

EXPLANATORY MEMORANDUM TO
THE TRANSFER OF FUNDS (INFORMATION ON THE PAYER) REGULATIONS
2007
2007/3298

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

2. Description

2.1 These Regulations implement, in part, Regulation (EC) 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfers of funds (Wire Transfers Regulation). The Regulations place penalties on payment institutions for non-compliance with the Wire Transfer Regulation and provide relevant supervisory authorities with appropriate monitoring and enforcement powers.

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

3.1 None

4. Legislative Background

4.1 The Wire Transfer Regulation's aim is to update European legislation on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing so that it reflects Special Recommendation VII on Wire Transfers made by the Financial Action Task Force¹. These Regulations (which are made under the power conferred by section 2(2) of the European Communities Act 1972 and specific powers contained in the Financial Services and Markets Act 2000) allocate supervisors for persons in the regulated sector and set out their duties and enforcement powers.

4.2 Provision for anti-money laundering and terrorist-financing controls is also made under Part 7 of the Proceeds of Crime Act 2002 and Part 3 of the Terrorism Act 2000.

4.3 The House of Commons Select Committee on European Scrutiny reported on the draft Wire Transfers Regulation (doc. 11549/05) in reports 34-x (2005-06), para 13 (16 November 2005) and cleared it from scrutiny on the 6th December 2005, see report 34-xiii (2005-06), para 13. The House of Lords European Union Law Committee considered the draft Wire Transfer Regulation in Sub-Committee E (Law and Institutions) and cleared it from scrutiny on 25 July 2006 after Ministerial correspondence (see section ii of Part 2 of the European Union Progress of Scrutiny, Nineteenth Report (2005-06)). A Transposition Note is attached as an Annex to this memorandum

5. Extent

5.1 This instrument applies to all of the United Kingdom.

¹ www.FATF-GAFI.org

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Transfer Of Funds (Information On The Payer) Regulations 2007 are compatible with the Convention rights.

7. Policy background

Objectives

7.1 The principal policy objective behind the Wire Transfers Regulation is to update and enhance European legislation to bring it in line with Special Recommendation VII of the international standards on combating money laundering and terrorist financing set out by the Financial Action Task Force (FATF).

7.2 While the Wire Transfer Regulation has direct effect, these Regulations are needed to implement article 15 of the Wire Transfer Regulation, namely, to lay down rules on penalties applicable to infringements of the Regulation, and to provide supervisors with powers to effectively monitor payment institutions' compliance with the Regulation.

Supervision

7.3 The supervision and enforcement provisions in these Regulations mirror those in the Money Laundering Regulations 2007. The FSA and HMRC have been given the same monitoring powers for compliance with the Wire Transfers Regulation, as they have been given for the Money Laundering Regulations 2007. The Government believes that these supervisors should have the powers to require information, undertake onsite inspection and impose administrative penalties for those firms that do not comply with the Wire Transfer Regulation. Decisions to impose a civil penalty are subject to review and appeal according to the particular legislative framework applying to that supervisor.

Penalties

7.4 The Regulations provide for both civil and criminal penalties, for non-compliance with the main requirements of the Wire Transfers Regulation. This is in line with the Macrory Review Recommendations on penalties in being both dissuasive and proportionate. Criminal penalties are especially appropriate given that the aim of the Wire Transfers Regulation is to prevent payment institutions being used to finance terrorism.

Consultation

7.5 The Government consulted for 12 weeks on its model of supervision for compliance with anti money laundering and counter terrorist financing Regulations through the documents "implementing the Third Money Laundering Directive" in July 2006 and "draft Money Laundering Regulations" in January 2007. Around 100 responses were received for each consultation. A summary of the responses to each consultation is published on the Treasury's website (hm-treasury.gov.uk).

Implementation of the Regulations and guidance

7.6 The Government sees these Regulations as part of an implementation system that also includes supervisory rules (such as those in the FSA Handbook) and guidance to industry (for example the Joint Money Laundering Steering Group guidance for financial services providers), which includes a section on compliance with the Wire Transfers Regulation. The Regulations enable firms that have followed Treasury approved guidance to use this as a defence against the imposition of civil penalties or prosecution for a criminal offence under the Regulations.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Lucy French at HM Treasury Tel: 020 7270 5794 or e-mail: lucy.french@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.

Transposition note for EC Regulation 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds

