

EXPLANATORY MEMORANDUM TO
THE PAYMENT SERVICES (AMENDMENT) REGULATIONS 2015

2015 No. 422

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 This instrument amends the Payment Services Regulations 2009 (“the 2009 Regulations”). It transfers the functions of supervising and enforcing compliance with the requirements of the 2009 Regulations relating to access to payment systems from the Competition and Markets Authority (CMA) to the Payment Systems Regulator (PSR). This instrument also makes related amendments, including provision for the PSR’s funding for those functions.

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

3.1 None.

4. Legislative context

4.1 The 2009 Regulations implement Directive 2007/64/EC of the European Parliament and the Council on payment services in the internal market (“the Directive”). The history of the Parliamentary scrutiny of the Directive was set out in the explanatory memorandum to the 2009 Regulations, and a transposition note detailing the implementation of the Directive in the UK was annexed to that explanatory memorandum.

4.2 The 2009 Regulations originally conferred the functions of supervising and enforcing compliance with requirements relating to access to payment systems on the Office of Fair Trading. On 1 April 2014 those functions were transferred to the CMA. This instrument transfers those functions to the PSR, which was established under section 40 of the Financial Services (Banking Reform) Act 2013 (“the 2013 Act”), from 1 April 2015 when the PSR will become fully operational. It also ensures that certain provisions of the 2013 Act apply in relation to the PSR’s exercise of functions under the 2009 Regulations in the same way as they apply in relation to the PSR’s exercise of functions under the 2013 Act.

4.3 This instrument also makes minor drafting changes to the requirements relating to access to payment systems in regulation 97 of the 2009 Regulations, in order to reflect more closely the wording of the Directive.

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 2013 Act received Royal Assent. The 2013 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. Transferring the responsibility for supervising and enforcing the 2009 Regulations to the PSR is necessary to ensure that the full range of regulatory powers relating to access to payment systems can be exercised in a coherent manner.

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 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. Regulation 109 of the 2009 Regulations (as amended by this instrument) enables the PSR to give guidance on the exercise of its functions under the 2009 Regulations.

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.