EXPLANATORY MEMORANDUM TO

THE ELECTRONIC MONEY REGULATIONS 2011

2011 No. 99

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

2. Purpose of the instrument

2.1 These Regulations implement Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions ("the second Directive"). The Regulations establish a new authorisation regime for certain issuers of electronic money (known as electronic money institutions) who are not banks or building societies, and set out conduct of business rules (concerning the safeguarding and redemption of customers' funds) for all electronic money issuers.

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

3.1 None.

4. Legislative Context

4.1 The Treasury submitted an Explanatory Memorandum to Parliament on 31 October 2008 (14201/08). The Explanatory Memorandum was cleared by the House of Commons European Scrutiny Committee on 24 June 2009. It was cleared by the House of Lords European Scrutiny Committee on 22 April 2009, following letters to the Government on 18 November 2008 and 17 December 2008 and replies by Lord Myners, then Financial Services Secretary, to the Chairman on 2 December 2008, 30 March 2009 and 2 April 2009.

4.2 The Treasury considered that the best way to transpose the Directive would be to ensure that the legal framework is closely based so far as possible on the provisions in the Directive. The Directive is a maximum harmonising Directive, subject to the provision of certain powers for national derogations.

4.3 A Transposition Note detailing the UK's implementation of the Directive is attached at Annex A.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Services Secretary to the Treasury, Mark Hoban, has made the following statement regarding Human Rights:

In my view the provisions of the Electronic Money Regulations 2010 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Directive 2000/46/EC of the European Parliament and Council of 18th September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions ("the first Directive") was adopted in response to the emergence of electronic money as a substitute for notes and coins.

7.2 The second Directive was adopted following a review by the European Commission in July 2006 which found that the e-money market was developing more slowly than expected[1]. The Commission reported in October 2008 that the legal framework set by the first Directive was holding back the development of the market. The principal causes were identified as uncertainty over the application of the legal framework to new business models, excessive prudential requirements, and inconsistent application of the rules by Member States[2].

7.3 The objectives of the second Directive are to:

- enable innovation and the design of new and secure electronic money services;
- facilitate market access to new players and promote competition between market participants;
- modernise the provisions of the first Directive and ensure consistency with the Payment Services Directive (Directive 2007/64/EC).

7.4 The principal changes made by the second Directive and these Regulations are as follows:

a) the initial minimum capital requirement for an authorised electronic money institution will be cut from €1 million to €350,000. The calculation method for the ongoing capital requirement has also changed. It must be 2% of average outstanding balance of electronic money in issue (compared to the previous method based on 2% of total financial liabilities);

---

[1] Staff Working Document on the Review of the E-Money Directive (2000/46/EC) SEC(2006) 19 July 2006.

[2] Staff Working Document accompanying the proposal for a Directive amending Directive 2000/26/EC.SEC(2008)2573. 9 October 2008

b) the scope of activities that electronic money institutions can undertake will be expanded so that they can undertake mixed business activities. This means, for example, that they will be able to carry out unrelated payment services and other unregulated business;

c) customers funds will be safeguarded. The broad approach is to follow the safeguarding rules prescribed for payments institutions by the Payment Services Regulations 2009 (S.I. 2009/209);

d) new redeemability requirements will ensure that customers can get their money back up to six years after the end of a contract;

e) the anti-money laundering rules for electronic money institutions will be updated. A provision for firms to carry out simplified due diligence checks will be raised from €150 to €250. This will be raised further to €500 for transactions within the UK.

7.5 The second Directive permits the Government to derogate from many of the provisions relating to small electronic money institutions. Small electronic money institutions are defined by the Directive as those that have average liabilities relating to electronic money that do not exceed €5 million (or a lower limit set by the Member State). In accordance with its deregulatory agenda, the Government has exercised permitted derogations from the Directive relating to small electronic money institutions. The principal derogations set out in the Regulations relate to:

- the minimum capital requirement. There will be no capital requirement where the average outstanding electronic money balance over six months does not (or will not) exceed €500,000 on average. When the €500,000 threshold is exceeded, the capital requirement will be set at 2% of average outstanding balances;
- the minimum capital for payment services that are not related to the issuance of electronic money. There will be no capital requirement in respect of such services. This will put small electronic money institutions on the same footing as small payment institutions registered in accordance with Directive 2007/64/EC;
- the carrying on of additional activities, such as payment services, operating payment systems, granting credit, and unregulated activities;
- outsourcing;
- the requirements for registering as a small electronic money institution. These will not be subject to all the conditions that apply to the larger bodies applying for registration, for example with regard to their links with other institutions and those who have holdings in the institution;
- a storage limit on electronic money storage devices. An existing limit of €150 will be removed.

7.6 The Government has not exercised a waiver from the requirement for small institutions to safeguard customers' funds. They will be required to hold customers' funds

in a segregated account, and there will be controls on how those funds can be invested. The experience of recent failures of e-money issuers, payment service providers and of retailers that have issued prepaid cards suggests that safeguards are necessary to protect creditors. However, small electronic money institutions will not be required to safeguard funds received for payment transactions that are not related to electronic money, consistent with the requirements applied to small payment institutions.

7.7 In accordance with its deregulatory agenda, the Government has exercised an option to increase the amount that can be stored on rechargeable instruments for the purposes of due diligence checks under the Money Laundering Regulations 2007 from €250 to €500 for payment transactions within the UK. Credit unions, municipal banks and the National Savings Bank have been exempted from all the prudential provisions.

Consolidation

7.8 There are no plans to consolidate any of the legislation amended by these Regulations.

8. Consultation outcome

8.1 In January 2009, the previous Government consulted on the approach to take to EU-level negotiations on the proposed changes to the first Directive. It published a response in June 2009.

8.2 In October 2010, the Government consulted on its proposed approach to implementing the second Directive, and on draft Regulations**.** Eighteen responses were received. The Treasury has had ongoing engagement with the electronic money industry, including individual firms and representative bodies, and has alerted them to the significant changes that will be made. The Treasury will publish a summary of the responses to its consultation on the draft regulations.

9. Guidance

9.1 The regulator, the Financial Services Authority, will publish two documents early in 2011. It will publish Perimeter Guidance and an Approach Document detailing the scope of the regulations and the supervisory and enforcement approach of the Authority.

10. Impact

10.1 An impact assessment is attached to this memorandum at Annex B.

11. Regulating small business

11.1 The Regulations apply to small electronic money institutions.

11.2 To minimise the impact of the requirements on small firms, the Government has decided to adopt the derogations from the Directive that will apply to them, as set out in paragraphs 7.5 and 7.6 above.

11.3 The basis for the final decision on what action to take to assist small business was developed as part of the consultation process.

12. Monitoring and review

12.1 These Regulations will be monitored and reviewed when the Directive is reviewed by the European Commission in its report to the institutions mentioned in Article 17 of the second Directive. A report on the implementation and impact of the Directive is due by 1 November 2012.

