EXPLANATORY MEMORANDUM TO

THE PAYMENT TO TREASURY OF PENALTIES REGULATIONS 2013

2013 No. 429

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 These Regulations relate to new arrangements to require revenue from fines received by regulators of financial services to be passed to the Treasury net of enforcement case costs for the year. The regulations replicate the regime established by the Financial Services Act 2012 for requiring revenue from fines imposed under FSMA to be passed to the Treasury for fines imposed under other regulatory regimes for which the FCA and Bank of England will be responsible for policing.

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

3.1 None.

4. Legislative Context

4.1 These Regulations amend the following regulations to provide that the amounts received by the regulator by way of penalties imposed under the regulations is to be paid by the regulator to the Treasury–
The Money Laundering Regulations 2007;
The Transfer of Funds (Information on the Payer) Regulations 2007;
The Regulated Covered Bonds Regulations 2008;
The Payment Services Regulations 2009;
The Electronic Money Regulations 2011;
The Recognised Auction Platforms Regulations 2011;
The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012.

4.2 These provisions reflect the provisions made by the Financial Services Act 2012 (c. 21) (see in particular section 109) in relation to the payment to the Treasury of penalties received by the regulators under the Financial Services and Markets Act 2000 (c.8) ("FSMA").

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 The Financial Services Act 2012 provides for financial services regulatory fines revenue net of enforcement case costs for the year to be passed to the Treasury, who must surrender it to the Consolidated Fund (the Government's "current account" with the Bank of England). The new arrangements are effective in relation to penalties received from 1 April 2012 and will apply to the FSA, to the FSA's successors, the new Financial Conduct Authority and Prudential Regulation Authority as regulators of the financial services sector, and to the Bank of England in its role in regulating payment systems and clearing houses.

7.2 The Regulations replicate the regime established by the Financial Services Act 2012 for requiring revenue from fines imposed under FSMA to be passed to the Treasury for fines imposed under other regulatory regimes for which the FCA and Bank will be responsible for policing.

7.3 The Regulations take effect alongside the Payment to Treasury of Penalties (Enforcement Costs) Order 2013 ("Enforcement Costs Order") which provides for enforcement case costs relating to these regimes to be deductable from FSMA penalties. This ensures that revenue from FSMA penalties is used, where possible, to protect compliant firms from the direct costs of enforcement cases in these standalone regimes. As the enforcement case costs in relation to the "stand-alone" regimes amended by these Regulations are taken into account in calculations of deductions from FSMA penalties by virtue of the Enforcement Costs Order, they do not need to be deducted from penalties made under these regimes before sums are passed to the Treasury. The Treasury consider that it is appropriate to allow the regulators to recover the costs they incur in enforcing the standalone regimes from the penalties imposed under FSMA as relatively few financial penalties are imposed under the stand alone regimes. It would not be possible, in all financial years, for the regulator to recover the enforcement costs incurred under the standalone regimes purely from penalties imposed under the standalone regimes.

7.4 The Government announced that the arrangements for changing the use of revenue from financial regulatory fines would apply to penalties received from 1 April 2012. In these regulations the amendments made to the Money Laundering Regulations 2007 relate

to amounts received by the Financial Services Authority in the financial year beginning 1st April 2012. In the case of all other amendments, the amendments relate only to amounts received after 1st April 2013. This reflects the fact that no amount by way of penalties has been received or is expected to be received under the other regulations in the financial year beginning 1st April 2012.

8. Consultation outcome

8.1 HM Treasury has consulted the FSA and the Bank of England in the preparation of this instrument.

9. Guidance

9.1 None.

10. Impact

10.1 The instrument, in itself, does not impose any additional regulatory burdens on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared specifically for this instrument. Instead the overarching Impact Assessment that covers the changes to the regulatory system provided for by the 2012 Act is available on the Treasury website as Annex H to the following publication: http://www.hm-treasury.gov.uk./d/condoc_fin_regulation_draft_secondary_leg.pdf.

11. Regulating small business

11.1 These Regulations will not impose additional burdens on small businesses.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

James Aitken at HM Treasury Tel: 0207 270 6152 or email: james.aitken@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.