

# **Deregulating freight forwarding insurance**

A consultation

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December 2006



HM TREASURY





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**Deregulating freight  
forwarding insurance**

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# INTRODUCTION

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**1.1** This consultation document seeks views on the Government's intention to remove the insurance activities of freight forwarders from the scope of Financial Services Authority (FSA) regulation.

**1.2** A freight forwarder, whose business involves the organisation of the movement of goods by all modes of transport, will typically offer insurance to its customers to cover loss of, or damage to, their goods whilst these goods are in the freight forwarder's possession. Freight forwarders were brought within the scope of FSA regulation following the UK's implementation of the EU's Insurance Mediation Directive (IMD), which requires, broadly, the regulation of the selling of insurance contracts by intermediaries. Implementation of the Directive was subject to extensive public consultation, the outcome of which was announced on 5 June 2003. The Directive was implemented in the UK by giving the FSA the power to regulate the selling of insurance contracts and the FSA began regulating this area on 14 January 2005.

**1.3** Following representations from the freight forwarding industry, HM Treasury entered into discussions with the European Commission about whether the insurance activities of freight forwarders should be subject to regulation under the terms of the IMD. Following this dialogue, and given HM Treasury's assessment of the low potential for consumer detriment in this area, on 16 October 2006 the Economic Secretary to the Treasury, Ed Balls MP, announced the Government's intention to exempt the insurance activities of freight forwarders from FSA regulation. This is in line with the Government's proportionate and risk-based approach to the regulation of financial services.

**1.4** HM Treasury is now seeking views on the appropriateness and extent of this exemption. In particular HM Treasury would welcome evidence on the costs and benefits of removing freight forwarders from regulation and also views and evidence on the potential costs and benefits of extending this exemption to similar activities.

**1.5** Draft legislation is provided alongside this document in Annex B. This consultation will run for 12 weeks – with an appropriate extension for the Christmas break - and will close on 22 March 2007. Following this consultation the Government will announce its chosen approach alongside a summary of the consultation responses and, if appropriate, final legislation.

**1.6** Readers of this consultation document may also wish to be aware that HM Treasury is also reviewing whether travel insurance sold with a holiday or related travel should be subject to FSA regulation. A call for evidence, released on 23 November 2006 as part of this review, is available on HM Treasury's website: <http://www.hm-treasury.gov.uk>.



# 2

## RESPONDING TO THE CONSULTATION

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### HOW TO RESPOND

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**2.1** The Government welcomes the views of all stakeholders on issues raised in this document. The consultation period begins with the publication of this document and will run for 12 weeks, with an appropriate adjustment for the Christmas break. Please ensure that responses to this consultation reach us by 22 March 2007. We cannot guarantee to consider responses received after this date. Responses should be sent to:

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**2.2** This document can be found on HM Treasury's website: [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

**2.3** When responding, please state whether you are responding on behalf of an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

### CONFIDENTIALITY

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**2.4** All written responses will be made public on HM Treasury's website unless the author specifically requests otherwise in writing.

**2.5** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

**2.6** An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury. HM Treasury will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

**2.7** Subject to paragraphs 2.4, 2.5 and 2.6 if you wish part (but not all) of your response to remain confidential, please supply two versions – one for publication on

the website with the confidential information deleted, and another confidential version for use by HM Treasury.

## **FREEDOM OF INFORMATION CONTACT**

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**2.8** Any Freedom of Information Act queries should be directed to:

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## **HOW THIS CONSULTATION IS BEING CONDUCTED**

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**2.9** This consultation is being conducted in line with the Code of Practice on Consultation. The criteria are listed below (a full version can be found at <http://www.cabinet-office.gov.uk/regulation/consultation/code.htm>). The six consultation criteria are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about who may be affected, what questions are being asked, and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows Better Regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you have concerns as to how this consultation is being conducted, please contact:

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# 3

## REMOVING FREIGHT FORWARDERS FROM THE SCOPE OF REGULATION

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### FREIGHT FORWARDING

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**3.1** There are around 2,500 freight forwarding firms in the UK. Freight forwarding as a sector contributes around £16 billion per annum to the UK's GDP and employs around 15,000 people<sup>1</sup>. Freight forwarding is a sub-sector of the logistics industry – an extremely diverse sector that includes a number of activities other than freight forwarding including, amongst others, the Express Parcels sector. Collectively the logistics industry consists of 65,000 companies that contribute £55 billion per annum to the UK economy and employ around 1.7 million people<sup>2</sup>.

**3.2** The basic service provided by the freight forwarding industry is the international movement of freight by any mode of transport. Whilst there is no such thing as a 'typical' freight forwarding firm, freight forwarders generally provide one or more of the following services:

- European road and rail distribution;
- maritime intermodal services;
- air freight consolidation and forwarding;
- customs broking and consultancy;
- packing of goods for export;
- warehousing and distribution;
- logistics and supply chain management.

**3.3** Within these activities, the freight forwarder is often independent of the physical carrier of the freight, allowing the forwarder to advise on the customer's distribution needs.

### FREIGHT FORWARDERS' INSURANCE ARRANGEMENTS<sup>3</sup>

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**3.4** Insurance plays an important part in international trade. Goods in transit are exposed to numerous risks and hazards. In light of this, and as part of their service, freight forwarders typically arrange insurance that allows the owners of goods to insure their cargo against loss or damage whilst it is carried by, or in transit with, third parties who do not otherwise have an insurable interest<sup>4</sup>.

