

**EXPLANATORY MEMORANDUM TO THE
FINANCIAL SERVICES AND MARKETS ACT 2000 (TRANSITIONAL
PROVISIONS) (GENERAL INSURANCE INTERMEDIARIES) ORDER 2004**

2004 No. 3351

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. **Description**

2.1 This instrument sets out transitional arrangements for firms coming under Financial Services Authority (FSA) regulation for the purposes of the sale and administration of contracts of general insurance. It will confer 'deemed authorised' status on firms whose completed applications have been received by the FSA before 14 January 2004, but who have not received a final authorisation decision. This will cover all firms with appeals outstanding against FSA authorisation decisions on the date regulation comes into force. The introduction of 'deemed' authorisation will allow firms to continue trading until a final decision on authorisation is reached. Its effect will be limited to a 12-month period.

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

3.1 The instrument will not impose any additional costs on firms beyond those already identified as a consequence of regulation. Indeed the effect of implementing this instrument will be to remove the potential costs of having to cease business between the date regulations come into force and the date on which a final authorisation decision is issued. It is designed to ensure firms are not penalised because they have applied for authorisation after the official deadline of 14th July 2004. The instrument may therefore be understood to be de-regulatory in effect.

3.2 The instrument will disapply section 213 (3)(c) of Financial Services and Markets Act 2000 in order to allow the FSA to exclude 'deemed authorised' firms from the Financial Services Compensation Scheme. The FSA, with due reference to its statutory duty to balance the interests of consumers and industry, will decide in due course whether or not to make use of this power.

3.3 Article 4 of the instrument also allows the FSA to vary its rules without consultation.

4. **Legislative Background**

4.1 This instrument is being made to facilitate the introduction of the new regulatory regime for the sale and administration of general insurance contracts. The legislation determining FSA regulation of general insurance was approved by

Parliament in June 2003 (S.I. 2003/1476). This legislation had the effect of implementing the EU Insurance Mediation Directive (IMD) in the UK.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury Stephen Timms MP has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 are compatible with the Convention rights

7. Policy background

7.1 The instrument sets out transitional arrangements for firms coming under FSA regulation for the purposes of selling and administering contracts of insurance from 14 January 2005. The decision to bring general insurance under FSA regulation was announced by the Financial Secretary to the Treasury on 12 December 2001, following consultation the previous year. Consultation on detailed proposals on the form of regulation was carried out between 21 October 2002 and 31 January 2003. This followed the approval by the European Parliament of the Insurance Mediation Directive on 30 September 2002, which general insurance regulation was designed to implement. The orders confirming regulation of the sale and administration of general insurance contracts were laid before Parliament in June 2003.

7.2 As noted above, general insurance regulation will implement the EU Insurance Mediation Directive in the UK. This directive has a broad scope and means that a large number of secondary intermediaries will require FSA authorisation. Despite the best efforts of the FSA (through consultation, press advertising and engagement with trade bodies) to publicise the need for secondary intermediaries to apply for authorisation by 14 July 2004 in order to guarantee authorisation by 14 January 2005, a large number of intermediaries have not realised the implications of regulation for them until much later. There is therefore a danger that there will be a backlog of firms whose applications have not been processed by the date at which regulation will come into force draws near. There will also be some outstanding appeals by firms and individuals against FSA authorisation decisions.

7.3 The effect of this instrument will be to confer 'deemed authorised' status on firms whose applications for authorisation have been received by the FSA by 14 January 2005. Without this instrument these firms would be forced to cease regulated activities from 14 January.

7.4 This 'deemed authorised' status will have the same practical effect for firms as authorisation under Part IV of the Financial Services and Markets Act and Part V approval for individuals.

8. Impact

8.1 No Regulatory Impact Assessment has been prepared as there are no impacts foreseen beyond those identified as part of the Regulatory Impact Assessment on the regulation of mortgages and general insurance, published by HM Treasury 12 December 2001.

8.2 There will be no impact on the public sector.

9. Contact

Matt Holmes at HM Treasury (Tel: 0207 270 5780 or e-mail: matt.holmes@hm-treasury.gov.uk) can answer any queries regarding the instrument.