

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED ACTIVITIES)
(AMENDMENT) (PENSIONS GUIDANCE EXCLUSIONS) ORDER 2015

2015 No. 489

- 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 makes provision in connection with the implementation of the pensions guidance service, Pension Wise, to ensure that persons providing the service are not carrying out an activity regulated by the Financial Conduct Authority (“the FCA”).

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

3.1 This instrument contains no matters of special interest to the Joint Committee on Statutory Instruments.

4. Legislative Context

4.1 This instrument is made under section 22 of, and Schedule 2 to, the Financial Services and Markets Act 2000 (“FSMA”). It is made to ensure that where a person is providing guidance by arrangement with HM Treasury pursuant to HM Treasury’s role under section 333B of FSMA, that person is not carrying out an activity regulated by the FCA. Regulated activities are defined in section 22 of FSMA and in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I 2001/544).

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

7.1 This instrument makes provision in connection with the implementation of the pensions guidance service, Pension Wise.

7.2 The legislative framework for the pension guidance service is set out in Schedule 3 to the Pension Schemes Act 2015 which amends FSMA by inserting a new Part 20A. This Order specifies that persons providing pensions guidance under arrangements with HM Treasury pursuant to that legislative framework are not carrying out certain FCA regulated activities in the course of providing pensions guidance.

7.3 The activities which this order excludes are those which might otherwise be carried out in the course of providing pensions guidance, namely:

- Arranging deals in investments
- Debt-counselling
- Providing basic advice on stakeholder products
- Advising on investments
- Advising on regulated mortgage contracts
- Advising on regulated home reversion plans, regulated home purchase plans and regulated sale and rent back agreements

7.4 It is not intended that the pensions guidance service should carry out activities which would amount to giving regulated advice or arranging deals in the absence of these amendments. Instead, the amendments to these regulated activities ensure that those providing pensions guidance are subject to the bespoke scheme for monitoring the guidance set out in Part 20A of FSMA, rather than the scheme for FCA regulated persons established elsewhere in the Act.

8. Consultation

8.1 The broad proposal was included in the Government response to the consultation issued after the 2014 Budget and informal consultation on this approach has continued as part of HM Treasury's stakeholder engagement regarding the Pension Wise service. No objections have been raised with HM Treasury by regulated firms or other stakeholders.

8.2 The FCA was consulted on the draft instrument.

9. Guidance

9.1 Guidance on the regulatory perimeter is the responsibility of the FCA and will be made available by the FCA if it deems appropriate.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies as regulatory burdens on these bodies will be reduced as a result of this legislation which does no more than clarify the regulatory arrangements for designated guidance providers.

10.2 The impact on the public sector is not quantified as this legislation simply clarifies the regulatory arrangements for designated guidance providers of the Pension Wise service.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of the instrument to ensure it continues 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) can answer any queries regarding the instrument.