

EXPLANATORY MEMORANDUM

The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2007

2007 No. 800

- 1.** This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.
- 2. Description**
 - 2.1 This Order amends the Schedule to the Financial Services Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062) which sets out arrangements which are not to be regarded as collective investment schemes for the purposes of the Financial Services and Markets Act 2000 (c. 8). Paragraph 7 of that Schedule excludes certain funds relating to leasehold property. The amendment made by article 2(1) of this Order extends this exclusion to arrangements where the participants have rights or interests in money held under a tenancy deposit scheme as provided for by Chapter 4 of Part 6 of the Housing Act 2004 (c. 34).
- 3. Matters of Special Interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
- 4. Legislative Background**
 - 4.1 Under the Housing Act 2004 the Department of Communities and Local Government ("DCLG"), as the appropriate national authority, is obliged to set up schemes to safeguard deposits paid to landlords by tenants. These schemes are intended to provide tenants with greater assurance that their deposits will be returned when they move out, and that any deductions for damage to rented property will be fair. In future a landlord will not be able to take a deposit in respect of an assured shorthold tenancy unless it is covered by a tenancy deposit scheme.
 - 4.2 The schemes will either be custodial (where the tenant pays his deposit to the landlord who in turn transfers it into the scheme administrator's bank account) or insurance-based (where the landlord retains the deposit but the scheme administrator becomes liable in the event that the landlord defaults on repayment of the requisite amount). The scheme administrator will be under contract to the DCLG and subject to DCLG oversight.
 - 4.3 This instrument provides for exemption from financial services regulation for both types of scheme by amending the Schedule to the Financial Services Markets Act 2000 (Collective Investment Schemes) Order 2001 which sets out arrangements which are not to be regarded as collective investment schemes for the purposes of the Financial Services and Markets Act 2000.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Both custodial and insurance-based tenancy deposit schemes potentially fall within the definition of a collective investment scheme in FSMA. Securing FSA authorisation as a collective investment schemes in these circumstances would have significant cost implications with minimal benefits to consumers on the grounds that :

- Tenants' deposits would be held in accounts at credit institutions which were already authorised by the FSA; and
- Scheme administrators controlling those accounts would be subject to DCLG oversight and contractual obligations.

8. Impact

A Partial Regulatory Impact Assessment has been prepared for this instrument and can be viewed at:

http://www.hm-treasury.gov.uk/media/6C8/B3/consult_tenancydepositscheme.pdf

9. Contact

John Sparrow at HM Treasury Tel: 020 7270 5312 or e-mail: john.sparrow@hm-treasury.gov.uk can answer any queries regarding the instrument.