EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONSUMER CREDIT) (TRANSITIONAL PROVISIONS) ORDER 2014

2014 No. 376

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument makes transitional provision in connection with the transfer of consumer credit regulation from the Office of Fair Trading ("OFT") to the Financial Conduct Authority ("FCA") which is effected by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, S.I. 2013/1881, and the Financial Services Act 2012 (Consumer Credit) Order 2013, S.I. 2013/1882.

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

3.1 None.

4. Legislative Context

4.1 The Financial Services and Markets Act 2000 (Consumer Credit) (Transitional Provisions) Order 2014 is made under section 426(1) of the Financial Services and Markets Act 2000.

5. Territorial Extent and Application

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The instrument makes provision in connection with the transfer of consumer credit regulation from the OFT to the FCA. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881) makes various transitional provisions in connection with that transfer. In particular, it enables persons holding a Consumer Credit Act licence to obtain interim permission under the Financial Services and Markets Act 2000. The instrument amends those transitional provisions so as to enable a person whose Consumer Credit Act licence is subject to a suspension immediately before 1st April 2014 to obtain interim permission where an appeal against the suspension is successful. The instrument also amends the transitional provisions in so far as they relate to certain enforcement and disciplinary notices issued by the Office of Fair Trading, maintaining the position under the Consumer Credit Act regime under which notices are sent only to the licensee (and not copied to any third party who may be referred to in the notice).

8. Consultation outcome

8.1 The Government consulted the FCA and the OFT during the preparation of the instrument.

9. Guidance

9.1 Further guidance will be made available by the FCA.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the transfer of consumer credit regulation from the OFT to the FCA is set out in the accompanying impact assessment. The Government's best estimate of the total cost to business of the new regulatory regime is £336million over 10 years (at 2013 prices). The Government's best estimate of benefits of the regime is £689million over 10 years. The estimated net benefit over 10 years is £353million.

10.2 The impact on the public sector is not quantified as public sector organisations generally do not undertake consumer credit activities, apart from local authorities which offer certain types of unsecured credit agreements. The Government has consulted local authorities and found that comparatively few authorities would need to be authorised. As noted above, this SI also provides that local authorities which are authorised for consumer credit activities will be excluded from a requirement to be authorised for other FCA-regulated activities.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the regulatory regime for consumer credit has been designed so that small firms will be subject to proportionate and manageable burdens:

- Many small firms will be able to take advantage of the limited permission regime which will impose lower costs and reduced administrative requirements on eligible firms;
- Small firms (except lenders which apply interest and charges to loans) will have the option to become an appointed representative, as a way for smaller firms to operate without having to shoulder the burden of direct authorisation and regulation;
- Consumer credit firms will not be subject to minimum capital requirements (except where they undertake debt management business);
- Existing exemptions from regulation for agents of mail order firms and home credit providers will continue;
- Firms which specialise in finding or tracing individuals, where these are not carrying on a financial services business will be removed from the scope of regulation; and
- In addition, the FCA proposes to introduce a differentiated fee charging system, which will reflect the size of firms.

11.3 The basis for the final decision on what action to take to assist small business is ensure that small businesses gain from the reputational benefits of a better-regulated and well-functioning market and to ensure that small businesses are subject to appropriate and proportionate regulatory burdens. The Government has decided against exempting small business from this policy, as its objective is to strengthen consumer protection across the consumer credit market.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of the instrument to ensure it continues to meet the policy aims.

13. Contact

13.1 Laura Hanoman at HM Treasury (tel: 0207 270 5507 or email: laura.hanoman@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.