

<p><b>Title:</b> Financial Services and Markets Act 2000 (Collective Investment Scheme) (Amendment) Order 2021</p> <p><b>SI No:</b> TBC</p> <p><b>Other departments or agencies:</b> HM Treasury</p> <p><b>Contact for enquiries:</b> <b>Tukeer Hussain:</b> <a href="mailto:tukeer.hussain@hmtreasury.gov.uk">tukeer.hussain@hmtreasury.gov.uk</a></p>	<p><b>De minimis assessment</b></p>
	<p><b>Date:</b> 29/04/2021</p>
	<p><b>Type of regulation:</b> Domestic</p>
<p><b>Cost of Preferred (or more likely) Option</b> N/A</p>	<p><b>Date measure comes into force:</b> 18/06/2021</p> <p><b>Equivalent Annual Net Direct Cost to Business per year (in 2019 prices)</b> (Nil, but material positive impact expected)</p>

## 1. What is the problem under consideration? Why is government intervention necessary?

Paragraph 6A of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (“the CIS Order”), provides that regulated peer to peer lending platforms do not amount to a collective investment scheme and so are exempt from being authorised by the Financial Conduct Authority (“the FCA”) for this particular activity. This is referred to as “the CIS exemption”.

At present, there is a possible lack of clarity concerning the scope of the CIS exemption; specifically whether it applies where a firm is being wound up and its peer to peer lending agreements are transferred to another firm with the purpose of continuing the provision of services to a lender and borrower. Therefore, the Government is amending the instrument that provides the CIS Exemption to make clear that even where a firm operating a peer to peer lending platform, or other service provider, did not “originate” the loan (i.e., did not facilitate the entry into it by a borrower and lender) that firm would still benefit from the CIS Exemption where it takes over those loans in the event of the originating platform being wound up.

The effect of the amendment will also clarify that – where the lending agreements are transferred to a number of firms, the CIS exemption will apply to all those firms. In addition, if one or more of those subsequent firms is, itself, subject to winding up proceedings, a further firm to which the lending agreement are transferred will also benefit from the CIS exemption.

## 2. What are the policy objectives and the intended effects?

It is the Government’s view that if a firm taking over another firm’s peer to peer loan book needs to hold, or obtain authorisation to operate a collective investment scheme, it is likely that would significantly reduce the number of firms that can or may be willing to carry out this activity. If an effective run-off or transfer of business is not achieved, it becomes more likely that a lender (i.e. those investing via the platforms), using a peer to peer lending platform will not receive some or all of the repayment of the loans they made through the platform. There is also a risk that a disorderly platform failure could result in uncertainty for lenders which could ripple out to other platforms if lenders try to withdraw funds invested elsewhere. In the very worst case, this could possibly lead to further failures.

Given the above and based on discussions with the FCA, the Government has decided that the existing CIS Exemption (described in section 2.1) requires a minor legal clarification in order to help facilitate – should the need arise – any potential failing platform loan books to be taken over.

Whilst the industry has not called for such a clarification, the Government believes it is prudent to do so. This is ultimately to reduce the possibility of any potential lender (i.e. those investing via the platforms) harm in the peer to peer lending sector and to further support market stability.

**3. What policy options have been considered, including any alternatives to regulation?  
Please justify preferred option**

HM Treasury identified no alternatives that could provide clarity in the existing legislative provisions. Only a legislative amendment will provide the necessary clarity.

**4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.**

The statutory instrument seeks to provide legal clarity in the Schedule to the CIS Order in a specific set of circumstances i.e. a regulatory exemption applying in the case of a firm that takes on the lending agreements of another firm that is winding down the operations of a peer to peer lending platform. Therefore, the net impacts to business falls into the de minimis category; significantly less than £5 million a year.

There are reasonable grounds to assume there will be no incremental cost to businesses as a result of this change – both for the firm operating the peer to peer platform transferring the loan book, and potential acquiring firms. This assumption is based on the fact that the statutory instrument requires no active engagement or adjustments by businesses in their business-as-usual processes. For context, there are currently 57 FCA regulated firms operating peer to peer lending platforms, and whilst it is recognised this number could grow, at present, the scope of this amendment is naturally quite limited.

Furthermore, for the same reasons above, this amendment is not expected to trigger any notable firm familiarisation costs or require system modification. Given the minimal (if any) incremental costs associated with the amendment, coupled with the notable potential benefit from reducing investor harm, it is likely that in the aggregate, there is a small net benefit associated with this change. However, it is not possible to quantify given the infrequency of loan book transfers.

**5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:**

**a) Significant distributional impacts (such as significant transfers between different businesses or sectors)**

No

**b) Disproportionate burdens on small businesses**

No, the vast majority of businesses (of all sizes) will remain unaffected by this amendment. The amendment in the statutory instrument will apply equally to firms of all sizes that wish to acquire a loan book from another firm who is winding down their peer to peer lending operations.

**c) Significant gross effects despite small net impacts**

No

**d) Significant wider social, environmental, financial or economic impacts**

No

**e) Significant novel or contentious elements**

No

Sign-off for de minimis assessment: SCS

***I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

**SCS of Banking & Credit**

Signed: **DAVID RAW**

Date: 30/04/2021

**SCS of Better Regulation Unit**

Signed: **Linda Timson**

Date: 04/05/2021

Sign-off for de minimis assessment: Minister

***I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

***(name, Ministerial role)***

Signed: **John Glen MP, Economic Secretary to the Treasury**

Date: 06/05/2021

**Further information sheet**

Please provide additional evidence in subsequent sheets, as required.