as well as paper (paragraph 3.45 to 3.46).
9	The Government proposed that all payment institutions, hybrid and non-hybrid firms, would have to safeguard payment service user funds above a safeguarding threshold of €600.	It has been clarified during the EU transposition process that Member States could set safeguarding thresholds lower than the €600 limit stated in the Directive. The Government will impose the safeguarding provisions on both hybrid and non-hybrid firms alike, and proposes to set a lower safeguarding threshold of £50 to take account of reactions to the consultation. The Government will formally consult on the safeguarding threshold proposal in the summer consultation document (paragraph 3.107 to 3.112).
13	The Government was considering whether agents of waived payment institutions would need to be registered under the PSD.	European level discussions have clarified that agents of waived payment institutions must be registered (paragraph 3.118 to 3.120).

28	The Government proposed two options for implementing Article 28 – access to payment systems: an ex-ante approach and an ex-post approach.	The Government has decided to implement Article 28 by means of an ex-post legislative model. This model will involve placing a prohibition on payment system rules that are discriminatory, not objective, or not proportionate. The payment system scheme board and its members will be bound by the provisions, and will have a legal duty to comply with them. Penalties will be established in legislation to enforce the prohibition, with the Competition Appeal Tribunal acting as the associated appellate body (paragraph 3.135 to 3.139).
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CONSULTATION RESPONSES AND GOVERNMENT CONCLUSIONS

3.1 This Chapter considers the responses to the thirty-four questions posed in the consultation document. It is divided into sub-sections dealing with each Title of the Payment Services Directive (PSD), analysing in each case the policy approach to implementation and the policy options within the Directive.

3.2 For reasons of space, this Chapter does not in all cases address points made by a single respondent or where the Government has not significantly altered its approach. The conclusions will also be subject to the ongoing transposition discussions at EU level.

3.3 The Government's conclusions on the consultation responses generally fall into one of the following categories:

- instances where there was explicit support for the proposed approach in the policy consultation document;
- instances where points of clarification were requested;
- reactions with which the Government disagrees; and
- reactions with which the Government agrees, and is amending the policy approach.

3.4 The consultation's associated Impact Assessment asked several questions relating to the flexibility of the policy options available within the PSD, including the initial and compliance cost of the regime, as well as the groups that would be affected by the regulations. The Impact Assessment has been updated based on the responses received and is provided at Annex B.

TITLE I – SCOPE AND DEFINITIONS

3.5 Title I of the PSD sets out:

- the intended scope and negative scope of the Directive covering both providers and activities; and
- the definitions used in the Directive.

3.6 This section summarises the responses received and sets out the Government's conclusions (as well as further clarity, where requested) on the intended scope and negative scope of the Directive: providers and activities; issues related to some of the definitions used in the Directive; and the policy options open to Member States in relation to scope.

QUESTIONS 1, 2, AND 3: SCOPE (ARTICLE 1)

Q1. Do you think you will need to obtain authorisation as a payment institution, or would you qualify for the waiver, enabling you to register only?

Q2. What types of payment services do you provide?

Q3. How many agents and branches do you have?

3.7 The consultation document provided initial estimates of the number of firms and their agents that may need to comply with the prudential regime (Title II of the Directive) and/or with the conduct of business rules (Titles III and IV of the Directive) in the UK:

- around 65 firms in the UK may need to be authorised as a payment institution and up to 175,000 principally agents of the larger payment institutions might need to be registered. A further 2,700 firms would meet the waiver criteria and would need to be registered as a payment institution. All payment institutions and their agents that offer payment services within the EU will need to comply with the conduct of business rules outlined in the Titles III and IV of the Directive; and
- credit institutions, currently 332 banks and 61 building societies; e-money institutions, currently 13 authorised and 39 waived; and 1 post office giro institution will need to comply with the conduct of business provisions in the PSD.

Post office giro institution 3.8 After consulting with the Royal Mail Group and Post Office Limited, it has been determined that Post Office Limited, should be considered as a post office giro institution under the PSD. This means that the Post Office Limited will not have to seek authorisation as a payment institution but, similarly to a credit institution, will need to comply with the PSD conduct of business rules outlined in Titles III and IV of the Directive.

Bill payment service providers 3.9 At the time of publishing the December consultation document, it was known that there were five bill payment service providers operating in the UK with a network of agents. In the course of the consultation attention was drawn to the fact that some business models of bill payment service providers might fall outside the scope of the PSD. Following on from the policy consultation process, an analysis of the business models of bill payers in the UK was undertaken to determine how they might be affected by the PSD.

3.10 The conclusion of the analysis was that some bill payment service providers are not to be considered as providing money remittance services nor providing any other payment service within the meaning of the PSD. In these cases, the model operated is that the provider acts as agent of the payee for the purpose of receiving payer monies, such that payment by the payer to the firm (or its agent) constitutes payment to the payee without any further execution on the part of the bill payment service provider.

3.11 This conclusion is subject to the ongoing discussions at the EU level. If those discussions raise issues that affects this analysis, the FSA will work with the bill payment service providers to understand any impact.

Conclusion 3.12 The responses received have suggested that the initial estimated number of firms that would need to comply with the Directive is in the right region, although the FSA is doing further work with the industry to refine the estimates. In the light of analysis of the business models of bill payment service providers and money remitters, the Government may revise the estimated number of principal firms that may need to seek authorisation and the number of agents working to these principals

3.13 Further to discussions in the European transposition process, it has been clarified that agents of registered firms must also be registered. This means that registered firms will need to provide their agents' names and addresses so that they appear on the publicly available register.

3.14 The Government is aware that, over time, the number of firms that will have to comply with the Directive might increase. At present this level is difficult to estimate, and is dependent on matters such as how other Member States choose to implement the Directive, and whether firms choose to be authorised in the UK or another Member State.

QUESTION 4: PAYMENT SERVICE ACTIVITIES (ARTICLE 4(3))

Q4. Do you agree with the suggested interpretation of payment service activities covered by the PSD annex?

3.15 The December 2007 policy consultation document provided an initial view on the types of accounts that may be caught by the payment services outlined in the Annex of the PSD. Since publication, the scope of the Directive has been discussed as part of the EU transposition process. Based on these discussions it has been concluded that operational accounts that allow payment transactions would be caught by the scope of the Directive.

3.16 Respondents from the banking industry raised concerns about the potential for a very broad interpretation of the scope of the term ‘payment account’ (to be discussed later in this Chapter) and welcomed the initial interpretation in the consultation document that only current accounts and e-money were subject to the PSD.

3.17 Some respondents requested greater clarity with regards to which types of bill payment business models would be captured when referring to ‘some bill payment models’ (as referred to in paragraphs 3.9 - 3.11). One respondent suggested that pre-paid electronic payment accounts should be explicitly referred to when assigning the payment activities in the Annex to e-money accounts.

3.18 Furthermore, as part of the European transposition process it has been clarified that the payment service described in Annex point 5, ‘Issuing and/or acquiring of payment instruments,’ should actually be read as ‘the issuing of a payment instrument or the acquiring of a payment transaction’.

Conclusion 3.19 In view of the discussions and conclusions as part of the European transposition work and stakeholders’ requests for further clarity, Table 3.1 revises the original table that provided a reading of the payment services listed in the Annex of the PSD.

Table 3.1 Payment Services in scope of the PSD-Revised reading of the Annex

ANNEX	Current reading of activities (subject to transposition)
<p>1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.</p>	<ul style="list-style-type: none"> • Cash deposits on a payment account and through an ATM • Operational payment accounts (current accounts; flexible savings accounts; payment facilities of 'one accounts' (i.e. combined current and savings/mortgage accounts); & e-money accounts (including pre-paid e-money accounts))
<p>2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.</p>	<ul style="list-style-type: none"> • ATM cash withdrawals and over the counter withdrawals • Operational payment accounts (current accounts; flexible savings accounts; payment facilities of 'one accounts'; & e-money accounts (including pre-paid e-money accounts))
<p>3. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:</p> <ul style="list-style-type: none"> • execution of direct debits, including one-off direct debits, • execution of payment transactions through a payment card or a similar device, • execution of credit transfers, including standing orders. 	<ul style="list-style-type: none"> • Direct Debits (including one off Direct Debits). • Transferring e-money. • Credit transfers.
<p>4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:</p> <ul style="list-style-type: none"> • execution of direct debits, including one-off direct debits, • execution of payment transactions through a payment card or a similar device, • execution of credit transfers, including standing orders. 	<ul style="list-style-type: none"> • Direct Debits using overdraft facilities. • Card payments. • Credit transfers using over draft facilities.

5. Issuing and/or acquiring of payment instruments.	<ul style="list-style-type: none"> • Card issuing and card merchant acquiring services (rather than merchants themselves).
6. Money remittance.	<ul style="list-style-type: none"> • Money transfer/remittances; and • models of bill payment service that do follow the remittance model.
7. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.	<ul style="list-style-type: none"> • Mobile or fixed phone payments; and • payments made from handheld devices (e.g. blackberry).

QUESTION 5: NEGATIVE SCOPE (ARTICLE 3)

Q5. Do you agree with the interpretation of negative scope? Are you aware of activities or business models that might unintentionally fall within the scope of the PSD?

3.20 Respondents generally felt that greater clarification would be helpful in determining the negative scope of the Directive to ensure that both payment service providers and payment service users have a clear understanding of the type of payment services that will be captured by the Directive.

Conclusions 3.21 From the discussions in the European transposition process, together with bilateral meetings with stakeholders, the Government is able to offer some further clarity on the intentions of some of the negative scope provisions.

Electronic payments

3.22 The Directive focuses on resolving market issues relating to electronic payments and does not cover non-electronic payment services and providers. Credit card cheques, in addition to those examples of non-electronic payments listed in the consultation document, should therefore fall out of scope.

3.23 In relation to cash back services, it should be noted that, although the actual cash back service is out of scope (i.e. the cash back provider is not subject to the PSD requirements), the cash back payment transaction is in scope. This means that the payments service user's provider will have to abide by the PSD conduct of business requirements when processing the transaction.

Provision of user funds

Independent ATMs 3.24 The Association of Cash Machine Operators (ACMO) noted that independent ATM deployers (IADs) that offer only cash dispensing facilities on behalf of one or more card issuer would fall under the negative scope of the Directive. However, IADs that also provide other payment services, such as bill payment services, would fall into the positive scope of the Directive and need to comply with Titles III and IV.

