

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXERCISE OF POWERS
UNDER PART 4A) (CONSULTATION WITH HOME STATE REGULATORS)
REGULATIONS 2013

2013 No. 431

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. **Purpose of the instrument**

- 2.1 When a financial services firm applies for permission to carry on regulated activities, in considering the application the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) must have regard to any relevant relationships that the applicant has with other members of its group. This is because a firm might have relationships which make it unsuitable to carry on a particular activity. The regulator also considers these relationships when varying or cancelling a firm's permission to carry on a regulated activity.

- 2.2 Sometimes, the applicant might have a group relationship with a firm that is authorised in another EEA state. These regulations set out the circumstances in which the PRA and FCA must consult that EEA firm's regulator. The regulations provide that the PRA and FCA must always consult the home state regulator, unless the permission relates to insurance mediation activities or various activities connected to mortgage contracts. This implements the requirements of EU law (which do not apply in the case of insurance mediation activities or activities in relation to mortgage contracts).

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

- 3.1 None.

4. **Legislative Context**

- 4.1 This instrument is being made by the Treasury in exercise of the powers conferred by section 55R of the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012, which received Royal Assent on 19 December 2012.

5. **Territorial Extent and Application**

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

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Financial Services Act 2012 provides for the reform of financial regulation in the UK. In the place of the Financial Services Authority (FSA), it establishes a new system of financial services regulators comprising:

- An expert macro-prudential authority, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks in the financial sector;
- A focused micro-prudential regulator, the PRA, to regulate firms that manage complex risks on their balance sheets - specifically, all deposit takers, insurers and some large investment firms; and
- A focused conduct of business regulator, the FCA, to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

7.2 These regulations make minor and technical provision about the circumstances in which the two new regulators (the PRA and FCA) consult with home state regulators, consistent with EU law.

8. Consultation outcome

8.1 HM Treasury has consulted the FSA and the Bank of England in the preparation of this instrument. Due to the minor and technical nature of the instrument, and in line with common practice for secondary legislation that makes minor, technical and transitional provisions, there has been no formal public consultation.

9. Guidance

9.1 None.

10. Impact

10.1 The instrument, in itself, does not impose any additional regulatory burdens on business, charities or voluntary bodies. The impact of the overall change to the regulatory system on business, charities or voluntary bodies, in so far as they are regulated financial services firms, is set out in the overarching impact assessment for the 2012 Act.

10.2 The impact on the public sector is set out in the overarching impact assessment for the 2012 Act.

10.3 An Impact Assessment has not been prepared for this instrument. Instead the overarching Impact Assessment that covers the changes to the regulatory system provided for by the 2012 Act is available on the Treasury website as Annex H to the following publication: http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf.

11. Regulating small business

11.1 This instrument will not impose additional burdens on small businesses.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

Chris Goodspeed at HM Treasury Tel: 0207 270 5690 or email: christopher.goodspeed@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.