EXPLANATORY MEMORANDUM TO

THE PAYMENT ACCOUNTS REGULATIONS 2015

2015 No. [XXXX]

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument implements Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features ("PAD") (OJ L257, 28.8.2014, p.214).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The provision in this instrument will come into force on or after 18 September 2016. Before then (and once the instrument has been made), the Payment Systems Regulator may exercise its power to designate an alternative arrangement pursuant to regulation 15(1) and HM Treasury may exercise its power pursuant to regulation 21 to designate credit institutions as credit institutions to which the duty to offer a payment account with basic features will apply before the date upon which the regulations come into force. In order to make such designations pre – commencement, reliance will be placed on section 13(b) (anticipatory exercise of powers) of the Interpretation Act 1978.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and includes Northern Ireland.

4. Legislative Context

4.1 This instrument is being made to implement the requirements of PAD. Part 1 of Schedule 7 to this instrument applies various provision made in the Financial Services and Markets Act 2000 for the purposes of enabling the Financial Conduct Authority to monitor and enforce compliance with the requirements of PAD as transposed. A note setting out how this instrument transposes the requirements of PAD is attached as an annex to this memorandum.

4.2 PAD was given scrutiny clearance by the House of Lords European Union Committee on 4 November 2013 and by the House of Commons European Scrutiny Committee on 11 June 2014.

5. Extent and Territorial Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Payment Accounts Regulations 2015 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 PAD entered into force on 17 September 2014. PAD sets common standards across European Union member states that payment service providers (in this context, principally banks and building societies) must meet. PAD has three main policy objectives: (1) improving the transparency and comparability of fees relating to payment accounts that are used for day-to-day payment transactions (principally personal current accounts); (2) making it easier for consumers to switch payment accounts (i.e. to move their current account business from one payment service provider to another) and (3) to ensure that all consumers legally resident within the European Union are able to access banking services by ensuring that a sufficient number of payment accounts with basic features are made available.

7.2 In the United Kingdom, a number of initiatives were already underway at a domestic level for the purposes of achieving these objectives:

- In January 2013 the Office of Fair Trading published its Review of the Personal Current Account Market, which lead to a number of voluntary initiatives by payment service providers intended to improve transparency of fees and charges, including the issuing of annual statements and increased use of text message alerts warning consumers of possible unarranged overdraft charges.
- On 16 September 2013, the Payments Council (a trade body now known as Payments UK) launched the Current Account Switch Service ("CASS"), a free-to-use service for consumers intended to make the process of switching payment accounts simpler and more reliable.
- In December 2014 the major United Kingdom banks entered into an agreement to offer improved basic bank accounts from the end of 2015.

7.3 During the negotiations on PAD, HM Treasury sought to ensure provision in the Directive aligned with existing United Kingdom practice as far as possible in order to minimise negative impacts on industry. This approach has been maintained for the implementation of PAD and is reflected in this instrument.

7.4 The principal effects of this instrument are as follows:

- Payment service providers that offer payment accounts as defined in the regulations must use terminology that is standardised at European Union level in their contractual, commercial and marketing information and must make available to consumers a glossary of these terms. Payment service providers must provide consumers with a fee information document that meets

prescribed criteria before entering into a contract for a payment account with consumers and must provide their payment account customers with an annual statement of fees that sets out prescribed information.

- The Money Advice Service is required to offer consumers access to an impartial, free-to-access price comparison website where consumers will be able to compare the fees charged by payment service providers for a number of services linked to a payment account featuring in a list that the Financial Conduct Authority will be required to publish.
- Payment service providers must offer a switching service between payment accounts. A switching service must meet criteria specified in PAD (and directly transposed in Schedule 3 to this instrument) except in cases where the switching service has been designated as an alternative arrangement by the Payment Systems Regulator.
- Designated credit institutions will be required to offer a payment account with basic features to any consumer legally resident in the European Union who either does not hold a payment account with any United Kingdom credit institution, or who would be ineligible for a payment account offered by the credit institution that is not a payment account with basic features. This requirement will extend eligibility beyond that provided for in the current voluntary agreement on access to basic bank accounts.

