

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES (BANKING REFORM) ACT 2013 (TRANSITIONAL AND
SAVINGS PROVISIONS) (AMENDMENT) ORDER 2015

2015 No. 1660

- 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 amends the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (S.I. 2015/492) to extend its scope to include: certain overseas banks and investment firms which will become “relevant authorised persons” for the purposes of Part 5 of the Financial Services and Markets Act 2000 (“FSMA 2000”) by virtue of the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015¹; and insurers to which the EU Solvency II Directive² does not apply.

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

3.1 None

4. Legislative Context

4.1 The Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (S.I. 2015/492) made transitional and savings provisions in connection with the commencement of Part 4 of the Financial Services (Banking Reform) Act 2013 (“the 2013 Act”) and the changes that Part will make to Part 5 of FSMA 2000. This Order makes further provision in connection with those changes.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

¹ A draft of this Order was laid before Parliament under section 429(1) of the Financial Services and Markets Act 2000 on 20 July 2015.

² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (Solvency II) (recast).

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Part 4 of the 2013 Act amends Part 5 of FSMA 2000 to put in place the legal framework for reforms to strengthen the regulation of individuals working in the UK financial services sector and in particular in banking. These reforms implement recommendations of the Parliamentary Commission on Banking Standards.

7.2 Part 4 of the 2013 Act applies the substantive reforms only in relation to banks and building societies (“deposit-takers”) incorporated in the UK and investment firms regulated by the Prudential Regulation Authority (“PRA”) that are incorporated in the UK. However, it gives HM Treasury power to apply the reforms to deposit-takers and investment firms that are incorporated outside the UK by an Order made under the affirmative procedure. HM Treasury has decided to exercise this power³, subject to Parliamentary approval, and laid the necessary draft statutory instrument before Parliament on 20 July 2015. This Order extends the scope of the original Transitional and Savings Provision Order so that it can apply in relation to the relevant non-UK firms.

7.3 Although the substantive reforms only apply to deposit-takers and certain investment firms, Part 4 of the 2013 Act makes a number of changes to definitions and terminology used in Part 5 of FSMA 2000 which apply in relation to other types of firm, including insurers and reinsurers. The PRA and the Financial Conduct Authority have also been developing measures to ensure the EU Solvency II Directive, which relates to insurers and reinsurers, is properly implemented in the UK. As a result, the original Transitional and Savings Provision Order includes provisions applicable to insurers and reinsurers that are subject to the Solvency II Directive. Since the original Order was published, the regulators have consulted on how they will apply the relevant provisions of the original Order to insurers and reinsurers that are not subject to the EU Solvency II Directive. To facilitate the regulators making transitional rules in relation to such non-directive insurers and reinsurers, this Order brings such insurers and reinsurers within the scope of the original Transitional and Savings Provisions Order.

8. Consultation outcome

8.1 The Treasury has not consulted on the making of this Order.

9. Guidance

9.1 The regulators will provide guidance as part of the information they provide to firms about the transitional arrangements.

³ The decision was announced by the Economic Secretary to the Treasury in a Written Ministerial Statement to the House of Commons on 3 March 2015 (Hansard Column 47WS).

10. Impact

10.1 This Order makes transitional and savings provisions. An impact assessment has not been prepared.

11. Regulating small business

11.1 This Order applies to small businesses.

11.2 This Order contains no provision for different treatment of small businesses. The regulators can make different provision for different sizes of business in their substantive rules if that is appropriate.

12. Monitoring & review

12.1 This Order makes transitional and savings provisions. It will not be reviewed.

13. Contact

David Sly at HM Treasury email: david.sly@hmtreasury.gsi.gov.uk can answer any policy queries regarding the instrument. Adam Goodyer at Treasury Legal Advisers email: adam.goodyer@hmtreasury.gsi.gov.uk can answer any legal queries regarding the instrument.