3.25 At present IADs are unable to offer products, such as providing a conduit for the sale of tickets for sports and music events. If the IADs' offerings were to develop, such that they are able to offer other payment services, a greater number of IADs might require authorisation or registration under the PSD.

3.26 The PSD could be interpreted such that issuing banks, rather than the cash machine deployer, would ultimately be responsible for providing the information requirements related to cash withdrawals. AMCO members support this interpretation. When the PSD is reviewed, AMCO is likely to support all IADs being brought into the positive scope of the Directive.

3.27 It should be noted that, while there is an exemption for IADs offering only cash withdrawals, ATM transactions themselves fall in scope of the PSD and will be subject to the conduct of business requirements including transparency of charges. The UK ATM industry will need to ensure that all ATMs are compliant with relevant PSD requirements.

Agents of payment service users **3.28** Based on the transposition work in Europe, it has been clarified that, when the payment transaction between the payer and the payee is executed through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or payee, the agent will be considered to be out of scope of the PSD. In contrast, an agent that acts on behalf of a credit, e-money, or payment institution will be caught by the Directive.

Acting only as an intermediary

Mobile phone operators **3.29** The aim of the PSD is to regulate payment services, rather than to regulate business activities that involve the delivery of digital goods and services (for example, ring tones, music or digital newspapers) directly to the user. When a mobile phone operator facilitates the transfer of funds between the customer and a third party in payment for a good or service, two scenarios may arise:

- the operator adds value to the good or service (for example in the form of access, search or distribution facilities). In this case the customer's payment obligation is typically towards the mobile operator and not the content provider. The transfer is outside the scope of the PSD, as the third party has no direct contractual relationship with the customer in respect of the payment; or
- the operator is a pure intermediary between the payer and the provider of the digital good or the service without adding value to the content. This type of transfer would be considered a payment transaction, as the provider can request the payment directly from the consumer, and this transaction would fall in scope of the PSD.

3.30 At present mobile phone operators in the UK offer digital goods and services through two methods: a premium rate service and the PayForIt service, both of which involve adding value. For both services the mobile phone operator has a contract with an aggregator, pursuant to which the aggregator receives a revenue share from the operator. The aggregator will then enter into revenue sharing agreements with third parties who will supply the digital goods and services to the customer. The mobile phone operators hold separate contracts with their customers and thus there is no direct contractual relationship between the customer and service

provider for the payment obligation. This type of transaction will therefore fall out of scope of the Directive.

3.31 There is one mobile phone operator, currently piloting a project for remittance of money from the UK to Kenya, which appears to fall in scope of the PSD. It uses a combination of an online platform in the UK and the mobile network in Kenya; participants must either register in person or by telephone to meet AML regulations. The current payment transaction value of this pilot is below €3 million per month and operates only in the UK-Kenya corridor. For this product the operator would have to be registered under the PSD. As most mobile operators in the UK add value to the payment services they currently offer their customers, through a discreet contractual relationship with their customers, the majority are expected to fall outside the scope of the PSD.

3.32 The Government is aware that the current environment for innovative electronic payments via the mobile may have been hindered by limitations within the Electronic Money Directive (EMD). The Commission is reviewing the EMD with the aim of improving the legal certainty of the Directive through refinement of the definition of e-money, clarification of the scope, and facilitation of access under a more proportionate regulatory regime. The result should be to create a more business-friendly and streamlined regulatory framework for the issuance of e-money, in line with the stated objectives of the original Directive. As a result, the types of payment services mobile phone operators offer might evolve and might be captured by the PSD in the future. In Japan, for example, mobile phones have been developed to transact contactless payment transactions. This innovation has enabled mobile users to pay for train and bus tickets by swiping their SIM card within their phone against a reader, which then debits the payment from their account with the phone operator.

Firms providing ancillary payment services

3.33 Some respondents raised concerns about the treatment of firms that transact payments on behalf of their clients, for example a solicitor or a broker dealer. It is our understanding that these firms would be out of scope of the Directive, as to the extent that they are providing payment services, they are not doing so as a "regular occupation or business activity".

Limited network

3.34 Member States and the payments industry have expressed some uncertainty about how limited networks are to be defined, since the Directive does not make a clear distinction between a network that is limited and one that is limitless. Some have called for stricter boundaries in the definition of a network that is limited, while others have favoured broader interpretation of the provision.

3.35 The Directive does not provide the criteria to define a limited network. Based on the transposition work in Europe, the following are examples of what might be classified as a limited network and therefore out of scope of the Directive:

- *Transport cards* - if used only for purchasing tickets for transport systems. In the UK, for example, the Oyster Card is used to buy tickets to access the public transport system of London i.e. the underground, bus and some train networks;
- *Store cards* – if used only for payments in a specific shop or a chain of stores, by, for example, spending points collected for purchases in these shops. However, store cards that are co-branded with a three or four party card scheme, such as VISA or MasterCard, would fall within the scope of the PSD. While credit is not a criterion used in this provision, issuing store cards with

credit function should respect the relevant Community law and the national legislation regarding conditions for granting credit to consumers not harmonised by the PSD; or

- *Cards for buying petrol* at petrol stations of the same chain. These cards can be used throughout the EU and would still fall within the exemption. During the transposition work at European level, it has further been clarified that payments transacted with these cards in shops on the petrol station concourse offering goods, such as food and newspapers, might also fall into the scope of the exemption, proving that the network remains limited.

3.36 Furthermore, as websites are virtual marketplaces that reflect the real world in web space, the same limited network principles should apply. Therefore, if a payment instrument is only used for purchases through a specific website or for a certain range of goods/services which are offered through the internet, this would be classified as a limited network.

3.37 If the payment service providers consider increasing their networks it will be for the provider to consider whether it will still be operating a limited network and, if not, to apply for authorisation or registration as a payment institution.

QUESTION 6: DEFINITIONS (ARTICLE 4)

Q6. Are there any concerns or issues you wish to raise with respect to the interpretation of any definitions in the Directive?

3.38 Respondents generally seemed clear on the majority of the definitions within Article 4 of the Directive. However greater clarity was requested on some of the definitions including those outlined below:

Payment account

3.39 The initial interpretation put forward in the policy consultation document was that only current accounts and e-money accounts would be caught by the terms 'payment account'. However, the final text of the Directive has left the definition of payment account open to a very broad reading. If an extensive interpretation were to be used, a payment account could potentially capture all types of accounts that can be used for the payment services set out in the Annex of the Directive. The conduct of business rules in Titles III and IV would therefore apply to transactions made to and from such accounts. This could result in significant costs being imposed on firms which would be required to revise business processes, information for customers and terms and conditions in relation to those accounts that fall in scope. Some of the Title IV requirements might make certain accounts inoperable.

3.40 In order to gain clarity of the definition of payment account, there has been much discussion at the European level on the type of accounts that will be captured, including whether or not savings accounts fall in the scope of the definition. However, instead of discussing the 'types' of account that should be captured, it is more appropriate to focus on the underlying purpose of an account and the functionality it offers. Through this approach some savings fall within and some outside scope of the PSD as illustrated.

3.41 Flexible, easy access saving accounts, for example, where no penalties are awarded to customers for withdrawing their funds on a regular basis either via a debit card or transferring to another account, should be captured by the scope of the term payment account. On the other hand, the EU transposition process has clarified that fixed term deposit and similarly restrictive savings accounts should fall outside its scope as, broadly, the deposit is taken by the institution and only paid back by it at the end of the term: the holder of the deposit does not have complete freedom to place additional funds or withdraw funds during the term of the deposit.

3.42 In terms of a 'one account', which combines current, savings and mortgage functionalities to reduce the overall mortgage balance, only the current (and potentially savings) element of the account where payments could be transacted, would be considered to be a 'payment account' for the purposes of the PSD. The mortgage element of the account would be out of scope.

Payment instrument

3.43 During the EU transposition discussions on implementation it was clarified that the term 'payment instrument' within the PSD referred to an instrument that a payment service user would use to verify a transaction and thus the term should really be read as a 'payment verification instrument'. This would include physical devices (for example cards or mobile phones) and / or a set of procedures (for example PIN codes, TAN codes, Digipass, and log in, together with passwords). By using the instrument, the user gives the provider the necessary instruction to execute the payment transaction.

3.44 If the payment transaction were to be initiated by paper, the paper slip itself would not be considered to be a payment instrument in the PSD.

Durable medium

3.45 As part of the EU transposition process, it has been acknowledged that the term durable medium could refer to emails and text messages via the mobile phone (commonly known as short message service or SMS), as well as paper. It has also been established that, if the consumer requested the information on a durable medium other than that specified in the framework contract, the payment service provider could levy a proportionate charge.

3.46 The use of emails and text messages would be in line with improving consumer choice, reducing the operational costs of payment providers and mitigating environmental concerns. While consumers might fail to store such mediums of information, it would be the consumers' responsibility to ensure that the message was retained for the duration of the payment service contract.

QUESTIONS 7 AND 8: EXEMPTIONS (ARTICLE 2(3))

Q7. Are there reasons to exempt any of the following institutions from all or part of the PSD: the National Savings Bank, the Commonwealth Development Finance Company Limited, the Agricultural Mortgage Corporation Limited, the Scottish Agricultural Securities Corporation PLC, Crown Agents for overseas governments and administrations, and municipal banks?

Q8. Do you agree that credit unions should be exempt from all of the PSD?

3.47 Article 2(3) provided the UK with the option of exercising a derogation to waive all or part of the Directive for the following institutions: the National Savings Bank, the Commonwealth Development Finance Company Limited, the Agricultural Mortgage Corporation Limited; the Scottish Agricultural Securities Corporation PLC; Crown Agents for overseas governments and administrations; municipal banks and credit unions.

3.48 From the responses received, the majority of stakeholders were in favour of exempting these institutions from the scope of the PSD as they benefited from a similar exemption in the Capital Requirements Directive. Some respondents believed that the exemption was also appropriate for those institutions, which the Government underwrites. Others, however, raised concerns that by exempting these entities an uneven playing field might be created (particularly if their main activities involve transacting payment services), distorting competition in the payments market.

3.49 Based on discussions with the institutions in question and on consultation responses received, the Government presents its conclusions on whether or not to exempt each of the institutions below.

National Savings Bank

3.50 In the 1970s, when the Post Office was being created, the National Savings Bank Act 1979 consolidated its banking services into the National Savings Bank (NSB). National Savings and Investment (NS&I) 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. The Government underwrites the NSB.

