

**EXPLANATORY MEMORANDUM TO**  
**THE OPEN-ENDED INVESTMENT COMPANIES (AMENDMENT)**  
**REGULATIONS 2005**

**2005 No.**

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

**2. Description**

These Regulations amend the Open-Ended Investment Companies Regulations 2001 (“**the principal Regulations**”) to allow open-ended investment companies (“**OEICs**”) to dispense with the holding of annual general meetings. They also make various other, consequential, amendments to the principal Regulations, vary the type of notice that the Financial Services Authority (“**FSA**”) must give in a case where it decides, following issue of a warning notice, to approve the appointment of a director etc, and remove the requirement for the FSA to publish certain notifications in the London and Edinburgh Gazettes.

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

None.

**4. Legislative background**

4.1 These Regulations form one of eight Statutory Instruments to be made following the Two Year Review of the Financial Services and Markets Act 2000 (“**FSMA**”).

4.2 They are being made to improve the operational efficiency of OEICs, and the FSA’s regulation of them, by amending the principal Regulations so that they make new provisions:

- for dispensing with the requirement for OEICs to hold annual general meetings (AGMs) (regulation 2(6) and (7)) and for making available to shareholders copies of directors’ service contracts (regulation 2(5));

- for the appointment of directors (regulation 2(3)), their removal (regulation 2(4)) and the appointment of auditors (regulation 2(9));
- for the type of notice that the FSA must give in a case where it decides, following issue of a warning notice, to approve the appointment of a director etc. (regulation 2(2)); and
- removing the requirement for the FSA to publish certain notifications in the London and Edinburgh Gazettes (regulation 2(8)).

## **5. Extent**

This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

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

In my view, the provisions of the Open-Ended Investment Companies (Amendment) Regulations 2005 are compatible with Convention Rights.

## **7. Policy background**

7.1 The Two Year Review of FSMA has been carried out in light of the Government's commitment to review the impact of FSMA on competition in financial services markets in response to the March 2000 Cruickshank Report on Competition in UK Banking. The Government also took this opportunity to review certain components of the FSMA framework more generally, including the scope of FSMA in some places.

7.2 The policy objectives of FSMA 2000 are to create an efficient, effective and transparent framework for financial services regulation in the UK which promotes market confidence and protects consumers. The Regulations fulfil these objectives by improving the operational efficiency of OEICS, which would indirectly affect OEIC shareholders, by allowing OEICS to dispense with AGMs and to conduct the business previously undertaken by AGMs via more efficient means. The Regulations also enable the FSA, the UK's single regulator for financial services, to regulate OEICS more efficiently.

7.3 Currently, OEICs are subject to regulatory requirements which are costly but which provide limited, if any, investor protection, and which might have an adverse impact on competition in the collective investment scheme sector. In particular the

requirement for OEICs to hold AGMs is costly and the business reserved for AGMs could be conducted more efficiently via other means. Certain requirements placed on the FSA in relation to publishing OEIC notifications and serving OEICs notices serve a limited purpose and/or their purpose could be achieved more effectively via other means. There is a risk that these burdens would not be relieved if the Regulations were not made.

7.4 The original proposals for the Regulations were publicly consulted on in February 2004. The changes were largely supported by the eleven consultation respondents who expressed views on them. In spite of the deregulatory rationale behind the proposals, the majority of consultation respondents identified unjustified regulatory burdens and practical complications with some of the new investor safeguards which were proposed for OEICs which dispense with AGMs. The Treasury agrees with a number of these concerns. Accordingly, the Regulations are more proportionate and effective than had been originally proposed.

7.5 The changes made by the Regulations are not of major political or legal importance.

## **8. Impact**

A Regulatory Impact Assessment has been prepared and is available on the HM Treasury website. [http://www.hm-treasury.gov.uk/media/510/35/fin\\_ser\\_mark\\_act\\_gov\\_resp\\_nov04.pdf](http://www.hm-treasury.gov.uk/media/510/35/fin_ser_mark_act_gov_resp_nov04.pdf)

## **9. Contact**

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**HM TREASURY**

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