

**EXPLANATORY MEMORANDUM TO**

**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED  
ACTIVITIES) (AMENDMENT) ORDER 2005**

**2005 No. 593**

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

**2. Description**

2.1 This Order amends the Financial Services and Markets Act (Regulated Activities) Order 2001 (S.I. 2001/544) (“**the principal Order**”). The principal Order specifies kinds of activities and investments for the purpose of the Financial Services and Markets Act 2000 (“**FSMA**”). The relevant amending instrument is the Financial Services and Markets Act 2000 (Regulated Activities (Amendment) (No.2) Order 2004 (S.I. 2004/2737), which introduced the definition of stakeholder pensions that could be sold through basic advice. This instrument makes changes to the principal Order to amend the definitions of ‘occupational pension scheme’, ‘stakeholder pension scheme’ and ‘stakeholder product’.

2.2 This instrument also enables a trustee to arrange for trust assets to be safeguarded and administered by a custodian, and sub-custodian where appropriate, without this activity needing to be authorised by the FSA.

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

None.

**4. Legislative background**

4.1 Article 2(2)(a) of this instrument is to ensure that the FSMA definition of ‘occupational pension scheme’ mirrors the definition in the Pensions Schemes Act 1993, as amended by the Pensions Act 2004. This has been the first opportunity for HM Treasury to make this amendment. Article 2(2)(b) ensures that the definition of “stakeholder pension scheme” applies throughout the United Kingdom. Article 2(3) ensures that the definition of “stakeholder product” includes rights under a stakeholder pension scheme which may be sold through basic advice. This reflects recent amendments in Department for Work and Pensions legislation.

4.2 Article 2(4) of this instrument is one of the amendments required to implement some of the reforms following the Two Year Review of FSMA. Specifically, Article 2(4) adds an additional exclusion from the regulated activity of the kind specified by Article 40 of the principal Order. This exclusion applies to the activities of a trustee who arranges for a third party to safeguard and administer trust assets, and of a trustee and third party who arrange for the safeguarding and administering of trust assets,

where that third party has permission to carry on the activity of the kind specified by article 40 or is exempt.

## **5. Extent**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

Not applicable.

## **7. Policy background**

7.1 The aim of the stakeholder product suite is to create a suite of simple, price controlled, and regulated “stakeholder products” that can be sold through a basic sales process, to help drive competition in the industry and improve access to financial services for those on moderate incomes. The instrument fulfils these objectives by extending the definition of “stakeholder pension scheme” so that it applies throughout the United Kingdom, and by specifying the rights under a stakeholder pension scheme that may be sold through basic advice by reference to recent Department for Works and Pensions legislation.

7.2 The Two Year Review of FSMA has been carried out in light of the Government’s commitment to review the impact of FSMA on competition in financial services markets in response to the March 2000 Cruickshank Report on Competition in UK Banking. The Government also took this opportunity to review certain components of the FSMA framework more generally, including the scope of FSMA in some places. The policy objectives of FSMA 2000 are to create an efficient, effective and transparent framework for financial services regulation in the UK which promotes market confidence and protects consumers. Article 2(4) of this instrument fulfils these objectives since it may lead to trustees making greater use of custodians and sub-custodians, which may indirectly enable trustees to manage assets more efficiently, and indirectly affect beneficiaries and other parties to the trusts in question, for example by having a positive impact on the security of trust assets.

7.3 The policy objectives in paragraphs 7.1 and 7.2 would not be addressed if the amendments in article 2 were not made.

7.4 Paragraphs (2) and (3) have not been formally consulted on as they are changes to ensure regulatory consistency. The original proposals behind paragraph (4) of this instrument were publicly consulted on in February 2004. All the responses received on the proposals were supportive. Some respondents proposed in addition that overseas assets could be held by the custodian’s sub-custodian network, and that trustees should be able to deal directly with both custodians and sub-custodians. The Treasury agree with both of these suggestions.

7.5 The changes made by this instrument are not of major political or legal importance.

## **8. Impact**

No Regulatory Impact Assessments (RIAs) have been prepared on paragraphs (2) and (3) of article 2 because these provisions have no impact on the costs of business or consumers. An RIA on paragraph (4) of article 2 is available on the HM Treasury website. [http://www.hm-treasury.gov.uk/media/510/35/fin\\_ser\\_mark\\_act\\_gov\\_resp\\_nov04.pdf](http://www.hm-treasury.gov.uk/media/510/35/fin_ser_mark_act_gov_resp_nov04.pdf)

## **9. Contact**

Ted Hart at HM Treasury (Tel: 020 7270 5234 or email [ted.hart@hm-treasury.x.gsi.gov.uk](mailto:ted.hart@hm-treasury.x.gsi.gov.uk)) can answer any queries regarding paragraphs (2) and (3) of article 2 of this instrument. Marcello Casale at HM Treasury (Tel: 020 7270 5173 or email [marcello.casale@hm-treasury.x.gsi.gov.uk](mailto:marcello.casale@hm-treasury.x.gsi.gov.uk)) can answer any queries regarding paragraph (4) of articles 2 of this instrument.

**MARCH 2005**