

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (DISCLOSURE OF
CONFIDENTIAL INFORMATION) (AMENDMENT) REGULATIONS 2009

2009 No. 2877

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 The purpose of the Financial Services and Markets Act 2000 (Disclosure Of Confidential Information) (Amendment) Regulations 2009 (“the Regulations”) is to allow for the disclosure of certain information by the Financial Services Authority to the Claims Management Regulator.
 - 2.2 This Order sets out a number of exemptions from the restrictions on financial promotions contained in section 21(1) of the Financial Services and Markets Act 2000 (c. 8) (“the financial promotion restriction”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. **Legislative Context**
 - 4.1 The disclosure of information by the Financial Services Authority (FSA) is governed by sections 348 and 349 of the Financial Services and Markets Act 2000 (c.8). In particular, section 348 defines “confidential information” for the purposes of the Act and section 349(1) allows the disclosure of information made for the purposes of facilitating the carrying out of a public function and permitted by regulations made by the Treasury under that section. Section 352 of the Act makes disclosure in breach of section 348 an offence.
 - 4.2 The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (“the 2001 Regulations”) define the circumstances in which recipients are permitted to disclose “confidential information” as defined in section 348(2) of the 2000 Act. The table in Schedule 2 to the principal Regulations provides a list of persons to which confidential information not subject to single market directive restrictions may be disclosed. These Regulations amend that table to add the Claims Management Regulator.
 - 4.3 The amendments take into account the fact that some information held by the FSA may not be disclosed or is subject to conditions on onward disclosure because of restrictions imposed under European Directives

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 As explained above, these Regulations update the 2001 Regulations so as to include the Claims Management Regulator on the list of persons to which confidential information, not subject to single market directive restrictions, may be disclosed .

7.2 The Claims Management Regulator - the Secretary of State for Justice is currently the Regulator - is responsible for regulating the activities of claims management companies which conduct regulated activities in respect of claims for compensation in certain sectors. It is desirable at times for the FSA to share certain information about the companies and individuals that it regulates with the CMR.

- *Consolidation*

7.3 The Treasury does not have plans to consolidate the 2001 Regulations with amendments at this time. Commercial publishers produce consolidated versions of the 2001 Regulations, both in electronic and hard copy versions.

8. Consultation outcome

8.1 A full public consultation was not conducted in relation to this instrument, as the majority of changes it implements are simply administrative, and there are no policy issues for such a consultation exercise to determine.

8.2 However, the Order has been fully discussed with key stakeholders (Ministry of Justice and the Financial Services Authority) both of whom are content

9. Guidance

9.1 No guidance is being issued in relation to this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is de minimis.

10.2 The impact on the public sector is de minimis.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The 2001 Regulations are subject to a process of continuous review by the Treasury.

13. Contact

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