

**EXPLANATORY MEMORANDUM TO  
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (PRESCRIBED FINANCIAL  
INSTITUTIONS) ORDER 2013**

**2013 No. 165**

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. **Purpose of the instrument**

- 2.1 This instrument prescribes the financial institutions which will be subject to Part 12A of the Financial Services and Markets Act 2000 (“FSMA”) (powers exercisable in relation to parent undertakings).

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

- 3.1 The Order defines “financial institution” only for the purposes of the definition of “financial holding company” rather than for all purposes of the Order. The Government recognises this is a slightly unusual approach and so provides the following explanation.

- 3.2 The definition of “financial holding company” derives from European law which contains a definition of “financial institution”. Hence it is appropriate to define “financial institution” when used in that context. However the definition of “financial institution” will not apply to the references to “financial institution” in article 2 of the Order. This reflects the fact that “financial institution” is used in FSMA (see for example section 192B(4), as inserted by section 27 of the Financial Services Act 2012) without a definition. “Financial institution” is a generally understood term which is used, again without definition, in other legislation (including the Banking Act 2009). The term includes an entity which itself provides financial services or which operates financial market infrastructure or whose business involves the ownership of, or management of, such entities. It would therefore be inappropriate for the definition of “financial institution” in the Order to apply to the references to “financial institution” in article 2 which are closely related to the operation of section 192B of FSMA.

4. **Legislative Context**

- 4.1 This instrument is being made by the Treasury in exercise of the powers conferred by section 192B(4) of FSMA as inserted by section 27 of the Financial Services Act 2012 (“the 2012 Act”), which received Royal Assent on 19 December 2012. The Order prescribes kinds of financial institutions for the purposes of Part 12A of FSMA. The

parent undertakings of qualifying authorised persons (as defined by section 192A of FSMA) or recognised UK investment exchanges (as defined by section 192B(5) of FSMA) which are financial institutions of a prescribed kind may be subject to directions by the Financial Conduct Authority or Prudential Regulation Authority under section 192C of FSMA or subject to rules made by those regulators relating to the provision of information under section 192J of FSMA. The overall effect of the Order in relation to financial institutions which are parent undertakings of qualifying authorised persons exchanges is that those institutions which are subject to consolidated supervision under EU law are prescribed for this purpose. The effect of the Order in relation to financial institutions which are parent undertakings of recognised UK investment exchanges is that all such financial institutions are prescribed for this purpose.

4.2 Part 12A of FSMA is applied to the Bank of England in its capacity as the regulator of recognised clearing houses by paragraph 17 of Schedule 17A to FSMA (as inserted by Schedule 7 to the 2012 Act). This Order also prescribes kinds of financial institution for the purposes of Part 12A as so applied. The effect of the Order in relation to financial institutions which are parent undertakings of recognised clearing houses is that all such financial institutions are prescribed for this purpose.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

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

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

## **7. Policy background**

7.1 The Financial Services Act 2012 provides for the reform of financial regulation in the UK. In the place of the Financial Services Authority (FSA), it establishes a new system of financial services regulators comprising:

- An expert macro-prudential authority, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks in the financial sector;
- A focused micro-prudential regulator, the Prudential Regulation Authority (PRA), to regulate firms that manage complex risks on their balance sheets - specifically, all deposit takers, insurers and some large investment firms; and
- A focused conduct of business regulator, the Financial Conduct Authority (FCA), to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

7.2 Part 12A of FSMA, as inserted by section 27 of the 2012 Act, strengthens the regulatory framework by providing that the regulators can take action in relation to a

parent undertaking, which is itself not regulated, but which controls and exerts influence over an authorised person. These provisions will allow the regulators to give a direction where desirable to advance its objectives or (where the regulator is responsible for consolidated supervision of the group) desirable for the purpose of effective supervision of the group. The regulator may also make rules which apply to parent undertakings requiring the regular provision of information.

7.3 To limit the powers of direction to parent undertakings whose main business is related to financial services, FSMA provides that the powers may only be exercised in relation to parent undertakings of certain authorised persons, recognised investment exchanges or recognised clearing houses if the parent undertaking is a financial institution of a prescribed kind.

7.4 The instrument prescribes, in relation to parent undertakings of authorised persons, that the following kinds of institution are prescribed financial institutions for the purposes of Part 12A: an insurance holding company; a financial holding company; and a mixed financial holding company.

7.5 The instrument also prescribes all financial institutions for the purposes of Part 12A in so far as that Part applies to the parent undertakings of recognised investment exchanges or to the Bank of England in the exercise of its functions in relation to recognised clearing houses.

## **8. Consultation outcome**

8.1 A draft of this instrument was subject to full public consultation in the document “A new approach to financial regulation: draft secondary legislation”, which was published on the HM Treasury website on 15 October. The consultation closed on 24 December, in line with Government guidance on public consultation, and consultation respondents were broadly supportive of the draft Order.

## **9. Guidance**

9.1 In line with section 192H of FSMA, the PRA and FCA have issued draft statements of policy for consultation setting out their views on use of the Part 12A powers.

## **10. Impact**

10.1 The instrument, in itself, does not impose any additional regulatory burdens on business, charities or voluntary bodies. The impact of the overall change to the regulatory system on business, charities or voluntary bodies, in so far as they are regulated financial services firms, is set out in the overarching impact assessment for the Financial Services Act 2012.

10.2 The impact on the public sector is set out in the overarching impact assessment for the Financial Services Act 2012.

10.3 An Impact Assessment has not been prepared for this instrument. Instead the overarching Impact Assessment that covers the changes to the regulatory system provided for by the Financial Services Act 2012 is available on the Treasury website as Annex H to the following publication: [http://www.hm-treasury.gov.uk/d/condoc\\_fin\\_regulation\\_draft\\_secondary\\_leg.pdf](http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf).

## **11. Regulating small business**

11.1 The legislation applies to small business, but does not in itself impose any additional regulatory requirements on them.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the PRA and FCA will be required by the Financial Services Act 2012 to 'have regard' to the principle of proportionality when carrying out their general functions through section 3B of the Financial Services and Markets Act 2000; specifically, that any burdens they impose should be proportionate to the benefits that are expected to result. Additionally, the PRA and FCA will be required to carry out and publish cost benefit analyses on any new requirements they impose.

## **12. Monitoring & review**

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

## **13. Contact**

Michael Harvey at HM Treasury Tel: 0207 270 4876 or email: [michael.harvey@hmtreasury.gsi.gov.uk](mailto:michael.harvey@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.