13. Contact

Brian Garcia at HM Treasury (Tel: 020 7270 5219 or e-mail: Tbrian.garcia@hm-treasury.gsi.gov.uk) can answer any queries regarding this instrument.

Title: **Impact Assessment on draft E-Money Regulations**	**Impact Assessment (IA)**
Lead department or agency: HM Treasury	**IA No:**
Other departments or agencies:	**Date:** 05/01/2011
	Stage: Final
	Source of intervention: EU
	Type of measure: Secondary legislation
	Contact for enquiries: Faizan Jabbar

Summary: Intervention and Options

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

A review of the European regulatory framework for issuers of electronic money found that the e-money market was developing more slowly than expected. The main causes were found to be uncertainty over the application of the rules to new business models, tight prudential requirements and inconsistent application of the rules by Member States.

A new Electronic Money Directive to update the rules was adopted in September 2009 (2009/110/EC). Implementing Regulations will take effect on 30 April 2011.

What are the policy objectives and the intended effects?

There are three objectives, to:

- reflect technological changes, and promote innovation in the design of new, secure e-money products;
- reduce barriers to entry and increase competition in the market; and
- modernise the rules for e-money issuers and align them with existing rules for payment service providers.

The new framework introduces a lighter prudential regime for e-money issuers who are not banks, and new safeguarding and refund rules protect customers. For example, it lowers the initial capital requirements, allows issuers to undertake a wide range of mixed business activities, and waives some rules for small firms

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The options are

Option 1: Exercise a number of optional waivers, notably to reduce or disapply the requirements for small firms, and to reduce some potential negative impacts of new safeguarding and redemption requirements for customers' funds. Some waivers are not exercised in full where there is a need to balance small firms' interests with the interests of consumer protection .

Option 2: Implement the Directive without waivers for small firms or any cost mitigating measures.

Both options are estimated to generate net benefits. The preferred option is Option 1 because it applies a more proportionate, lower cost regime while maintaining consumer protection.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 11/2012
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY 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: ....

URN 10/899 Ver. 1.0 04/10

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £6m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	1		0	**1**

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

The key monetised costs relate to new requirements for safeguarding and redeeming customers' funds.

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

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	7		0	**7**

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

Many firms will benefit from lower capital requirements as compared to the existing regime. This will generate benefits through lower costs of capitalfor both existing firms and new entrants to the market in future.

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

The new rules will help to promote innovation and competition in the e-money market. New entrants to the market will be able to take advantage of lower prudential requirements and a more proportionate regulatory regime that is aligned with the exising regime for payment service providers. Consumers will benefit from the clarification of their rights to redeem funds at par value and at any moment, and from secure arrangements for protecting their funds from the insolvency of an e-money issuer

Key assumptions/sensitivities/risks | **Discount rate (%)** 3.5

This assessment makes conservative assumptions about:

(i) the number of potential new entrants to the market, based on current entry rates;
(ii) authorisation and registration fees, based on current FSA scales for payment service providers
(iii) the benefits of a reduction in the capital requirement. Only the lower cost of capital and not the reduction in capital itself is counted as a benefit.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			30/04/2011		
Which organisation(s) will enforce the policy?			FSA		
What is the annual change in enforcement cost (£m)?			£0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	N/A
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	Yes
Small firms Small Firms Impact Test guidance	Yes	Yes
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	N/A
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	N/A
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	N/A
Human rights Human Rights Impact Test guidance	No	N/A
Justice system Justice Impact Test guidance	No	N/A
Rural proofing Rural Proofing Impact Test guidance	No	N/A
Sustainable development Sustainable Development Impact Test guidance	No	N/A

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -£1m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	4		4	**8**

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

The key monetised costs relate to new requirements for safeguarding and redeeming customers' funds, and new minimum capital requirements for small issuers who were previously exempt from holding a minimum level of capital. The principal cost element is the minimum capital requirement, which is substantially higher than in option 1.

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

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	10	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		7	**7**

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

Many firms will benefit from lower capital requirements as compared to the existing regime. This will generate benefits for through lower costs of capital costs for existing firms and new entrants to the market in future.

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

The new rules will help to promote innovation and competition in the e-money market. New entrants to the market will be able to take advantage of lower prudential requirements and a a more proportionate regulatory regime that is aligned with the exising regime for payment service providers. Consumers will benefit from the clarification of their rights to redeem funds at par value and at any moment, and from secure arrangements for protectingng their funds from the insolvency of an e-money issuer

Key assumptions/sensitivities/risks — **Discount rate (%)**: 3.5

This assessment makes conservative assumptions about:

(i) the number of potential new entrants to the market, based on current entry rates;
(iii) authorisation and registration fees, based on current FSA scales for payment service providers.
(iii) the benefits of a reduction in the capital requirement. Only the lower cost of capital and not the reduction in capital itself is counted as a benefit.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			30/04/2011		
Which organisation(s) will enforce the policy?			FSA		
What is the annual change in enforcement cost (£m)?			Not yet set		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A		**Non-traded:** N/A
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A		**Benefits:** N/A
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties[2] Statutory Equality Duties Impact Test guidance	No	N/A
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	Yes
Small firms Small Firms Impact Test guidance	Yes	Yes
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	N/A
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	N/A
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	N/A
Human rights Human Rights Impact Test guidance	No	N/A
Justice system Justice Impact Test guidance	No	N/A
Rural proofing Rural Proofing Impact Test guidance	No	N/A
Sustainable development Sustainable Development Impact Test guidance	No	N/A

[2] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Directive 2009/110/EC on the taking-up, pursuit and prudential regulation of the business of electronic money institutions amending Directives 2005/6-/EC and 2006/48/EC and repealing Directive 2000/46/EC.
2	Directive 2000/46/EC of the European Parliament and the Council on the taking up and prudential supervision of the business of electronic money institutions.
3	Revisions to the EMD and implementing the EU regulation on cross border payments: a summary of consultation responses. HM Treasury. June 2009.
4	Staff Working Document accompanying the proposal for a Directive amending Directive 2000/26/EC.SEC(2008)2573. 9 October 2008.
5	HM Treasury consultation: *Laying of regulations to implement the new E-Money Directive.* October 2010.

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

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

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	1.1	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	1.1	0	0	0	0	0	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0.9	0.84	0.81	0.78	0.76	0.73	0.71	0.68	0.66	0.64
Total annual benefits	-0.2	0.84	0.81	0.78	0.76	0.73	0.71	0.68	0.66	0.64

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

Evidence Base (for summary sheets)

A review of the European regulatory framework for issuers of electronic money found that the e-money market was developing more slowly than expected. The main causes were found to be uncertainty over the application of the rules to new business models, tight prudential requirements and inconsistent application of the rules by Member States.