3.51 The NS&I operates on two principles:

- to provide a totally secure place for people to save, backed by the Government; and
- to provide the Exchequer with a source of funding (i.e. public borrowing).

3.52 To fulfil the latter principle, NS&I does not hold any of the user funds on its balance sheet, as these funds are transferred daily to the Government's consolidated fund. Conversely, any instructions for repayment of funds are affected by the NS&I drawing down on the national loans fund.

3.53 NS&I offers a mixed portfolio of savings and investment products, the majority of which should fall out of the scope of the PSD. One product, however - the NS&I Easy Access Savings Account (EASA) - could potentially fall into the scope of the PSD, as it is similar to products offered by credit institutions. It enables customers to pay funds into the account via a cheque payment mechanism or debit card. Customers can access their funds via either a cash card or telephone banking, with funds transferred directly through BACS to their account held in a credit institution.

3.54 NS&I is a subscriber to the Banking Code and, as part of its internal operations, it voluntarily applies the applicable elements of the FSA Handbook to its activities. NS&I users are protected by the jurisdiction of the Financial Ombudsman Service. It should be noted in this context that the Banking Code will be updated to take account of the PSD where applicable.

3.55 The Government believes it is appropriate for the NSB to be exempt from the prudential regulations of the PSD as it does not have any balance sheet items and is underwritten by Government. NS&I is currently exempt from the Financial Services & Markets Act and therefore is not regulated by the FSA. However, for NS&I products in scope of the Directive, these should be offered in voluntary compliance with the PSD conduct of business rules.

Commonwealth Development Finance Company Limited

3.56 According to the Companies House register the Commonwealth Development Finance Company Limited was dissolved in January 1994.

Agricultural Mortgage Corporation plc

3.57 The Agricultural Mortgage Corporation plc (AMC) was established in the inter-war years to provide farmers with long-term credit. The corporation was registered as a limited company but, as it was established with Government support, certain statutory restrictions were imposed on its activities and on the type of loans it could offer. In 1991, as part of the consultation process for the Agricultural and Forestry (Financial Provisions) Bill, the Government judged that the institution, due to its success, no longer required Government support and should be deregulated². When the Bill was passed in 1991, the AMC was able to provide more flexible loan financing.

3.58 The AMC is now a subsidiary of the Lloyds TSB group. The institution continues to issue specialised commercial finance for land based commercial businesses. The only product that the AMC offers is the Commercial Mortgage product, which is supported by a small number of High Interest Cheque Accounts.

3.59 The AMC does not undertake any payment service activities in scope of the Directive and for this reason the exemption is not applicable.

Scottish Agricultural Securities Corporation plc

3.60 The Scottish Agricultural Securities Corporation plc (SASC), like the AMC, was set up during the inter-war years and assessed in the early 1990s as no longer requiring Government support. The Agricultural and Forestry (Financial Provisions) Bill also deregulated the institution in 1991.

3.61 The SASC continues to be owned by the three Scottish clearing houses, Royal Bank of Scotland, Bank of Scotland and the Clydesdale Bank. Its primary objective has been to provide a loan facility to the Scottish farming community against land assets. Since the mid-1990s, the SASC has issued a limited number of loans and is currently in the process of running off its loan book with the last loan to mature in 2020.

3.62 The SASC does not undertake any payment service activities in the scope of the Directive and for this reason the exemption is not applicable.

Crown Agents

3.63 At the end of 1989 the Crown Agents for Overseas Governments and Administrations (which was a Government owned statutory corporation, with its activities prescribed under the Crown Agents Act 1979) transferred all its banking and

² Agricultural and Forestry (Financial Provisions) Bill, Lord Sitting, Hansard, 11 June 1991

payment activities to its 100 per cent owned subsidiary, Crown Agents Financial Services Limited. This also became an exempt institution from the Capital Requirements Directive (and later the Banking Consolidation Directive that replaced it). In 1997 when the Crown Agents was transferred to the private sector, Crown Agents Financial Services Limited applied for, and was granted, authorised status by the Bank of England under the Banking Act 1987, and the provisions of the Crown Agents Act 1979 fell away. Since that time the banking and payment activities have remained within Crown Agents Financial Services Limited, which changed its name to Crown Agents Bank Limited in September 2006. The Financial Services Authority now regulates Crown Agents Bank.

3.64 As Crown Agents Bank is now regulated by the FSA as an UK credit institution, the Government believes that Crown Agents Bank should be subject to the conduct of business rules as defined in Titles III and IV of the Directive.

Municipal Banks

3.65 Municipal Banks have been established by the terms provided in the Banking Act of 1987 and are exempt from the prudential requirements of the Banking Consolidation Directive. The 1987 Banking Act provides that a municipal bank:

- carries on a deposit taking business;
- is connected to a local authority so that its shares are held by members of the local authority only and all funds lent by the company are lent to the local authority; and
- has its deposits guaranteed by that local authority so that the local authority [or its successor], is liable - if the bank defaults in payment - to make good to a depositor the principal and interest owing in respect of any deposit with the company.

3.66 Municipal banks currently offer a savings account product that accepts standing orders as payments into the account; the only method by which customers can access their funds is via a bank book or cash card. Customers also have the facility to make regular direct debit payments from their saving accounts to pay their Council rent and Council tax to their affiliated Council. The customer base of the municipal banks derives primarily from the low income and financially excluded population of the local authority.

3.67 As local authorities underwrite municipal banks, it would not be appropriate for these banks to comply with Title II prudential requirements. The cost of complying with the PSD could be excessive for the municipal banks, as the resources attributed to their operations are limited; this could lead to closures, to the detriment of the low-income groups they currently serve. The Government will exempt municipal banks from the PSD. It will, however, continue to engage with the municipal banks on financial services legislation, including the PSD, to ensure that the regulatory approach towards the sector remains proportionate, risk-based and workable.

Credit Unions

3.68 The majority of respondents supported the view that credit unions should be exempt from the PSD as they provided financial services to those at risk of financial exclusion. They also believed that applying the PSD requirements to credit unions would impose a disproportionate regulatory burden especially on the smaller credit

unions. Some respondents, however, cautioned that if credit unions offered payment services then this exemption might create an uneven playing field.

3.69 Concerns were raised by ABCUL, the trade body that represents the majority of credit unions in Great Britain that if the credit unions were exempt from the PSD, this would restrict them from offering payment services. The Government is satisfied, however, that exemption would not restrict the sector from offering payment services in the UK: it would mean that they could provide payment services without having to comply with the PSD.

3.70 The Government's current view is that the credit union sector should be fully exempt from the provisions of the Directive. Compliance with the conduct of business rules could be excessive for the sector, causing it to move away from providing basic financial services to low income consumers. This would be to the detriment of its customers, who may face barriers to accessing such services from mainstream financial institutions, generating a significant social cost.

3.71 The Government is currently reviewing the legislation for credit unions in Great Britain including the qualifying criteria for membership "the common bond" as well as the range of activities that credit unions are currently able to undertake. The Government will continue to engage with the credit union sector on financial service legislation, including the PSD, especially in the light of any changes to the business models of credit unions, to ensure that the regulatory approach towards the sector remains proportionate, risk-based and workable.

OTHER SCOPE ISSUES

Territorial scope

3.72 The territorial scope of the PSD was not explicitly discussed in the last consultation document. However since its publication, European level discussions have identified two territorial issues:

- the regulatory treatment of the branches of third country firms (i.e. where the principal firm is located outside the territory of the Community but provides payment services within the EU) is not clearly defined in the PSD; and
- extension of the scope of certain PSD conduct of business provisions to one-leg transactions, i.e. where the payer is located in the EU and the payee is located outside the EU or vice versa. The Commission Services is encouraging Member States to do this through national legislation.

Treatment of third country firms

3.73 The scope of the PSD captures all firms with a legal presence in the territory of the Community (as defined by Article 299 of the EU Treaty) together with their branches and agents that provide payment services. The final text of the Directive, however, left ambiguous the treatment of third country firms that have a legal presence outside the Community. If these firms are not within the scope of the PSD and were able to provide payment services through their branches within the Community, an uneven playing field would be created, as third country firms would receive more favourable treatment than institutions located within the Community. This could inadvertently incentivise firms to locate outside the EU, and compromise the prudential and consumer protection provisions introduced by the Directive.

3.74 In the course of EU transposition discussions to date, it has been asserted that third country firms wanting to provide payment services within the Community would be required to: have a legal presence within the territory of the Community; be PSD authorised or registered if the waiver criteria are met; and meet the PSD conduct of business requirements. Based on EU transposition discussions to date, this should compromise neither GATS (General Agreement on Trade in Services) nor the previously established OECD agreements, although discussions are continuing on this issue.

One leg transactions

3.75 Article 2 states that Titles III and IV of the Directive will apply to payment services provided only within the Community, with the exception of the provisions in Article 73 of the PSD which relates to value dating and which will apply to all payment transactions. Title II, in contrast, will apply to all establishments in the EU whether operating only in the EU or sending money out of the EU. The Commission services is, however, encouraging Member States to extend the scope of certain conduct of business provisions of the PSD to one-leg payment transactions, i.e. payment transaction either going out of the EU or coming into the EU. The Commission services has identified a number of provisions which could be implemented by Member States, on a voluntarily basis through national legislation, to cover both "one-leg" and "two-leg" payment transactions: Articles 30, 32, 33, 35 to 48, 49(1), 50, 51, 52(1), 54 to 58, 60, 61, 64 to 66, 74 and 79 to 82.

3.76 The UK Remittance Task Force (UK RTF), a private sector-led DfID funded body, aims to create a more competitive market for remittances, promote greater transparency of commission and exchange rates, and support better-informed consumers. The UK RTF supported, in its response, the Commission services proposal of extending the scope of the PSD to cover one-leg transactions. Earlier this year, the UK RTF introduced a Remittance Customer Charter that includes many of the conduct of business requirements of the PSD and additionally requires remittance businesses to inform the payer of the amount of money the payee/beneficiary will receive in the local currency.

3.77 The Charter has been adopted by a significant number of money transfer organisations and will apply to all of their transactions, regardless of the destination. The Government welcomes this as a positive step taken by industry. The UK RTF has, however, suggested that the impact of a voluntary code of practice, which has been adopted by only part of the industry, would be less effective than legislation covering the entire industry and which was statutorily monitored and enforced.

3.78 The UK RTF further noted that if the one-leg transactions fell outside the scope of the PSD, the consumer protection for migrant remittances to countries outside the EU would be limited. As these remitters are arguably amongst the most vulnerable and financially excluded, they should be able to benefit from the PSD.

