

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES (BANKING REFORM) ACT 2013 (DISCLOSURE OF
CONFIDENTIAL INFORMATION) REGULATIONS 2014

2014 No. 882

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 will allow confidential information collected under the Payment Systems Regulator's regime to be disclosed to and by specified persons, for the purpose of helping those persons to discharge their functions. The Regulations set out the circumstances under which this confidential information can be disclosed: where persons are specified in the Schedule; for the purposes of criminal proceedings and investigations; for the purposes of certain other proceedings (listed in Regulation 5(4)); and in pursuance of an EU obligation.

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

3.1 None.

4. Legislative context

4.1 Section 40 of the Financial Services (Banking Reform) Act 2013 ("the 2013 Act") provides for the establishment of the Payment Systems Regulator. Section 91 of the 2013 Act provides that information about private persons' affairs (including business affairs) obtained for the purposes of the Payment Systems Regulator's functions under Part 5 of the 2013 Act must not be disclosed without the consent of the person from whom it was obtained and (if different) the person to whom it relates. Section 92 of the 2013 Act provides that such information may be disclosed without consent for the purpose of public functions where permitted by regulations made by the Treasury. These Regulations set out the circumstances under which such information may be disclosed.

5. Territorial Extent and Application

5.1 This 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 In December 2013 the 2013 Act received Royal Assent. The Act provides for the establishment of a new Payment Systems Regulator as a separate body under the

FCA. The role of the Payment Systems Regulator will be to regulate payment systems in the UK, with objectives to promote competition and innovation in payment systems and the interests of end-users of those systems.

7.2 The Payment Systems Regulator will need to co-ordinate on an ongoing basis with other authorities and regulators with functions relevant to the payment systems market – for example, the Treasury and other Government departments, the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the European Central Bank and other non-UK central banks, international counterparts with monetary authority functions or responsibilities for the oversight of payment systems, the Bank for International Settlements, the Competition and Markets Authority and the Office of Communications (Ofcom). This instrument will ensure that the Payment Systems Regulator is able to disclose relevant, confidential information to the list of persons specified in the Schedule, for the purpose of the Payment Systems Regulator and other bodies discharging their functions.

7.3 It may also be necessary for confidential information gathered under the Payment Systems Regulator’s regulatory regime to be disclosed for the purposes of criminal proceedings and investigations; for the purpose of the civil proceedings listed in Regulation 5(4); or in pursuance of an EU obligation.

8. Consultation outcome

8.1 Although this instrument has not been subject to a dedicated consultation, the Treasury consulted publically on its proposals to establish the new Payment Systems Regulator (*Opening up UK payments*, published 26 March 2013). This consultation document consisted of nine questions, including a question on the proposed positioning of the new regulator in relation to other regulatory bodies. The consultation ran until 25 June 2013, and received 80 substantive responses.

8.2 On balance, a majority of respondents agreed that the FCA would be best placed to take on the role of housing the new Payment Systems Regulator. Respondents saw it as an appropriate choice for reasons largely centred on its existing regulatory and financial services knowledge and relationships with relevant regulatory bodies within the UK and EU. Respondents anticipated up-skilling challenges for the new Regulator in a number of areas, including the gaining of requisite expertise in utility-style regulation. To address the need for the Payment Systems Regulator to quickly gain requisite expertise in utility-style regulation, the Government commented in its response to the consultation that the PSR would lever skills and experience from existing economic regulators, such as Ofcom. In consultation responses, most comments underlined the need for clearly defined remits and effective joining-up of the various bodies in this regulatory space, at both a UK and EU level.

9. Guidance

9.1 The Treasury does not intend to issue any guidance in connection with these Regulations.

10. Impact

- 10.1 No impact on business, charities or voluntary bodies is foreseen.
- 10.2 There is no impact on the public sector.
- 10.3 Therefore an Impact Assessment has not been prepared for this instrument.

11. Regulating small businesses

- 11.1 The legislation does not apply to small businesses.

12. Monitoring and review

- 12.1 The relevant bodies (the FCA, the Payment Systems Regulator and Ofcom) will monitor and review the effectiveness and operation of these provisions from time to time.

13. Contact

- 13.1 Dan Turnbull, HM Treasury, can answer queries regarding the instrument.
Tel: 020 7270 4819 or email: daniel.turnbull@hmtreasury.gsi.gov.uk.