

Title: Impact assessment of UK implementation regulations making amendments to the EU Prospectus Directive. Lead department or agency: HM Treasury Other departments or agencies:	Impact Assessment (IA)
	IA No: HMT1137
	Date: 09/03/2011
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Secondary legislation
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Summary: Intervention and Options

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

In September 2009, the European Commission published a proposal to amend the Prospectus Directive (PD) which is the EU framework for the preparation of prospectuses in public offers of securities and where securities are admitted to trading on a regulated market. In November 2010 the European Parliament and Council adopted the "Amending Directive". The Government now has to implement the directive to meet the European deadline of 1 July 2012 and is proposing to do this by amending existing domestic legislation. The Government is proposing to introduce two measures early (before the implementation deadline), as these will be beneficial to companies. Both the threshold for an offer of securities, and the minimum number of investors for which a Prospectus is required, will be raised.

What are the policy objectives and the intended effects?

The Commission consulted on the operation of the PD in 2009 and concluded that the overall effect of the Directive has been positive. However, some improvements were identified. The objectives of the Amending Directive are to improve and simplify the application of the PD, principally by reducing the administrative burdens on issuers whilst maintaining investor protection and improving legal certainty. The Government is proposing to introduce two measures of the Amending Directive early as these will be beneficial to companies, particularly smaller companies, by reducing the administrative burden on issuers and facilitating capital raising. The proposed UK implementation regulations bring this into effect so UK industry can benefit from these changes as soon as reasonably possible.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- 1) To amend the prospectus provisions of the Financial Services and Markets Act 2000 and the transparency provisions of the Companies Act 2006, and the FSA to amend its Prospectus and Disclosure and Transparency Rules in order to comply with the European Directive 2010/73/EU to meet the European deadline of 1 July 2012 and bring two measures of the Amending Directive into force early.
- 2) To amend the regulations as set out in option (1) but not to bring two measures of the Amending Directive into force early.

Option 1 is preferred in view of the benefits associated with introducing two measures of the Amending Directive early. These will reduce the administrative burden on companies, particularly smaller companies, and facilitate capital raising.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 01/2016

What is the basis for this review? PIR. **If applicable, set sunset clause date:** Month/Year

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 SELECT SIGNATORY:

MIL

Date:

9/3/11

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: 84	High: 141	Best Estimate: 112
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	0		0		0
High	0		0		0
Best Estimate	0				0
<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>These changes widen existing exemptions that have already been implemented into UK legislation. They will reduce burdens on companies, so that fewer offers will need a prospectus. No monetised costs are envisaged. We are seeking more information on these via the consultation process.</p>					
<p>Other key non-monetised costs by 'main affected groups'</p> <p>There could be indirect costs relating to the adjustment of industry and the FSA to these changes as well as the updating of related guidance. These are expected to be negligible.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	0		£9 million		£84 million
High	0		£15 million		£141 million
Best Estimate	0		£12 million		£112 million
<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>We have estimated that the potential benefits for companies of increasing the current exemptions under which there is no requirement to produce a prospectus may amount to approximately £9 million to £15 million, representing a benefit of £350,000 to £600,000 for 26 public offers per year. The total benefits of early implementation are therefore estimated to be £12 million, as companies will benefit from a year of early implementation.</p>					
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>Implementing these amendments early will allow companies more efficient access to capital. They are likely to be most significant in the case of further fundraisings by smaller companies. The measures will enable companies to offer securities to a wider set of investors more cost effectively and to raise capital more cost efficiently, as they will be able to raise larger amounts of capital at a time.</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
This is a consultation Impact Assessment. We have used the consultation to seek views from industry and investors who can express a more detailed opinion on the costs and benefits of the UK implementation regulation.					3.5
Direct impact on business (Equivalent Annual) (£m):			In scope of OIOO?	Measure qualifies as	
Costs: 0	Benefits: 12	Net: 12	Yes	OUT	

