EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONSUMER CREDIT) (TRANSITIONAL PROVISIONS) ORDER 2013

2013 No. 3128

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 Office of Fair Trading (OFT) will cease to exist at the end of March 2014. Its functions are being transferred to various successor bodies. Its consumer credit licensing regime will come to an end and consumer credit firms will need to be authorised by the Financial Conduct Authority (FCA) from 1 April 2014. This instrument confers powers on the FCA to establish a scheme to make payments to OFT consumer credit licensees.

2.2 Section 137C of the Financial Services and Markets Act 2000 ("FSMA") confers powers on the FCA in relation to the cost of credit. Part 11 of FSMA confers information gathering powers on the FCA. This instrument also confers powers on the FCA to obtain information for the purposes of making such rules from OFT licensees who carry on activities that will, on 1 April, be regulated under FSMA; article 4 of this instrument treats the references in Part 11 of FSMA to "authorised persons" as if they included reference to such OFT licensees.

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

3.1 Article 4 of the instrument confers powers on the FCA to obtain information, from person who will, from 1 April, be regulated under FSMA, for the purposes of making rules under section 137C of FSMA. There is a strong consumer protection justification for having rules capping the cost of credit in place as soon as possible. But making rules is a lengthy process: the FCA needs a proper evidence base, has to consult on draft rules, and produce a response to consultation. The FCA is still at the first stage in that process, and waiting until 1 April to gather relevant information will delay the rules by some considerable time. HM Treasury therefore considers it is necessary to confer the information powers on the FCA as soon as possible.

4. Legislative Context

4.1 The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, S.I. 2013/1881, and the Financial Services Act 2012 (Consumer Credit) Order 2013, S.I. 2013/1882, confer functions in relation to the regulation of consumer credit on the FCA in place of the OFT.

4.2 Section 137C of the Financial Services and Markets Act 2000 ("FSMA") confers powers on the FCA in relation to the cost of credit. Part 11 of FSMA confers powers on the FCA to obtain information from authorised persons.

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 On 1 April 2014, responsibility for consumer credit regulation will transfer from the OFT to the FCA and the regulatory framework will in large part move from the Consumer Credit Act 1974 and secondary legislation made under that Act to the Financial Services and Markets Act 2000 and secondary legislation made under that Act.

7.2 OFT licences will cease to have effect at the point of regulatory transfer in April 2014. Firms which wish to continue to undertake consumer credit activities will be required to be authorised by the FCA in respect of those activities. The FCA levies annual fees from authorised persons.

7.3 The OFT practice was to charges fees to consumer credit licensees every five years. The majority of such licensees will have paid a fee to the OFT in respect of a licence that would have extended beyond 31 March 2014.

7.4 The Government has decided that licensees should be reimbursed in respect of the portion of their OFT licence fee that relates to the period after 31 March 2014 up until the end of the licence period or the due date for the next maintenance fee payment. Part 2 of Schedule 21 to the Financial Services Act 2012 provides for the OFT to transfer property, rights and liabilities to the FCA; a transfer scheme under these provisions will enable the OFT to transfer funds to the FCA and enable the FCA to make payments to relevant licensees. This instrument confers powers on the FCA to establish and administer a scheme to make the payments.

7.5 The refund scheme does not extend to payday lenders who were inspected as part of the OFT compliance review into the payday lending market.

7.6 The FCA already has powers under section 137C of the FSMA to make rules in relation to the cost of credit. It does not, however, currently have powers to obtain information necessary to make such rules from OFT licensees. This instrument therefore confers such information-gathering powers to support its powers under section 137C, exercisable until 1 April 2014.

8. Consultation outcome

8.1 HM Treasury has consulted the FCA and the OFT in the preparation of this instrument.

8.2 The intention to implement a rebate scheme has been well received by businesses.

9. Guidance

9.1 The FCA will publish details of the payment scheme, including details of how to make an application for a payment.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the transfer of the regulation of consumer credit from the OFT to the FCA was set out in the Impact Assessment accompanying S.I. 2013/1881. 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 £689million over 10 years. The estimated net benefit over 10 years is £353million.

10.2 The impact on the public sector is not quantified. Public sector organisations are largely exempt from consumer credit regulation. The Government is conducting a further consultation exercise to establish the extent of unsecured lending undertaken by local authorities and similar organisations and, if appropriate, suitable regulatory arrangements.

10.3 The 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 differenced 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 keep this instrument under review.

13. Contact

Alastair Jones at HM Treasury (Tel: 020 7270 6093 or email: alastair.jones@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.