A new Electronic Money Directive to update the rules was adopted in September 2009 (2009/110/EC). Implementing Regulations will take effect on 30 April 2011.

Policy Objective

There are three objectives, to:

- reflect technological changes, and promote innovation in the design of new, secure e-money products;
- reduce barriers to entry and increase competition in the market; and
- modernise the rules for e-money issuers and align them with existing rules for payment service providers.

The new framework introduces a lighter prudential regime for e-money institutions that are not banks, and new safeguarding and refund rules protect customers. For example, it lowers the initial capital requirements, allows issuers to undertake a wide range of mixed business activities, and waives some rules for small firms

Description of options considered

The options are

Option 1: Exercise a number of optional waivers, notably to reduce or disapply the requirements for small firms.. Some waivers are not exercised in full where there is a need to balance small firms' interests with the interests of consumer protection.

Option 2: Implement the Directive without any cost mitigating measures.

The preferred option is option 1, because it applies a more proportionate, lower cost regime while maintaining consumer protection.

The baseline for the assessment of these options has been normalised at zero in order to facilitate comparison between options 1 and 2.

Option 1- Exercise a number of optional waivers

Breakdown of costs and benefits				
Summary of key changes	Potential impacts		Potential benefits	
	Transitional	On-going	Transitional	On-going
New definition of e-money	£0	£0	Qualitative	
Prudential requirements	£0	£0	£0	
Cost of capital	£0	£0		£0.9m
New permitted activities	£0	£0	Qualitative	
Exemption for limited networks	£0	£0	Qualitative	
Safeguarding e-money Redemption requirements	£1.1m	£0	Qualitative	
Storage limits	£0	£0	Qualitative	
Waivers for small firms	£0	£0	Qualitative	
New authorisation requirements	£0.04m	£0	Qualitative	
Total	1.14m	£0	£0	£0.9m

Transition costs

Detail

(a) There are three main sources of transition costs to firms:

a. New minimum capital requirements for existing small issuers;
b. New arrangements for redeeming and safeguarding customer funds;
c. Potentially, existing issuers may incur additional authorisation fees.

a. Minimum capital requirements for small issuers

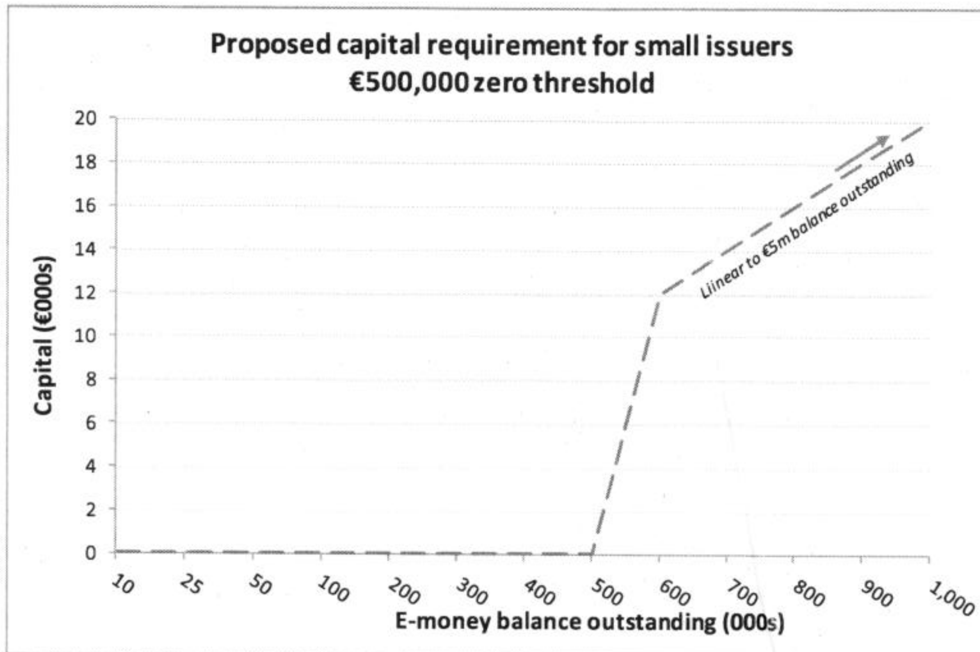
Small e-money institutions are defined in the directive as those whose total business activities generate average outstanding electronic money of no more than €5 million. There are an estimated 48 small active issuers out of 78 registered small issuers in the UK. This assessment excludes 30 dormant firms. The dormant firms will not be affected by the new rules. They are not trading and are expected to drop out of the FSA's register.

The Treasury consulted on the case for setting a proportionate, minimum initial capital requirement of €75,000 (£65,000) for small firms. A minimum requirement was being considered because it is not proposed to place a limit on the amount of e-money that a small firm can issue, and because small firms will enjoy new freedoms to undertake mixed business, such as granting credit, payment services and unregulated activities. These liberalising measures will benefit small firms and allow them to expand their field of operations. However, these measures will also increase the risk of a firm failing. The experience of recent failures of e-money issuers, payment service providers and of retailers that have issued prepaid cards suggests that these firms can expose creditors and consumers to significant risk of loss if a firm fails. A minimum level of capital is therefore necessary act as a buffer against unexpected shocks and to protect creditors and consumers. However, consultation feedback suggested that a fixed minimum capital requirement of €75,000 would impact a number of small firms who do a very low volume of business (broadly, micro enterprises). It could also act as a deterrent to start-ups and pilot programmes.

Following discussion with the industry, the preferred alternative is to set a threshold for micro enterprises, below which there will be no minimum capital requirement. The threshold is being set at €500,000 of average outstanding e-money (the average balances may be turned over several times a year). The zero threshold level of €500,000 has been selected because, based on experience, it is

broadly equivalent to the maximum level of business that micro enterprises might undertake (micro enterprises turnover up to €2m pa). It will also exempt small start-ups and pilot programmes.

Small firms that exceed the threshold of €500,000 will be required to hold capital equivalent to 2% of their average outstanding e-money. Small firms that exceed this level of business are broadly those with a turnover up to €10m pa. This means that the starting level of capital will be €10,000 based on average outstanding e-money of €500,000, rising to €100,000 capital required to support the maximum of €5 million average outstanding e-money. This is illustrated in the chart below:



The €500,000 threshold will exempt 85% of existing small firms (40 firms) from holding a minimum level of capital altogether. Therefore this measure will have no impact on them.

It is estimated that the remaining small firms that are not exempted by the €500,000 threshold already meet or exceed the minimum level of capital based on 2% of average outstanding balances. Therefore this measure will have no impact them.

This means that small firms will not have to raise new capital. The capital requirement will instead put a floor under them, which will fluctuate in line with business size. There would be serious concern about any firm that could not meet this minimum requirement as this would leave it vulnerable to shocks to capital or liquidity, and consequently put consumers at risk. This is particularly important given that there will be no limit on the amount of e-money a firm can issue.

