EXPLANATORY MEMORANDUM TO

THE SMALL AND MEDIUM SIZED BUSINESS (CREDIT INFORMATION) REGULATIONS 2015

2015 No. [XXXX]

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

2. Purpose of the instrument

2.1 The Small and Medium Sized Business (Credit Information) Regulations 2015 ("the regulations") require designated banks to share information on their small and medium sized business ("SME") customers with designated Credit Reference Agencies ("CRAs"). The regulations also require that those designated CRAs, provide equal access to that data to finance providers. In each case the obligation is dependent on the SME customer having agreed to the provision of data.

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

3.1 None

4. Legislative Context

4.1 These regulations, for the first time, exercise powers provided in sections 4, 6 and 7 of the Small Business, Enterprise and Employment Act 2015. These regulations are designed to complement the Small and Medium Sized Business (Finance Platform) Regulations 2015.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

In my view the provisions of the Small and Medium Sized Business (Credit Information) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 At present the largest four banks account for over 80 per cent of UK SME main banking relationships. The Government believes that such high concentration levels are bad for consumers and business and is determined to see a step change in competition in the UK banking market.

7.2 The problem of a lack of available credit information represents a considerable barrier to entry into the market for lending to businesses and has been highlighted as such by a range of informed comment on SME access to finance. The Office of Fair Trading, the Competition Commission and the 'Boosting Finance Options For Business' Review, headed by Tim Breedon, have all highlighted a lack of information about the creditworthiness of SMEs as a potential barrier to competition in the SME banking market and SME lending in particular.

7.3 These regulations are intended to open up access to data on SMEs to other finance providers by requiring designated banks to share information on their SME customers with designated CRAs. The regulations also require that those designated CRAs, provide equal access to that data to finance providers. The regulations give HM Treasury the power to designate banks and CRAs for the purposes of the regulations.

7.4 The regulations also require that designated CRAs share the aforementioned data with the Bank of England, and make provision to protect the confidentiality of this information.

7.5 This is designed to increase the data available to challenger banks and alternative finance providers and is expected to improve the ability of these companies to conduct accurate SME risk assessments and, by levelling the playing field between providers, make it easier for SMEs to seek finance from a provider other than their bank. This is designed to help reduce market concentration levels; provide new sources of finance for the UK's SMEs; and enable a better understanding of the SME sector which will stimulate competition and innovation in the provision of finance to SMEs, improving the cost and quality of services offered.

7.6 The provision of credit data on companies is not a regulated activity under the Financial Services and Markets Act 2000. The regulations create a new obligation on the Financial Conduct Authority ("FCA") to monitor and enforce compliance with the regulations.

7.7 These regulations also widen the pool of SMEs that can have recourse to FOS in respect of credit referencing to include all those SMEs that generally have recourse to the FOS for other purposes (currently those which have an annual turnover of less than €2 million and fewer than ten employees). This will ensure that SMEs whose information is held by designated CRAs have the same level of protection under the FOS as they do in relation to other financial services, and whether the CRA is regulated by the FCA or not.

7.8 The regulations also modify the application of the Data Protection Act 1998 and Consumer Credit Act 1974 to ensure that the protections they provide for certain small businesses when dealing with CRAs authorised by the FCA apply equally when dealing with any designated CRA.

8. Consultation outcome

8.1 HM Treasury ran a consultation between 20 December 2013 and 21 February 2014 on 'Improving access to SME credit data' which set out the proposal to require

banks to share information on their SME customers with other lenders through CRAs. The consultation received over 30 responses including major banks, challenger banks, alternative finance providers, CRAs, business groups, trade associations and other interested parties.

8.2 Responses provided widespread support for the proposals. The Government's proposals for the method of improving access to SME credit data were seen by the majority of respondents as both appropriate and sufficient to deliver the Government's objective. The majority of respondents acknowledged the value of data sharing and the importance of ensuring equal access to the data that is shared through CRAs.

8.3 All respondents also agreed that it was important to ensure that SMEs have confidence in how their data is being used and that the necessary protections are in place to safeguard the quality of that data.

8.4 The Government published its Summary of Responses document[1] on 6 June 2014.

9. Guidance

9.1 The British Business Bank ("BBB") has published a "Call for Information" document that sets out the evaluation criteria for CRAs that apply to be designated under these regulations.

9.2 An implementation guide will be produced, in partnership with industry, which will detail the required technical specifications to enable the secure and efficient transfer of data between finance providers and CRAs.

10. Impact

10.1 The impact on business, charities or voluntary sector is an estimated total net present value cost of between £19.25m and £8.75m, with a best estimate of £14m. It has not been possible to monetise many of the benefits of this measure which include the unquantifiable benefits of increased competition. This is a pro-competition measure and the costs are therefore out of scope of the Government's 'one-in-two-out' regulatory framework.

10.2 There is no impact on the public sector, as the FCA is funded through levies on industry. FCA funding costs are included in the impact on business in 10.1 above.

10.3 The Bank of England will benefit from receiving an increased depth of credit information as a result of the regulations.

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

[1] www.gov.uk/government/uploads/system/uploads/attachment_data/file/323318/PU1681_final.pdf

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 approach taken is to designate those banks to which this legislation will apply, based on their market share of SME lending. Therefore, only the largest banks are affected by the legislation in order not to increase barriers to entry for smaller and challenger banks or alternative finance providers.

11.3 This legislation does not place new burdens on SMEs. SMEs are the intended beneficiaries of this legislation and are expected to experience improved outcomes when applying for credit.

12. Monitoring & review

12.1 Part 7 of the regulations places a duty on HM Treasury to, from time to time, carry out a review of the regulations and publish the conclusions of the review in a report. The first report must be published on or before 1 January 2021 with subsequent reports being published at intervals not exceeding 5 years.

13. Contact

Rob Wareing at HM Treasury Tel: 020 7270 4504 or email:
rob.wareing@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.