

EXPLANATORY MEMORANDUM TO
THE PAYMENT SERVICES AND ELECTRONIC MONEY (AMENDMENT)
REGULATIONS 2020

2020 No. 1275

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends the Electronic Money Regulations 2011 and the Payment Services Regulations 2017 in order to apply sections 93(4) and 233-236 of the Banking Act 2009, with modifications, to authorised electronic money institutions, small electronic money institutions, authorised payment institutions and small payment institutions.

2.2 This will allow HM Treasury to make regulations to modify insolvency law with respect to these institutions, including setting up a bespoke insolvency regime applicable to them. Modifications to the Banking Act 2009 provisions were necessary in order to adapt the powers appropriately for these institutions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the whole of the United Kingdom.

4.2 The territorial application of this instrument is to the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument further implements obligations in Article 10 of Directive 2015/2366/EU and Article 7 of Directive 2009/110/EC under powers conferred by section 2(2) of the European Communities Act 1972.

- 6.2 The regulations provide for the amendment of the Electronic Money Regulations 2011 (S.I. 2011/99) and the Payment Services Regulations 2017 (S.I. 2017/752) to apply specified provisions in the Banking Act 2009 (c.1) to specified electronic money and payment services institutions. The provisions have been modified so as to allow them to apply appropriately for those institutions.

7. Policy background

What is being done and why?

- 7.1 The payments and e-money sectors have expanded rapidly over the last decade, with payments and e-money institutions now holding more than £17bn of funds belonging to UK consumers. Payments and e-money institutions include payment card services, remittance firms and e-money wallet services.
- 7.2 In recent years, insolvencies in these sectors have taken a number of years to resolve and seen consumers receiving reduced monies after the cost of distribution. With a large number of creditors and only the standard insolvency toolkit available, there have been difficulties for insolvency practitioners to efficiently wind-down firms and return the money to consumers and other creditors. In the three insolvencies since 2018, none have so far returned client assets to consumers.
- 7.3 Given the changes in the market and consumer experiences in insolvency noted above, this legislation is necessary to develop the UK's implementation of Article 10 of Directive 2015/2366/EU and Article 7 of Directive 2009/110/EC which require member states to safeguard user funds, ensuring those funds are insulated against claims of other creditors, particularly in the event of insolvency.
- 7.4 This legislation will provide an enabling power for HM Treasury to create new insolvency regulations and rules for the payments and e-money sectors. HM Treasury intends to use this power to create a Special Administration Regime for payments and e-money institutions (pSAR). The existing Special Administration Regime for Investment Banks has been successful in returning client assets more quickly and at reduced cost, and similar outcomes are anticipated for consumers of institutions in the payments and e-money sectors.
- 7.5 The pSAR would give insolvency practitioners administering the insolvencies of payments or electronic money institutions an expanded toolkit. This would allow the insolvency practitioner to keep an insolvent institution operational and prioritise the return of client assets.
- 7.6 The expanded toolkit is expected to lead to less disruptive insolvencies which ensure continuity for consumers and prioritise the return of their assets.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 As an enabling power with no regulatory ramifications for individuals or businesses, HM Treasury did not conduct an open consultation with regards to this instrument. HM Treasury has informally consulted a number of affected parties, including the Financial Conduct Authority, the Insolvency Service, and a number of insolvency practitioners and trade associations representing payments and electronic money institutions. In these discussions stakeholders were supportive of the proposed changes to be made.
- 10.2 HM Treasury will be running a full open consultation on the regulations and rules that will create the Special Administration Regime for payments and e-money firms.

11. Guidance

- 11.1 This instrument does not create any new obligations or regulation for individuals or businesses in any sector to follow.

12. Impact

- 12.1 The net impact of the instrument on business is considered to be less than £5m, and a de-minimis Impact Assessment has been published.
- 12.2 There is no impact on charities or voluntary bodies.
- 12.3 There is no cost to the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. However, as an enabling power, this instrument does not place burdens or new regulations on businesses of any size.

14. Monitoring & review

- 14.1 There are no plans for monitoring or review of the instrument.

15. Contact

- 15.1 Toby Churchley at HM Treasury Telephone: 020 7270 5886 or email: toby.churchley@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Joe Taylor, Deputy Director for Resilience & Resolution, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury John Glen, can confirm that this Explanatory Memorandum meets the required standard.