EXPLANATORY MEMORANDUM TO

THE BANKING ACT 2009 (WHOLESALE CASH OVERSIGHT FEES) REGULATIONS 2024

2024 No. 1344

1. Introduction

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

2. Declaration

2.1 Tulip Siddiq, the Economic Secretary to the Treasury at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Azin Roussos, Deputy Director for Debt and Reserves Management at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Valentin Boboc at HM Treasury Telephone: 07484 919 511 or email: Valentin.Boboc@HMTreasury.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument approves the scale of fees that the Bank of England ('the Bank') may charge to certain firms recognised by HM Treasury in the wholesale cash distribution ('WCD') market. The payment of these fees will reimburse the Bank for its costs incurred in connection with overseeing these WCD firms for the purpose of managing risks to the effectiveness, resilience, and sustainability of wholesale cash distribution throughout the UK or any part of it.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is all of the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 WCD is the mechanism that supplies physical cash (banknotes and coins) to retail banks, cash machines, and the wider retail market. Physical cash is distributed across the country by commercial wholesale operators comprising major banks, logistics firms, and the Post Office. There is also a large network of companies operating local cash centres, transporting cash, and managing the network of free-to-use and pay-to-

use cash machines. This is a vital mechanism for ensuring the sustainable provision of, and reliable public access to, cash.

5.2 In April 2022, the then government issued a policy statement outlining that the fall in the use of cash is putting pressure on the business models of the firms that make up the WCD industry. In turn, this gave rise to the material risk that the WCD industry might transition to a smaller network in the coming years and that this could happen in a disorderly way. Should a situation such as this arise, the then government judged that it could pose a potentially significant risk to the effectiveness and sustainability of the WCD mechanism, and consequently its ability to supply cash as and when required to the retail network across the UK.

5.3 The then government judged that such risks needed to be managed and that it was not possible to do so through voluntary arrangements alone. Given the existence of these risks, the lack of existing oversight, and the importance of the WCD mechanism, the previous government brought forward legislation to enable the Bank to oversee certain 'recognised' persons (i.e. firms) involved in WCD. The purpose of this was to ensure that risks are managed to ensure the effectiveness, resilience, and sustainability of WCD. In practice, this would see the Bank monitoring risks and taking steps where necessary to mitigate them. The result was the Financial Services and Markets Act 2023 which inserted Part 5A of the Banking Act 2009 ("the Act").

5.4 The WCD industry comprises a range of firms of varying sizes that undertake activity related to WCD. The actions of some firms might have significant impacts on the wider market, whereas others might not. To ensure sufficient oversight is balanced with minimising the burden of oversight on the WCD industry, only those firms undertaking relevant functions in relation to WCD activity (as defined in the Act) and recognised by HM Treasury as market significant (or, in addition, systemically significant) will be subject to the Bank's oversight and enforcement powers. The legislation provisioned for HM Treasury to make recognition orders to bring a firm into the scope of the regime and requires the order to specify whether a firm is market significant or, in addition, systemically significant. Before HM Treasury may 'recognise' a firm they must (among other things), consult the Bank, notify the firm, and consider any representations made by the firm (see section 206I of the Act). HM Treasury is in the process of considering which firms it might notify; once HM Treasury has considered representations it will proceed with issuing 'recognition orders' as may be considered appropriate.

5.5 Undertaking oversight activity comes with costs. In order to allow the Bank to recover costs, the legislation provisioned for the Bank to be able to require a 'recognised' firm to pay fees (section 206Z(1) of the Act). The legislation set out that these fees must relate to a scale of fees approved by HM Treasury by regulations (section 206Z(2)). This instrument makes provision for that scale of fees in relation to 'recognised' firms with market significance only. That is because HM Treasury does not expect in the near term to recognise any firm has having systemic significance. In the event that this were to occur, HM Treasury would make further regulations to provide a scale of fees for systemically significant firms and it is expected HM Treasury would have enough notice to be able to do that in good time.

5.6 The scale of fees contained in these Regulations sets effective caps on 'supervision' (i.e. the business as usual activity of the Bank) and on 'special projects' (i.e. one-off or significant activities that may be time limited and require additional supervisory resource). On the former, these Regulations enable the Bank to charge an in-scope 'recognised' firm a fee of no greater than £400,000 in any one calendar year for the

supervision of that person in respect of supervision under the WCD market oversight regime. On the latter, where the Bank considers events require the further supervision of an in-scope 'recognised' firm this instrument also enables the Bank to charge that firm a special project fee of no more than £150,000 per 'recognised' firm in any one calendar year.