3.79 The International Association of Money Transfer Networks (IAMTN) and the UK Money Transfer Association (UKMTA) together represent a large cross-section of firms within the remittances sector. Both organisations are in favour of extending the scope of the Directive to one-leg transactions on the grounds that that this would allow payment service providers to comply with a single set of legal rules. It would also reduce the potential for confusion on the part of consumers faced with two standards when transacting remittances intra- and extra- EU. However, UKMTA members recognise that the extensive conduct of business rules could be excessive for smaller money transfer companies, resulting perhaps in closures or in greater recourse to the informal remittance sector. Furthermore, some Money Transfer Operators (MTOs) were concerned that, in order to comply with the conduct of business requirements, they

might need to compromise the speed of the transaction process, with adverse impacts for the firm's business model.

3.80 Although the Government recognises the need to provide sufficient levels of protection to all consumers that use payment services, it also believes that there should be a balance between consumer protection and workability. If conduct of business rules were to be imposed on one-leg transactions through legislation, effectively gold-plating the Directive, this could have an adverse affect on small MTOs which might not be able to comply with the rules due to lack of skilled resources. This could lead to these MTOs either closing or operating in the informal sector, which would give consumers less protection than they currently receive.

3.81 From a broader perspective, the UK payments industry might – for legal jurisdictional reasons – not be able to comply with some of the provisions for one-leg transactions. There would also be practical compliance issues for institutions based in third countries.

3.82 As one-leg transactions were not discussed within the last consultation document, the Government proposes to consult on this issue in its next consultation document to be published this summer, so that further information on this question can be gathered and analysed before any conclusions are drawn.

TITLE II – THE PRUDENTIAL REGIME

3.83 Title II of the Directive sets out the home Member State’s authorisation requirements for firms which are neither credit institutions nor e-money institutions and which wish to provide payment services in the EU. As part of the authorisation process firms will have to provide capital adequacy in accordance with the amounts set down in the Directive. They will also have to put in place safeguarding provisions to protect consumer funds in the event of insolvency. Firms that meet the waiver criteria and do not wish to passport their services into the EU will need to complete the registration process. The PSD defines these firms, both authorised and registered, as payment institutions.

3.84 This section summarises the responses received and provides Government conclusions, and in some cases clarity or further explanations, on:

- the prudential requirements of the firms seeking authorisation;
- the safeguarding provisions of the Title II;
- the regulatory approach to supervision of Title II;
- the treatment of agents; and
- the transitional provisions of the Directive.

QUESTIONS 9 AND 10: CAPITAL REQUIREMENTS (ARTICLE 8)

Q9. Are there issues relating to the initial or ongoing capital requirements which would benefit from further clarification? Please also give views on which of the three methods would be most appropriate to your business model.

Q10. Should payment institutions be able to choose the method they use for calculating their ongoing capital, subject to final agreement by the FSA?

3.85 Some respondents raised concerns that the capital requirements for payment institutions were more favourable than those for e-money institutions in the Electronic Money Directive (EMD), creating an uneven playing field between the two types of institution. Respondents from the credit institution sector requested reassurances that the capital requirements for payment institutions would be sufficient to ensure that there would not be unfair competition between the payment services offered by both types of institution.

3.86 The majority of respondents were supportive of an approach which would allow firms to choose the most appropriate ongoing capital requirements calculation method from the options set out in the Directive for their business, subject to the agreement of the competent authority. This flexible approach would cater for different overheads, transaction volumes and operating incomes and would avoid distortions of competition based on underlying differences in business models. A few respondents sought clarification as to whether and how an authorised payment institution would be able to move between the different methods of calculating the ongoing capital, as and when the firm’s business model evolved.

3.87 Some respondents were not in favour of allowing three methods of calculating ongoing capital. They suggested that a large number of possible permutations of application could lead to significant regulatory discrepancies across Europe. Member States might adopt a variety of different methods, resulting in not only a confusing regime but also a non-harmonised Single Market. Respondents were further concerned that, if Member States applied different methods of calculating ongoing capital, then - depending on which method was chosen - Member States could encourage or discourage the creation and establishment of certain firms. This would not be in the spirit of the Directive.

Conclusion 3.88 The Government recognises the discrepancies between the PSD and the EMD for payment institutions and e-money institutions, and will argue in favour of reducing these inconsistencies as part of the European process to review the implementation of the EMD. It should, however, be noted that the introduction of the PSD does move the playing field towards a more even footing in one respect, as prior to this Directive payment institutions were not statutorily required to meet capital adequacy requirements.

3.89 The Government will give firms the choice of which methodology they can use in calculating their ongoing capital requirement, subject to final FSA agreement. Such flexibility is consistent with the UK's better regulation principles. In response to how firms can move from one method of calculating the ongoing capital requirement to another as their business evolves, it is envisaged that the competent authority would permit the payment institution to change its capital method subject to the competent authority's agreement. Such a change would, however, not be permitted intra-year.

QUESTION 11: SAFEGUARDING (ARTICLE 9)

Q11. Does your business currently operate some form of ring-fencing or safeguarding of user funds? If so, how does this match the ring-fencing options under the PSD? If you do not currently ring-fence user funds, how will this requirement affect your costs and business model? How might ring-fenced user funds be best protected in the event of insolvency?

3.90 E-money licence holders and their representative bodies stated that the sector was familiar with the concept of ring-fencing user funds. Some e-money institutions further confirmed that they already undertake the practice of placing client funds in separate accounts from funds that are used for corporate activities. Furthermore, credit institutions currently ring-fence unallocated payments in a clearly identifiable manner within a suspense account designated as 'customer funds.'

3.91 If e-money institutions were to convert to payment institutions, these firms might then find it operationally easier to ring-fence user funds than firms from the money transfer sector. Larger money transfer organisation (MTOs) that use a network of agents to conduct their business highlighted that, in the majority of cases, remittance transactions are typically paid out (i.e. the end users – the payees - receive their funds) prior to the money remitting firm settling with the paying out agent. In these cases the agent would be transmitting funds to the principal MTO so that they could settle with the paying out firm; as such, these funds would no longer be defined as user funds. The MTO sector has also argued that the principal firm would always be liable to execute the underlying consumer transaction and discharge funds appropriately, and that safeguarding does not provide any additional benefit to the consumer.

3.92 The MTOs have further suggested that remittance funds could be protected through other provisions within the PSD:

- earmarking funds with a unique identifier (Article 4);
- payment institutions will be supported by initial and ongoing capital requirements (Articles 6, 7, and 8); and
- payment institutions cannot use payment service user funds for any other purpose than to provide the payment service (Article 16(2)).

3.93 Mobile phone operators agreed with the December consultation document that to apply the ring-fence provision to all prepaid mobile phone credit (typically in the region of £5 to £10 per transaction), would not only be administratively cumbersome but would also create a financial burden that could lead to products being withdrawn from the market. For this reason, mobile phone operators are not supportive of the ring-fencing provisions.

3.94 Industry respondents also raised concerns that, while safeguarding provisions might be well-intentioned, the lack of an EU harmonised approach to insolvency legislation could lead to complexities when resolving cross-border payment insolvency cases.

QUESTIONS 12 AND 13: CAPITAL REQUIREMENTS (ARTICLES 7(3) AND 8(3))

Q12. Do you agree that ongoing capital requirements should be applied for payment institutions already included under the consolidated supervision of credit institutions? Do you intend to passport your services? If so, please provide details.

3.95 Respondents emphasised the importance of not applying a double regulation regime to payment institutions already included in the consolidation supervision of credit institutions, and agreed that the highest requirements should always prevail. The Government will therefore exempt such payment institutions from ongoing capital requirements.

3.96 The Government is grateful to those firms that indicated whether they planned to passport their services, and the FSA is currently assessing these responses as part of the operational work on implementation.

Q13. How do you think the FSA should approach its ability to exercise the discretion to vary ongoing capital charges by 20 per cent?

3.97 Respondents, in principle, welcomed the flexible approach of the competent authority being able to apply a 20 per cent variance in ongoing capital requirements. However, some respondents also saw potential problems in applying this provision in a transparent, objective and consistent manner. As there will be a variety of firms seeking authorisation, it would be difficult for a competent authority to evaluate consistently the adequacy of ongoing capital and to exercise the 20 per cent variance. The majority of respondents suggested that this power should be applied as an exception rather than the norm, especially if the competent authority planned to decrease the capital requirement by 20 per cent.

Conclusion 3.98 In view of cost concerns around ensuring a consistent evaluation the FSA intends to not exercise this discretion initially.

QUESTIONS 14, 15, 16 AND 17: SAFEGUARDING REQUIREMENTS (ARTICLE 9)

Q14. Should payment institutions be able to apply safeguarding measures only to an estimated portion of funds, which might be used for future payment transactions where these are unknown in advance?

3.99 The majority of respondents agreed that payment institutions should be able to apply the safeguarding provisions against an estimated proportion of funds that might be used for future payment transactions, where these were unknown in advance. Respondents also felt that, to ensure a level playing field, it would be appropriate to apply this provision to both hybrid and non-hybrid firms alike.

3.100 Some respondents emphasised that calculation of the amount to safeguard should be based on historical and benchmarked data, taking into account possible seasonal peaks. They also argued that a clear set of rules should be established to ensure that there was transparency in determining the estimated proportion of funds to be ring-fenced. Where there was an absence of historical data, respondents believed that it might not be appropriate to use this provision, as any derived estimate would be unlikely to provide appropriate protection against operational risk.

Conclusion 3.101 The Government will use the provision to allow firms to safeguard an estimated portion of funds which might be used for future payment transactions, where these are unknown in advance. This safeguarding flexibility will be key to the viability of certain business models but can be used only where historical data is available.

Q15. Should non-hybrid firms have to safeguard user funds in a similar manner to hybrid payment institutions? What would be the costs and benefits of this?

3.102 A few respondents suggested that, if payment institutions were obliged to implement both safeguarding and prudential requirements, the regulatory environment for payment institutions might become overly burdensome. For this reason these respondents were in favour of applying this provision at its minimum obligation level (that is, only to hybrid firms and on transactions that exceeded €600).

3.103 However, the majority of respondents believed strongly that consumers should receive the same level of protection on payment services, regardless of the business model used by the firm (i.e. hybrid and non-hybrid). Furthermore, respondents argued that, as hybrids typically transacted a lower volume of payments than their non-hybrid counterparts, it would be disproportionate to apply the safeguarding provisions, only to hybrid firms. Respondents further noted the risk of applying a two-tier system, is that hybrid firms might decide to restructure their business and separate their payment services into a separate entity, bypassing the safeguarding provisions.

