EXPLANATORY MEMORANDUM TO

THE BANKING ACT 2009 (FEES) REGULATIONS 2018

2018 No. 734

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 These Regulations approve the scale of fees that the Bank of England ('the Bank') may charge to the operators of recognised payment systems, and specified service providers in relation to those recognised payment systems. The payment of these fees will reimburse the Bank for its costs incurred in connection with overseeing recognised payment systems and specified service providers to recognised payment systems.

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 resolution 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 Section 203(1) of the Banking Act 2009[1] ('the Act') permits the Bank to require operators of recognised payment systems to pay fees. This section was amended by the Banking Act 2009 (Service Providers to Payment Systems) Order 2017[2], which was made under section 206A of the Act, to also include specified service providers in relation to recognised payment systems.

4.2 Section 203(2) of the Banking Act 2009 states that the fees must relate to a scale of fees approved by the Treasury by regulations.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, John Glen, has made the following statement regarding Human Rights:

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[1] (c.1)
[2] SI 2017/1167

TNA/EM/10-2015.1

"In my view the provisions of the Banking Act 2009 (Fees) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The UK's payment systems enable the movement of money around the economy. The inter-linkages between payment systems, banks and other financial intermediaries are important for financial stability as problems with payment systems have the potential to spread through the financial system, ultimately affecting businesses and consumers. The Bank supervises systemically important payment systems ('recognised payment systems') and specified service providers to recognised payment systems ('specified service providers'), pursuant to its financial stability objective.

7.2 To date, the supervision of recognised payment systems and specified service providers has been funded from the Cash Ratio Deposits[3] (CRD) scheme. In February 2017, the Independent Evaluation Office, which assesses the Bank's performance, recommended the Bank consider a move to levying fees directly on the operators of recognised payment systems and specified service providers that they supervise.[4] For the reasons outlined below, the Bank and HM Treasury support a move to this fee levying regime. HM Treasury issued a consultation on the renewed CRD in February 2018. This paper referred to the prospect that costs of FMI supervision would no longer be funded from the CRD[5].

7.3 A fee regime will provide greater transparency and accountability in the delivery of the Bank's supervision function for financial market infrastructure, including for recognised payment systems and specified service providers. It allows a more proportionate allocation of costs as it better reflects the subjects of the Bank's supervision. CRD contributors are a different population of firms to those subject to supervision by the Bank's Financial Market Infrastructure Directorate. It will also align the funding for the Bank's supervision of recognised payment systems and specified service providers with that of other supervisory areas within the Bank and other financial regulators such as the Financial Conduct Authority and Payment System Regulator. A fees regime also allows the Bank to levy fees for specific projects and so respond more appropriately to one-off or significant activities that require additional supervisory resource.

7.4 As set out in section 203(2) of the Act, in order for the Bank to implement a fee levying regime for recognised payment systems and specified service providers, the Treasury must approve the scale of fees the Bank can levy in respect to the supervision of recognised payment systems and specified service providers. These Regulations therefore approve a fee of no greater than £760,000 per recognised payment system or specified service provider in any one year. They also approve special project fees of no more than £500,000 per recognised payment system or specified service provider in any one year, where special projects are one-off or

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[3] The Cash Ratio Deposits (CRD) scheme is the main source of funding for the Bank of England's monetary policy and financial stability operations. The scheme requires some deposit-taking institutions to place non-interest bearing deposits at the Bank. The Bank invests these deposits in gilts, and the income earned is used to fund these functions.

[4] See: www.bankofengland.co.uk/independent-evaluation-office/fmi-supervision-february-2017.

[5] See: www.gov.uk/government/consultations/review-of-the-cash-ratio-depositscheme-consultation-on-proposed-changes.

significant activities that may be time limited and require additional supervisory resource.

