

EXPLANATORY MEMORANDUM RELATING TO THE

Financial Services and Markets Act 2000 (Transitional Provisions)(Complaints Relating to General Insurance and Mortgages)(Amendment) Order 2004 No.1609

1. This explanatory memorandum is laid before Parliament by Command of Her Majesty and contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. The draft Transitioning Complaints Amendment Order corrects technical errors in the principal Order in relation to the commencement date, which have been drawn to our attention by the Joint Committee on Statutory Instruments (JCSI).

2.2. We have taken this opportunity to add provisions which relieve the Financial Services Authority and the Financial Ombudsman Scheme of certain duties to consult on new rules or guidance in relation to the effect of the Transitioning Complaints Order. These provisions are included following further consideration of the vires to make them, and give fuller effect to the policy we announced in when publishing the Transitioning Complaints Order.

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

3.1. The procedure for free issue, referred to in paragraph 3.4.11 of the Statutory Instrument Practice will be followed in this case as the principal reason for making this instrument is to correct a defective instrument. The instrument is being corrected to take account of the points made in the JCSI's letter to the Treasury of 16 March 2004 on S.I. 2004/454. The JCSI's letter is attached to this Explanatory Memorandum as Annex A.

4. Legislative Background

4.1. This Order amends the Financial Services and Markets Act 2000 (Transitional Provisions)(Complaints Relating to General

Insurance and Mortgages) Order 2004 (S.I. 2004/454) (“the principal Order”).

- 4.2. This Order corrects several errors in the principal Order in relation to the commencement date.
- 4.3. It also revokes article 10 of the principal Order which provided for the application of the definition of “consumer” under the Act to customers of firms against whom complaints could be made before commencement of the principal Order which are dealt with under the new scheme pursuant to the principal Order (“transitional complaints”). The FSA now propose to deal with this point in their rules and therefore the provision is otiose.
- 4.4. This Order adds article 12 to the principal Order which relieves the Authority of its duty to consult on new rules or guidance under sections 155 and 157(3) of the Act in relation to the effect of this Order and the application of rules and guidance made or to be made before the commencement date of the principal Order to persons against whom transitional complaints may be made. Similar provision is made in relation to rules made by the scheme operator of the Financial Ombudsman Scheme.

5. Extent

- 5.1. This instrument applies to all of the United Kingdom.

6. Policy background

- 6.1. At present complaints about mortgages and general insurance products bought from firms who have signed up to the Mortgage Code Compliance Board (MCCB) and the General Insurance Standards Council (GISC) are dealt with by arrangements set up by those bodies.
- 6.2. Mortgage business and the selling of general insurance will be brought into FSA regulation from 31 October 2004 and from 14 January 2005 respectively. After FSA regulation commences, complaints about products bought in the regulated market will be dealt with by the Financial Ombudsman Service (FOS).
- 6.3. The Transitioning Complaints Order gives the Financial Ombudsman powers to deal with complaints about products bought from MCCB or GISC members before FSA regulation

commences but which arise after it comes into force (“transitional complaints”).

- 6.4. The draft Transitioning Complaints Amendment Order, attached, corrects technical errors in the principal Order in relation to the commencement date, which have been drawn to our attention by the Joint Committee on Statutory Instruments (JCSI).
- 6.5. We have taken this opportunity to add provisions which relieve the Financial Services Authority and the Financial Ombudsman Scheme of certain duties to consult on new rules or guidance in relation to the effect of the Transitioning Complaints Order. These provisions were omitted in error from the original order, and give full effect to the policy we announced in when publishing the Transitioning Complaints Order.
- 6.6. These changes do not affect our published policy in relation to transitioning of complaints, rather they ensure that the Order is corrected to fully implement that policy.

7. Impact

- 7.1. A Regulatory Impact Assessment (RIA) was prepared for the original Transitioning Complaints Order. An RIA has not been prepared for this instrument as it merely corrects errors in the original order.

8. Contact

Peter McDermott at HM Treasury [tel: 020 7270 5780 or e-mail: peter.mcdermott@hm-treasury.x.gsi.gov.uk] can answer any queries regarding the instrument.



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16 March 2004

JOINT COMMITTEE ON STATUTORY INSTRUMENTS

Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454)

The Committee considered the above instrument at its meeting today and has instructed me to request you to submit a memorandum on the following point:

Explain the need for the words “the beginning of” in sub-paragraphs (a) and (b) of the definition of “relevant commencement date” in article 1(3). Further to this point:

(a) in article 2(1), is “after the relevant commencement date” intended to mean at any time on or after 14 January 2005 or, as the case may be, 31 October 2004, or is it intended to mean at any time after whichever of those dates is applicable? The same question applies to the phrase “after commencement” in article 11(5);

(b) explain the effect, in article 2(2)(b), of the phrase “on or after the relevant commencement date”.

I should be grateful if you could submit an electronic version of the memorandum by e-mail to jcsi@parliament.uk, by noon on Monday 22 March 2004.

MARTYN ATKINS
Commons Clerk of the Committee