Articles of Regulation	Objective	Implementation	Body Responsible
1	Defines subject-matter	-	-
2	Definitions	-	-
3(1), (2),(4), (5) and (7)	Sets scope of persons to whom EC Regulation applies	-	-
3(3)	Excludes electronic money issuers where MSs exercised the optional derogation in the Third Money Laundering Directive	Derogation exercised in Reg. 13(7)(d) of MLR 2007.	HMT
3(6)	Optional derogation to Member States for transfers within it if transfer is for payment of goods or services and less than 1000 E.	Not exercised by the UK.	HMT
4	Defines “complete information on the payer” (CIP)	-	-
5	CIP must accompany transfer of funds and PSPs must verify CIP	-	-
6	Transfers within the Community may require a number	-	-
7	Transfer from inside to outside Community must be accompanied by CIP. Exception for batch file transfers.	-	-
8	PSP of payee must detect missing IP.	-	-
9	Obligations on PSP of payee if missing IoP	-	-
10	Risk-based assessment if missing IoP	-	-
11	PSP of payee must keep records for 5 years	-	-
12	IPSPs must ensure that IoP is kept with transfer	-	-
13	Use of payment systems with technical limitations where there is missing IoP. Record-keeping obligation on IPSP.	-	-
14	PSPs must cooperate with law enforcement authorities.	Part 7 of POCA 2002 & Part 3 of Tact 2000. Regulation 20(4) of MLR 2007.	HO & HMT
15(1)	Penalties for infringements that are effective, proportionate and dissuasive.	Regulations 11 to 17.	HMT
15(3)	Supervisors must effectively monitor PSPs and take necessary measures to ensure compliance.	Regulations 3 to 5 and 7 to 10.	HMT
17	Agreements with territories outside the Community	Regulation 18 (for Channel Islands and Isle of Man).	HMT
18	Optional exemption for transfer to not-for-profit organisations and charities.	Not exercised by the UK.	HMT

Summary: Intervention & Options

Department /Agency: HMT	Title: Impact Assessment of THE TRANSFERS OF FUNDS(INFORMATION ON THE PAYER) REGULATIONS	
Stage: Final	Version:	Date:
Related Publications: FINAL RIA FOR THE MONEY LAUNDREING REGULATIONS 2007, RIA for the EC WIRE TRANSFERS/PAYMENTS REGULATION		

Available to view or download at:

http://www.hm-treasury.gov.uk/consultations_and_legislation/consult_fullindex.cfm

Contact for enquiries: Financial Crime Team, HM **Telephone:** 02072705000

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

Article 15 of the EU Regulation on Wire Transfers requires MS to "require competent authorities to effectively monitor, and take necessary measures with a view to ensuring compliance with the requirements of the Regulation" and that Member States shall "lay down the rules on penalties applicable to infringements of the provisions of this Regulation and take all measures necessary to ensure they are implemented. Such penalties shall be effective, proportionate and disuasive."

Government intervention in the form of "The Transfers of Funds Regulation" implemets these parts of the EU Regulation

What are the policy objectives and the intended effects?

Ensuring compliance, and taking action against those that are not compliant with the preventative measures of customer due diligence, record keeping and the reporting of suspicious transactions is crucial to the effectiveness of the anti- money laundering and counter- terrorist financing regime.

The intended effects of the Regulation is to provide HMRC and FSA with adequate supervisory powers, and penalty provisions to increase compliance of the 3400 firms subject to the Regulation.

What policy options have been considered? Please justify any preferred option.

Option 1: no active monitoring. This is the do nothing option.

Option 2: risk based and proportionate monitoring. Monitoring firms for their compliance with the Regulations.

Option 3: a fuller monitoring regime comprising more visits, transaction monitoring, and relationship managers with firms.

The Govenrent's preferred option is option 2. The RIA for the Money Laundering

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 2 years

Ministerial Sign-off For SELECT 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:

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 0		Payment institutions
	Average Annual Cost (excluding one-off)		Time spent on additional information for annual returns- £89,000
	£ 89,000		Total Cost (PV)
			£
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit		
	£		Total Benefit (PV)
			£
Other key non-monetised benefits by 'main affected groups'			
Meets the objectives behind the requirements of the FATF and Third Money Laundering Directive; increasing compliance with counter terrorist financing measures and ensuring that firms are applying the preventative measures and reporting			

Key Assumptions/Sensitivities/Risks

A risk of non compliance with the EU Regulation would be infraction proceedings by the European Union. This could have significant financial implications.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate)		
What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			15 th December		
Which organisation(s) will enforce the policy?			HMRC and FSA		
What is the total annual cost of enforcement for these			£ N/A		
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?			£ N/A		
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	Small 20	Medium	Large 52
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£ 82,000	Decrease	£	Net £ 82,000

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Further background to the Regulations

The Financial Action Task Force's special recommendation VII was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs. Specifically the aim of the international, recommendation and the EU Regulations on wire transfers (which derives from this recommendation) is to ensure that basic information on the originator or wire transfers is immediately available:

- (1) to appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorist or other criminals;
- (2) to financial intelligence units (in the UK the Serious Organised Crime Agency) for analysing suspicious or unusual activity and disseminating it as necessary: and
- (3) to beneficiary financial institutions to facilitate identification and reporting of suspicious transactions.

The EU Regulation places identification requirements on firms. The UK's Transfers of Funds Regulations provide HMRC and FSA (the relevant supervisors) with monitoring and enforcement powers to ensure that firms subject to the EU Regulation are compliant with its requirements. It also provides penalties for non-compliance with the key requirements.

Sectors Covered

The Transfer of Funds Regulation applies to payment institutions as defined by the Regulations. The UK Government believes that this will apply to:

650 Banks and Building Societies

2670 Other Payment Institutions (for example Money Service Businesses and small electronic money providers)

In total 3,400 firms.