Conclusion 3.104 The Government is sympathetic to the view that the regulatory framework might become overly burdensome, were payment institutions obliged to comply with both prudential and safeguarding requirements. The Government also recognises, however, that a two-tiered system between hybrid and non-hybrid firms in relation to safeguarding, would create inconsistent levels of consumer protection in payment services. For this reason the Government will impose the safeguarding provision on both hybrid and non-hybrid firms alike.

Q16. How should the competent authority approach the option to demand the legal separation of a payment institution's payments business from its non-payment activities?

3.105 The majority of respondents were strongly opposed to payment institutions having legally to separate their payments business from their non-payment activities. Although some respondents believed that this would provide additional safeguarding measures for consumers, they also believed that it would be practically difficult to implement due to the operational and legal costs involved. It would, therefore, be better for the competent authority to request the additional 20 per cent capital charges provided in Article 8(3) or require the firm to divest itself of the payments business if it could not comply with the PSD business requirements.

Conclusion 3.106 The Directive stipulates that Member States must implement this provision into national legislation and that it will ultimately be a decision for the competent authority as to whether or not to use the provision.

Q17. Should safeguarding be limited to funds exceeding €600? How might the use/non-use of this flexibility affect firms' processes and operating costs?

3.107 Respondents had mixed views on whether to apply safeguarding provisions only to users' funds that exceed €600. Those in favour of the €600 threshold supported the view that if the safeguarding provisions were applied to all transactions (i.e. even to those below €600), the development of low-value payment instruments might be inhibited. Furthermore, some respondents believed that by applying the threshold, the Directive would be implemented in a risk-based and proportionate manner, while giving sufficient protection through the prudential requirements.

3.108 Other respondents believed that the €600 threshold was too arbitrary to justify application and that, since the average remittance is around £324, this threshold would not protect the most vulnerable and financially excluded, and those most likely to be affected by a firm becoming insolvent.

3.109 From a firm's perspective, the cost of installing a transaction value tracking and separation system could prove prohibitive. The regulatory burden of installing such a system could create a barrier to entry for smaller firms.

3.110 If a threshold for safeguarding were to be applied, the majority of respondents agreed that the provision should be applied to both hybrid and non-hybrid firms to ensure a level playing field.

Conclusion 3.111 In the light of the financial difficulties experienced by an MTO in summer 2007, the Government is keen to support the protection of vulnerable consumers from the impact of a payment service provider becoming insolvent, while still ensuring that payment institutions have an innovative environment in which to develop. In the

course of 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. Using this flexibility the Government proposes to set a threshold of £50, such that both hybrid and non-hybrid payment service providers must safeguard users' funds for all transactions higher than £50, while giving firms the choice of safeguarding all users' funds. This threshold should help to protect the innovative environment for low-value payment instruments while ensuring that the majority of high value payment transactions (both in terms of monetary and social value) are safeguarded. A £50 limit would also be consistent with the user liability threshold, covered later in this section.

3.112 The Government will consult formally on this proposal in the summer consultation document.

QUESTION 18: WAIVER CRITERIA (ARTICLE 26)

Q18. Do you agree with the approach to exercise the waiver, while retaining the fit and proper test outlined in MLR07?

3.113 The majority of respondents agreed that it would be appropriate to waive smaller payment service providers that met the waiver criteria and that did not wish to passport from Title II provisions, provided that they were subject to the 'fit and proper' test. Respondents believed that the cost of implementing Title II provisions for smaller payment institutions would be disproportionate and might result in these firms becoming priced out of the market. This could in turn lead to reduced consumer choice or greater recourse to the informal sector.

3.114 Other respondents, however, argued for the application of a partial waiver which would include the imposition of the safeguarding provisions on all payment institutions. It was felt that applying only AML requirements (and not some of the prudential authorisation requirements to which larger firms are subject) to smaller firms would create a two-tiered approach to the regime that would, from a consumer's viewpoint, lack transparency. From a firm's perspective it would also impose a disproportionate regulatory burden on an arguably lower risk part of the sector.

3.115 Although it would be the responsibility of the payment institution to inform the competent authority of its status and need to authorise, some respondents felt that this might not be adequate for rapidly growing firms. A payment institution might, for example, seek authorisation, but find, during the three-month authorisation process, that monthly transactions volumes had increased beyond the waiver criteria. Some respondents suggested that payment institutions could submit monthly information to the competent authority on their transaction volumes, enabling that authority to inform the firm of the most appropriate time to seek authorisation.

3.116 Some respondents urged that the PSD regulation should not entail a requirement to produce a duplicative registration process for AML and PSD purposes. Respondents preferred the production of a single, unified list of registered companies to avoid creating a double registration obligation on smaller payment providers.

Conclusion 3.117 The Government understands the concerns raised surrounding the creation of a two-tiered system. However, to impose regulatory burdens on smaller firms that transact a low value of payments would be disproportionate and might result in these firms being priced out of the market or moving to the informal sector. This would be detrimental to consumer choice and could result in lower levels of consumer

protection. The Government will, therefore, apply the waiver provision together with the AML requirements currently in operation, as proposed in the December consultation document.

QUESTION 19: APPROACH TO AGENTS (ARTICLE 17)

Q19. Should the agents of registered payment institutions be registered?

3.118 From the responses provided there was no clear view as to whether agents of registered payment institutions should also be registered. Some respondents agreed that the process of registering agents would be in line with the provisions set out in the Article 17 (1) to (5), and that this would provide greater transparency to customers and end-users.

3.119 Other respondents viewed the practice of registering agents as being very costly, cumbersome and not adding any value. They believed that the list of agents could easily become out of date, creating unnecessary confusion for consumers. There was further concern that agents of registered payment institutions that were not carrying out payment services might also be caught if these provisions were exercised.

Conclusion 3.120 During the EU transposition discussion it has been clarified that the agents of waived firms will need to be registered. The Government will, therefore, legislate to ensure that agents of registered payment institutions are registered. To clarify, the only agents that would be captured as part of the PSD would be those that conduct payment services on behalf of their principle payment institution. This would also apply to agents of all firms authorised under the Directive operating in the UK.

QUESTION 20: TRANSITIONAL PROVISIONS (ARTICLE 88)

Q20. Do you intend to take advantage of the transitional provisions? Please provide details.

3.121 Some e-money institutions that plan to become a payment institution, as well as other firms that will become payment institutions, are likely to take advantage of the transitional provisions to ensure that they comply with the requirements of the Directive before seeking authorisation or registration. The capital requirements and ring-fencing obligations, for example, will be complex for some firms to establish, and firms might require the lead-time allowed in the transitional provisions.

3.122 Respondents from the credit institution sector recognised that transitional provisions did not affect their business. Responses from e-money institutions suggested that not many e-money institutions would convert to become a payment institution, and thus the transitional provisions would not affect them.

3.123 Some respondents, however, believed that by allowing firms that met the waiver criteria three years to register, a two-tiered situation would be created. It has been clarified at EU level discussions that the transition period for waived firms ends on 25th December 2010 (i.e. three years from the date, 25th December 2007, by which existing non-bank service providers were required to inform their existence to the competent authority).

QUESTION 21: ACCESS TO PAYMENT SYSTEMS (ARTICLE 28)

Q21. Do you agree with the interpretation of the scope and aim of Article 28 on access to payment systems, and the schemes that will be affected in the UK? Are there other payment systems that may be affected?

3.124 As outlined in the consultation document, the objective of Article 28 is to promote competition, in particular by ensuring that the rules governing payment service providers' access to payment systems are objective, non-discriminatory and proportionate. This is to enable payment institutions, both authorised and waived, to gain access to payment systems and to compete in the payment market, alongside credit and e-money institutions. However, Article 28 also requires that access rules should be robust enough to guard against operational, settlement and other specific risks that would affect the stability of the payment systems.

3.125 The majority of stakeholders agreed that, in order to foster a competitive environment, all payment service providers should have access to payment systems on the same terms. However, access should be subject to essential safeguards to protect systems from risks that would affect operational stability.

Exemptions to the article

3.126 The majority of stakeholders acknowledged that the access principles in the Article would not apply to payment systems designated under the Settlement Finality Directive (SFD) (i.e. currently CHAPS, Bacs, and the embedded payment systems supporting the Euroclear UK and Ireland securities settlement system and LCH.Clearnet Ltd); payment systems composed of payment service providers belonging to a group; or proprietary payment systems that are established and operated by single provider. Many were also of the view that the application of this Article would not be anti-competitive.

Three-party card schemes

3.127 Some stakeholders questioned the rationale behind exempting three-party card schemes, suggesting that the exclusion of these schemes would create an uneven playing field. Some further suggested that the three party schemes were, in reality, four-party schemes and that by exempting them there would be a risk that the intention of the Article would be compromised. These stakeholders also suggested that a three-party card scheme might evolve to allow for a third party to issue its branded cards.

3.128 The difference between a three-party and a four-party card scheme is that, in the former case, there are three operational parties: the payment card scheme operator (who is both the card issuer and the merchant acquirer), the merchant; and the cardholder. In the four-party scheme there are four operational parties: the card issuer, the merchant acquirer, the merchant and the cardholder. There are also some three-party card schemes where the card issuer and merchant acquirer activities as a whole are contracted or franchised to a third party to perform these activities. The operator of the three-party scheme is the payment service provider to both the payer and payee of the system.

3.129 Further to this, access rules tend to apply only to four-party schemes rather than three-party schemes. Four-party schemes are agreements to co-operate between undertakings that would normally be in competition with each other. In contrast, the undertakings in three-party schemes are generally not in competition with each other

(although arguably at the margins). For this reason three-party schemes tend not to be scrutinised by competition authorities with the same vigour as four-party schemes.

3.130 If the business model of a three-party scheme were to change such that the card issuer and the merchant acquirer were predominately different parties, this payment system would then fall into the scope of the Article; the scheme would no longer be defined as a three-party scheme.

Faster payments **3.131** Respondents from the banking industry questioned whether the Faster Payments service would be exempt from the scope of the Article. The introduction of Faster Payments, launched in May 2008, means that electronic payments made by telephone, internet and standing order will move from a current three day clearing to near real-time. The banking industry believes that the Faster Payments service will be a systemically important system, and will be applying for designation under the Settlement Finality Directive in due course.

