**EXPLANATORY MEMORANDUM TO**

**THE PAYMENT TO TREASURY OF PENALTIES (ENFORCEMENT COSTS OF THE PAYMENT SYSTEMS REGULATOR) ORDER 2015**

**2015 No. 487**

**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 The Financial Services (Banking Reform) Act 2013 ("the Act") gives the Payment Systems Regulator ("the PSR") the power to enforce its decisions by imposing financial penalties on regulated bodies that fail to comply with its directions or requirements. The Act requires those penalties to be paid to the Treasury, after deduction of the PSR's enforcement costs. This instrument supplements the definition of "enforcement costs" in the 2013 Act.

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

3.1 None.

## 4. Legislative context

4.1 Schedule 4 of the Act requires the PSR to pay the amounts it receives in penalties under the Act to HM Treasury, subject to the deduction of its enforcement costs. The Payment Services (Amendment) Regulations 2015 amend the Payment Services Regulations 2009 so as to require penalties imposed by the PSR under those Regulations to be treated in the same way.

4.2 The Act provides that the PSR's enforcement costs are the expenses incurred in connection with the recovery of penalties imposed under the Act or the exercise of its "enforcement powers", which include powers to enforce directions given or requirements imposed under the Act and powers to investigate and prosecute offences under the Act.

4.3 This instrument specifies further powers of the PSR under the Act, the Competition Act 1998, the Enterprise Act 2002 and the Payment Services Regulations 2009 as enforcement powers, allowing the PSR to deduct the expenses incurred in connection with the exercise of these powers from the penalty receipts paid to HM Treasury.

## 5. Territorial extent and application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

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 Act received Royal Assent. The Act provided for the establishment of a new Payment Systems Regulator (PSR) as a separate body under the Financial Conduct Authority. The role of the PSR 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.

7.2 The provisions in the Act relating to the PSR will come into force fully on 1 April 2015. The provisions in this Order are necessary to ensure that proceeds from penalties are returned to the public purse, rather than benefitting offenders.

## 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. As set out in the Government response to this consultation, published in October 2013, the Government concluded that it was appropriate to proceed with the creation of the PSR.

## 9. Guidance

9.1 HM Treasury 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, in discussion with the PSR, will monitor and review the effectiveness and operation of these provisions from time to time.

## 13. Contact

Georgina Lee at HM Treasury (Tel: 020 7270 1721, email: Georgina.Lee@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.