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			31/07/2011		
Which organisation(s) will enforce the policy?			UK courts/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?			No		
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	
Distribution of annual cost (%) by organisation size (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 duties¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	p6
Small firms Small Firms Impact Test guidance	Yes	p5
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain 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 assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	EU Impact Assessment http://ec.europa.eu/internal_market/securities/docs/prospectus/proposal_240909/impact_assessment_en.pdf
2	EU Amending Directive http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:327:0001:0012:EN:PDF
3	Prospectus Directive 2003/71/EC http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0064:0089:EN:PDF
4	Transparency Directive 2004/109/EC http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0057:EN:PDF
5	The Prospectus Regulation 2005 Impact Assessment http://www.hm-treasury.gov.uk/d/20050519_Final_RIA.pdf
6	Matching IN: Financial Services Authority regulation of the second charge mortgage market (attached)

+ Add another row

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	0									
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0									
Annual recurring benefits	12	12	12	12	12	12	12	12	12	12
Total annual benefits	12	12	12	12	12	12	12	12	12	12

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



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Background to the Amending Directive (2010/73/EU)

On 24 November 2010 the European Parliament and Council adopted Directive 2010/73/EU (the "Amending Directive"), which amends the Prospectus Directive (PD) (2003/71/EC) on the prospectus to be published when securities are offered to the public or admitted to trading and the Transparency Directive (TD) (2004/109/EC) on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market. Member States have until 1 July 2012 to adopt and publish the laws, regulations and administrative provisions, necessary to comply with this Directive, which will apply from 31 December 2010.

The PD was adopted in 2003 and is the EU framework for the preparation of prospectuses for public offers of securities and where securities are to be admitted to trading on a regulated market. Its objectives are to enhance investor protection and to improve the efficiency of the single market. Its key innovation is that a prospectus approved in one Member State is valid across the EU, giving issuers a 'passport' across the EU capital markets. The PD was implemented in the UK via the Prospectus Regulation 2005, which came into force on 1 July 2005.

Article 31 of the PD required the European Commission to review the application of the Directive five years after its entry into force and to present, where appropriate, proposals for its review. The Amending Directive is the outcome of consultations carried out on the operation of the PD. The Commission consulted on the operation of the PD in 2009 and concluded that the overall effect of the Directive has been positive. However, the need for some improvements was identified. This focused on the need to improve and simplify the application of the PD, to reduce administrative burdens on issuers whilst maintaining investor protection and to improve legal certainty.

The Government is proposing to introduce two measures of the Amending Directive early (before the implementation deadline) so that UK industry can benefit from these changes. These measures will be beneficial to companies, particularly smaller companies, by reducing the administrative burden on issuers and facilitating capital raising.

These implementation regulations seek to amend the prospectus provisions of the Financial Services and Markets Act (2000) in order to comply with the European Amending Directive (2010/73/EU) and so that UK industry can benefit from the early implementation of these changes as soon as reasonably possible.

Small Firms Impact Assessment Test

The Directive captures those companies which have securities admitted to trading on regulated markets and these tend to be substantial businesses which are generally required to have more than 25% of the business owned by third parties. In addition, in relation to public offers of securities, small companies are likely to be able to use the exemptions within the Directive that enable them to avoid production of a prospectus. This includes making an offer to fewer than 100 persons or an offer of less than €2.5 million.

The Amending Directive made amendments to these specific exemptions by i) increasing the number of persons to whom an offer may be directed before it ceases to be an exempt offer from 100 to 150 persons per Member State; and ii) increasing the limit for the total consideration of the offer in the EU below which a prospectus is not required from €2.5 million to €5 million.

We are proposing to introduce these two measures of the Amending Directive early, as they will be beneficial to companies, particularly smaller companies. These changes widen existing exemptions and their effect is to lift burdens, as fewer offers will need a prospectus. Discussions held between HM Treasury and a number of organisations that represent the views of small companies and the markets on which they are admitted suggest that implementing these amendments early will allow companies more efficient access to capital on public markets.

Competition Assessment

Given that the Regulations will introduce largely incremental changes to the existing regime, they should not have a significant effect on competition. We anticipate that the early implementation of these measures of the Amending Directive will not significantly alter the competitive positions of the regulated and exchange-regulated markets. Introducing these measures early is likely to be beneficial for UK companies in terms of competitiveness compared to other Member States which have not implemented these measures early.

