

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (EXEMPTION)
(AMENDMENT) ORDER 2011

2011 No. 1626

1. 1.1 This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 S.I. 2001/1201 (the “Exemption Order”), to ensure that home finance related activities by Northern Ireland housing associations are not subject to regulation by the Financial Services Authority (“FSA”).

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

3.1 None.

4. Legislative Context

4.1 Section 19 of the Financial Services and Markets Act 2000 provides that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless they are authorised or exempt. This is known as the “general prohibition”. A “regulated activity”, for this purpose, is an activity specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544), including arranging, advising on, entering into and administering regulated mortgage contracts, regulated home purchase plans and regulated sale and rent back agreements. The Exemption Order provides for those persons specified in it to be exempt from the general prohibition subject to certain limitations. This Order amends paragraph 48 of the Schedule to the Exemption Order, which lists those housing bodies which are exempt from the general prohibition in respect of regulated home finance activities.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Department for Social Development Northern Ireland (“DSDNI”) is considering the introduction of a mortgage rescue scheme to assist homeowners at risk of repossession. This rescue scheme would include the option of a homeowner entering into a sale and rent back agreement, under which a registered housing association in Northern Ireland would purchase the property of the distressed homeowner and then offer an agreement to the homeowner to remain in the property as a tenant. At present, if such a scheme were to be introduced, Northern Ireland housing associations would require authorisation from the FSA to carry out the regulated activities relating to such sale and rent back agreements, whereas housing associations in England, Wales and Scotland are currently exempt from requiring authorisation from the FSA.

7.2 All registered housing associations in the United Kingdom are supervised by the relevant regulator of social housing in their jurisdiction. Registered housing associations in Northern Ireland are regulated by the DSDNI.

7.3 This Order will facilitate the introduction of a mortgage rescue scheme in Northern Ireland by exempting registered Northern Ireland housing associations from the need to obtain authorisation from the FSA. It will place Northern Ireland housing associations in the same position as their counterparts in England, Wales and Scotland.

- *Consolidation*

7.4 There are no plans to consolidate the Exemption Order.

8. Consultation outcome

8.1 There has been no public consultation on this Order but the Order has been drawn up after discussion with the DSDNI and the FSA.

9. Guidance

9.1 The Treasury is not providing any guidance in relation to this Order.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies, with the exception of registered housing associations in Northern Ireland which will experience a cost saving and reduced regulatory burden as a result of being exempt from FSA regulation.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov website.

11. Regulating small business

11.1 The legislation is de-regulatory and exempts all registered housing associations in Northern Ireland, many of which are small businesses, from FSA regulation when engaging in activities relating to sale and rent back agreements.

12. Monitoring & review

12.1 The DSDNI will assess the effectiveness of the new exemption by carrying out a post-project evaluation of the mortgage rescue scheme after two years of operation.

13. Contact

13.1 Rohan Lee at Her Majesty's Treasury Tel: 020 7270 5826 or email: rohan.lee@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.