

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (DISCLOSURE OF
CONFIDENTIAL INFORMATION) (AMENDMENT) REGULATIONS 2012

2012 No. 3019

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 purpose of this instrument is to restore the Gas and Electricity Markets Authority to the list of bodies to which confidential information within the meaning of the Financial Services and Markets Act 2000 (“FSMA”) that is not subject to restrictions on disclosure under EU legislation may be provided.

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

3.1 None

4. Legislative Context

4.1 Section 348 of FSMA imposes restrictions on “primary recipients” (principally the Financial Services Authority (“the Authority”)) disclosing confidential information to third parties without the consent of the person from whom the information was obtained and, if different, the consent of the person to whom the confidential information relates.

4.2 However, section 349(1) of FSMA permits the disclosure of confidential information without such consent provided that the disclosure is “made for the purpose of facilitating the carrying out of a public function” and is permitted by regulations made by the Treasury.

4.3 The relevant regulations made pursuant to section 349(1) of FSMA are the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (“the 2001 Regulations”). Before the 2001 Regulations were amended by the Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916) (“the Omnibus 1 Regulations”), they included provision that permitted the Authority to disclose to the Gas and Electricity Markets Authority (“GEMA”) confidential information provided that (1) the information was not subject to restrictions on disclosure under EU legislation and (2) the disclosure was made for the purposes of enabling or assisting GEMA to discharge its statutory functions.

4.4 Regulation 3(15) of the Omnibus 1 Regulations removed this provision from the 2001 Regulations. This was an error and the purpose of this instrument is to rectify that error and reinstate the disclosure gateway between the Authority and GEMA.

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 It has been long – standing government policy that the Authority should be permitted to provide GEMA with confidential information in order to assist GEMA in the discharge of its statutory functions. This instrument is simply correcting an inadvertent mistake and does not represent any change in policy.

7.2 HM Treasury has no plans to consolidate the 2001 Regulations.

8. Consultation outcome

8.1 This instrument has not been subject to any consultation.

9. Guidance

9.1 No guidance accompanies this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is minimal. The Authority will simply revert to the information sharing arrangements between itself and GEMA that were in place prior to the commencement of the Omnibus 1 Regulations.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 It is not proposed to monitor or review the outcome of the changes effected by this instrument.

13. Contact

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Daniel.Lee@HMTreasury.gsi.gov.uk can answer any queries regarding the instrument.