3.132 The provisions under Article 28 of the PSD will come into force on 1st November 2009. If the Faster Payments service has successfully applied for SFD designation before the PSD is enacted, it will be exempt from provisions of Article 28.

Conclusions **3.133** The implementing legislation will, in line with the Directive, clarify that access principles will not apply in the following instances:

- where payment systems are designated under the SFD;
- where payment systems are composed of payment service providers belonging to a group; and
- where the proprietary payment systems are established and operated by a single provider, and exercise their right bilaterally to license the use of their intellectual property on a discretionary basis to other payment service providers.

3.134 It should be noted that scope of the access principles for payment systems established in Article 28 does not extend to the provision of settlement accounts by the Bank of England.

QUESTION 22: LEGISLATIVE MODELS TO IMPLEMENT ARTICLE 28

Q22. What are the merits of an ex ante or an ex post approach to implementation of Article 28 on access to payment systems? Are there any other approaches that should be considered?

3.135 The consultation document discussed two legislative models to implement the provisions of Article 28: ex ante and ex post enforcement. The majority of respondents preferred the ex-post model, as this would be consistent with the Office of Fair Trading's (OFT) approach to the Competition Act and the Enterprise Act.

3.136 Some respondents preferred the ex-ante approach, as they believed that the risks of a payment system not complying with the provision would be reduced. However, other respondents noted that this approach would not give legal certainty. Some respondents also raised concerns that an ex-ante approach might not work on a pan-European level, as different national competent authorities could review payment systems rules on a different basis.

3.137 Others respondents suggested a mixture of the two models. The ex-ante approach would help to mitigate the risks of non-compliance while the ex-post regime would provide the competent authority with the ability to enforce sanctions for non-compliance.

Conclusion 3.138 The Government has decided to implement Article 28 by means of an ex-post legislative model. This model will place a prohibition on payment system rules that are discriminatory, not objective, or not proportionate. The payment system scheme board and its members will be bound by the provisions, and will have a legal duty to comply with them. Penalties will be established in legislation to enforce the prohibition, with the Competition Appeal Tribunal acting as the associated appellate body. This will follow the Competition Act 1998 model. In investigating a complaint against a payment system's access rules, the OFT will liaise with the Bank of England to check whether the relevant access condition is in fact justified (and if necessary, has been applied) on the grounds of protecting the financial and operational stability of the payment system.

3.139 In early 2009, the OFT will be publishing its approach to the supervision of Article 28. This will outline the principles by which it will pursue a complaint against a payment system. Further to this, the OFT will list the payment systems that are in scope of this Article.

TITLES III AND IV – CONDUCT OF BUSINESS REQUIREMENTS

3.140 Titles III and IV of the Directive contain the conduct of business rules applicable to all payment service providers, including credit institutions, e-money institutions, and authorised and registered payment institutions that conduct payment transactions within the European Economic Area. Title III establishes transparency conditions and the information requirements for payment services, while Title IV establishes the rights and obligations of both payment service provider and user.

3.141 This section summarises the responses and provides Government conclusions and in some cases further clarity on:

- the treatment of low value payment instruments and low value e-money instruments;
- the treatment of micro-enterprises;
- the approach to certain provisions within Titles III and IV: termination, charging; scope and negative scope of the Directive: providers and activities; information provided on paper; execution times; and user liability;
- the read-across to other legislation; and
- industry codes of practice.

3.142 It should be noted that the Commission plans to convene meetings with Member States later in 2008 as part of the transposition process, to discuss Titles III and IV and ensure a consistent interpretation of the Directive's requirements. For this reason the Government conclusions provided in this sub-section remain subject to the outcome of these ongoing discussions.

QUESTION 23: INFORMATION REQUIREMENTS

Q23. Is any clarification needed in relation to any of the information requirements and how they relate to a given payment method or business model?

3.143 Responses to this question usefully highlighted certain points of ambiguity. The Government will seek to provide clarification in the summer consultation document, with the draft regulations. In particular, many respondents sought clarity on:

- **the timing of executing certain provisions:** Several provisions indicate that providers must execute the provision by a certain timeframe. However, this timeframe is relatively unclear: for example, Article 38 'immediately,' Article 41(1) 'in good time,' and Article 47 'without undue delay'.
- **payment transaction contracts:** questions were raised as to whether the prior information requested before a single payment transaction may in practice be as onerous as those required as part of a framework contract. Article 37(2) states that services providers, at a Member State's discretion, might need to provide specific information for single payment transactions listed in Article 42 (which details the information and conditions of framework contracts). Respondents from the banking industry questioned

whether they would need to send existing consumers new ‘framework contracts’ or whether existing contracts should suffice.

- **the penalty regime:** the Directive does not indicate clearly which provisions would be subject to criminal or civil sanctions.

3.144 The December consultation document contained an error in paragraph 5.11, which stated that an example of a unique identifier, which the consumer would have to produce before being bound by a contract for single transactions, was a pin number. This should have, instead asserted that a unique identifier would be combination of a sort-code and an account number.

QUESTION 24: TREATMENT OF MICRO ENTERPRISES (ARTICLE 30)

Q24. Do you agree with making Title III provisions compulsory when payment service providers deal with micro-enterprises, as for consumers?

3.145 The majority of stakeholders agreed that micro-enterprises and consumers were subject to the same information asymmetries vis-a-vis their payment service providers. For this reason they agreed that it should be compulsory for providers to apply the transparency of conditions and information requirements (Title III) when providing payment services to micro-enterprises.

3.146 Many respondents from the banking industry were not in favour of reducing the level of protection afforded to micro-enterprises; the banking code currently provides protection equivalent to that of consumers, for businesses with an annual turnover of £1 million. In the event of this derogation being exercised, however, industry requested clarity on which definition of micro-enterprise would be used; if the European definition were to be used, a wider set of businesses could be captured than might have been intended.

3.147 Some respondents believed that, if micro-enterprises were treated as consumers, a complex regulatory landscape would be created across Europe. It was suggested that payment service providers would find it difficult to track the status of a business, which might result in providers taking a conservative approach by providing the same level of information to all enterprises. This would be costly to the industry and ultimately to users.

3.148 The Government has decided to legislate to make it compulsory for payments service providers to provide the information and transparency requirements outlined in the provisions of the Title III for both micro-enterprises as well as consumers. However, if an enterprise were to change status (i.e. moving from a micro-enterprise to become a small to medium enterprise, or vice versa) after it had entered into a contract with a payment service provider, the enterprise would be obliged to inform the provider of its change in status.

QUESTION 25: LOW VALUE PAYMENT INSTRUMENTS AND LOW-VALUE E-MONEY (ARTICLE 34)

Q25. Do you think the UK should exercise the right to adjust the thresholds for low value payment instruments in Article 34(1) for national payment transactions?

3.149 The majority of respondents supported the view that the threshold for low value payment instruments and low value e-money instruments should be increased to the maximum limits for national payment transactions. This would mean that payment transactions below the thresholds would not be subject to all of the information provisions defined in Title III. Stakeholders raised concerns that, if the thresholds were too low, they could potentially hold back innovation within the payment market and might deter consumers from using certain instruments that typically required quick transaction times. Other respondents noted that a higher threshold would be consistent with the 2007 Money Laundering Regulation (MLR07) and Joint Money Laundering Steering Group (JMLSG) guidance, both of which exempt the following e-money devices from the verification of customer identity:

- non-reloadable devices with a purse limit of €150 (regulation 13(7) of the MLR);
- non-reloadable cards with a purse limit of €1000 (JMLSG GN 3.25-3.27); and
- reloadable devices with a transaction limit of €2500 per year (regulation 13(7)(d) of the MLR).

3.150 Some respondents were concerned that if the thresholds across the EU were not consistent then the Commission would not meet its aim of creating a harmonised Single Market for retail payments. Some respondents also noted that, if one Member State were to apply higher thresholds, a competitive advantage over the other Member States might be created, which would in turn result in other Member States increasing their thresholds. Other respondents that provide pan-European services raised concerns that their compliance and operational costs would increase if they faced different thresholds for their products across Europe.

Conclusion 3.151 The Government is opting to apply the highest thresholds possible for national payment transactions in Article 34(1) of the PSD. The threshold in Article 34(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 national 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.

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

QUESTION 26: TERMINATION OF A CONTRACT (ARTICLE 45)

Q26. Do you agree with the approach of not imposing further requirements on conditions for termination, as provided for in the derogation under Article 45(6)?

3.153 The majority of respondents supported the principles of contract termination set out in the Directive. Respondents argued strongly that it should be left to market competition to develop more favourable termination provisions. One respondent suggested that if additional compulsory termination requirements were imposed on industry, these might lead to unintended consequences.

3.154 One respondent raised concerns that Article 45(2) could lead to providers being able to apply any level of charge on a payment service user who wished to terminate a contract before the 12-month period stated in the article, after which termination would be free of charge.

Conclusion 3.155 As a result of responses received, the Government will not legislate beyond the termination provisions outlined in the Directive.

QUESTION 27: INFORMATION PROVIDED ON PAPER (ARTICLES 47 AND 48)

Q27. Do you agree with the approach of not imposing additional requirements concerning the provision of information on paper, as provided for in Articles 47(3) and 48(3)?

3.156 There was support for not imposing a requirement on payment service providers to provide paper-based information once a month and free of charge on individual's payment transactions. The application of this provision could limit consumer choice, increase operational cost for payment service providers (which would ultimately be passed onto the user), and have implications on the environment.

3.157 It was acknowledged by one respondent that transaction information provided on paper might be valuable for certain individuals and micro enterprises, particularly those who did not have access to electronic communication. The respondent was aware of the concerns raised above and therefore suggested that consumers should have the option to opt out of receiving paper-based information.

Conclusion 3.158 The Government believes that payment service providers should provide information free of charge on payment transactions to their consumers on a durable medium in line with the Directive, but not necessarily on paper and will, therefore, not apply this derogation.

QUESTION 28: OUT OF COURT REDRESS PROCEDURES (ARTICLES 51 AND 83)

Q28. Do you agree with the Government's intention of dis-applying access to out of court procedures only where the payment service user is corporate and not a micro-enterprise?

3.159 There was broad support for giving micro-enterprises the same access to out of court procedures within the PSD as consumers. As with the responses to Q24, and to ensure that payment service providers would be correctly complying with the PSD provisions, respondents sought clarity on which micro-enterprise definition would be used.