5.7 The scale of fees is based on the Bank's estimation of the potential cost to the Bank of supervision of a 'recognised' firm per annum over the next five years. The total cost of the Bank's supervision includes, for example:

- expenditures associated with staff costs, legal resource, policy support, corporate services, and pensions;
- any other expenditures associated with the work of the supervisory team; and
- expenditures associated with the specialist resource required for carrying out a special project.

5.8 HM Treasury worked closely with the Bank to work out a reasonable and sustainable scale of fees in the near and medium term. In 2022, the Bank estimated the total cost of WCD market supervision to be around £1.2 million pounds per year, with the highest individual yearly fee paid by a 'recognised' firm being £230,000. The upper bound of £400,000 per firm was calibrated based on the Bank's estimation of the potential maximum cost to the Bank of the supervision of a 'recognised' firm per fee year, over the next five years, under an adverse scenario. This is intended to provide a guard rail to limit the extent of any large rise in fees and should not be considered as a guide as to where the Bank expects fees to increase over the coming years.

5.9 The scale provided in the instrument only allows the Bank to recoup the costs arising out of supervision. The Bank will calculate the fees payable by in-scope recognised persons by estimating the cost for the year. Where any fees paid on the basis of the estimate exceed the Bank's actual costs, any excess will be addressed by the Bank in the following year. For any one year, the fees charged by the Bank to in-scope recognised persons, taken together, must not exceed the total costs incurred by the Bank arising out of its supervision of such persons.

What was the previous policy, how is this different?

5.10 There was no such WCD oversight regime, and therefore no ability for HM Treasury to set a scale of fees, prior to the passing of the Financial Services and Markets Act 2023.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 55 of, and Schedule 9 to, the Financial Services and Markets Act 2023 inserted Part 5A into the Banking Act 2009. Part 5A enables the Bank to oversee recognised persons involved in wholesale cash distribution. The Bank exercises its powers under Part 5A for the purpose of managing risks to the effectiveness, resilience and sustainability of wholesale cash distribution.

6.2 Wholesale cash distribution is defined as the arrangements (taken as a whole) by which banknotes issued by an issuing authority, or coins made by the Mint, are made available for retail cash distribution, and removed from circulation (see section 206E(1) of the Act). Wholesale cash distribution activities are activities intended to facilitate or control wholesale cash distribution and include (but are not limited to) purchasing cash from issuing authorities or the Mint, storing or transporting cash,

undertaking authentication processes or facilitating the return of cash to issuing authorities or the Mint (see section 206E(2) of the Act).

6.3 HM Treasury may by order specify a person as a recognised person for the purposes of Part 5A (section 206G(1) of the Act) (a "wholesale cash oversight order"). A person may only be recognised if it performs a relevant function in relation to a wholesale cash distribution activity and is recognised as having market significance (section 206G(2) of the Act).

6.4 Relevant functions are undertaking or managing the activity, providing a service in relation to the activity or providing financial assistance in relation to the activity (section 206G(3) of the Act).

6.5 A person may only be recognised as having market significance if HM Treasury is satisfied that any significant deficiency in, or disruption to, the performance of the person's relevant functions in relation to wholesale cash distribution activities would be likely to undermine the effectiveness, resilience, or sustainability of wholesale cash distribution throughout the UK or any part of the UK (section 206H(2) of the Act).

6.6 In addition to being recognised as having market significance, a person may also be recognised as having systemic significance. It may be recognised as such only if HM Treasury is satisfied that the person has market significance and, in addition, any significant deficiency in, or disruption to, the performance of the person's relevant functions in relation to wholesale cash distribution activities would be likely to threaten the stability of, or confidence in, the UK financial system, or to have serious consequences for business or other interests throughout the United Kingdom or any part of the United Kingdom (section 206H(3) of the Act).

6.7 Before making a wholesale cash oversight order in respect of a person HM Treasury must (among other things) consult the Bank, notify the person and consider any representations made. At the point of laying of this instrument, that process is ongoing and HM Treasury expects persons to be recognised in due course.

6.8 The Bank may require a recognised person to pay fees (section 206Z(1) of the Act). The requirement must relate to a scale of fees approved by HM Treasury by regulations (section 206Z(2) of the Act). This instrument contains the scale of fees approved by HM Treasury in relation to recognised persons with market significance only. It does not apply to recognised persons with systemic significance.

6.9 The scale consists of a maximum fee of £400,000 that the Bank may charge a recognised person in any one calendar year in respect of supervision of the person and a maximum fee of £150,000 the Bank may charge in any one calendar year in respect of a special project, if the Bank considers further supervision of the person is necessary.