The **transitional additional capital requirement for micro enterprises, and small firms** is therefore estimated to be zero.

This requirement therefore balances the need to protect creditors against increased risks in future while minimising the costs to existing e-money institutions.

b. Redeeming and safeguarding customer funds

The main transition costs to firms will be in issuing new terms and conditions, and making new administrative arrangements. These relate to redeeming and safeguarding customer funds, with associated compliance costs. Some firms may also need to renegotiate contracts with their programme managers.

It would be possible to disapply the requirement to safeguard customers' funds for small issuers. It is not proposed to do so in order to protect consumers. The reasons for this are firstly that it is bad

practice not to keep customers' funds in a segregated account; and secondly, as set out in section (a) above, that small firms will enjoy new freedoms to undertake mixed business, such as granting credit, payment services and unregulated activities which increase the risks of a future failure. No restriction will be placed on the amount of e-money that a small firm can issue. The experience of recent failures of e-money issuers, payment service providers and of retailers that have issued prepaid cards shows that customers have suffered severe detriment in some cases where their funds have not been held in a segregated account. Consumers need to be safeguarded against this happening in future. The consultation feedback supports this view.

Firms costs in this area are commercially sensitive. Based on soundings of individual firms, and discussions with industry representatives, the average direct costs to 18 currently authorised large issuers are estimated to be in the region of £35,000, and to 48 small registered issuers £10,000, within a range of +/- 25%. The main constituents are the cost of issuing new terms and conditions, putting new accounting arrangements in place, and making changes to IT systems. There is insufficient information to disaggregate these constituents.

The **transitional safeguarding and redemption costs** are therefore:

Large issuers 18 x £35,000	= £ 630,000
Small issuers 48 x £10,000	= £ 480,000
Total	= £ 1,110,000

The projected range (+/-25%) is between £ 0.83 million and £1.4 million

c. Authorisation fees

The FSA have consulted on authorisation fees in October 2010. The FSA will not levy fees for grandfathering existing authorised firms. However, there will be a fee for re-registering small issuers, as there is unlikely to be sufficient information already on hand to re-register them. Small issuers who need to re-register are expected to be charged around £1,000 each. There are no other additional regulatory costs arising out of the Directive.

The **transitional authorisation costs for small issuers** are

48 firms x £1,000 = £48,000

Transition Benefits

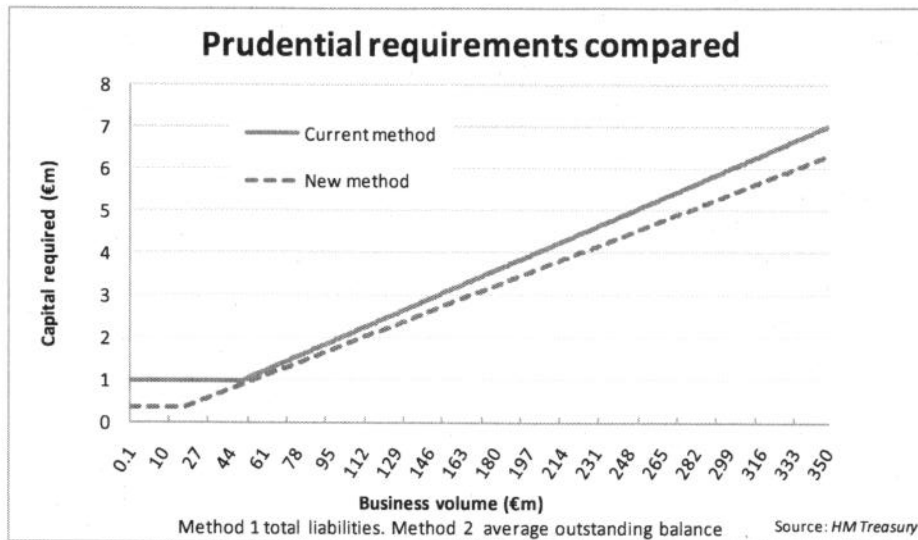
The main quantitative benefits accrue to large issuers who incur lower capital requirements. Issuers may or may not reduce their capital in response to a lower regulatory requirement. This assessment assumes that firms will reduce their regulatory capital. It does not count a reduction in capital as a benefit to firms, but assumes they will benefit through lower costs of regulatory capital.

The capital requirement for large issuers is based on 2% of total financial liabilities related to outstanding electronic money over the preceding 6 months or €1 million, whichever is higher.

Based on data provided by the FSA, there are at present 18 large issuers who hold aggregate capital of €87 million (around £73 million). The average capital per issuer at present is therefore:

£73,000,000/ 18 = £4,055,555
Around £4 million per issuer

The new capital requirement will be based on 2% of the average outstanding balance of e-money, or €350,000, whichever is the higher. The minimum capital requirement will therefore be lower than at present. The difference is illustrated in the chart below.



In the absence of comparative data about issuers' average outstanding balances and total financial liabilities this assessment conservatively assumes that average balances are 90% of total liabilities. On this basis the assessment takes 90% of issuers' currently held capital as representing 2% of their average outstanding balances (ie their new, lower capital requirement). This will always be higher than the minimum €350,000, based on the practical experience of current issuers.

The average current capital held by firms is	£4,000,000
90% of this (the assumed average balances) is	£3,600,000
Net reduction	£ 400,000

The aggregate reduction in the current average capital held by issuers is therefore £7.2 million (£400,000 lower capital x 18 issuers = £7,200,000)

Ongoing Annual costs

There are three main sources of ongoing costs to firms:

a. New minimum capital requirements for new entrant small issuers;
b. The additional cost of capital for all small issuers.
c. New arrangements for redeeming and safeguarding customer funds

a. New minimum capital requirements for new entrant small issuers

Initial capital requirements will be calculated and applied to new entrants to the market. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to apply to every new small issuer.

The rate of entry of small firms to the e-money market is low – currently less than two a year, half of whom do not become active issuers. The rate is expected to increase as a result of the additional freedoms brought in by the directive. This assessment assumes conservatively that the rate will increase to two a year.

The €500,000 threshold will exempt micro enterprises from holding a minimum level of capital altogether.

Small firms that exceed the threshold of €500,000 will be required to hold capital equivalent to 2% of their average outstanding e-money. This means that the starting level of capital will be €10,000 based on average outstanding e-money of €500,000, rising to €100,000 capital required to support the maximum of €5 million average outstanding e-money. It is estimated that the minimum level of

capital based on 2% of average outstanding balances will not impose additional burdens on new entrants, given the practical experience of the impact on existing electronic money institutions.

