EXPLANATORY MEMORANDUM TO

THE BANKING ACT 2009 (INTER-BANK PAYMENT SYSTEMS) (DISCLOSURE AND PUBLICATION OF SPECIFIED INFORMATION) REGULATIONS 2010

2010 No. 828

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 These Regulations permit the Bank of England to disclose to specified persons information the Bank has obtained using its powers under section 204(1) of the Banking Act 2009 ("the Act"). The Regulations also make provision about the manner and extent of the publication of such information.

2.2 These Regulations are made in exercise of the powers conferred by sections 204(6) and (8) and 259(1) of the Act.

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

3.1 None.

4. Legislative Context

4.1 Part 5 of the Act (inter-bank payment systems) creates a statutory regime for the oversight of inter-bank payment systems[1] that are specified by the Treasury as "recognised systems". Section 184(1) of the Act confers on the Treasury a power to make recognition orders specifying inter-bank payment systems as recognised systems where the recognition criteria set out in section 185(1) are met.[2] Recognition has the effect of bringing a system within the Bank of England's regime of oversight

[1] Inter-bank payment systems are integral to the proper functioning of the UK economy, facilitating payment services such as direct debits, and settlement services for sterling and foreign exchange transactions, securities, derivatives and commodity trades. Examples of inter-bank payment systems include Bacs, CHAPS and LINK.

[2] Before making a recognition order the Treasury must consult the Bank of England and, where appropriate, the FSA, and consider any representations made (section 186(1)(a) and (2)). The Treasury must also notify the operator of the system and consider any representations made (section 186(1)(b)).

under Part 5 of the Act (which confers various supervisory and disciplinary powers on the Bank in respect of recognised systems).

4.2 Section 204(1) of the Act permits the Bank of England to obtain, by notice in writing, information which the Bank thinks will help the Treasury in determining whether to make a recognition order, or which the Bank otherwise requires in connection with its functions under Part 5 of the Act ("specified information").

4.3 Section 204(4) permits the Bank to disclose specified information to:

- the Treasury;
- the Financial Services Authority ("FSA");
- any authority in a country or territory outside the UK which exercises functions similar to those of the Treasury, the Bank of England or the FSA in relation to inter-bank payment systems;
- the European Central Bank;
- the Bank for International Settlements.

4.4 Section 204(6) confers a power on the Treasury to make regulations permitting the disclosure of information obtained by virtue of section 204(1) to a specified person.

4.5 Section 204(7) makes provision permitting the Bank to publish specified information and subsection (8) confers a power on the Treasury to make regulations about the manner and extent of such publication.

4.6 The Regulations are made in exercise of the powers conferred by sections 204(6) and (8) and 259(1) (statutory instruments). In summary:

- Regulation 3 permits the Bank of England to disclose specified information to certain persons for any of the purposes referred to in regulations 4, 5 or 6;
- Regulation 4 permits the Bank of England to disclose specified information to a public authority for the purposes of criminal investigations and proceedings and regulation 5 makes similar provision in respect of civil proceedings;
- Regulation 6 permits the Bank of England to disclose specified information to the persons listed in the Schedule to the Regulations for the purposes of enabling or assisting that authority to discharge specified public functions;
- Regulation 7 makes provision in respect of the manner and extent of the publication of specified information.

5. Territorial Extent and Application

5.1 These Regulations apply to the United Kingdom.

6. European Convention on Human Rights

6.1 As the Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement as to the compatibility with Convention Rights is necessary.

7. Policy background

- ***What is being done and why***

7.1 Part 5 of the Act establishes a new statutory framework for the oversight of recognised inter-bank payment systems by conferring powers on:

- the Treasury to designate, by order, an inter-bank payment system as a "recognised system", where the Treasury is satisfied that any deficiencies in the design of the system or disruption of its operation would be likely to (a) threaten the stability of, or confidence in, the UK financial system; or (b) have serious consequences for business or other interests throughout the UK (section 184(1)); and

- the Bank of England to oversee recognised systems (including powers for the Bank to impose penalties where compliance failures are committed).

7.2 Section 204(1) confers a power on the Bank of England to gather information for certain purposes (see paragraph 4.2).

7.3 The Bank of England may disclose such information to the Treasury and the FSA (and their international counterparts), the European Central Bank and the Bank of International Settlements (section 204(1)(b) and (4)). The Bank of England may also publish information obtained by virtue of this section (section 204(7)).

7.4 The Treasury consider that it is in the public interest to extend the Bank of England's power to disclose information to specified persons. The importance of information sharing between authorities in relation to financial institutions has been highlighted repeatedly during the recent period of financial instability, when it has been essential for the relevant authorities to have appropriate powers to share information in order to identify and mitigate domestic and international threats to financial stability.

7.5 In addition, the Treasury consider it important for authorities such as the Bank of England to have powers to share information in pursuance of other important public interests, such as the detection and prevention of criminal activity and regulatory failures.

7.6 The ability for authorities to gather and share information is fundamental to the effective oversight of payment systems and, more generally, the identification and mitigation of threats to financial stability and the detection and prevention of crime and regulatory failures. Accordingly, the Regulations enable the Bank of England to

share the information gathered for the purpose of Part 5 with other specified persons in certain cases (see paragraph 4.6).

7.7 Regulation 7 specifies the manner and extent of the publication by the Bank of England of specified information. Where spcified information relates to persons regulated or overseen by the FSA, the Bank of England must consult with the FSA before publishing that information, for example to ensure that information is not published which could harm the operation of regulated bodies, or could affect FSA investigations or enforcement proceedings.

8. Consultation outcome

8.1 Before making the Regulations, the Treasury consulted with the Bank of England and the FSA and held a short period of public consultation. Two responses were received to the consultation and the Treasury has written to each of the respondents.

9. Guidance

9.1 The Treasury do not consider it necessary to issue specific guidance in connection with the Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Treasury and the Bank of England will keep the Regulations under review.

13. Contact

Phelan Hill can answer any queries regarding the Regulations. Phelan is contactable by telephone: 020 7270 6105, by email: phelan.hill@hmtreasury.gsi.gov.uk, or in writing at HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.