

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES ACT 2012 (CONSEQUENTIAL AMENDMENTS) ORDER
2013

2013 No. [XXXX]

- 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 instrument**

2.1 This instrument provides for consequential amendments of enactments, necessitated by the passing of the Financial Services Act 2012. It makes provision for amendments of references to Financial Services Authority Instruments in various enactments and for amendments of references to provisions of the Financial Services and Markets Act 2000 which have been amended by the Financial Services Act 2012.

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

3.1 None.

- 4. Legislative Context**

4.1 This instrument is required under the Financial Services Act 2012, which received Royal Assent on 19 December 2012, in advance of the new regulatory system for financial services in the UK being implemented on 1 April 2013.

4.2 The instrument makes consequential amendments to the following pieces of legislation: Superannuation and other Trust Funds (Validation) Act 1927; the Taxation of Chargeable Gains Act 1992; the Finance Act 1993; the Finance Act 1994; the Finance Act 1998; the Finance Act 2004; the Income Tax (Trading and Other Income) Act 2005; the Companies Act 2006; the Taxation (International and Other Provisions) Act 2010; the Finance Act 2010; the Finance Act 2011; and the Finance Act 2012.

- 5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services Act 2012 (Consequential Amendments) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Financial Services Act 2012 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.

7.2 A number of changes to other pieces of legislation are required as a consequence of the regulatory reforms introduced by the Act. The majority of these were included in Schedule 18 of the Act. A small number of amendments have required further consideration during the Act's passage and are therefore being made through this instrument. Primarily, this instrument amends references to the FSA's rulebook in primary legislation, taking into account that both the PRA and the FCA will make rules in the new regulatory system. It also makes any necessary amendments of references to provisions of the Financial Services and Markets Act 2000 which have been amended by the Financial Services Act 2012.

8. Consultation outcome

8.1 Due to the minor and technical nature of the instrument, and in line with common practice for secondary legislation that make consequential amendments, it has not been consulted on.

9. Guidance

9.1 None.

10. Impact

10.1 The instrument, in itself, does 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 Financial Services Act 2012.

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

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 Financial Services Act 2012 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 The legislation applies to small business, but does not in itself impose any additional regulatory requirements on them.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the PRA and FCA will be required by the Financial Services Act 2012 to 'have regard' to the principle of proportionality when carrying out their general functions through section 3B of the Financial Services and Markets Act 2000; specifically, that any burdens they impose should be proportionate to the benefits that are expected to result. Additionally, the PRA and FCA will be required to carry out and publish cost benefit analyses on any new requirements they impose.

11.3 The basis for the final decision on what action to take to assist small business was that this instrument will not impose additional burdens on small businesses.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the 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.