A minimum requirement is considered necessary because it is not proposed to place a limit on the amount of e-money that a small firm can issue, and because small firms will enjoy new freedoms to undertake mixed business, such as granting credit, payment services and unregulated activities. These liberalising measures will benefit small firms and allow them to expand their field of operations. However, these measures will also increase the risk of a firm failing. The experience of recent failures of e-money issuers, payment service providers and of retailers that have issued prepaid cards suggests that these firms can expose creditors and consumers to significant risk of loss if a firm fails. A minimum level of capital is therefore necessary act as a buffer against unexpected shocks and to protect creditors and consumers

The **ongoing additional capital requirement for micro enterprises, small and medium sized issuers** is therefore estimated to be zero.

This requirement therefore balances the need to protect creditors against increased risks in future while minimising the costs for new entrants. It does so by putting a floor on the minimum level of capital they must hold.

b. Redeeming and safeguarding customer funds

The aggregate value of e-money left unused at the end of e-money contracts is thought to be £5 million to £7.5 million per year. Firms may charge fees for redeeming these funds in certain circumstances, provided for in the directive. Fees must be proportionate and reflect the actual costs incurred. This measure is therefore expected to be cost neutral. It is cost neutral for two main reasons: (i) firms may earn interest on customers' unredeemed funds; and (ii) the average per account is thought to be around £10. As the cost of the cost of paying a refund is around £10 - £15, firms are not expected to have to refund the vast majority of such funds.

Ongoing Annual Benefits

The main quantitative benefits accrue to large new entrants who will incur lower capital requirements than before. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to apply to every large new entrant. These are additional one off benefits that will be incurred by every new entrant to the market as a result of holding less capital than they would have had to hold before. The reduction in capital for the average large new entrant is estimated to be the same as for existing large issuers. This is estimated in the transitional benefits section to be £400,000 per issuer.

Lower cost of capital

There is an on-going benefit to large issuers from a lower capital requirement, represented by a lower cost of capital. Given a very wide variety of firm size and business models, however, together with the absence of concrete data, any attempt to model the potential savings in ongoing lower costs of capital is fraught with difficulty. This would be done by comparing the risk free rate of return on capital with the expected rate of return in the e-money market.

In very general terms, the lower capital requirements for 18 large issuers are assessed at £7,200,000

Assuming a risk free rate of return of 2.0% and an expected rate of return of 15% (net 13%) the ongoing annual saving from holding less capital is

£7.2 milllion x 13% = £936,000.
around £0.9 million

Assuming the business growth rate based on the estimated number of new entrants to the market set out above, the annual saving in cost of capital will grow to a little over £1 million in year 10.

Small firms impact

Small firms will benefit from the ability to grant credit, provide payment services and operate payment systems. They may also carry out other, non-regulated business activities other than issuing e-money. There will be no restriction on the value of e-money they can issue. This is set out in more detail in the consultation document.

The aggregate cost to small issuers of the new measures is expected to be confined to the transitional regulatory costs of registration ranging of £1,000 each. The aggregate costs amount to less than £50,000.

Option 2 – Implement the Directive in full

Breakdown of costs and benefits				
Summary of key changes	Potential impacts		Potential benefits	
	Transitional	On-going	Transitional	On-going
New definition of e-money	£0	£0	Qualitative	
Prudential requirements	£1.4m - £4.3m	£0.06m - £0.18m	£0	£0
Cost of capital		£0.4m		£0.9m
New permitted activities	£0	£0	Qualitative	
Exemption for limited networks	£0	£0	Qualitative	
Safeguarding e-money Redemption requirements	£0.83m - £1.4m	£0	Qualitative	
Storage limits	£0	£0	Qualitative	
Waivers for small firms	£0	£0	Qualitative	
New authorisation requirements	£0.04m	£0	Qualitative	
Total	£2.27m - £5.74m	£0.46m - £0.58m	£0m	£0.9m

Transition costs

Detail

There are three main sources of transition costs to firms:

d. New minimum capital requirements for existing small issuers;
e. New arrangements for redeeming and safeguarding customer funds;
f. Potentially, existing issuers may incur additional authorisation fees.

d. Minimum capital requirements for small issuers

Small e-money issuers are defined in the directive as those whose total business activities generate an average outstanding electronic money of no more than €5 million. There are an estimated 48 small active issuers out of 78 registered small issuers in the UK. This assessment excludes 30 dormant firms. The dormant firms will not be affected by the new rules. They are not trading and are expected to drop out of the register.

The capital requirements for small issuers are, at present, waived by the FSA. The FSA assess that issuers are holding a minimum level of capital in order to operate. This assessment makes a conservative assumption that small issuers are on average holding at least £25,000 of capital within a very broad range. This number is based on taking 4% of their reported outstanding liabilities, which average £625,000.

This option provides that small issuers would be required to hold a minimum initial capital requirement of €100,000 (£85,000). This would represent 2% of the maximum business liabilities that a small issuer may accept (€5 million).So small issuers will be required to hold more capital than they are estimated to hold at present. The difference between the current estimated average capital being held (£25,000) and the new requirement (£85,000) represents the additional capital that would be required per small issuer.
The additional capital is:

New capital requirement per issuer	£85,000
Average capital being held by issuers	- £25,000
Additional capital per issuer	£60,000

The **transitional capital requirement for small issuers** is estimated to be:

48 x £60,000 = £2,880,000

The projected range (+/- 50%) is between £1.4 million and £4.3 million

e. Redeeming and safeguarding customer funds

The main transition costs to firms will be in issuing new terms and conditions, and making new administrative arrangements. These relate to redeeming and safeguarding customer funds, with associated compliance costs. Some firms may also need to renegotiate contracts with their programme managers.

The average direct costs to 18 currently authorised large issuers are estimated to be in the region of £35,000, and to 48 small registered issuers £10,000, within a range of +/- 25%.

The **transitional safeguarding and redemption costs** are therefore:

Large issuers 18 x £35,000	=	£ 630,000
Small issuers 48 x £10,000	=	£ 480,000
Total	=	£ 1,110,000

The projected range (+/-25%) is between £ 0.83 million and £1.4 million

f. Authorisation fees

The FSA have consulted on authorisation fees in October 2010. The FSA will not levy fees for grandfathering existing authorised firms. However, there will be a fee for re-registering small issuers, as there is unlikely to be sufficient information already on hand to re-register them. Small issuers who need to re-register will charged £1,000 each.