3.160 A minority of respondents did not agree with extending access to out of court redress mechanisms, to micro-enterprises. They believed that this would create confusion among payment service providers and could be detrimental to the development of cross border trade. They suggested that this derogation, together with the compulsory application of all Title III provisions on micro-enterprises, would create confusion with respect to the rights, obligations, and legal avenues for redress available to parties to an agreement, as these would be dependent on the size of the parties involved.

Conclusion 3.161 The Government will legislate to include micro-enterprises under the out of court procedures of the PSD, as it believes that micro-enterprises might be discouraged from raising a complaint by the cost of resolving a dispute in the courts. The Financial Ombudsmen Service (FOS) currently provides an independent service for settling disputes between consumers, including businesses with annual turnovers less than £1 million, and businesses providing financial services. The inclusion of micro-enterprises under the out of court procedures of the PSD would be in line with the current jurisdiction of FOS.

QUESTION 29: CHARGING (ARTICLE 52)

Q29. Do you agree with the approach of not exercising the derogation to forbid or limit the right of payees to request charges for payers' use of a given payment instrument?

3.162 There was broad support for the Government not legislating to prohibit or limit the right of payees to request charges when payers chose to use a certain payment instrument. The respondents believed that charging was a commercial matter and that, through compliance with transparency obligations, payment service users would be able to assess which payment mechanism was best suited to their needs.

3.163 A few respondents were strongly opposed to payees being able to apply additional charges on a given payment instrument. They raised concerns about this action being used not to cover the cost of a transaction, but as a way for the payee (i.e. the merchant) to earn additional revenue from the consumer.

Conclusion 3.164 The Government will not legislate to prohibit payees from requesting additional charges for using particular payment instruments. The Government believes that this approach encourages competition and promotes the development of efficient payment products through a free market.

QUESTION 30: LOW VALUE PAYMENT INSTRUMENTS AND LOW VALUE E-MONEY (ARTICLE 53)

Q30. Do you think the UK should exercise the right to reduce or increase the thresholds permitted for low value payment instruments under Article 53(1) for national payment transactions?

3.165 As with Q25, respondents were supportive of raising thresholds. The Government will implement the highest thresholds possible for national payment transactions, so that the threshold in Article 53(2) will be implemented at the maximum of €500 for pre-paid instruments, and payment service providers will not be obliged to provide certain Title IV requirements to the payment instruments and e-money instruments that are:

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

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

QUESTION 31: USER'S LIABILITY (ARTICLE 61)

Q31. Do you agree with the approach to derogations in relation to Article 61 of the Directive on the user's liability (i.e. to maintain current UK standards)?

3.167 The majority of respondents were in favour of the Government retaining the current UK standard for the user's liability threshold of £50. They believe that this standard is well-known and consistent with current thresholds for credit tokens under the Consumer Credit Act. They do not believe that increasing the threshold to that of €150 in the PSD would provide payment service users with the appropriate level of protection against their cards being lost, stolen or otherwise misused.

3.168 Some stakeholders raised concerns that, if this derogation were exercised, there could be a risk of the EU not meeting its aim of creating a Single Market. Different levels of user liability thresholds across the EU might create confusion for both providers and users of a payment service.

3.169 The Government is in favour of retaining the £50 user's liability threshold. If the threshold were to increase, UK consumer protection standards would be reduced. The Government considers that the risk of this jeopardising the EU's Single Market objective is minimal.

QUESTION 32: EXECUTION TIMES FOR PAYMENT TRANSACTIONS (ARTICLES 69 AND 72)

Q32. Do you agree with the approach of not legislating beyond the maximum execution times set by the Directive?

3.170 All respondents to this question were in favour of the Government not legislating to reduce the maximum execution time of D+1 (i.e. by the end of the next business day) as set out in the Directive. Respondents from industry strongly believed that competition rather than legislation should drive payment service providers to offer better service provisions and improved execution times. As part of its remit, the UK Payments Council will continue to play a key role in ensuring the efficiency and innovation of the payment systems in the UK.

Conclusion 3.171 The Government will not legislate beyond the maximum execution times set out in the Directive.

QUESTION 33: CODES OF PRACTICE FOR PSD IMPLEMENTATION

Q33. Do industry groups intend to produce codes of practice on PSD implementation for their members? To what extent can this be based on any existing trade association standards?

3.172 Responses received from representative bodies of payment service providers indicated that many intended to produce codes of practice or industry guidance on PSD implementation for their members. It will be important for these bodies to work collaboratively with the FSA, the OFT and each other to ensure that there is consistency in interpretation.

3.173 In addition to this, the FSA plans to publish an approach document in early 2009 that will help firms navigate and understand the regulations and relevant Handbook material and how the FSA will approach supervision under the PSD in practice. This document should also incorporate the OFT's approach to Article 28.

QUESTION 34: LINKS WITH OTHER EU LEGISLATION

Q34. How do you think the PSD rules will interact with existing consumer credit legislation, and any other existing conduct of business legislation?

3.174 The Government acknowledges that there is a wide degree of overlap between the provisions under the PSD and other EU and national laws. In addition to the Consumer Credit legislation, Distance Marketing Regulations and the Unfair Terms in Consumer Contracts Regulations, respondents have identified potential overlaps with the Consumer Protection from Unfair Trading Regulations 2008 and Business Protection from Misleading Marketing Regulations 2008, as well as and with money laundering/ terrorist financing legislation.

3.175 As part of the consultation on PSD legislation, the Government plans to outline how the PSD will co-exist with legislation already in force, and will seek to provide some further clarity on which provisions would prevail when obligations overlap.

4

NEXT STEPS

4.1 The deadline for implementing the PSD is 1 November 2009. The Government intends to lay the necessary legislation before Parliament by the end of 2008, in order to allow businesses time to adjust to the PSD requirements before the legislation comes into force.

4.2 The next steps in the process of consultation and implementation are that:

- draft UK implementation legislation will be published by summer 2008, accompanied by further consultation material; and
- final legislation will be laid before Parliament by end-2008, to come into force by 1 November 2009.

4.3 The PSD transposition work at EU level is running in parallel to the UK implementation timeline. This transposition work aims to ensure that EU Member States have a consistent interpretation of the Directive's requirements. To date, the European Commission has convened three of these meetings:

- February 2008 – Title I – Scope and Definition;
- April 2008 – Title II – Prudential Regime; and
- May 2008 – Title III – Information requirements for payment services.

4.4 Further meetings will be convened in 2008 to discuss the provisions under Title IV and outstanding concerns.

Related consultations

4.5 In addition to the Government's consultation process on the PSD, the Financial Services Authority (FSA) intends to consult this summer on the following proposed changes to its Handbook as a result of the PSD:

- changes to the 'Dispute Resolution' section of its Handbook so that the FSA's complaints handling rules apply to payment institutions;
- changes to the jurisdiction of the Financial Ombudsman Service so that it can perform the out of court redress function as required under Article 83;
- changes to the Decision Procedure and Penalties Manual and the Enforcement Guide (EG) to explain the FSA's approach to enforcement of the PSD implementation legislation; and
- any necessary consequential changes.

4.6 Additionally, the FSA intends to consult on its approach to PSD fees in October 2008 and publish an Approach Document in early 2009 outlining its approach on matters such as authorisation and supervision under the PSD.

REVIEW OF THE ELECTRONIC MONEY DIRECTIVE (EMD)

4.7 In July 2006, the Commission adopted a staff working document on the review of the Electronic Money Directive (EMD). The report concluded that there was a need to revise the provisions in the current Directive, some of which appeared to have hindered the development of the e-money market. Now that the Payment Services Directive has been adopted, the Commission believes that the EMD should be reviewed. Building on the findings of the 2006 staff-working document, the Commission services are currently conducting an impact assessment.

4.8 Depending on the outcomes of the impact assessment, the Commission plans to improve legal certainty through refinement of the definition of e-money and clarification of the scope and facilitation of access under a more proportionate regulatory regime. The end goal is to create a more business-friendly and streamlined regulatory framework for the issuance of e-money, in line with the stated objectives of the original Directive.

4.9 It should be noted that the Commission is currently discussing the EMD with Member States and the payments industry, with a view to presenting a proposal to amend the Directive as soon as possible.

A

LIST OF CONSULTATION RESPONDENTS

4X Currency Corporation PLC
Association of British Credit Unions Ltd (ACBUL)
Association of Corporate Treasurers (ACT)
AMCO
American Express (AMEX)
APACS, the Cards and Fraud Control Division

Bank of England
Barclays
Building Society Association (BSA)
British Bankers Association (BBA)

Cartes Bancaires (CB)
Community Development Finance Association (CDFA)
CITI Bank
Co-operative Bank PLC

Edgar, Dunne & Company (EDC)
Eiger Systems
Envoy
Electronic Money Association (EMA)
EPSM

Financial Services Consumer Panel

HBOS

IAMTN

JP Morgan

Lloyds TSB
LOGICA UK Ltd

MasterCard Europe
Mobile and Broadband Group (MBG)
MoneyGram International Limited (MG)

Nationwide
North Lanarkshire Council

Payments Council

PayPal

PrePaid Forum

Royal Bank of Scotland (RBS)

Royal Mail Group

Trading Standards Institute

Transport for London (TfL)

UK Money Transfer Association (UKMTA)

UK Remittance Task Force (UKRTF)

Visa

Vodafone

Western Union (WU)

Summary: Intervention & Options

Department /Agency:
HM Treasury

Title:
Impact Assessment of the Implementation of the Payments Service Directive on business

Stage: Final Proposal

Version: Final

Date: 17 June 2008

Related Publications: Summary of responses to the consultation on the implementation of the Payment Services Directive (May 08)

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 creating a Single Market in retail payment services. This is expected to improve economies of scale and competition, which should increase 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 scope of Directive (A2(3)); the safeguarding requirements for payment institutions (PI) (A 9); the criteria for PIs waiving application for prudential requirements (A 26); the waiver of conditions in Titles III and Title IV for low-value payment instruments & e-money (A34), (A 53); and the user's liability for unauthorised use of payment instruments (A61).

- If the Directive is implemented without the flexibility offered in the derogations, the estimated cost to business would be £34.0m one-off & £19.6m p.a.. By applying the derogations as suggested the estimated cost to business should fall to £28.3m one-off & £4.8m 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 the Directive has been transposed into the national law of each EU Member State.

