EXPLANATORY MEMORANDUM TO

THE DEPOSIT GUARANTEE SCHEME (AMENDMENT) REGULATIONS

2015 No. 1456

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 This instrument is being made to implement further Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes (DGSD).

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

3.1 These Regulations will come into force on 3rd July 2015, the deadline for transposition of the DGSD. This is less than 21 days after the Regulations were laid.

3.2 This has been done in order to ensure that the DGSD is fully transposed by 3rd July 2015, and in particular to provide clarity about the level of protection provided by the Financial Services Compensation Scheme (FSCS) from 3rd July.

3.3 Delaying the legislation in order to comply with the 21 day rule would lead to a sudden reduction in the maximum level of protection provided by the FSCS on 3rd July. This would be detrimental to the interests of depositors, a number of whom have acted in reliance on the current maximum level of protection of £85,000. A sudden reduction in this level would undermine confidence in the system of deposit protection in the UK, and would expose some depositors to additional risk.

3.4 These amending regulations are being made so close to 3rd July to ensure that it is possible to announce the maximum level of protection which will apply after the transitional period provided for by these regulations has expired, at the same time as publishing the regulations. This is intended to avoid uncertainty about the level of protection that will apply after the transitional period, which could in itself reduce depositor confidence in the FSCS. Under the DGSD, the maximum level of deposit protection can only be set by reference to the exchange rate applying on 3rd July, meaning that it is not possible to announce, in advance of 3rd July, the maximum level of protection that will apply after the transitional period.

4. Legislative Context

4.1 This instrument amends the Deposit Guarantee Scheme Regulations 2015 to implement further the DGSD. In particular, it makes provision about the maximum level of protection for deposits provided by the FSCS.

4.2 The other provisions of the DGSD are being implemented in rules made by the Prudential Regulation Authority (PRA) under the Financial Services and Markets Act 2000 (FSMA).

4.3 On 3 July, the day that this statutory instrument comes into force, the PRA will set the new FSCS coverage level, using rules that it will publish on its website www.bankofengland.co.uk/pra

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

- What is being done and why

7.1 The DGSD (2014/49/EU) aims to create a harmonised system of Deposit Guarantee Schemes (DGS) across Europe and ensure that deposits are adequately protected. This enhances consumer protection, and ensures a level playing field across the EU for the provision of financial services by eliminating differences between deposit protection in different member states. The DGSD repeals and replaces the original Directive (94/19/EC).

7.2 DGS are schemes set up in order to protect deposits in the event that a bank or other credit institution fails. In the event of the failure of a bank or credit institution, DGS protect depositors with that institution up to defined levels and provide compensation to depositors in the event that their bank or other credit institution is no longer able to repay their deposits. The UK's DGS is the Financial Services Compensation Scheme (FSCS).

7.3 Without DGS, when a bank or other credit institution fails, depositors would be unsecured creditors in the insolvency, and may not recover the full amount of their deposit. They would also lose access to their deposit for a period. The existence of DGSs means that depositors are protected and will receive their money back promptly following a firm's failure, up to the defined coverage limit.

7.4 The FSCS currently protects eligible depositors up to a maximum of £85,000 per depositor, per PRA-authorised institution. The DGSD requires that, on 3 July 2015, the maximum level of protection is the sterling equivalent of €100,000, based on the prevailing exchange rate on that date.

7.5 On current exchange rates, that is likely to lead to a reduction in the maximum level of protection provided by the FSCS. In order to ensure that depositors have legal certainty about the level of protection provided by the FSCS, and have time to act in response to any changes, these Regulations maintain the maximum level of protection at £85,000 until 31 December 2015. The coverage level that applies after that date will be set by PRA rules which determine the coverage level by reference to the exchange rate prevailing on 3 July 2015.

7.6 This transitional protection is only provided to classes of depositors who, before 3rd July 2015, are entitled to up to £85,000 of protection, and who will continue to be entitled to protection after 3rd July.

- Consolidation

7.7 The Deposit Guarantee Scheme (Amendment) Regulations 2015 make very limited amendments to existing legislation. Consolidated versions will be available from commercial databases.

8. Consultation outcome

8.1 This SI was not subject to a public consultation, since it does not regulate business directly but imposes requirements on the PRA and the FSCS. The Treasury consulted with both the PRA and the FSCS in drafting this SI.

9. Guidance

9.1 The Treasury has been in close contact with the PRA and the FSCS regarding the new obligations imposed by this SI. No guidance will be published.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible. The new procedural requirements that apply to the PRA and FSCS are not burdensome. They can be absorbed into the existing processes of these bodies, and will not require the hiring of additional staff or introduction of new systems or processes that would incur a cost.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The amendment provided for in this legislation applies for a limited period. After 1 January 2016 it will no longer be relevant. No review has therefore been provided for.

13. Contact

Catherine McCloskey at HM Treasury Tel: 020 7270 5377 or email: catherine.mccloskey@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.