

Title: Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order '21 No.2 SI No: TBC Other departments or agencies: Financial Conduct Authority (FCA) Contact for enquiries: Michael Ash	De minimis assessment
	Date: 31/03/2022
	Type of regulation: Domestic
	Date measure comes into force: 29/07/2022
Cost of Preferred (or more likely) Option N/A	Equivalent Annual Net Direct Cost to Business per year (EANDCB in 2019 prices)

Questions

1. What is the problem under consideration? Why is government intervention necessary?

The government expects the FCA to bring pre-paid funeral plan providers within the scope of the Financial Services Compensation Scheme (FSCS). However, without the further legislative changes in this SI the FSCS will not be able to most effectively perform its functions if a regulated funeral plan provider fails. A disorderly wind-down would likely result in poor financial outcomes for funeral plan holders.

It has also become apparent that there are barriers that hinder providers who are exiting the market from transferring their plans to providers which will become regulated. These barriers relate to i) the available legal mechanisms for transferring plans, and ii) the time available for transfers to be effected ahead of regulation coming into force on 29 July 2022.

2. What are the policy objectives and the intended effects?

The first objective is to grant the FCA the power to make rules enabling the FSCS to most effectively perform its functions if a regulated funeral plan provider fails. The effect will be to enable the FSCS to secure continuity of cover for plan holders, and to more effectively seek recovery of the sums it pays out from the trust assets and insurance monies underpinning funeral plans. The FSCS will also be able to require that an insolvency practitioner co-operate with them in the event of a firm failure, and be able to provide discretionary funding to facilitate this if required.

The second objective is to make it easier for funeral plan providers exiting the market to transfer their plans to providers who will become regulated. This will ensure that the sector can ensure continuity of cover for the maximum number of consumers.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

With regard to the first objective, the government considered two options: (i) granting the FCA additional rule-making powers and (ii) taking no action. Option (i) was chosen because facilitating the orderly wind-down of a regulated funeral plan provider will benefit consumers - who may be elderly or vulnerable – as they don't need to source new contracts. Moreover, enabling the FSCS to recover paid-out sums more effectively will reduce the burden on other levy-payers (and is therefore a benefit to businesses) by reducing overall FSCS costs.

With regard to the second objective, the government considered two options: (i) making it easier for providers exiting the market to transfer their plans and (ii) taking no action. Option (i) was chosen for the same reason as above – to benefit consumers.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

There are around 60 known funeral plan providers. The government expects that around 40 funeral plan providers (i.e. those who have applied for authorisation) will be impacted once the FCA has designed and implemented its new regulatory rules in relation to this legislation, alongside any insolvency practitioners involved in a firm wind-down. The government assumes that half of these funeral plan providers back their funeral plans with trust arrangements – in which cases trustees will also be impacted - and half utilise insurance contracts – in which cases insurance companies will also be impacted. However, it is important to note that in most respects these proposals will only impact firms if a regulated funeral plan provider fails.

The extent and precise impact of these rules will be assessed through the FCA's independent consultation process, which includes an FCA cost-benefit analysis and are therefore not included here in accordance with Better Regulation guidelines.

The government expects that around 20 funeral plan providers (i.e. those who intend to transfer their plans) will be impacted by the legislation to better facilitate the transfer of plans. There will be no additional costs to these providers beyond the costs they might already have expected to incur in the process of transferring their plans.

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) Significant distributional impacts (such as significant transfers between different businesses or sectors)

No

b) Disproportionate burdens on small businesses

The FCA estimate that 50 of the current funeral plan providers are small businesses, though they have not formally defined 'small', 'medium' and 'large' firms in their regulations. The FCA will consider the impact on small businesses as part of its own cost-benefit analysis.

A large number of insolvency practitioners are small businesses. The government considers that the impact on insolvency practitioners will be negligible, especially as the FSCS will be enabled to provide discretionary funding to assist with co-operation if required.

c) Significant gross effects despite small net impacts

No

d) Significant wider social, environmental, financial or economic impacts

No

e) Significant novel or contentious elements

No

Sign-off for de minimis assessment: SCS

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Personal Finance and Funds

Signed: ***Anna Harvey***

Date: 30/03/2022

SCS of Better Regulation Unit

Signed: ***Linda Timson***

Date: 30/03/2022

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen MP***

Date: 31/03/2021

Further information sheet

Please provide additional evidence in subsequent sheets, as required.