

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (COLLECTIVE
INVESTMENT SCHEMES)(AMENDMENT)(No.2) ORDER 2008

2008 No.1813

1. This explanatory memorandum has been prepared by Her Majesty's 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 Order makes a correction to the Financial Services and Markets Act 2000 (Collective Investment Schemes)(Amendment) Order 2008, (S.I. 2008/1641) ("the 2008 Order").

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

3.1 It was not possible to abide by the 21-day rule in the making of the correction made by this Order.

4. **Legislative Background**

4.1 The reason for the making of this Order is to correct certain wording in sub-paragraph 3 of the substituted paragraph 9 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001, (S.I. 2001/1062). The substitution of paragraph 9 was made by the 2008 Order.

4.2 To avoid the situation where the substituted paragraph 9 comes into force with the error on its face Treasury has made an amendment to the 2008 Order. This instrument could not have been made and laid sooner since the error was only identified following the making and laying of the 2008 Order. It was felt necessary to make this change with this urgency to avoid any period of uncertainty as to the effect of the Order, in particular a period during which permitted participants are not able to agree that a scheme is indeed a collective investment scheme.

4.3 To achieve the amendment of the 2008 Order it was necessary to bring the correcting instrument into force prior to 15th July 2008.

4.4 The opportunity has also been taken to remove the words "irrevocably agrees" from paragraphs 9(1)(b)(ii) and 9(3) of the inserted text and replace them with words including "agrees in writing in respect of the life of the arrangements" (in the first case referring to "the remaining life"). In making a consequential amendment to sub-paragraph (7) that sub-paragraph has been substituted. The amendment makes clear that once the relevant agreement has been made its effect on the status of the arrangements as being or, as the case may be, not being a collective investment scheme cannot be altered.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 Not applicable.

8. Impact

8.1 A Regulatory Impact Assessment was attached to the memorandum for the 2008 Order.

9. Contact

Tom Springbett at Her Majesty's Treasury Tel: 020-7270 4356 or e-mail: tom.springbett@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.