The **transitional authorisation costs for small issuers** are

48 firms x £1,000 = £48,000

Transition Benefits

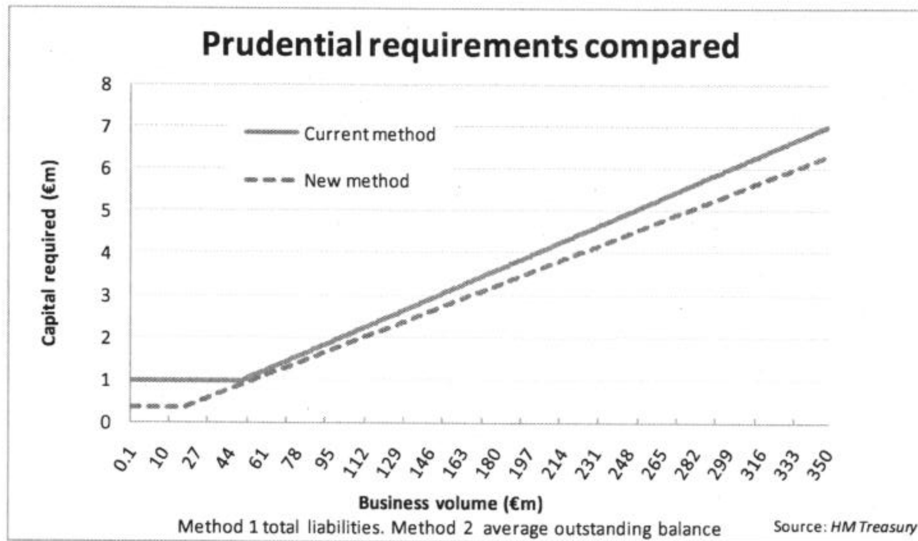
The main quantitative benefits accrue to large issuers who incur lower capital requirements. Their capital requirement is based on 2% of total financial liabilities related to outstanding electronic money over the preceding 6 months or €1 million, whichever is higher.

Based on data provided by the FSA, there are at present 18 large issuers who hold aggregate capital of €87 million (around £73 million). The average capital per issuer at present is therefore:

£73,000,000/ 18 = £4,055,555

Around £4 million per issuer

The new capital requirement will be based on 2% of the average outstanding balance of e-money, or €350,000, whichever is the higher. The minimum capital requirement will therefore be lower than at present. The difference is illustrated in the chart below.



In the absence of comparative data about issuers' average outstanding balances and total financial liabilities this assessment conservatively assumes that average balances are 90% of total liabilities. On this basis the assessment takes 90% of issuers' currently held capital as representing 2% of their average outstanding balances (ie their new, lower capital requirement). This will always be higher than the minimum €350,000, based on the practical experience of current issuers.

The average currently capital held by firms is	£4,000,000
90% of this (the assumed average balances) is	£3,600,000
Net reduction	£ 400,000

The difference between the current average capital held by issuers and the new lower requirement represents the benefits to existing issuers of the new methodology. In aggregate, this is

The **transitional benefits of lower capital requirements for large issuers** are:
£400,000 lower capital x 18 issuers = £7,200,000
Range (+/- 25%) From £5.4 million to £9 million

It is not known whether large issuers will, in fact, re-direct the savings from a lower regulatory capital requirement to other purposes capital in response to the lower capital requirement. This impact assessment does not therefore score the total reduction in the capital requirement as a benefit

Ongoing Annual costs

There are two main sources of ongoing costs to firms:

d. New minimum capital requirements for new entrant small issuers;
e. The additional cost of capital for all small issuers.

c. New minimum capital requirements for new entrant small issuers

Initial capital requirements will be calculated and applied to new entrants to the market. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to apply to every new small issuer. These are additional one off costs that will be incurred by every new entrant to the market as a result of holding more capital than they would have had to hold before. The additional entry costs are estimated to be £60,000 per issuer.

The rate of entry of small firms to the e-money market is low – currently less than two a year, half of whom do not become active issuers. The rate is expected to increase as a result of the additional freedoms brought in by the directive. This assessment assumes conservatively that the rate will increase to two a year.

The ongoing annual **capital requirement for new entrant small issuers** is estimated to be:	
	£60,000 x 2 = £120,000
The projected range (+/- 50%) is	between £60,000 and £180,000

d. Cost of capital

There is an on-going cost to small issuers from holding more capital. Given a very wide variety of firm size and business models, however, together with the absence of concrete data, any attempt to model the potential savings in ongoing lower costs of capital is fraught with difficulty. This would be done by comparing the risk free rate of return on capital with the expected rate of return in the e-money market.

In very general terms, the one-off costs of lower capital requirements for small issuers was assessed in the transitional costs section at £2,880,000.

Assuming a risk free rate of return of 2.0% and an expected rate of return of 15% (net 13%) the ongoing annual cost of holding more capital is	
	£2.9 milllion x 13% = £377,000.
	around £0.4million

Assuming the business growth rate based on the estimated number of new entrants to the market set out above, the annual cost of capital will grow to a little over £0.6 million in year 10.

e. Redeeming and safeguarding customer funds

Firms may charge fees for redeeming funds in certain circumstances. Fees must be proportionate and reflect the actual costs incurred. This measure is therefore expected to be cost neutral.

Ongoing Annual Benefits

The main quantitative benefits accrue to large new entrants who will incur lower capital requirements than before. These are the same as those set out for existing issuers in the transitional costs section, and are assumed to apply to every large new entrant. These are additional one off benefits that will be incurred by every new entrant to the market as a result of holding less capital than they would have had to hold before. The reduction in capital for the average large new entrant is estimated to be the same as for existing large issuers. This is estimated in the transitional benefits section to be £400,000 per issuer.

Lower capital requirement

The rate of entry of to the e-money market is low – currently less than one large new entrant a year. The rate is expected to increase as a result of the additional freedoms brought in by the directive. This assessment assumes conservatively that the rate will increase to one or two a year.

The ongoing annual **capital reduction for new entrant large issuers** is estimated to be:	
	£400,000 x 2 = £800,000
The projected range (+/- 1 issuer) is	between £400,000 and £1,200,000

The one-off reduction is estimated to apply to one or two new entrants every year, so this is an ongoing benefit of £0.4 million to £1.2 million. As this is a notional benefit, it is not scored as a benefit in this impact assessment.

Lower cost of capital

There is an on-going benefit to large issuers from carrying a lower capital requirement represented by a lower cost of capital. Given a very wide variety of firm size and business models, however, together with the absence of concrete data, any attempt to model the potential savings in ongoing lower costs of capital is fraught with difficulty. This would be done by comparing the risk free rate of return on capital with the expected rate of return in the e-money market.

In very general terms, the one-off benefits of lower capital requirements for 18 large issuers was assessed in the transitional benefits section at £7,200,000

Assuming a risk free rate of return of 2.0% and an expected rate of return of 15% (net 13%) the ongoing annual saving from holding less capital is

£7.2 milllion x 13% = £936,000.
around £0.9 million

Assuming the business growth rate based on the estimated number of new entrants to the market set out above, the annual saving in cost of capital will grow to a little over £1 million in year 10.

Small firms impact

Small firms will benefit from the ability to grant credit, provide payment services and operate payment systems. They may also carry out other, non-regulated business activities other than issuing e-money. This is explained in more detail in the consultation document.

