

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (AMENDMENT)
REGULATIONS 2009

2009 No. 2461

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 Is to make amendments to 96B(2) of the Financial Services and Markets Act 2000 (FSMA) to preserve the current definition of “connected person”.

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

- 3.1 None.

4. **Legislative Context**

- 4.1 Section 96B(2)(a) defines a “connected person” of person discharging managerial responsibilities by reference to section 346 of the Companies Act 1985. Paragraph 50 of Schedule 3 to the Companies Act 2006 (Commencement No 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194) (“the 2007 Order”) expressly provided that the repeal of section 346 did not affect section 96B(2)(a) of FSMA.

- 4.2 Companies Act 2006 (Consequential Amendments, transitional provisions and Savings) Order 2009 (S.I. 2009/1941) (“the 2009 Order”) subsequently amended section 96B(2) so that “connected persons” will be defined by reference to section 252 of the Companies Act 2006 with effect from 1 October 2009. This would nullify the saving provision made in the 2007 Order.

- 4.3 The amendments made by this instrument will ensure that “connected person” will continue to be defined in section 96B(2) in the same terms as those set out in the definition in section 346 of the Companies Act 1985.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to the United Kingdom.

6. **European Convention on Human Rights**

- 6.1 The Financial Services Secretary to the Treasury, Lord Myners, has made the following statement regarding Human Rights:

“In my view the provisions of the Financial Services and Markets Act (Amendment) Regulations 2009 are compatible with the Convention rights”.

7. Policy background

- *What is being done and why*

7.1 Section 96B was one of the provisions inserted into Part 6 of FSMA to implement the market abuse directive¹, and the implementing commission directive.² It implemented Article 6.4 of that directive, ensuring that the FSA have power to ensure that investors have information about the trading in the shares of companies by the senior management (and those closely connected to them) of those companies.

7.2 Section 96B(2) defined a “connected person” in relation to someone discharging managerial responsibilities within an issuer by reference to section 346 of the Companies Act 1985 as this was sufficient to satisfy the UK’s obligation under Article 6.4 and the implementing commission directive.

7.3 The amendments made by this instrument will restore the definition of “connected person” applying before the consequential amendment made in the 2009 Order. This will avoid the extension of the definition which would result from the amendment made in the 2009 Order, which refers to the equivalent provision in the Companies Act 2006. Such an extension is not required under the Market Abuse Directive or the Commission Directive implementing it.

- *Consolidation*

7.2 The Treasury does not have plans to consolidate FSMA with amendments at this time. Commercial publishers produce consolidated versions of the Act, both in electronic and hard copy versions, and the Statute Law Database will produce a revised version of the Act which can be viewed over the internet at no charge.

8. Consultation outcome

As this instrument will preserve the present position in relation to section 96B, no consultation has been carried out.

9. Guidance

9.1 As this instrument will not change the law, HM Treasury does not propose to produce any guidance in relation to it.

10. Impact

¹ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ No L 96, 12.4.2003, p.16).

² Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers’ transactions and the notification of suspicious transactions (OJ No L 162, 30.4.2004, p 70).

10.1 The impact on business, charities or voluntary bodies is zero.

10.2 The impact on the public sector is zero.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business. It only affects issuers.

12. Monitoring & review

No monitoring or review will be required as a result of this instrument.

13. Contact

Hannah Gurga at the Treasury Tel: 020-7270 4345 or email: hannah.gurga@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.