7.5 In implementing the requirements of PAD, HM Treasury has used copy-out wherever it considers that this gives the necessary clarity and is consistent with existing United Kingdom legislation. A copy-out approach has not been adopted in respect of every requirement set out in PAD, because HM Treasury does not consider that the language of PAD is in all cases sufficiently clear and precise.

Consolidation

7.6 HM Treasury does not have any plans to consolidate the minor amendments that Part 2 of Schedule 7 to this instrument makes to secondary legislation. Commercial publishers produce consolidated versions of this secondary legislation.

8. Consultation outcome

8.1 HM Treasury published a consultation document along with a draft implementing instrument and impact assessment on 23 June 2014. The consultation ran for six weeks and received 13 responses from large and medium sized payment service providers, trade bodies for payment service providers, and consumer groups. HM Treasury considered that allowing six weeks for consultation responses was sufficient, given that key stakeholders were already aware of the PAD's requirements and that the industry was pressing for the implementing instrument to be made no later than the end of 2015.

8.2 Respondents raised concerns about the definition of the term "payment account", requesting that further clarification be given as to the scope of the term. HM Treasury's view remains that the definition of the term "payment account" that is used in this instrument gives as much clarification as the text of PAD allows, and that the term covers what are generally referred to as current accounts in the United Kingdom or accounts that have functionalities directly comparable to those of current accounts.

8.3 All respondents that commented upon the proposal for the implementation of the account switching requirements in Chapter 3 of PAD agreed with HM Treasury's approach of using the flexibility allowed by Article 10(1) of PAD to permit switching to be effected by way of measures alternative to those prescribed in Article (10)(2) to (6) of PAD.

8.4 The government received a number of responses which commented on the proposal for implementing the requirements of Chapter 4 of PAD on access to payment accounts. A number of respondents expressed concern that HM Treasury was going further than PAD by placing designated credit institutions under a duty to offer a payment account with basic features to consumers who already hold a payment account, but who would nevertheless be ineligible for a payment account offered by the credit institution that is not a payment account with basic features. HM Treasury does not intend to revise the eligibility criteria as it continues to consider that it is important to ensure that consumers in financial difficulty are permitted access a functional payment account. This reflects the eligibility criteria set out in the existing voluntary agreement on access.

8.5 Some respondents expressed concern that services to be provided free of charge to consumers holding a payment account with basic features will include services which would ordinarily incur a foreign exchange fee (e.g. making withdrawals in a foreign currency). HM Treasury acknowledges that this would go beyond what is provided for in the voluntary agreement and that it is not a necessary service for the purpose of financial inclusion. Accordingly, this instrument allows credit institutions to charge a reasonable fee in such cases.

9. Guidance

9.1 The Financial Conduct Authority will decide whether this instrument will require any changes to its rules or guidance following the making of this instrument and will consult on any prospective changes to its handbook of rules and guidance in accordance with its usual practice. Any changes made will be in force by the time the relevant provision in this instrument is commenced.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be an annual equivalent net cost of £10.86m.

10.2 HM Treasury does not expect the public sector to incur significant costs as a result of the measures. Limited costs may be incurred by the Financial Conduct Authority and the Payment Systems Regulator due to their new functions provided for in this instrument, but these are expected to remain low.

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

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effect of this instrument to ensure that it meets the policy objective of minimising any negative impact on United Kingdom payment service providers and consumers.

12.2 The instrument includes a requirement for HM Treasury to review the instrument within five years, and periodically following that, at least once every five years.

13. Contact

13.1 Jeanie Watson at HM Treasury Telephone: 020 7270 1945 or email: Jeanie.Watson@HMTreasury.gsi.gov.uk can answer any queries regarding the instrument.