6.10 Under the scale, for any one calendar year, the fees charged by the Bank to in-scope recognised persons, taken together, must not exceed the total costs incurred by the Bank arising out of its supervision of such persons.

Why was this approach taken to change the law?

6.11 This is the only possible approach to make the necessary changes, since the Bank can only charge fees to recognised persons in relation to a scale approved by HM Treasury by regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 The approach to charging fees saw public consultation by the Bank in 2022[1], prior to the passing of the Financial Services and Markets Act 2023. Subsequently. the Bank carried out a targeted consultation on the prospective scale of fees for the wholesale cash oversight regime among likely affected firms. It did so alongside a consultation on its proposed Codes of Practice.

7.2 The targeted consultation took place between 30 November 2023 and 31 January 2024. Overall, four responses were received. Most respondents welcomed the idea of imposing an upper bound on the fee that the Bank may charge in any one year. Some responses asked for further clarifications on the definition of a 'special project' and how the yearly fees will be calculated and apportioned to recognised persons.

7.3 The Bank has responded to relevant firms in the WCD industry who were subject to the targeted consultation.

8. Applicable Guidance

8.1 HM Treasury does not consider it necessary to publish specific guidance in relation to these Regulations.

8.2 The Bank's approach to the supervision of recognised persons with market significance can be found on its website at the following link: https://www.bankofengland.co.uk/paper/2023/sop/sop-on-the-banks-supervisory-approach-to-market-oversight-for-wholesale-cash-distribution

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because few businesses are affected, and the impacts are de minimis. The Impact Assessment for the Financial Services and Markets Act 2023 that accompanied the bill in 2022[2] outlined that 'recognised' firms will incur certain costs to comply with the regulatory regime, namely costs associated with: supplying information to the Bank, monitoring internal compliance with the regime, inspections, and independent reports. The actual resource impact on a 'recognised' firm of complying with the regime will depend on the firm's existing standards and practices. Many firms already regularly provide information to and engage with the Bank. The actual impact of the regulation will therefore be lower for these firms.

9.2 Further, the Bank will charge 'recognised' firms annual fees to recover costs it incurs in supervising firms. As per the Bank's consultation (published in December 2022) on supervisory approach[3], the Bank will engage industry on a yearly basis to establish how to apportion the costs of their supervisory activity amongst 'recognised' firms. As of February 2024, the Bank estimates the initial annual fee per firm to be between £115,000 and £230,000 depending on the size and the number of activities carried out by a firm, taking the total cost to industry to somewhere below £1.5m per annum. The

[1] https://www.bankofengland.co.uk/paper/2022/consultation-on-the-bank-of-englands-supervisory-approach-to-wholesale-cash-distribution
[2] https://bills.parliament.uk/publications/49053/documents/2621
[3] https://www.bankofengland.co.uk/paper/2022/consultation-on-the-bank-of-englands-supervisory-approach-to-wholesale-cash-distribution

fee for each participant represents a low percentage of firm revenue, 0.2% or less of a firm's revenue in all cases (based on 2023 revenue data). This instrument places a maximum limit of £400,000 per calendar year per firm, to ensure that there is a sustainable and predictable fee regime in place for industry in the short and medium term.

9.3 The overall benefits of the full oversight policy, as outlined in the Impact Assessment for the Financial Services and Markets Act 2023 comprise sustainable access to cash to the retail industry. By seeking to ensure the effectiveness, resilience, and sustainability of the wholesale cash network, this measure will reduce the risk of serious disruption to the supply of cash. This will be of benefit to businesses, such as independent automated teller machine (ATM) deployers, who rely on wholesale cash services as an integral part of their business model. Protected access to cash also provides enhanced financial inclusion for those individuals who are reliant on cash (c. 3.1 million adults as of May 2022 according to FCA's Financial Lives Survey).

Impact on businesses, charities and voluntary bodies

9.4 There is no, or no significant, impact on business, charities, or voluntary bodies. In line with the impact assessment above, the impact to the WCD industry is considered de minimis, somewhere below c.£1.5m to industry per annum.

9.5 There is no, or no significant, impact on the public sector of this scheme owing to the Financial Services and Markets Act 2023 giving powers to the Bank to recover costs of its oversight from 'recognised' firms.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause. The instrument makes provision in connection with the imposition of a levy or other charge and so, pursuant to section 28(3)(a)(ii) of the Small Business, Enterprise and Employment Act 2015, the duty in section 28 of the 2015 Act does not apply.

10.2 As noted above, the Bank will engage industry on a yearly basis with respect to how to apportion the costs of their supervisory activity among recognised firms. HM Treasury will work closely with the Bank in the coming years to review whether the scale of fees continues to meet its intended purpose.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").