

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED ACTIVITIES)
(AMENDMENT) (NO. 2) ORDER 2014

S.I. 2014 No. 1448

- 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 The instrument removes certain credit broking activities from the scope of regulation under the Financial Services and Markets Act 2000 (“the Act”).

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

3.1 None

4. Legislative Context

4.1 The instrument is made under section 22(1) and (5) of, and paragraph 25 of Schedule 2 to, the Act.

5. Territorial Extent and Application

5.1 The 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

7.1 The instrument amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544; “the RAO”) so as to remove certain credit broking activities from the scope of regulation under the Act. In particular, it extends the regulatory exemptions for broking credit agreements such that broking certain types of credit agreements, including government-sponsored housing schemes (e.g. Help to Buy: equity loan), is not a regulated activity; accordingly, developers and others who broker such lending schemes will not require authorisation by the Financial Conduct Authority.

7.2 The agreements themselves are already exempted from regulation. However, when the Government was preparing the secondary legislation by which the consumer credit regime was transferred from the Office of Fair Trading to the Financial Conduct Authority, it was not considered appropriate to mirror those exemptions when defining the scope of regulated activity for broking, as there was a concern it might risk incentivising brokers to distort the choices offered to consumers towards unregulated activities carried on by unauthorised persons. The amendments in respect of credit broking in this instrument provide a very limited exemption, for broking on second charge mortgage lending activity where the lender is a housing authority; and it is considered that this risk is not material.

7.3 While this requires clarification in the consumer credit regime, under which second charge lending is currently regulated, it is already reflected in the scope of existing mortgages regulation, which exempts mortgage broking activity for such credit agreements, where they are secured on a first rather than a second charge. This change therefore aligns the treatment of such broking for first and second charge lending.

8. Consultation outcome

8.1 The FCA was consulted on, and closely involved in the preparation of, the draft Order.

9. Guidance

9.1 Further guidance will be made available by the FCA.

10. Impact

10.1 This instrument will have no impact on business, charities or the voluntary sector.

10.2 The impact on business, charities or voluntary bodies of the transfer of consumer credit regulation from the OFT to the FCA is set out in the impact assessment accompanying the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881). The Government's best estimate of the total cost to business of the new regulatory regime is £336 million over 10 years (at 2013 prices). The Government's best estimate of benefits of the regime is £689 million over 10 years. The estimated net benefit over 10 years is £353 million.

10.3 The impact on the public sector is not quantified as public sector organisations generally do not undertake consumer credit activities, apart from local authorities which offer certain types of unsecured credit agreements. The Government has previously consulted local authorities and found that comparatively few authorities would need to be authorised.

11. Regulating small business

11.1 The instrument is deregulatory so will not increase the regulatory burdens on small business.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of the instruments to ensure they continue to meet the policy aims.

13. Contact

13.1 Anna Harvey at HM Treasury (tel: 0207 270 5780 or email: anna.harvey@hmtreasury.gsi.gov.uk) can answer any queries regarding the instruments.