

2017 No. 456

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 and the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) (Amendment) Regulations 2017

Made - - - - *21st March 2017*
Laid before Parliament *22nd March 2017*
Coming into force - - *12th April 2017*

The Treasury make the following Regulations in exercise of the powers conferred by sections 349(1)(b), (2) and (3), 417(1)(a) and 428(3) of the Financial Services and Markets Act 2000(b) and section 92(1)(b), (3), (4) and (6)(c) and 142(3) of the Financial Services (Banking Reform) Act 2013(d).

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 and the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) (Amendment) Regulations 2017 and come into force on 12th April 2017.

Amendment of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

2.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(e) are amended as follows.

(2) In Schedule 1 (disclosure of confidential information whether or not subject to single market restrictions), in Part 1 at the end insert—

“The Comptroller and Auditor General	(a) That person’s function under section 6 of the National Audit Act 1983(f) of carrying out examinations into the economy, efficiency and effectiveness with which the FCA has used its
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(a) See the definition of “prescribed”.
(b) 2000 c.8.
(c) See the definition of “specified”.
(d) 2013 c.33.
(e) S.I. 2001/2188 as amended by S.I. 2012/916; there are other amending instruments but none is relevant.
(f) 1983 c.44. There are amendments to section 6 which are not relevant to these Regulations.

	resources in discharging its functions (b) That person’s function of carrying out examinations under section 7D of the Bank of England Act 1998(a)
The National Audit Office	Functions for which it is responsible by virtue of section 22 of, and Schedule 3 to, the Budget Responsibility and National Audit Act 2011(b) in relation to— (i) examinations under section 6 of the National Audit Act 1983 in respect of the FCA; or (ii) examinations under section 7D of the Bank of England Act 1998”

Amendment of the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014

3. In the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014(c), in the Schedule (persons and functions in respect of which disclosure is permitted) at the end insert—

“The Comptroller and Auditor General	(a) That person’s function under section 6 of the National Audit Act 1983 of carrying out examinations into the economy, efficiency and effectiveness with which the FCA or the Payment Systems Regulator has used its resources in discharging its functions (b) That person’s function of carrying out examinations under section 7D of the Bank of England Act 1998
The National Audit Office	Functions for which it is responsible by virtue of section 22 of, and Schedule 3 to, the Budget Responsibility and National Audit Act 2011 in relation to— (i) examinations under section 6 of the National Audit Act 1983 in respect of the FCA or the Payment Systems Regulator; or (ii) examinations under section 7D of the Bank of England Act 1998”

21st March 2017 Andrew Griffiths
Guy Opperman
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (“the 2001 Regulations”) and the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 (S.I. 2014/882) (“the 2014 Regulations”). The 2001 Regulations and the 2014 Regulations specify the circumstances in which confidential information, as defined respectively in section 348(2) of the Financial Services and Markets Act 2000 (c.8) (“FSMA”) and in section

(a) 1998 c.11. Section 7D was inserted by section 11 of the Bank of England and Financial Services Act 2016 (c.14).
(b) 2011 c.4.
(c) S.I. 2014/882.

91(2) of the Financial Services (Banking Reform) Act 2013 (c.33) (“FSBRA”), may be disclosed, including persons to whom and by whom, and purposes for which, confidential information may be disclosed.

Except as permitted by the 2001 Regulations and the 2014 Regulations, confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of the person from whom the primary recipient obtained the information and (if different) the person to whom it relates.

For the purposes of the 2001 Regulations, primary recipients are the Financial Conduct Authority (“the FCA”), the Bank of England (including acting in its capacity as the Prudential Regulation Authority) and the Secretary of State, their current and former employees, auditors or experts instructed by them, any person who is or has been engaged by them to provide services to them, and skilled persons appointed to collect or update information under section 166A or to make a report under section 166 of FSMA.

For the purposes of the 2014 Regulations, primary recipients are the Payment Systems Regulator and the FCA, their current and former employees, a person who is or has been engaged to provide services to them, any auditor or expert instructed by them, and any person appointed to make a report under section 82 or to conduct an investigation under section 83 of FSBRA.

The amendments to the 2001 Regulations and the 2014 Regulations add the Comptroller and Auditor General and the National Audit Office as bodies to which and by which confidential information may be disclosed, subject to restrictions on disclosure set out in certain EU instruments. The functions for which disclosures may be made are (i) for the Comptroller and Auditor General, that person’s functions of carrying out economy, efficiency and effectiveness examinations under section 6 of the National Audit Act 1983 (c.44) and section 7D of the Bank of England Act 1998 (c.11), and (ii) for the National Audit Office, the functions for which it is responsible under Schedule 3 to the Budget Responsibility and National Audit Act 2011 (c.4) in relation to economy, efficiency and effectiveness examinations carried out by the Comptroller and Auditor General.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

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