EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONSUMER CREDIT) (TRANSITIONAL PROVISIONS) (No. 2) ORDER 2014

2014 No. 835

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

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

2. Purpose of the instrument

2.1 The instrument makes provision in connection with the transfer of consumer credit regulation from the Office of Fair Trading ("OFT") to the Financial Conduct Authority ("FCA") which is effected by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, S.I. 2013/1881 ("the 2013 Order").

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

3.1 The Order provides that it shall come into force on 1st April 2014. This breaches the 21 day rule. This is being done to ensure that the Order comes into effect at the same time as provisions of the 2013 Order. The Treasury were informed on 20th March that one of the effects of that Order would be that any members of professional bodies carrying on regulated activities by virtue of the exemption in Part 20 of the Financial Services and Markets Act 2000 before 1st April who are also carrying on consumer credit activities under an interim permission given by the 2013 Order would no longer qualify for the Part 20 exemption after that date. This would mean that they could no longer lawfully carry on regulated activities (other than consumer credit activities under the interim permission) incidental to their professional services, and that any agreement made in the course of carrying on such activities would not be enforceable. This was not intended, and this Order amends the 2013 Order to remedy the situation. As the Treasury has no power to make retrospective provision, it is necessary to bring the Order into force before the expiry of 21 days after the Order is laid before Parliament.

4. Legislative Context

4.1 The Financial Services and Markets Act 2000 (Consumer Credit) (Transitional Provisions) (No.2) Order 2014 is made under section 426(1) of the Financial Services and Markets Act 2000 ("the Act").

5. Territorial Extent and Application

5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The instrument makes provision in connection with the transfer of consumer credit regulation from the OFT to the FCA, and the regulation of consumer credit under the Act.

7.2 Part 20 of the Act provides an exemption from the need for authorisation for members of professional bodies who carry on regulated activity which is merely incidental to the provision of professional services. But such regulated activity must be the only regulated activity the member firm undertakes. Various consumer credit-related activities become regulated activity for the purposes of the Act on 1 April 2014; and persons with licences issued under the Consumer Credit Act 1974 will have interim permission to carry on those activities, provided they have notified the FCA and paid the relevant fee.

7.3 The amendments in article 2 of the instrument preserve the effect of the exemption in Part 20 of the Act where a member firm has an interim permission. Article 3 makes related transitional provision.

8. Consultation outcome

8.1 The Government consulted the FCA during the preparation of these instruments.

9. Guidance

9.1 Further guidance will be made available by the FCA.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the transfer of consumer credit regulation from the OFT to the FCA is set out in the accompanying impact assessment. The Government's best estimate of the total cost to business of the new regulatory regime is £336million over 10 years (at 2013 prices). The Government's best estimate of benefits of the regime is £689 million over 10 years. The estimated net benefit over 10 years is £353million.

10.2 The impact on the public sector is not quantified as public sector organisations generally do not undertake consumer credit activities.

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

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 regulatory regime for consumer credit has been designed so that small firms will be subject to proportionate and manageable burdens:

- Many small firms will be able to take advantage of the limited permission regime which will impose lower costs and reduced administrative requirements on eligible firms;
- Small firms (except lenders which apply interest and charges to loans) will have the option to become an appointed representative, as a way for smaller firms to operate without having to shoulder the burden of direct authorisation and regulation;
- Consumer credit firms will not be subject to minimum capital requirements (except where they undertake debt management business);
- Existing exemptions from regulation for agents of mail order firms and home credit providers will continue;
- Firms which specialise in finding or tracing individuals, where these are not carrying on a financial services business will be removed from the scope of regulation; and
- In addition, the FCA proposes to introduce a differentiated fee charging system, which will reflect the size of firms.

11.3 The basis for the final decision on what action to take to assist small business is ensure that small businesses gain from the reputational benefits of a better-regulated and well-functioning market and to ensure that small businesses are subject to appropriate and proportionate regulatory burdens. The Government has decided against exempting small business from this policy, as its objective is to strengthen consumer protection across the consumer credit market.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of the instruments to ensure they continue to meet the policy aims.

13. Contact

13.1 Laura Hanoman at HM Treasury (tel: 0207 270 5507 or email: laura.hanoman@hmtreasury.gsi.gov.uk) can answer any queries regarding the instruments.