Option 1 - To amend the prospectus provisions of the Financial Services and Markets Act 2000 and the transparency provisions of the Companies Act 2006, and the FSA to amend its Prospectus and Disclosure and Transparency Rules in order to comply with the European Directive 2010/73/EU to meet the European deadline of 1 July 2012 and bring two measures of the Amending Directive into force early.

Benefits:

Option 1 would provide additional benefits associated with introducing two measures of the Amending Directive early. The threshold for an offer of securities in the EU for which a Prospectus is required will be raised from €2.5 million to €5 million. Furthermore the minimum number of investors for which a Prospectus is required will increase from 100 to 150 investors per Member State.

Implementing these amendments early will allow companies more efficient access to capital on public markets. These changes widen existing exemptions and their effect is to lift burdens, as fewer offers will need the production of a prospectus. Responses to the Government's Green Paper consultation *Financing a Private Sector Recovery* outlined the costs involved with producing a prospectus. Respondents estimated that the cost of producing a prospectus can range from 7 to 12 percent of the funds raised for consideration levels below £10 million, where a prospectus is required. For example, for an offer of £5 million preparing a prospectus could cost in the range of £350,000 to £600,000.

Using evidence¹ from the last ten years (2000-2010) on the number of public offers² requiring a prospectus on both the London Stock Exchange's Main Market and AIM, 1,783 public offers benefitted from the €2.5 million limit for the total consideration of the offer below which no prospectus is required. The number of issues that would have benefitted from a higher fundraising threshold of €5 million (i.e. those with total public issues between €2.5 million and €5 million between 2000 and 2010) is an additional 256.

Using these statistics we can estimate the benefits of increasing the fundraising threshold from €2.5 million to €5 million. The benefits are estimated to be in the range of £9 million to £15 million, representing a benefit of £350,000 to £600,000 for 26 public offers per year. The total benefits of early implementation are therefore estimated to be in the range of £9 million to £15 million, as companies will benefit from a year of early implementation.

We anticipate the benefits to be towards the higher range, as it is likely that the cost of producing a prospectus has impacted upon those fundraisings below €5 million but above €2.5 million. This is because once an issuer is required to produce a prospectus it is often more cost effective to undertake a higher fundraising. In addition, we have not been able to estimate the quantitative benefits associated with increasing the number of persons to whom an offer may be directed before it ceases to be an exempt offer from 100 to 150 persons, which will also contribute to the benefits. This is because it is difficult to ascertain how many companies have used this exemption when undertaking offers. We would welcome any information that respondents to the consultation are able provide on this.

The benefits are likely to be most significant in the case of further fundraisings by smaller public companies. The European Commission's impact assessment for the proposals found that the evidence gathered indicated that the preparation costs of prospectuses particularly impact upon small and medium-sized issuers, which raise capital less frequently and for smaller amounts. Small companies are likely to be able to use the exemptions within the Directive that enable them to avoid production of a prospectus. The measures will enable unquoted companies and companies on both exchange-regulated markets, such as AIM and PLUS Quoted, and the main markets to offer securities to a wider set of investors (from 100 to 150 investors)

¹ <http://www.londonstockexchange.com/statistics/new-issues-further-issues/new-issues-further-issues.htm>

² 'Total Further Public Offers' includes the following offer types: further rights shares, offer for subscription, open offer, placing & open offer, placing and offer for subscription, public offering, rights issue.

more cost effectively. They will also help companies to raise capital through further issues more cost efficiently, as they will be able to raise larger amounts of capital (from €2.5 million to €5 million) at a time.

Due to the costs involved with producing a prospectus, smaller companies often choose to raise funds through private placements. Since the implementation of the PD in July 2005, the London Stock Exchange has estimated that AIM companies have raised approximately £28 billion through further fundraisings, the majority of which (approximately 98%) was through private placements. However, private placements rather than public offers can result in dilution of the shares of existing shareholders. These changes should help to encourage smaller companies to conduct rights issues, which will help to protect minority shareholders.

