

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES (BANKING REFORM) ACT 2013 (TRANSITIONAL AND
SAVINGS PROVISIONS) ORDER 2015

2015 No. 492

- 1.** This explanatory memorandum has been prepared by the 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 To make transitional provisions and savings in connection with the coming into force of Part 4 of the Financial Services (Banking Reform) Act 2015.

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

3.1 None.

4. Legislative Context

4.1 Part 4 of the Financial Services (Banking Reform) Act 2013 amends Part 5 of the Financial Services and Markets Act 2000. Among other things, Part 5 provides for the Financial Conduct Authority and the Prudential Regulation Authority (“the regulators”) to make rules specifying descriptions of functions (“controlled functions”) in authorised financial services firms which may only be performed by persons who have been approved by the regulators to perform these functions following an application by the firm concerned. The amendments to Part 5 change the powers of the regulators to make these rules.

4.2 The Order makes transitional and saving provision in connection with these changes. In particular, it makes provision for persons who are approved to perform controlled functions specified in rules made using current Part 5 powers (“current controlled functions”) to be approved to perform controlled functions specified in rules made using amended Part 5 powers (“new controlled functions”) without a new application by the firm concerned (“grandfathering”). The Order also makes provision for applications for approval to perform current controlled functions made but not determined before the amended powers come into force to be treated as applications for approval to perform new controlled functions.

4.3 The Order also gives the regulators powers to make rules mapping current controlled functions to new controlled functions. There are also savings for prohibitions

on performing certain controlled functions which had been given or which were being considered by the regulators before 7 March 2016, and to ensure that the regulators can, on and after 7 March 2016, continue to impose penalties for performing a controlled function before that date without approval.

5. Territorial Extent and Application

5.1 This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

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

7. Policy background

- What is being done and why

7.1 Following the report by the Parliamentary Commission on Banking Standards *Changing banking for good* published in June 2013, the Government legislated in Part 4 of the Financial Services (Banking Reform) Act 2013 (“the 2013 Act”) to implement the Commission’s recommendations in relation to individual conduct and accountability in banking. The Commission’s recommendations included the introduction of a “senior persons regime” and a “licensing regime” to replace the “approved persons regime” in Part 5 of the Financial Services and Markets Act 2000 as it applied to the banking industry. These recommendations are reflected in the included in Part 4 of the 2013 Act.

7.2 The basis of the senior managers regime (as currently of the approved persons regime) is the approval by the regulators of persons who are to perform certain functions in authorised financial services firms. These functions are known as controlled functions and their descriptions are specified in rules made by the regulators. New definitions of the types of controlled functions were put in place by the 2013 Act.

7.3 The Order makes transitional and saving provision in connection with these changes. Its main purpose is to ensure that persons who are approved to perform current controlled functions can be approved to perform new controlled functions (without an application having to be made to perform those new functions) which correspond to their actual duties, and which are consistent with the current controlled functions they are approved to perform. The Order also makes similar provision for applications for approval to perform controlled functions which are being considered by the regulators on 7 March 2016.

8. Consultation outcome

8.1 The Treasury has not consulted on the making of this Order.

9. Guidance

9.1 The regulators will provide guidance as part of the information they provide to firms about the transitional arrangements.

10. Impact

10.1 An Impact Assessment has not been prepared for this Order. The regulators included cost benefit analyses in their main consultation on rules published in July 2014. (See *FCA CP14/13 PRA CP14/14 Strengthening accountability in banking: a new regulatory framework for individuals* available on the regulators' websites – www.fca.org.uk and www.bankofengland.co.uk.)

11. Regulating small business

11.1 This Order applies to small business.

11.2 This Order contains no provision for different treatment of small businesses. The regulators can make different provision for different sizes of business in their substantive rules if that is appropriate.

12. Monitoring & review

12.1 This Order makes transitional and savings provisions. It will not be reviewed.

13. Contact

Adam Goodyer at Treasury Legal Advisers Tel: 020 7270 1611 or email: adam.goodyer@hmtreasury.gsi.gov.uk can answer any legal queries regarding the Order. David Sly at Treasury Tel: 020 7270 5162 or email: david.sly@hmtreasury.gsi.gov.uk can answer any policy queries regarding the Order.