

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONSUMER CREDIT)**  
**(MISCELLANEOUS PROVISIONS) (No. 2) ORDER 2014**

**2014 No. 506**

- 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 makes provision in connection with the transfer of consumer credit regulation from the Office of Fair Trading (“OFT”) to the Financial Conduct Authority (“FCA”) which is effected by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, S.I. 2013/1881, and the Financial Services Act 2012 (Consumer Credit) Order 2013, S.I. 2013/1882.

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

3.1 None

**4. Legislative Context**

4.1 The Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014 is made under section 2(2) of the European Communities Act 1972 and sections 38 and 426(1) of the Financial Services and Markets Act 2000.

**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 makes provision in connection with the transfer of consumer credit regulation from the OFT to the FCA as follows:

- to exempt a charity from the need for authorisation under the Financial Services and Markets Act 2000 (“FSMA”) where it operates an electronic system in relation to lending (commonly known as a peer-to-peer platform) and the lender receives no income or return other than the repayment of the capital;
- to exempt from authorisation under FSMA persons who acquire rights under regulated credit agreements (consumer credit loans), but do not actually make any such loans, provided that the person servicing or administering the loan is authorised by the FCA. The instrument provides a parallel exemption for regulated consumer hire agreements. The effect of these provisions is that special purpose vehicles used in capital market arrangements and securitisations, and other funding structures, will not require authorisation, but relevant consumer protections will be maintained because of the requirement that the servicer is authorised;
- to amend the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) in relation to local authorities and to insolvency practitioners to align the application of the restriction under FSMA on financial promotions to such persons with the exclusions for such persons from the requirement for authorisation under FMSA to carry on a regulated activity;
- to amend the Money Laundering Regulations 2007 (S.I. 2007/2157) align the application of those regulation to local authorities with the exclusions for local authorities from the requirement for authorisation under FMSA to carry on a regulated activity;
- to impose the requirements of article 21 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EC on persons who undertake credit broking but are excluded from the requirement for authorisation under FMSA to carry on that regulated activity;
- to amend the Consumer Credit Act 1974 to preserve the application of section 126 of that Act (enforcement of land mortgages) to residential and buy-to-let mortgages;
- to amend the commencement provisions in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366) and to make other amendments to that Order in consequence of amendments to article 58 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881) made by the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014 (S.I. 2014/208); and
- to make transitional provision in respect of complaints about functions of the OFT under the Consumer Credit Act 1974. Except where the complaint, or an appeal

against the OFT's response to such a complaint has been referred to the Parliamentary Commissioner for Administration (commonly called the Parliamentary Ombudsman) before 1st April 2014, complaints about the OFT's consumer credit functions are transferred into the complaints scheme maintained by the FCA under the Financial Services Act 2012.

## **8. Consultation outcome**

8.1 The Government consulted the FCA during the preparation of these instruments.

8.2 The Government also consulted: relevant stakeholders in relation to the exemption for charities; and the Council of Mortgage Lenders and two leading City law firms in relation to the exemptions relating to regulated credit agreements and regulated consumer hire agreements.

## **9. Guidance**

9.1 Further guidance will be made available by the FCA.

## **10. Impact**

10.1 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 accompanying impact assessment. The Government's best estimate of the total cost to business of the new regulatory regime is £336million over 10 years (at 2013 prices). The Government's best estimate of benefits of the regime is £689million over 10 years. The estimated net benefit over 10 years is £353million.

10.2 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 consulted local authorities and found that comparatively few authorities would need to be authorised. As noted above, this SI also provides that local authorities which are authorised for consumer credit activities will be excluded from a requirement to be authorised for other FCA-regulated activities.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the regulatory regime for consumer credit has been designed so that small firms will be subject to proportionate and manageable burdens:

- Many small firms will be able to take advantage of the limited permission regime which will impose lower costs and reduced administrative requirements on eligible firms;
- Small firms (except lenders which apply interest and charges to loans) will have the option to become an appointed representative, as a way for smaller firms to operate without having to shoulder the burden of direct authorisation and regulation;
- Consumer credit firms will not be subject to minimum capital requirements (except where they undertake debt management business);
- Existing exemptions from regulation for agents of mail order firms and home credit providers will continue;
- Firms which specialise in finding or tracing individuals, where these are not carrying on a financial services business will be removed from the scope of regulation; and
- In addition, the FCA proposes to introduce a differentiated fee charging system, which will reflect the size of firms.

11.3 The basis for the final decision on what action to take to assist small business is ensure that small businesses gain from the reputational benefits of a better-regulated and well-functioning market and to ensure that small businesses are subject to appropriate and proportionate regulatory burdens. The Government has decided against exempting small business from this policy, as its objective is to strengthen consumer protection across the consumer credit market.

## **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 Laura Hanoman at HM Treasury (tel: 0207 270 5507 or email: [laura.hanoman@hmtreasury.gsi.gov.uk](mailto:laura.hanoman@hmtreasury.gsi.gov.uk)) can answer any queries regarding the instruments.