

**EXPLANATORY MEMORANDUM TO THE
FINANCIAL SERVICES AND MARKETS ACT 2000 (TRANSITIONAL
PROVISIONS) (MORTGAGES) ORDER 2004**

2004 No. 2615

- 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. Description

2.1 This instrument sets out transitional arrangements for firms coming under FSA regulation for the purposes of selling residential mortgages from 31 October 2004. It will confer ‘deemed authorised’ status on firms with appeals outstanding against FSA authorisation decisions on the date regulation comes into force. This will allow firms to continue trading until a decision on their appeal is reached. Its effect will be limited to a 12-month period.

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

3.1 The instrument will not impose any additional costs on firms beyond those already identified as a consequence of regulation. Indeed the effect of implementing this instrument will be to remove the potential costs of having to cease business between the date regulations come into force and the resolution of an appeal. The instrument may therefore be understood to be de-regulatory in effect.

3.2 The instrument will disapply section 213 (3)(c) of Financial Services and Markets Act 2000 in order to allow the Financial Services Authority to exclude ‘deemed authorised’ firms from the Financial Services Compensation Scheme. The FSA, with due reference to its statutory duty to balance the interests of consumers and industry, will decide in due course whether or not to make use of this power.

3.3 Article 6 of the instrument also allows the FSA to vary its rules without consultation.

4. Legislative Background

4.1 This instrument is being made to facilitate the introduction of the new regulatory regime for the selling of mortgages. The legislation determining FSA regulation of residential mortgages was approved by Parliament on 1st July 2003.

5. Extent

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

The Financial Secretary to the Treasury Stephen Timms MP has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 are compatible with the Convention rights

7. Policy background

7.1 The instrument sets out transitional arrangements for firms coming under FSA regulation for the purposes of selling residential mortgages from 31 October 2004. The decision to bring the selling of mortgages under FSA regulation was announced by the Financial Secretary to the Treasury on 12 December 2001, following consultation the previous year. Consultation on the detail of legislation to bring this into force was carried out between February and April 2002 and the orders confirming regulation of the selling of residential mortgages were laid before Parliament in June 2003.

7.2 As the date at which regulation will come into force draws near, it is clear that there will be some outstanding appeals against FSA authorisation decisions on firms and individuals. The FSA believe that there will be approximately 35 firms who will still be in the Financial Markets Tribunal process at 31 October. The expected time taken for a case to progress through the Tribunal is 9-12 months.

7.3 The effect of this instrument will be to confer 'deemed authorised' status on firms with appeals in the Financial Markets Tribunal against FSA authorisation decisions still outstanding on the date regulation comes into force. Without this instrument these firms would be forced to cease regulated activities from 31 October.

7.4 This 'deemed authorised' status will have the same practical effect as authorisation under Part IV of the Financial Services and Markets Act, for firms and Part V approval for individuals.

8. Impact

8.1 No Regulatory Impact Assessment has been prepared as there are no impacts foreseen beyond those identified as part of the Regulatory Impact Assessment on the regulation of mortgages and general insurance, published by HM Treasury 12 December 2001.

8.2 There will be no impact on the public sector.

9. Contact

Matt Holmes at HM Treasury (Tel: 0207 270 5780 or e-mail: matt.holmes@hm-treasury.gov.uk) can answer any queries regarding the instrument.