EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (DISCLOSURE OF CONFIDENTIAL INFORMATION) (AMENDMENT) REGULATIONS 2014

2014 No. 883

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

2. Purpose of the instrument

2.1 This instrument amends the existing provisions permitting the disclosure of confidential information obtained for the purposes of functions under the Financial Services and Markets Act 2000. This instrument specifies the Payment Systems Regulator and the Office of Communications (Ofcom) as persons to which and by which confidential information may be disclosed. This will assist the Payment Systems Regulator in discharging its functions in relation to the regulation of payment systems. It will also assist both the Payment Systems Regulator and Ofcom in exercising their functions in relation to new payment systems which use mobile telephony.

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

3.1 None.

4. Legislative Context

4.1 The FCA obtains access to information about private persons' affairs (including business affairs) in the discharge of its functions. Under section 348 of the Financial Services and Markets Act 2000 ("the 2000 Act"), the Financial Conduct Authority ("FCA") must not disclose such information without the consent of the person from whom it was obtained and (if different) the person to whom it relates. However, section 349 provides that such information may be disclosed without consent for the purpose of public functions where permitted by regulations made by the Treasury.

4.2 The circumstances in which such disclosures are permitted are set out in the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001. These Regulations amend those 2001 Regulations to take account of the functions conferred on the Payment Systems Regulator by Part 5 of the Financial Services (Banking Reform) Act 2013 ("the 2013 Act"). Provision for the establishment of the Payment Systems Regulator is made by section 40 of the 2013 Act.

5. Territorial Extent and Application

5.1 This 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 In December 2013 the 2013 Act received Royal Assent. The Act provides for the establishment of a new Payment Systems Regulator as a separate body under the FCA. The role of the Payment Systems Regulator will be 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.

7.2 The Payment Systems Regulator is to be established as a subsidiary of the FCA. It will share certain resources (e.g. staff and services) on an ongoing basis and there will be overlaps in the populations regulated by each body (e.g. FCA-regulated financial institutions providing payment services). The FCA will also have an initial function in setting up the Payment Systems Regulator. It is therefore expected that the information the FCA collects from or relating to businesses it regulates under the 2000 Act to have relevance to the duties of the Payment Systems Regulator.

7.3 Some of the UK's payment systems may be provided by or with the involvement of electronic communications networks and service providers, i.e. businesses regulated by Ofcom (e.g. payments via mobile phones and "in-app" payments). The increasing intersection between electronic communications service providers and financial payments means that the FCA expects that the information it collects from or relating to businesses it regulates to have increasing relevance to the duties of Ofcom.

7.4 This instrument will ensure that the FCA is able to disclose relevant, confidential information to both the Payment Systems Regulator and Ofcom for the purpose of facilitating the carrying out of these bodies' functions relating to payment systems.

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). This consultation document consisted of nine questions, including a question on the proposed positioning of the new regulator in relation to other regulatory bodies. The consultation ran until 25 June 2013, and received 80 substantive responses.

8.2 On balance, a majority of respondents agreed that the FCA would be best placed to take on the role of housing the new Payment Systems Regulator. Respondents saw it as an appropriate choice for reasons largely centred on its existing regulatory and financial services knowledge and relationships with relevant regulatory bodies within the UK and EU. Respondents anticipated up-skilling challenges for the new Regulator in a number of areas, including the gaining of requisite expertise in utility-style regulation. To address the need for the Payment Systems Regulator to

quickly gain requisite expertise in utility-style regulation, the Government commented in its response to the consultation that the PSR would lever skills and experience from existing economic regulators, such as Ofcom. In consultation responses, most comments underlined the need for clearly defined remits and effective joining-up of the various bodies in this regulatory space, at both a UK and EU level.

9. Guidance

9.1 The Treasury does not intend to issue any guidance in connection with these Regulations.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

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 The relevant bodies (the FCA, the Payment Systems Regulator and Ofcom) will monitor and review the effectiveness and operation of these provisions from time to time.

13. Contact

13.1 Dan Turnbull, HM Treasury, can answer queries regarding the instrument. Tel: 020 7270 4819 or email: daniel.turnbull@hmtreasury.gsi.gov.uk.