

FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 5 – Regulation of Payment Systems

Complaints

Sections 91 to 95: Disclosure of information

248. *Sections 91 to 95* make provision about the treatment of confidential information by the Payment Systems Regulator and others. *Section 91* imposes a restriction on the disclosure of confidential information without the consent of the person who provided it, or the person to whom it related, by the Payment Systems Regulator, the FCA, their employees and service providers and certain others (each a “primary recipient”), as well as any person who had obtained the confidential information directly or indirectly from a primary recipient. Provision is made for what is and is not to be considered “confidential information” and to ensure that the restriction does not apply to information received by a primary recipient in connection with the discharge of the Payment Systems Regulator’s concurrent competition functions. Instead, the provisions contained in Part 9 of the Enterprise Act 2002, which deals with the disclosure of specified information, apply.
249. *Section 92* provides that disclosure of confidential information is permitted if it is for the purpose of facilitating the carrying out of a public function and is permitted by regulations made by the Treasury. A definition of “public functions” is included, and *subsections (3) to (4)* set out the matters for which Treasury regulations made under this power could make provision.
250. The restrictions on disclosing confidential information are enforced by making it a criminal offence by *section 93* to disclose confidential information in contravention of the restriction and, where information has been disclosed to a person in accordance with regulations made by the Treasury, for that person to use the information in contravention of any provision of those regulations.
251. *Section 94* restricts the disclosure by the Payment Systems Regulator or the the FCA to any person of “specially protected information” (defined in *subsection (3)*) received from the Bank of England. *Section 94* also sets out the circumstances in which disclosure of such information is not subject to the restriction.
252. *Section 95* amends section 246 of the Banking Act 2009 to allow the Bank of England to disclose restricted information to the Payment Systems Regulator.