Risks

In the case of cross border offers issuers may not be able to take advantage of the early implementation of these measures. This is because it is left to the discretion of Member States whether they transpose the Amending Directive into their domestic law in advance of the implementation date. As we intend to introduce early two measures into UK legislation issuers will need to take care when undertaking cross border offers when using these measures. This is because Member States may have yet to implement the same measure. Particular care will need to be taken when using the fundraising threshold, as the limit applies to the total consideration of the offer in the EU³. For example, where an offer, of say €3 million, is made in the UK and in another Member State that has not yet implemented the measure, in this case the offer may not be exempt under the domestic law of the other Member State. This will not be applicable where offers are made entirely in the UK. Where a prospectus is required in another Member State issuers should consider electing to have a prospectus in the UK which could then be passported into that other Member State so as to avoid the issuer infringing the laws of the other Member State. This should be borne in mind in relation to both the increase in the funding threshold to €5 million and the increase to 150 of the minimum number of investors for which a prospectus is required. It is important that issuers have a clear understanding of these points and we shall be working with the FSA to ensure this explanation is brought to the attention of industry.

As is the case at present, investors may choose not to take up an offer where a prospectus is not produced. On the assumption of implementing these measures approximately 12 months early we have estimated that there will be the option of not producing a prospectus for 26 more offers. Investors may choose not to invest in these offers. However, this is not expected to be significant, especially as issuers still have the option of producing a prospectus if they consider it necessary. We welcome views from investors on this point.

Costs:

These two changes widen existing exemptions and their effect is to lift burdens, so that fewer offers will need a prospectus. No monetised costs are envisaged. There could be indirect costs relating to the adjustment of industry and the FSA to these changes as well as the updating of related guidance. The associated costs are expected to be negligible.

The impact assessment prepared by the European Commission to accompany its proposed amendments to the PD indicated that widening these existing exemptions could have indirect costs through a possible increased risk to investor protection. This was on the basis that widening the exemption would mean a prospectus would not be required for a greater number of offers, thereby potentially reducing the information available to investors. As set out above, our analysis suggests that early implementation of these measures in the UK will mean issuers have the option of not producing a prospectus for 26 more offers. However, we consider the risk to investor protection to be minimal. Investors do not have to take up an offer where a prospectus is not produced. And for example in the case of companies quoted on AIM, they are also subject to AIM's rules on disclosure of periodic financial information.

Option 2 - To amend the regulations as set out in option (1) but not to bring two measures of the Amending Directive into force early.

³ If European Free Trade Association countries decide to adopt the Amending Directive this will apply within the European Economic Area.

Benefits:

The proposed UK implementation regulations seek to amend the prospectus provisions of the Financial Services and Markets Act 2000 in order to comply with the European Amending Directive 2010/73/EU. However, they only bring into effect two specific measures so UK industry can benefit from the early implementation of these changes. The Government will consult industry separately on proposals for implementation in the UK of the remaining elements of the Amending Directive, which will set out the costs and benefits of implementing these changes. These are not considered here.

The benefits associated with introducing these two measures will be smaller under option 2 as their implementation will have been delayed. On the basis that the delay in implementation is 12 months, the total present value of the benefits associated with introducing these measures will be £100 million, £12 million less than under option 1.

Costs:

As set out above, the Government will consult separately on proposals for implementation in the UK of the remaining elements of the Amending Directive, which will set out the costs and benefits of implementing these changes. These are not considered here.

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. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. 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.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p> <p>Within 5 years of the implementation of the statutory instrument the Treasury will review the implementing regulations.</p>
<p>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?]</p> <p>To ensure that the regulations remain an appropriate method of implementing the Amending Directive.</p>
<p>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]</p> <p>Treasury officials will seek views of relevant stakeholders, such as issuers, intermediaries, investors and the FSA.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>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]</p> <p>The Treasury and stakeholders consider that the implementing regulations continue to satisfactorily implement the provisions of the Amending Directive.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Treasury officials are in regular contact with affected stakeholders.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.

