

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED**  
**ACTIVITIES) (AMENDMENT) ORDER 2019**

**2019 No. 1067**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument inserts a new article 36FA in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the RAO”). This introduces a new exclusion from the ambit of article 36A, which specifies credit broking as a regulated activity, for introductions by registered social landlords and housing associations (RSLs) of individuals who seek to enter into a credit agreement to social and community lenders, in particular: credit unions; community benefit societies; community interest companies limited by guarantee; registered charities; subsidiaries of registered charities, and subsidiaries of registered social landlords which are made on a fee free basis. This instrument enables RSLs to effect fee-free referrals to tenants, or potential tenants, to these social and community lenders without requiring authorisation from the Financial Conduct Authority. This amendment was announced at Autumn Budget 2018 and aims to facilitate increased access to alternatives to high-cost lenders.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England, Scotland, Wales and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Scotland, Wales and Northern Ireland.

**5. European Convention on Human Rights**

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

## **6. Legislative Context**

- 6.1 The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2019 (“the RAO Order 2019”) will be made under sections 22 and 428 of the Financial Services and Markets Act 2000.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Social and community lenders, which are specified in paragraph 2, and subsequently defined in paragraph 4, of the new article 36FA, offer alternatives to high cost credit. RSLs are key partners for these lenders, as their tenants are low income consumers who may struggle to access mainstream credit.
- 7.2 Depending on the nature and circumstance of the activity, referring an individual to a social or community lender can be considered a type of credit broking and require FCA authorisation. However, RSLs can lack the appetite and resources to apply for such authorisation, as their primary undertaking is the provision affordable housing.
- 7.3 At Autumn Budget 2018 the government committed to simplifying regulation to make it easier for RSLs to refer their tenants to alternatives to high-cost credit.
- 7.4 Presently, a credit agreement which is made following a referral from an RSL without the appropriate FCA authorisation can become unenforceable. In addition, the referring RSL can be subject to criminal sanctions for carrying on a regulated activity without the appropriate FCA authorisation.
- 7.5 This instrument amends the regulatory perimeter for credit broking, allowing RSLs to effect fee-free referrals to social and community lenders without FCA authorisation.
- 7.6 The level of public interest in this policy is minimal. However, stakeholders directly impacted by the policy, specifically the affordable lending sector, have expressed support for this policy.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 HM Treasury have no current plans to consolidate the RAO and the amendments made to it.

## **10. Consultation outcome**

- 10.1 The Government informally consulted trade bodies from the affordable lending and housing sectors, consumer groups, industry trade bodies and the FCA. Stakeholders were asked four questions and given three weeks to respond.
- 10.2 One stakeholder proposed implementing a fast-track authorisation system for RSLs in place of this instrument. The Government discussed this suggestion with the FCA and concluded it would not effectively address the issue. As many RSLs lack the resource to apply for FCA authorisation, implementing a fast-track authorisation process would not be as effective as removing the barrier of applying for authorisation (as this instrument will do).

10.3 Stakeholders were otherwise supportive of the proposed approach and scope of this instrument.

10.4 As the consultation was informal and targeted, a formal summary and response has not been published.

## **11. Guidance**

11.1 No guidance is required for this instrument.

## **12. Impact**

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of the low level of impact per business. The total estimated familiarisation costs of this instrument are £220,000. Accounting for the savings in FCA registration fees, the net savings from this instrument is estimated to vary between £216,800 and £970,400 (depending on the RSLs current authorisation status). In line with Better Regulation guidance, a full impact assessment has not been carried out as the net impact on businesses will be less than £5 million a year.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 This is because the amendment reduces the regulatory requirements of small businesses, specifically RSLs. The amendment does not impose any additional requirements on RSLs, as they will not have to adjust any practices or systems to accommodate the instrument.

## **14. Monitoring & review**

14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 John Glen MP, Economic Secretary to the Treasury, has made the following statement:

‘In my view, and in line with the Statutory guidance produced by the Department of Business, Energy and Industrial Strategy, the provisions of the RAO Order 2019 do not require a statutory review clause given the low level of impact per business and the limited number of businesses affected by this instrument.’

## **15. Contact**

15.1 Alysha Kassam at HM Treasury (Telephone: 0207 270 6450 or email: [Alysha.kassam@hmtreasury.gov.uk](mailto:Alysha.kassam@hmtreasury.gov.uk)) can be contacted with any queries regarding the instrument.

15.2 David Raw, Deputy Director for Banking and Credit, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.