

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Xxx: Supplemental

744. This Part contains various supplemental provisions. For example, provisions as to Parliamentary control over statutory instruments and provisions enabling the Treasury to make transitional provisions and consequential amendments. It also determines the name by which the Act may be cited.

Section 426: Consequential and supplementary provision

745. This section confers on Ministers of the Crown a power, exercisable by order, to make incidental, consequential, transitional or supplemental provisions. The provisions which may be made include ones which appear to the Ministers to be necessary or expedient in order to give full effect to the Act. This power will be used in particular to make consequential amendments and repeals to other legislation when the Act is brought into force.

Section 427: Transitional provisions

746. This section amplifies the power conferred on Ministers of the Crown by section 426, permitting an order under that section may make particular provision in respect of transitional matters or savings. The complexity of the transition to the regulatory regime to be established under this Act is such that it may be necessary to make provisions of the kinds described in this section which might not otherwise fall within the scope of section 426.
747. For example, *subsection (2)(a)* makes clear that an order under section 426 could provide for a person authorised under predecessor arrangements to have permission from the day the relevant provisions of this Act come into force to continue to carry on the activities permitted by the authorisation from the predecessor regulator. An order under section 426 may also make provision for the continuation of rules and regulations. It is expected that most rules made by the Authority will be new rules made for the purposes of the Act. However, there may be a need for the continuation of rules under previous legislation, at least for a transitional period. This section will enable the Authority to be given power to carry forward such rules and regulations which it could make under this Act. This section also provides that an order under section 426 may deal with disciplinary cases in train on the day of commencement, and for transitional provisions to be made in respect of ombudsman and compensation schemes.

Section 429: Parliamentary control of statutory instruments

748. This section sets out the procedure for making statutory instruments under the powers in the Act. Most of the powers to make orders and regulations under the Act are subject

*These notes refer to the Financial Services and Markets Act
2000 (c.8) which received Royal Assent on 14 June 2000*

to the negative resolution procedure. The power to appoint a day for the commencement of particular provisions of the Act under section 431(2) is not subject to Parliamentary control. However, the affirmative procedure applies to the following powers:

- the power initially to set the definition, or to extend the scope of, regulated activities under section 22(1) (the type of affirmative procedure applicable to this power is set out in paragraph 26 of Schedule 2);
- the power initially to specify the matters set out in section 21(4), (5), (9) and (10) (the meaning of certain elements of the basic restriction on financial promotion and the exceptions from that restriction);
- any subsequent exercise of the power to specify the matters dealt with in section 21(4) and (5) (the meaning of certain elements of the basic restriction on financial promotion) which has the effect of extending that restriction so as to apply in circumstances in which it did not previously apply;
- the power to add to the activities and investments that are “controlled” for the purposes of section 21;
- the power under section 38, when it is first used, and any subsequent exercise of the power that has the effect of restricting or removing an exemption previously conferred by an order under section 38;
- the power to set the scope of price stabilising rules under section 144(4);
- the power under section 192(b) to vary, remove from or add to the cases in which a person has control for the purposes of Part XII and the equivalent power in section 192(e) in relation to the meaning of “controller” in section 422;
- the power under section 236(5) to amend the definition of open-ended investment company;
- the power for the establishment and regulation of collective investment schemes in Great Britain taking the form of oeics under section 262;
- the power initially to determine the circumstances in which the carrying on of regulated activities by members of the professions is subject to the arrangements set out under section 326(1) and restriction of exemption from the general prohibition under section 327(6)) and any subsequent exercise of those powers so as to restrict those circumstances;
- the power under section 404 authorising a scheme for reviewing past business;
- an order under section 419 defining the business test; and
- the power under paragraph 1 of Schedule 8 to allow any exercisable function conferred on the competent authority to be transferred in order for another person to exercise that function.