Ministerial Sign-off For consultation 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:



.....Date: 17 June 2008

Summary: Analysis & Evidence

Policy Option: N/A

Description: Payments Service Directive taken at basic implementation level for business i.e. not taking forward any of the flexibility offered

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Key affected groups-credit institutions (383); e-money issuers (24 licenced & 39 certified); money transfer companies (2781); credit unions (566); and Others (14). Please see page 8 for details on the estimated fees used in these calculations. The compliance cost has been estimated to be £20m one-off.
	One-off (Transition)	Yrs	
	£ 34.0m*	1	
	Average Annual Cost (excluding one-off)		
	£ 19.6m*	Total Cost (PV) £ 56.8m	
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. 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)		
	£ 2,722.5m	Total Benefit (PV) £ 7,885.0m	
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) £ 2,655.3m
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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)	Micro £7000*	Small £7000*	Medium £7000* Large £7000*
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 (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2

Description: Credit Unions to be fully exempt from the scope of the Directive (Article 2(3))

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 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' There are approx 566 credit unions (CU) in the UK. By applying the full derogation - exempting CU 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.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups'			
Credit unions 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) £ 0m
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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?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro 0 Small 0 Medium 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 Value

Summary: Analysis & Evidence

Policy Option: 3	Description: All payment institutions (PIs) to safeguard user funds above the safeguarding threshold.
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' A proportion of the 64 large & 2731 small hybrid & non-hybrid PIs may need to install new software to disaggregate payments below £50. The estimated cost of this technology is £40-200k 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	
	£ 335.4	1	
	Average Annual Cost (excluding one-off)		
£ 167.7m		Total Cost (PV)	£ 485.7m
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) £ -485.7m
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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	Small	Medium	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: 3	Description: Introducing the waiver criteria conditions for payment institutions waiving application for prudential requirements (article 26)
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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 2731 firms - will need to pay registration fees. Please see page 8 for details on the estimated fees used for these calculations.
	One-off (Transition)	Yrs	
	£ 0.3m*	1	
	Average Annual Cost (excluding one-off)		
	£ 0.5m*	Total Cost (PV)	£ 1.4m
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 offences.
	One-off	Yrs	
	£ 335.0m	1	
	Average Annual Benefit (excluding one-off)		
	£ 183.0m	Total Benefit (PV)	£ 530.0m
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) £ 528.6m
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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 £200*	Small £200*	Medium £200* 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	Description: Waiving the application of the Title III and Title IV for low-value payment instruments and electronic money (article 34), (article 53)
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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.
	One-off (Transition) Yrs	
	£ 0	
	Average Annual Cost (excluding one-off)	
	£ 0	Total Cost (PV) £ 0
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 instruments, which are defined in the Directive as: - 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) £
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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
Are any of these organisations exempt?	No	No	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 – mirror current UK legislation

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 as set out in the Consumer Credit Act 1974 and the Banking Code.
	One-off (Transition)	Yrs	
	£ 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' Zero - current UK status quo maintained.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 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) £
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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 Small Medium 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)

Evidence Base (for summary sheets)

Notes:

*Fee estimates provided on page 2 and 5 are based on current fees charged for comparative types of firms and activities. The Financial Service Authority's (FSA) current initial fee for a moderately complex authorisation application is £5,000 and the expected initial registration fee for 3MLD registration will be £100. Average annual ongoing costs are estimated to be around £7,000 and £200 for authorised and registered payment institutions respectively. These estimates are likely to change as more information becomes available and are subject to FSA consultation. 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 creating 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 of 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 is currently undertaking a three-staged consultation process, due to conclude in autumn 2008:
 - 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. This impact assessment accompanies the document that summarises the responses received and the conclusions reached; and
 - in summer 2008, the Government will publicly consult on the draft HM Treasury regulations that will enact the PSD legislation on 1st November 2009 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 of 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 governing the development of the UK payment systems.
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.
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 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. This final impact assessment sets out the options that the Government intends to take forward in implementing the Directive. The decisions have been made in the light of response received.
17. The summary of responses document and this final IA should be read together.

Sectors and groups affected by the Payment Service Directive

18. 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.
19. 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.
20. 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 institutions 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; and
 - municipal banks will be exempt from the Directive for similar grounds as credit unions (see below).
21. 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 and cost-benefit analysis, the Government concluded that it would continue its efforts to seek an exemption for credit unions from the PSD.
22. The majority of respondents supported the view that credit unions should be exempt from the Directive. Credit unions tend to provide financial services to those at risk of financial exclusion. As many credit unions are staffed for only part of the week, payments are typically not processed on a daily basis. The sector also relies on weekly or monthly statements from banks, which set out the inward payments that have been made to the credit union's pooled account before monies are segregated amongst its members. However, members of credit unions are generally well informed of these delays, and continue to use this type of payment service for reasons other than fast payments processing.

23. Increased compliance costs could lead the sector moving away from providing basic financial services to low income consumers, which would reduce the availability of affordable credit, might generate significant social costs, and might have a negative impact the Government's financial inclusion agenda. Many credit unions work to provide low-cost loans and need to avoid undue administrative burdens.
24. Some respondents, however, cautioned that if credit unions offered payment services then this exemption might create an uneven playing field.

Conclusion

25. Based on the consultation responses, the Government will fully exempt credit unions from the provisions of the PSD, as the Directive would impose a disproportionate regulatory burden on the sector, which may 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.
26. 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 (FOS). The Government will continue to engage with the credit union movement on financial services legislation, especially in the light of any changes to business models, to ensure that the regulatory approach towards the sector remains proportionate, risk-based and workable.

Safeguarding requirements for payment institutions (Article 9)

27. 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.
28. 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. This derogation could apply to funds paid into both hybrid and non-hybrid payment institutions, if the UK were to decide to impose safeguarding requirements on non-hybrid payment institutions under Article 9(3). In the course of the European-level transposition meetings, it has been clarified that Member States have the flexibility to set a threshold lower than the €600 limit referred to in the Directive.
29. 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.
30. The majority of respondents believed strongly that consumers should receive the level of protection on payment services regardless of the business model used by the firm (i.e. hybrid or non-hybrid). Respondents further argued that as hybrids tend to typically transact lower payment volume of payments than their non-hybrid counter parts, it would be disproportionate to apply safeguarding provisions only to hybrid firms. It was further noted that the risk of applying a two-tier system is that hybrid firms might decide to restructure their business and separate their payment services into a separate entity, by passing the safeguarding provisions.
31. With regards to the safeguarding threshold, i.e. the threshold above which firms would have to safeguard users' funds, 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 for both hybrid and non-hybrid firms, 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.
32. In the 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. 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.

Conclusion

33. The Government will 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.

34. With regard to the safeguarding threshold, the Government is keen to support the protection of vulnerable consumers from the impact of a payment service provider becoming insolvent, while still ensuring that payment instruments have an innovative environment in which to develop. For this reason the Government proposes to use the flexibility within the provision and will consult in the summer consultation to set the safeguarding threshold at £50, such that all payment institutions must safeguard user funds above £50, while giving firms the choice of safeguarding all users' funds. This threshold 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.

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

35. 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.
36. 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).
37. 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 complete an objective “fit and proper” test.
38. In deleting the provisions 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 this “fit and proper” requirement for such businesses. 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.
39. 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.
40. 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.
41. The majority of respondents agreed that it would be appropriate to waive smaller payment service providers, which met the waiver criteria and that do not wish to passport, from the

provisions of Title II, provided they were subject to the fit and proper test outlined in MRL07. Respondents believed that the cost of implementing Title II provisions for smaller payment institutions would be disproportionate and might result in these firms becoming priced out of the market. This could in turn lead to reduced consumer choice or greater recourse to the informal sector.

42. A few respondents argued that a partial waiver, which would include the safeguarding provisions, should be imposed on the smaller firms so to avoid creating a two-tiered system.

Conclusion

43. The Government understands the concerns raised surrounding the concerns 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. The average cost to firms to seek full authorisation has been estimated by the FSA to be £5.0k initial and £7.0k ongoing. These estimates have been based on roughly 64 firms seeking full authorisation. If an additional 2730 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 £100 initial and £200 ongoing.
44. The Government 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)

45. 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.
46. Article 34 (Title III) and Article 53 (Title IV) allows 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.
47. 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).
48. 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.
49. Article 53(2) 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.
50. Articles 60 and 61 will apply to e-money (of all values) unless the provider cannot freeze the account or the instrument. Member States have the option to limit this derogation to accounts/instruments of a certain value.
51. 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.

52. 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.
53. The majority of respondents supported the view that the threshold for low value payment instruments and low value e-money instruments should be increased to the maximum limits possible for national payment transactions. This would mean that transactions below these thresholds would not be subject to some of the provisions under Titles III and IV. Stakeholders raised concerns that, if the thresholds were too low, they could hold back innovation within the payments market and might deter consumers from using certain instruments that typically required quick transactions times.
54. Other respondents noted that higher thresholds would be consistent with MLR07 and JMLSG guidance, both of which exempt the following e-money devices from the verification of customer identity:
- non-reloadable devices with a purse limit of €150 (regulation 13(7) of MLR07)
 - non-reloadable cards with a purse limit of €1000 (JMLSG GN 3.25-3.27); and
 - reloadable devices with transaction limit of €2500 per year (regulation 13(7)(d) of MLR07).
55. Some respondents raised concerns that, if varying thresholds were applied across the EU, the Commission might not meet its aim of creating a harmonised Single Market for retail payments.

Conclusion

56. The PSD is aimed at promoting 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 will 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.
57. The thresholds for cross-border payments will be half of those mentioned above.

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

58. 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 and; where the payer has been grossly negligent, the payer would 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.
59. 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).
60. 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

61. 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).
62. The majority of respondents were in favour of the Government retaining the current UK standard for the user's liability of £50. They believed that standard is well-known and consistent with current thresholds for credit tokens under the Consumer Credit Act. They did

not believe that increasing the current threshold of £50 would provide payment service users with the appropriate level of protection against their cards being lost, stolen, or otherwise misused.

63. Some respondents raised concerns that, if Member States used the flexibility to reduce the user's liability threshold from €150, there could be a risk that the EU would not meet its aim of creating a Single Market for retail payments.

Conclusions

64. The Government favours 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 in compromising the Single Market objectives is minimal.

Implementation Timetable

65. 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.
66. The next steps in the process of implementation will be as follows:
- draft UK implementation legislation will be published by summer 2008, accompanied by further consultation material; and
 - final legislation will be laid before Parliament before end-2008, in order to ensure that UK providers have adequate time to adapt their procedures before the implementation deadline.

Monitoring, enforcement and sanctions

67. 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

68. 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 Directive has been transposed into the national law of each EU Member State.

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

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