EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES ACT 2012 (TRANSITIONAL PROVISIONS) (PERMISSION AND APPROVAL) ORDER 2013

2013 No. 440

THE FINANCIAL SERVICES ACT 2012 (TRANSITIONAL PROVISIONS) (ENFORCEMENT) ORDER 2013

2013 No. 441

THE FINANCIAL SERVICES ACT 2012 (TRANSITIONAL PROVISIONS) (MISCELLANEOUS PROVISIONS) ORDER 2013

2013 No. 442

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 instruments

2.1 These instruments provide for various transitional arrangements in respect of the coming into force of the Financial Services Act 2012 ("the 2012 Act"). The transitional arrangements relate to continuity of the following matters at the coming into force of the new regulatory regime, and their allocation to the relevant regulator:

- existing permissions and approvals relating to regulated activities and controlled functions;
- current disciplinary matters and decision-making procedures; and
- other duties, powers and actions undertaken or exercised by the Financial Services Authority.

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

3.1 None.

4. Legislative Context

4.1 These instruments are being made by the Treasury in exercise of the powers conferred by section 115(2) and 119(3), (4) and (5) of the 2012 Act, which received Royal Assent on 19 December 2012. These orders will support the transition to the new regulatory system for financial services in the UK provided for in the 2012 Act. They provide for various functions and responsibilities of the FSA undertaken before commencement of the new regulatory system to be treated as if undertaken by the new regulators.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The 2012 Act provides for the reform of financial regulation in the UK. In the place of the Financial Services Authority (FSA), it establishes a new system of financial services regulators comprising:

- An expert macro-prudential authority, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks in the financial sector;
- A focused micro-prudential regulator, the Prudential Regulation Authority (PRA), to regulate firms that manage complex risks on their balance sheets - specifically, all deposit takers, insurers and some large investment firms; and
- A focused conduct of business regulator, the Financial Conduct Authority (FCA), to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

In addition, the 2012 Act transfers to the Bank of England functions of the FSA in relation to recognised clearing houses

7.2 In order to ensure a seamless transition to the new regulatory system, some decisions and activities undertaken by the FSA need to be treated as if they had been undertaken by the new regulators. For example, any permissions to undertake a regulated activity granted by the FSA will be treated as if the relevant new regulator had granted the permission. This ensures that authorised persons do not have to apply for, and be given, new permissions to carry on regulated activities, avoiding a significant burden for both firms and the regulators.

8. Consultation outcome

8.1 HM Treasury has consulted the FSA and the Bank of England in the preparation of this instrument. Due to the minor and technical nature of these instruments, and in line with common practice for secondary legislation that make minor transitional provisions, there has been no formal public consultation. The Government's approach to transitional provisions was briefly outlined in the consultation document *A new approach to financial* *regulation: draft secondary legislation* that was published in October 2012. The Government did not receive any substantial comments on this approach.

9. Guidance

9.1 None.

10. Impact

10.1 The instruments, in themselves, do not impose any additional regulatory burdens on business, charities or voluntary bodies. The impact of the overall change to the regulatory system on business, charities or voluntary bodies, in so far as they are regulated financial services firms, is set out in the overarching impact assessment for the 2012 Act.

10.2 The impact on the public sector is set out in the overarching impact assessment for the 2012 Act.

10.3 An Impact Assessment has not been prepared for this instrument. Instead the overarching Impact Assessment that covers the changes to the regulatory system provided for by the 2012 Act is available on the Treasury website as Annex H to the following publication: http://www.hm-treasury.gov.uk./d/condoc_fin_regulation_draft_secondary_leg.pdf.

11. Regulating small business

11.1 These instruments will not impose additional burdens on small businesses.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of these instruments to ensure they continue to meet their policy aims.

13. Contact

Chris Goodspeed at HM Treasury Tel: 0207 270 5690 or email: christopher.goodspeed@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.