In addition the Regulations will affect the powers of HMRC and the FSA.

Costs and Benefits Analysis

Costs and Benefits of option 1

The UK could refuse to implement the EC requirements

The direct cost would be minimal as there is no change to the current situation. The indirect cost would be that of failing to meet the objectives behind the monitoring requirements, namely

ensuring compliance with the measures to prevent and detect money laundering and terrorist financing.

Further, the Government believes that this option would not meet the text of and intention behind the Third Directive, which states that there should be “effective monitoring with a view to ensuring compliance”. This option would therefore risk infraction proceedings by the Commission and not meet the FATF Special Recommendation VII standards.

The benefits would be no additional costs for firms

Costs and Benefits of option 2

Policy Costs of option 2

£0

Supervision of compliance with the Payments Regulation by money transmitters requires enhanced resources being devoted to that sector by HMRC. However irrespective of the Regulation the sector will be subject to enhanced HMRC compliance activity because of its high risk of exposure to Money Laundering activity as deemed by SOCA.

Supervision of compliance with the Payments Regulation by banks and building societies will also require additional resources by FSA, but again these will be subsumed in authorisation fees, and is unlikely to result in any specific increase in that fee.

Administrative Costs of option 2

Preparation for visits: There should be no additional cost over and above that in preparation for visits under the Money Laundering Regulations 2007. The final RIA included a cost for preparation for visits. It is expected that supervisors would combine assurance visits on this regulation with those under the Money Laundering Regulations 2007.

Filling in additional information for adhoc information requests or information for risk registers: The Government estimates that this will take an extra 2 hours per year per firm.

19.9 hourly wage cost of banks

7.7 hourly wage cost of other MSBs

x 1.3 to take account of any non labour costs.

[taken from Annual Survey of Hours and Earnings 2007]

Banks $(19.9 \times 1.3) \times 2 = £52$ per firm $\times 655 = £34,000$

MSBs $(7.7 \times 1.3) \times 2 = £20$ per firm $\times 2760 = £55,000$

Total cost=£89,000

Benefits of option2

The benefits of this option is that it meets the objectives behind the requirements of the FATF and Third Money Laundering Directive; increasing compliance with anti-money laundering measures and ensuring that firms are applying the preventative measures, and reporting suspicions. As supervisors will not only be able to monitor compliance but also take enforcement action (e.g. through issuing fines) against those that are seriously non compliant,

this will also to ensure that we deter, detect and disrupt money laundering and terrorist financing.

Costs and Benefits of Option 3

The costs of this option are the cost of a fuller monitoring regime. There are no obvious models of this but features such as relationship managers and full transaction monitoring are examples. Assuming that a doubling of monitoring activity would double the costs to individual firms then, administration costs would also be likely to double leading to an administration cost of £178,000. It is possible that such additional monitoring would lead to an increase in supervisory fees as well.

The benefits of this approach could be a higher rate of compliance. However, this unproven and would be achieved at disproportionate cost.

Significant Impact Tests

Competition Assessment

The filter test for the competition assessment was conducted and concluded that there would be little or no effect on competition. It is unlikely that any firm in the market has more than a 10%. It is also unlikely that the stated costs would put off firms entering the market.

Small firms impact test

This sector does include smaller firms. The consultation on options of monitoring included small firms (see paras 1.24 and 1.25 in the final RIA for the Money Laundering Regulations 2007). The additional administrative costs per firm are low should be slightly lower for smaller firms depending on the wage rate.

Consultation

The requirement for monitoring and penalties for compliance was consulted upon during the negotiations of the Payments Regulation.

The proposed model of monitoring and issuing penalties for money laundering and terrorist financing compliance was first consulted upon as part of the Implementing the Third Money Laundering Directive: A consultation document (published July 2006) and then in Implementing the Third Money Laundering Directive: draft Regulations (published January 2007). Payment Institutions were involved in this consultation and the proposed model received significant support. Therefore the Government has drafted the powers for HMRC and FSA on the same basis.

Penalties

Given the importance of the EU Regulation in preventing terrorists from having unfettered access to wire transfers for moving their funds, it is important that the penalties for non-compliance are dissuasive as well as proportionate. It is therefore proposed that, in line with the penalties for the Money Laundering Regulations 2007, non compliance with the core requirements is subject to administrative penalties (with no maximum limit) and criminal sanctions (which on summary conviction he is subject to a fine not exceeding the statutory minimum, or on conviction subject to imprisonment for up to 2 years).

The Transfer of Funds Regulation, also outlines the notification/review and appeals procedures that accompany any penalty.

The Government believes that the penalties outlined in the Transfers of Funds Regulation and the supervisors' processes for implementing them are in line with the Macrory review on penalties.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

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	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	Yes/No
Sustainable Development	No	Yes/No
Carbon Assessment	No	Yes/No
Other Environment	No	Yes/No
Health Impact Assessment	No	Yes/No
Race Equality	No	Yes/No
Disability Equality	No	Yes/No
Gender Equality	No	Yes/No
Human Rights	No	Yes/No
Rural Proofing	No	Yes/No

Annexes