7.5 The scale of fees is based on the Bank's estimation of the potential cost to the Bank of supervision of a recognised payment system or specified service provider per annum over the next five years. The total cost of the Bank's supervision includes, for example:

- the expenditure on resources required to conduct an annual assessment of each institution that the Bank supervises, to ensure that their practices are in line with internationally agreed requirements;
- the expenditure on resources required to carry out the Bank's core assurance programme, which ensures that supervised institutions are appropriately mitigating the risks they face.

The fees charged will only provide for the Bank to recoup the costs related to supervision, and not other functions. These Regulations do not enable the Bank to levy fees that exceed those costs.

Consolidation

7.6 These Regulations do not revoke or replace any other legislation, and so the matter of consolidation does not arise.

8. Consultation outcome

8.1 HM Treasury's consultation on a statutory instrument approving a scale of fees for recognised payment systems and specified service providers was conducted jointly with the Bank. This consultation formed Part 3 of the Bank's wider consultation on a fees regime for financial market infrastructure supervision.

8.2 The Bank's consultation ran from 14 March 2018 to 9 May 2018 and was open to the public. Overall six responses were received, one of which referred to Part 3 on HM Treasury's statutory instrument consultation. This response requested clarification on HM Treasury's definition of the term "firm" in Part 3 of the consultation paper. HM Treasury takes the term "firm" to mean recognised payment system or specified service provider, as opposed to operator.

8.3 The Bank has issued a policy statement in response to the consultation. This statement can be found at the following link: https://www.bankofengland.co.uk/financial-stability/financial-market-infrastructure-supervision.

9. Guidance

9.1 HM Treasury does not consider it necessary to publish specific guidance in relation to these Regulations.

9.2 The Bank's approach to the supervision of recognised payment systems can be found on its website at the following link: https://www.bankofengland.co.uk/financial-stability/financial-market-infrastructure-supervision.

9.3 The Bank's approach to the supervision of specified service providers to recognised payment systems can be found in Annex 1 of the Bank's 2017/18 Annual Report which can be found at the following link: https://www.bankofengland.co.uk/news/2018/february/supervision-of-financial-market-infrastructures-annual-report-2018.

10. Impact

10.1 This legislation only provides for the Bank to charge fees to recover its own costs arising out of supervising recognised payment systems and specified service providers. As noted above, the Bank currently recoups the cost connected with supervision from the CRD. The fees that the Bank will be able to levy as a result of this legislation will therefore result in an equivalent fall in the income required through the CRD scheme, making the net cost of the fee to the financial sector zero.

10.2 This legislation, and the fee levying regime it supports, will not alter the way the Bank undertakes its supervision of recognised payment systems and specified service providers. It will therefore not change the impact on businesses of the Bank's existing supervisory framework.

10.3 HM Treasury expects that the impact on the public sector, charities or voluntary bodies will be negligible as these types of institution are unlikely to be recognised payment systems or specified service providers and so will not be subject to the fee regime.

10.4 A de minimis impact assessment has been carried out. In line with Better Regulation guidance, the Treasury considers that the net impact on businesses will be less than £5 million a year (zero). Due to this limited impact, a full business impact assessment was not required.

11. Regulating small business

11.1 The fees regime for which these Regulations approve the scale of fees, applies to any recognised payment system or specified service provider supervised by the Bank. The legislation therefore applies to the activities undertaken by small businesses, should these businesses be recognised payment systems or specified service providers.

11.2 Recognised payment systems and specified service providers are a unique, small population of institutions. These institutions are generally small in size despite providing services of systemic importance to the UK financial system. They are also often member funded and generally operate on a cost recovery basis.

12. Monitoring & review

12.1 The Bank will consult on the fees it intends to levy for the following year, and will take account of the representations made. For special projects, the Bank will liaise with the firm or firms in the relevant circumstances.

13. Contact

13.1 James Evans at HM Treasury Telephone: 020 7270 5104 or email: James.Evans@hmtreasury.gov.uk can answer any queries regarding the instrument.