

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (FINANCIAL
PROMOTION) (AMENDMENT) ORDER 2005**

2005 No. 3392

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

This Order amends Articles 2(1), 20(5) and 60(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (“**FPO**”) to include references to civil partners and, where appropriate, surviving civil partners, in line with the policy underlying the Civil Partnership Act 2004 (the“**CPA**”).

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 The Treasury apologises to the Joint Committee on Statutory Instruments for the breach of the 21-day rule by the provision for this Order to come into force on 21 December 2005. The reason for this is that we have only recently become fully aware of the adverse policy and practical implications of delaying amendments to the FPO beyond that date.

Background

3.2 Civil partnership came into force on 5 December 2005. In some special circumstances, civil partnerships may be registered in England and Wales from 5 December 2005 though most – those subject to the standard procedure - cannot be registered before 21 December 2005. More information on how civil partnerships are registered is contained in Part 1 of the Civil Partnership guide:
<http://www.womenandequalityunit.gov.uk/civilpartnership/cpguide2005.pdf>

3.3 Our initial intention had been to include the amendments to articles 2, 20 and 60 of the FPO in an Order under section 259 CPA as referred to in paragraph 4.2 below which came into force on 5 December 2005. However, it became apparent that they could not be for the reason set out in paragraph 4.3 below.

Adverse policy and practical implications

3.4 We have only recently become fully aware of the adverse implications of delaying the commencement of this Order especially beyond 21 December 2005 which, as mentioned in paragraph 3.2 above, is in most cases the earliest date on which civil partnerships can be registered. For example, the share schemes exemption in article 60 of the FPO has not been amended and still just covers transactions between or for the benefit of employees or former employees and their wives, husbands, widows etc. Industry has recently (mid-November 2005) drawn our attention to the implications of widening the description of beneficiaries in a trust deed without a similar amendment to this exemption. The effect would be that any communication sent out by the

company relating to share schemes would have to be approved by a person authorised under the Financial Services and Markets Act 2000 (“FSMA”). This would have cost and administration implications without any obvious benefit.

4. Legislative Background

4.1 This instrument is being made to amend the FPO so as to bring it into line with the policy underlying the CPA.

4.2 Other subordinate legislation relating to financial services and made under FSMA has been amended by the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114) (the “CPA Order”)¹ which was made on 27 July 2005. That Order was made in exercise of powers conferred by section 259 CPA and came into force on 5 December 2005.

4.3 The FPO was not amended by the CPA Order because the FPO was made on 8 June 2005 and the relevant power under section 259 CPA is limited to the amendment of subordinate legislation made *before* 11 November 2004, the date of Royal Assent of the CPA. At the time the FPO was made, the non-applicability of the CPA Order to its provisions had not been understood.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 The CPA enables same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. This Order brings the provisions of the FPO into line with the policy underlying the CPA by amending the FPO as follows:

Article 2

7.2 Article 2(1) defines the term “close relative” which is used in paragraphs 3, 8, 12, 15, 19, 49 & 52 of the FPO. The new Order amends this definition so that civil partners are included within the meaning of close relative, wherever this term is used in the FPO, on the same basis as spouses.

Article 20

7.3 Article 20 covers communications by journalists.

7.4 Currently, disclosure is required where the author or member of his family is likely to obtain a financial benefit / avoid a financial loss if people act in accordance with the invitation or inducement contained in the communication. Otherwise, disclosure is not required as long as the communication is accompanied by an indication of any financial interest of the author or a member of his family.

¹ Article 2(16) of, and Part 1 of Schedule 16 to, the CPA Order provide for amendments to other subordinate legislation relating to financial services and made under FSMA.

7.5 The amendment is necessary to provide that a person's civil partner will be treated as a member of his/her family for the purposes of article 20. Once the amending order has come into force:

- disclosure will be required where the civil partner is likely to obtain a financial benefit / avoid a financial loss if people act in accordance with the invitation or inducement contained in the communication and, in these circumstances
- an indication of the financial interest of the civil partner (if any) will need to be included.

Failure to comply with the restriction on financial promotion in section 21(1) FSMA is dealt with by section 25 of that Act.

Article 60

7.6 The share schemes exemption in article 60, which covers communications relating to employee share schemes, currently only covers transactions between or for the benefit of employees or former employees and their wives, husbands, widows etc.

7.7 Most companies which operate employee share schemes use a trust to hold shares which can then be transferred to employees on the vesting of their awards or exercise of options. The trust forms part of the employee share scheme. The trust deed includes as beneficiaries employees or former employees and members of their family. From 5 December 2005, civil partners and, where appropriate, surviving civil partners, need to be included as family members for this purpose. Otherwise, companies will not be acting in line with policy underlying the CPA.

7.8 . Paragraph 3.4 above describes the adverse implications of not making this amendment. The Order therefore amends the share schemes exemption so that it also covers transactions between or for the benefit of the civil partners or surviving civil partners of employees or former employees.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business, charities or voluntary bodies or any public bodies distinct from that of the CPA itself. A full regulatory impact assessment for **civil partnership** was published alongside the CPA and can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.

9. Contact

John Sparrow at HM Treasury Tel: 020 7270 7509 or e-mail: john.sparrow@hm-treasury.gov.uk can answer any queries regarding the instrument.