

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (MISCELLANEOUS
PROVISIONS) (No. 2) ORDER 2015**

2015 No. 352

- 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 This instrument makes provision in connection with the specification of kinds of activities and investments for the purposes of the regulation of consumer credit under the Financial Services and Markets Act 2000 (“FSMA”) and in connection with the restrictions on financial promotion under FSMA.

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

3.1 None.

4. Legislative Context

4.1 The Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No. 2) Order 2015 (“the Order”) has been made under sections 21(5) and (6), 22(1) and (5) and 38 of, and paragraph 25(1)(a) of Schedule 2 to, FSMA. Section 21(5) and (6) empowers the Treasury to specify circumstances in which the restrictions on financial promotion (in section 21(1)) do not apply. Section 22(1) and (5) and paragraph 25(1)(a) of Schedule 2 empower the Treasury to specify kinds of activities and investments (with exemptions) for the purposes of regulation under FSMA. Section 38 empower the Treasury to exempt specified persons from regulation under FSMA.

4.2 The Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (under FSMA, section 22(1) and (5) and paragraph 25(1)(a) of Schedule 2); the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201) (under FSMA, section 38); and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) (under FSMA, section 21(5) and (6)).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services and Markets Act 2000 (Miscellaneous Provisions) (No. 2) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 This instrument makes provision as follows in connection with specification of kinds of activities and investments for the purposes of the regulation of consumer credit under FSMA:

- to increase from four to twelve the maximum number of repayments which may be due from a borrower under a credit agreement which is to be an exempt agreement on the basis that (among other things) it is a borrower-lender-supplier agreement for fixed-sum credit and is for instalment credit which is secured on land or for which no fees and charges are applied;
- to vary one of the conditions that must be met by a credit agreement which is to be an exempt agreement on the basis that (among other things) the borrower is an employee of the lender; so that an agreement may be exempt if the borrower is employed by an undertaking in the same group as the lender;
- to correct a minor error in the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201);
- to exempt persons who serve documents in connection with legal proceedings under credit agreements (and other kinds of regulated agreement) from the FSMA prohibition on carrying on the activities of debt collecting and debt administration without authorisation;
- to extend the exemption from the financial promotion restriction for a communication accompanied by a directors' report to a communication accompanied by a report prepared and approved under sections 414A and 414D of the Companies Act 2006 (strategic reports).

8. Consultation outcome

8.1 The FCA and a range of consumer credit stakeholders, including consumer groups on the issue of instalment credit, were consulted on the draft Order.

9. Guidance

9.1 Further guidance will be made available by the FCA.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the transfer of consumer credit regulation from the OFT to the FCA is set out in the accompanying impact assessment. The Government's best estimate of the total cost to business of the new regulatory regime is £336million over 10 years (at 2013 prices). The Government's best estimate of benefits of the regime is £689million over 10 years. The estimated net benefit over 10 years is £353million.

10.2 The impact on the public sector is not quantified as public sector organisations generally do not undertake consumer credit activity, apart from local authorities which offer certain types of unsecured credit agreements.

10.3 The impact on business, charities or voluntary bodies of the deregulation of monthly instalment credit with no interest and charges is set out in the accompanying regulatory triage assessment. The Government estimates that the net annual cost saving to businesses will be between £1.3m and £4.4m with a best estimate of £2.8m.

10.4 An impact assessment and regulatory triage assessment are attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the regulatory regime for consumer credit has been designed so that small firms will be subject to proportionate and manageable burdens:

11.3 The basis for the final decision on what action to take to assist small business is ensure that small businesses gain from the reputational benefits of a better-regulated and well-functioning market and to ensure that small businesses are subject to appropriate and proportionate regulatory burdens. The Government has decided against exempting small business from this policy, as its objective is to strengthen consumer protection across the consumer credit market.

11.4 The deregulation of monthly instalment credit with no interest and charges will apply to small business. The FCA estimates that between 1,500 and 5,000 firms will be permanently removed from the scope of consumer credit regulation.

12. Monitoring & review

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

13. Contact

13.1 Laura Hanoman at HM Treasury (tel: 0207 270 5507 or email: laura.hanoman@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.