The aggregate cost to small issuers of these measures is:
Transitional costs: £3.8 million (of which additional capital requirements account for £2.8m)
Ongoing costs: £0.9 million

It is likely that a number of existing micro enterprises with low levels of current business would cease to trade, as they could not sustain a minimum capital of €100,000. This would also impact start-ups.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; The Directive requires the European Commission to carry out a post implementation review by 1 November 2012.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] The review will look at the implementation and impact of the directive, in particular on the application of prudential requirements for e-money institutions
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] The review will be carried out at the European level.

Add annexes here.

Transposition note for Directive 2009/110/EC:
Electronic Money Regulations 2011

Articles of Directive 2009/110/EC	Objective	Implementation	Body Responsible
1	Sets out the electronic money issuers (i.e. those bodies permitted to provide electronic money issuance services) to which the Directive applies. Sets out an option for the Member States to waive the requirements of Part 2 of the Directive and specifies the monetary value to which the Directive does not apply.	Regulations 63 and 64 and the definition of "electronic money issuer" in regulation 2(1). The definition of electronic money issuer in regulation 2(1) and the exemptions in regulation 3.	HM Treasury
2	Sets out definitions of electronic money, electronic money institution, electronic money issuer and average outstanding electronic money	The definitions in regulation 2(1).	HM Treasury
3.1	Article 3(1) applies the following Articles of the Payment Services Directive (Directive 2007/64/EC) with the following effects in relation to electronic money institutions: Article 5: sets out the requirements for applications for authorisation as an electronic money institution. Article 10: sets out the conditions that institutions must meet in order to be authorised. Article 11: provides that competent authorities must communicate their decision within 3 months of receipt of the application. Article 12: sets out the circumstances in which competent authorities can withdraw authorisation. Article 13: requires a public register to be established and maintained for authorised persons, persons benefitting from the waiver, other issuers, agents, branches and those who are exempt. Article 14: duty to notify the competent authority of changes to information given in applications.	Regulations 5, 12, and Schedule 1. Regulations 6 to 9, 11, 13 to 16, 28 to 31 and 71. Regulation 9. Regulations 10, 11 and 15. Regulation 4 and section 347 of the Financial Services and Markets Act 2000. Regulation 17.	HM Treasury

Articles of Directive 2009/110/EC	Objective	Implementation	Body Responsible
	Article 15: provides that an electronic money institution must provide audited accounting information where it carries on business activities that are not related to electronic money issuance and payment services; and provides for certain information to be communicated by the auditor to the Authority.	Regulation 25.	
	Article 17(7): provides that the electronic money institution must notify the competent authority before outsourcing operational functions.	Regulation 26.	
	Article 18: requires Member States to ensure that where payment institutions rely on third parties for the performance of operational functions, those electronic money institutions take reasonable steps to ensure that the requirements of the Directive are met.	Regulation 36.	
	Article 19: requires institutions to keep certain records.	Regulation 27.	
	Article 20: sets out requirements for competent authorities including their designation, powers and duties.	Part 6.	
	Article 21: provides in respect of the supervision of the business of electronic money institutions by competent authorities.	Regulations 7 to 11, 15, 30, 37, 49 to 57, 60 and 71.	
	Article 22: requires Member States to ensure that the obligation of professional secrecy is respected and enforced.	Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, as modified by paragraph 11 of Schedule 3.	

Articles of Directive 2009/110/EC	Objective	Implementation	Body Responsible
	Article 23: provides that Member States must ensure that decisions taken by the competent authority are contestable in the court. Article 24: requires co-operation and exchange of information between competent authorities. Article 25: sets out the conditions under which authorised electronic money institutions can exercise their right of establishment and freedom to provide services.	Regulation 6 in respect of the Financial Services and Markets Act 2000 as modified by paragraphs 1 and 2 of Schedule 3, regulations 9(8), 10(6), 11 (5), 15, 29 (4), 34(11), 35(4), 53(4), 56(5) and 74(9). Regulation 71. Regulations 28 to 31.	
3.2	Provides that electronic money institutions must inform the competent authorities of any material change in safeguarding measures.	Regulation 37(2).	HM Treasury
3.3	Provides that an electronic money institution must inform the competent authority of any decision it has taken to acquire or dispose of qualifying holdings and provides for the sanctions imposed for failure to do so. Provides that Member States may waive or allow their competent authorities to waive the application of all or part of the obligations in Article 3.3.	Regulation 62 and Financial Services and Markets Act 2000 as applied with modifications by paragraph 4 of Schedule 3.	HM Treasury
3.4	Provides that Member States shall allow electronic money institutions to distribute and redeem electronic money through persons acting on their behalf. Provides that where an electronic money institution wishes to distribute electronic money in another Member State it shall follow the procedure set out in Article 25 of the Payment Services Directive.	Regulation 33. Regulations 28 to 30.	HM Treasury
3.5	Prohibits the issuance of electronic money through agents. Provides for payment services to be able to be carried on through an agent subject to the agent being registered in accordance with Article 17 of the	Regulation 33. Regulations 34 and 35.	HM Treasury HM Treasury

Articles of Directive 2009/110/EC	Objective	Implementation	Body Responsible
	Payment Services Directive.		
4	Sets out the initial capital that an electronic money institution must hold.	Regulation 6(3), 13(5) and Part 1 of Schedule 2.	HM Treasury
5	Sets out the own funds requirements for electronic money institutions.	Regulation 19 and Part 2 of Schedule 2.	HM Treasury
6.1	Sets out the activities in which an electronic money institution may engage, including conditions relating to the granting of credit.	Regulation 32.	HM Treasury
6.2	Prohibits the taking of deposits by electronic money institutions in respect of sums received in exchange for electronic money for unrelated payment services.	Article 9A of the Financial Services and Markets (Regulated Activities) Order 2001 and amendments to article 9B and 9AB of that Order made by paragraph 12 of Schedule 4.	HM Treasury
6.3	Requires that electronic money must be issued without delay and that sums received in exchange for electronic money shall not constitute a deposit.	Regulation 39, Article 9A of the Financial Services and Markets (Regulated Activities) Order 2001 and amendments to article 9AB of that Order made by paragraph 12 of Schedule 4.	HM Treasury
6.4	Provides that Articles 16.2 (exclusive use of payment accounts for payment transactions) and 16.4 (prohibition on deposit-taking) shall apply to funds received for payment transactions that are not related to electronic money issuance.	Regulation 32(3) and paragraph 12 of Schedule 4.	HM Treasury
7.1	Provides that Member States shall require an electronic money institution to safeguard funds received in exchange for electronic money in accordance with provisions of the Payment Services Directive subject to certain conditions.	Regulations 20, 21, 22 and 24.	HM Treasury
7.2	Provides a definition of secure, low-risk assets and makes it subject to a power for the competent authority to exclude them from the definition in exceptional circumstances.	Regulations 21(6) and 23.	HM Treasury
7.3	Applies the provision for safeguarding in Article 9 of the Payment Services Directive in respect of payment services that are not linked to the	Regulation 20(6).	HM Treasury

