EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (PART 9 RESTRICTIONS ON DISCLOSURE OF INFORMATION) (AMENDMENT) ORDER 2014

2014 No. 2807

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the list of enactments in Schedule 15 of the Enterprise Act 2002 ("the 2002 Act") to include the Banking Reform Act 2013 ("the 2013 Act"). This will allow the Competition and Markets Authority (CMA) to disclose information obtained in connection with its functions under the 2002 Act to the Payment Systems Regulator (PSR), established by the 2013 Act. This will assist the PSR in discharging its functions in relation to the regulation of payment systems.

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

3.1 None.

4. Legislative context

4.1 Sections 237 and 238 of the 2002 Act prohibit the disclosure of information about individuals or businesses obtained by public authorities such as the CMA and other regulators in connection with the exercise of functions under the 2002 Act (and certain other enactments). Other provisions in Part 9 of the 2002 Act provide exceptions to that prohibition, and section 241(3) permits the disclosure of information to another person for the purpose of facilitating the exercise by that other person of functions under the 2002 Act or under enactments specified in Schedule 15 of the 2002 Act. The recipient of that information may only use it for that purpose.

4.2 The enactments specified in Schedule 15 do not currently include the 2013 Act. This instrument adds the 2013 Act to list of enactments in Schedule 15 so that information may be provided to the PSR in order to facilitate the PSR's exercise of its functions under the 2013 Act.

5. Territorial extent and application

5.1 This instrument extends and applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Jo Swinson, the Parliamentary Under-Secretary for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 In December 2013 the 2013 Act received Royal Assent. The Act provided for the establishment of a new Payment Systems Regulator as a separate body under the Financial Conduct Authority. The role of the Payment Systems Regulator is 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. The 2013 Act conferred on the PSR new functions for the regulation of designated payment systems, and provided that certain competition functions of the CMA under the 2002 Act and the Competition Act 1998 are concurrent functions of the CMA and the PSR so far as they relate to participation in payment systems.

7.2 In exercising these powers, the CMA and the PSR will need to work together. This instrument ensures that, where the CMA obtains information pursuant to its functions under the 2002 Act which are relevant to the PSR's functions under the 2013 Act, the CMA will be able to disclose information to the PSR for the purposes of facilitating the carrying out of those functions by the PSR.

8. Consultation outcome

8.1 Although this instrument has not been subject to a dedicated consultation, the Treasury did consult publically on its proposals to establish the new Payment Systems Regulator (*Opening up UK payments*, published 26 March 2013). It ran until 25 June 2013, and received 80 substantive responses.

8.2 The consultation document consisted of nine questions, including a question on the proposed positioning of the PSR in relation to other regulatory bodies. It also included a question on the proposal for the PSR exercising concurrent competition powers. The majority of respondents to the consultation agreed that the PSR would need these powers, viewing it as critical for achieving a level playing field and tackling anti-competitive conditions in this market.

9. Guidance

9.1 The Department for Business, Innovation and Skills does not intend to issue any guidance in connection with this instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

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 HM Treasury and the Department for Business, Innovation and Skills will monitor and review the effectiveness and operation of these provisions from time to time, with input from the relevant bodies (the CMA and the PSR).

13. Contact

13.1 Ruth Harries at the Department for Business, Innovation and Skills; Telephone: 0207-215 6506; or email: ruth.harries@bis.gsi.gov.uk can answer any queries regarding the instrument.