

**EXPLANATORY MEMORANDUM TO  
THE FINANCIAL SERVICES (BANKING REFORM) ACT 2013 (DESIGNATED  
REPRESENTATIVE BODIES) ORDER 2016**

**2016 No. 202**

**1. Introduction**

- 1.1 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 gives five bodies the status of designated ‘supercomplainants’ for the Payment Systems Regulator (“the PSR”) under the Financial Services (Banking Reform) Act 2013 (“the Act”). This means that if and when any of these bodies makes a complaint to the PSR that a feature, or a combination of features, of a market in the United Kingdom for services provided by payment systems is, or is likely to be, significantly damaging the interests of service users, the Act requires the PSR to publish a response to the complaint. This will help ensure that instances of market failure or misconduct in the payment system sector are brought to the attention of the PSR and investigated.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The power to designate representative bodies is being exercised for the first time. HM Treasury is satisfied that the requirements of section 68(3) of the Act have been met - HM Treasury has published the criteria applied in determining whether to make a designation, and each body designated appears to HM Treasury to represent the interests of users of payment services, and meets those published criteria (broadly speaking, these criteria relate to the body’s independence and impartiality, and its ability to represent the interests of consumers and make reasoned complaints).

**5. Extent and Territorial Application**

- 5.1 This instrument extends to all of the United Kingdom.  
5.2 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**

### *What is being done and why*

- 7.1 In December 2013 the Act received Royal Assent. The Act provided for the establishment of a new Payment Systems Regulator (the 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. The provisions in the Act relating to the PSR came into force fully on 1 April 2015.
- 7.2 This instrument ensures that there will be designated representative bodies that are able to make “supercomplaints” to the PSR if instances of market failure or consumer detriment occur. HM Treasury has selected these bodies for designation as PSR supercomplainants because it considers that these bodies meet the criteria for designation as published by HM Treasury on 28 September 2015<sup>1</sup>. HM Treasury also considers that each of these bodies has relevant experience and expertise in supporting the interests of consumers and small businesses in the financial services and payments sectors.

### *Consolidation*

- 7.3 Since this instrument does not make any amendments to other legislation, the question of consolidation does not arise.

## **8. Consultation outcome**

- 8.1 Although this instrument has not been subject to a dedicated public 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 that consultation, published in October 2013, the Government concluded that it was appropriate to proceed with the creation of the PSR.
- 8.2 On 28 September 2015 HM Treasury published an invitation for interested parties to apply to be designated as supercomplainants<sup>2</sup>. HM Treasury did not receive any applications in response to that invitation. HM Treasury has, however, contacted the bodies designated by this instrument, and none of them has raised any objection to being designated.

## **9. Guidance**

- 9.1 HM Treasury does not intend to issue any guidance in connection with this instrument. Section 70 of the Act provides that guidance given by the PSR under its power in section 96 of the Act must include guidance about the presentation of a reasoned case for a “supercomplaint”, and may include guidance about other matters

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<sup>1</sup> <https://www.gov.uk/government/publications/super-complainants-for-the-payment-systems-regulator>

<sup>2</sup> <https://www.gov.uk/government/publications/super-complainants-for-the-payment-systems-regulator>

to do with supercomplaints. The PSR issued draft guidance<sup>3</sup> in March 2015 which stated that the guidance would be reissued in final form following the designation of representative bodies.

## **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 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 HM Treasury, in discussion with the PSR, will monitor and review the effectiveness and operation of the arrangements for supercomplaints from time to time. Where HM Treasury considers it appropriate, it may make an order to designate further bodies as representative bodies, or to de-designate existing representative bodies. Since the instrument does not make regulatory provision as defined in section 32(4) of the Small Business, Enterprise and Employment Act 2015, the requirement in section 28 of that Act to include a review clause does not apply.

## **13. Contact**

- 13.1 Georgina Lee at HM Treasury. Telephone: 020 7270 1721 or email: Georgina.Lee@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.

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<sup>3</sup> <https://www.psr.org.uk/sites/default/files/media/PDF/Draft%20PSR%20Super-Complaints%20Guidance%20docx.pdf>