Articles of Directive 2009/110/EC	Objective	Implementation	Body Responsible
	issuance of electronic money.		
7.4	Provides that Member States may determine which safeguarding method shall be used.	Regulations 20, 21 and 22.	HM Treasury
8.1	Provides in relation to the treatment of branches of electronic money institutions with a head office situated outside the EEA.	Regulations 6(4)((b), 32(4), 60 and all other regulations applicable to authorised electronic money institutions.	HM Treasury and the Financial Services Authority.
8.2	Provides that the competent authority shall inform the Commission when it authorises branches mentioned in 8(1).	Regulations 71 and 60; not otherwise transposed into legislation.	HM Treasury and the Financial Services Authority.
8.3	Provides that the Community may come to agreements with third countries with the objective of ensuring the identical treatment of the branches mentioned in Article 8(1).	Not transposed into legislation.	HM Treasury
9.1	Permits Member States to waive provisions of Articles 3, 4, 5 and 7 for small electronic money institutions subject to exceptions. Permits electronic money institutions which carry on other business to estimate the volume of average outstanding electronic money for the purposes of Article 9. Permits Member States the option of setting maximum storage amounts when exercising exemptions. Requires small electronic money institutions to comply with Article 26 of the Payment Services Directive.	An exemption in respect of: a) Article 3 has been exercised in Regulations 13 (conditions for registration) and 26 (outsourcing); b) Article 4 has been exercised in Article 13(5) and Part 1 of Schedule 2 (initial capital); c) Article 5 has been exercised in regulation 19(2) and Part 2 of Schedule 2; d) Article 7 in regulation 20(6). Regulation 14. This option has not been exercised. Regulation 13(4), (11) and (12).	HM Treasury
9.2	Requires a small electronic money institution to have its head office in the Member State in which it carries on business.	Regulation 13(9).	HM Treasury
9.3	Provides that a person benefitting from the waiver under Article 9 shall be	Definition of "electronic money	HM Treasury

Articles of Directive 2009/110/EC	Objective	Implementation	Body Responsible
	treated as an electronic money institution except for the purposes of the exercise of passport rights.	institution” in regulation 2(1); regulations 28 to 31.	
9.4	Permits Member States the option of limiting the business activities of small electronic money institutions.	This option has not been exercised.	HM Treasury
9.5	Requires small electronic money institutions to notify changes in the conditions mentioned in Article 9.1.	Regulation 37.	HM Treasury
9.6	Requires that small electronic money institutions must apply to become an authorised electronic money institution within 30 days on ceasing to comply with conditions for registration as a small electronic money institution.	Regulation 16.	HM Treasury
9.7	Requires that competent authorities are sufficiently empowered to verify continued compliance with the conditions in Article 9.	Regulations 37, 48 and 49.	HM Treasury
9.8	Provides that exemptions in Article 9 shall not apply in respect of provisions of money laundering legislation.	Not transposed into legislation.	HM Treasury
9.9	Places obligations on Member States to provide information to the Commission relating to the use of Article 9.	Not transposed into legislation.	HM Treasury
10	Provides that Member States must prohibit persons who are not electronic money issuers from issuing electronic money.	Regulations 63 and 64.	HM Treasury
11.1	Requires Member States to ensure that electronic money is issued at par value.	Regulation 39.	HM Treasury
11.2	Requires Member States to ensure that electronic money issuers redeem electronic money upon request at any moment at par value.	Regulation 39.	HM Treasury
11.3	Provides for information to be communicated to the electronic money holder and included in the contract.	Regulation 40.	HM Treasury
11.4	Provides for the circumstances where redemption may be subject to a fee.	Regulation 41.	HM Treasury
11.5	Provides in respect of redemption before termination of the contract.	Regulation 42(1).	HM Treasury
11.6	Provides in respect of redemption on or up to one year after termination of the contract.	Regulation 42(2).	HM Treasury
11.7	Provides in respect of redemption rights of persons other than a consumer.	Regulation 44.	HM Treasury
12	Prohibits the granting of interest in respect of electronic money.	Regulation 45.	HM Treasury
13	Applies chapter 5 of title 4 of the Payment Services Directive for the purposes of Title 3 of the Electronic Money Directive.	Regulations 38, 48 to 58, 76(2) and 79 in respect of paragraph 2 of Schedule 4.	HM Treasury
14	Sets out implementing measures that may be adopted by the Commission.	Not transposed into legislation.	HM Treasury
15	Provides for a committee procedure in respect of implementation.	Not transposed into legislation.	HM Treasury
16	Provides for full harmonisation.	The Regulations.	HM Treasury

Articles of Directive 2009/110/EC	Objective	Implementation	Body Responsible
	Provides that Member States shall ensure that issuers do not derogate to the detriment of electronic money holders.	Regulations 10(4), 49, 58, 60, 63 and 64.	and the Financial Services Authority
17	Provides for a review of the Directive.	Not transposed into legislation.	European Commission.
18.1	Provides for transitional provisions allowing persons authorised as electronic money institutions under the previous regime to continue to issue electronic money under that regime for a period of time before being entered on the register or ceasing to issue electronic money.	Regulations 74 and 75.	HM Treasury and the Financial Services Authority.
18.2	Provides that Member States may permit competent authorities to grant authorisation automatically to those authorised under the previous regime.	Regulation 74.	HM Treasury
18.3	Provides that Member States shall allow electronic money institutions who benefit from a waiver under the previous regime to continue under that regime until 30 April 2012 without applying for registration.	Regulation 76.	HM Treasury
19.1	Makes amendments to Article 3(2) of the Money Laundering Directive.	Regulation 79 in respect of paragraph 19 of Schedule 4.	HM Treasury
19.2	Makes amendments to Article 11(5) of the Money Laundering Directive	Regulation 79 in respect of paragraph 19 of Schedule 4.	HM Treasury
20.1	Makes amendments to Article 4 of the Banking Consolidation Directive.	Regulation 79 in respect of paragraphs 1 to 19 and 21 of Schedule 4.	HM Treasury
20.2	Makes amendments in respect of Annex 1 of the Banking Consolidation Directive.	Regulation 79 in respect of paragraphs 3, 4, 6 and 19 of Schedule 4.	HM Treasury
21	Repeals the first electronic money directive	Regulation 79 in respect of paragraphs 3, 19 and 21 of Schedule 4; to be further transposed in FSA rules.	HM Treasury and Financial Services Authority
22	Provides for steps that Member States are to take in respect of transposition.	Regulation 1; otherwise not transposed into legislation.	HM Treasury
23	Provides for the date that the Directive enters into force.	Not transposed into legislation.	European Commission
24	Provides that the Directive is addressed to Member States.	Not transposed into legislation.	European Commission