

INQUIRIES ACT 2005

EXPLANATORY NOTES

AMENDMENTS ETC

Section 46: Inquiries under the Financial Services and Markets Act 2000

105. This section amends section 14 of the Financial Services and Markets Act 2000 (“FSMA”) which provides a mechanism for the Treasury to appoint a person to hold an independent inquiry in various circumstances relating to the regulatory framework for the financial services industry. The amendment is intended to extend the possible scope of inquiries under FSMA to cover failings in the previous regulatory system (albeit only where the events triggering the inquiry have occurred after December 2001). References to *subsections* below are to those of section 14 of FSMA.
106. An inquiry may be held in two types of cases. The first case, set out in *subsection (2)*, relates to events concerning persons carrying on regulated activities or collective investment schemes. To trigger the power, it must appear to the Treasury that two conditions are met. The first of these is that the events posed, or could have posed, a grave risk to the financial system, or that they caused, or could have caused, significant damage to the interests of consumers. The second condition is that a serious failure in the regulatory system, or in the operation of that system, might have caused or exacerbated the risk or damage, or potential risk or damage.
107. The second case, set out in *subsection (3)*, relates to events concerning the listing function under Part VI FSMA and significant damage to holders of listed securities. Here the Treasury must be concerned with the damage, or potential damage, that might have been caused by a serious failure in the listing regime or its operation.
108. In both cases, the power to arrange an inquiry relates to serious failure in the regulatory system established by FSMA. Subsections (2) and (3) of the section expand the scope of *subsections (2) and (3)* to include serious failure in the regulatory system under predecessor legislation, albeit that the event triggering an inquiry (e.g. grave risk to the financial system or significant damage to consumers) is subject to a separate requirement (see below)
109. Subsection (4) of this section inserts a new *subsection (5A)*. This provides that an inquiry cannot be triggered where events described in *subsection (2) and (3)* occurred before 1 December 2001. An inquiry into similar events after 1 December 2001 could though consider circumstances surrounding these events, regardless of when these circumstances occurred.