**3.5** In practice, the freight forwarder manages and organises the transport of the customer's goods and insurance is provided as an optional element of the service. The freight forwarder typically does this through the use of an "Open Cover" policy. The policy is in the name of the freight forwarder and all customers requiring insurance are covered by this one policy. The forwarder purchases this policy directly from an

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<sup>1</sup> Source: British International Freight Association (BIFA)

<sup>2</sup> Source: Skills for Logistics

<sup>3</sup> Source: BIFA

<sup>4</sup> Insurance of this type is known as 'marine' insurance, regardless of the mode of transportation used in the movement of the goods.

insurance company or, more usually, through an insurance broker - it is a standard policy that is not negotiable by the customer or the forwarder. The insurance cover is paid for by an annual deposit premium by the freight forwarder and is reviewed on an annual basis.

**3.6** During contract negotiations with the customer, the forwarder will include the option for the customer to have the cargo insured. If the customer agrees, the cargo is added to the monthly policy declaration.

**3.7** The customer who has requested insurance is charged a premium for the service and this premium is included with all the other charges for services provided by the forwarder. Periodically, normally once a month, the freight forwarder will submit a list to the insurer or broker declaring those of the customers' consignments that are to be covered by the policy. A periodic adjustment of the premium is made in line with actual declared carryings. Every customer who requests insurance is covered even if the forwarder forgets to declare the goods on his monthly declaration.

**3.8** Due to the nature of international trade the ownership of the cargo in transit from a seller to a buyer can change hands. With this change of ownership so the benefit of the insurance cover needs to change. An Open Cover policy recognises this and provides for either the seller or, if ownership of the goods has passed into his hands, the buyer to make a claim against the policy and be entitled to direct compensation from the insurer. Additionally, the customer's direct right under the Open Cover policy helps to facilitate the purchase of goods on credit.

## THE INSURANCE MEDIATION DIRECTIVE

### General insurance regulation

**3.9** The selling of insurance products by an insurance intermediary is required to be regulated by the EU's Insurance Mediation Directive (IMD)<sup>5</sup>. Insurance intermediaries can be specialist insurance brokers (i.e. an individual or firm whose service is to advise the customer on their insurance needs and to find in the marketplace insurance products appropriate to these needs) or they can be non-specialist providers, for example, banks, supermarkets or motor dealers. In other words, any individual or firm carrying on certain activities relating to contracts of insurance is captured by the requirements of the IMD, regardless of their main professional activity.

**3.10** These activities are: introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance; concluding contracts of insurance; and assisting in the administration and performance of such contracts, in particular in the event of a claim<sup>6</sup>. The Directive requires the regulation of these mediation activities in relation to all contracts of insurance, including long-term and general insurance business, commercial insurance and reinsurance.

**3.11** The Government decided to implement the Directive in the UK by giving the FSA the responsibility for regulating various activities relating to the sale and administration of general insurance products, whether carried on by intermediaries or insurers. The FSA was already responsible for regulating insurers' business on a prudential basis and regulating mediation activities relating to some contracts of long-term insurance, for example life insurance products.

<sup>5</sup> EU Directive 2002/92/EC

<sup>6</sup> See Article 2.3 of the IMD

**3.12** Following extensive consultation by HM Treasury and the FSA, the FSA took on responsibility for regulating general insurance on 14 January 2005. The Insurance Mediation Directive came into force on 15 January 2005. FSA regulation of this area means that those carrying out activities relating to the sale and administration of general insurance products must be authorised by the FSA, and must comply with the relevant FSA prudential and conduct of business rules<sup>7</sup>. The FSA's *Insurance: Conduct of Business* rules relate to the business processes involved in selling and administering (non-investment) insurance - including marketing, sales, providing literature to customers and claims handling.

**3.13** Retail and small business customers of FSA authorised firms are offered additional protection through access to the Financial Ombudsman Service (FOS) in the case of a dispute with an authorised firm, and to the Financial Services Compensation Scheme (FSCS) in the case of an insolvency of an authorised firm. The FOS provides an independent and impartial complaints service – free of charge to the consumer - that can be used as an alternative to taking action through the courts. The Ombudsman's decision is binding on insurers and intermediaries, while not interfering with the complainant's right to seek an alternative decision through the courts if they are dissatisfied with the Ombudsman's decision. The FSCS acts as the UK's compensation fund of last resort for customers of financial services firms. This means that the FSCS can pay compensation to consumers if an authorised financial services firm is unable, or likely to be unable, to pay claims against it. The FSCS is funded by a levy on authorised firms. As noted above, these protection schemes only apply to individuals or small business customers<sup>8</sup>.

**Regulation of  
freight  
forwarders'  
insurance  
activity**

**3.14** During the implementation phase of the Directive, the European Commission had made it clear that the wording of the IMD was deliberately wide. The Government's original assessment was that freight forwarders should be regulated in order to fulfil the requirements of the IMD. Given this, the Government had no discretion simply to exempt the freight forwarding sector from the effects of the IMD.

**3.15** Following discussions with the UK's freight forwarding industry, it became apparent that other EU Member States were not regulating freight forwarders' insurance activity. The Government approached the Commission for further clarification and, following dialogue, the Commission confirmed that it does not consider that the specific insurance activities of freight forwarders require regulation in order to comply with the IMD. The notification to the insurer of the customer's rights in the policy does not imply that freight forwarders carry out insurance mediation for the purpose of the IMD, as the policy remains in the name of the freight forwarder who concluded the contract.

**3.16** This has given the Government the opportunity to revisit whether freight forwarders should be subject to regulation. Two factors are of central importance to this assessment: firstly, the Government's over-arching framework of risk-based regulation, balancing the need for consumer protection with the cost of regulation on business; secondly, the impact on the international competitiveness of the UK freight forwarding sector's insurance activities being subject to regulation, given that competitors in other Member States are not subject to such requirements.

<sup>7</sup> Available on the FSA website: [www.fsa.gov.uk](http://www.fsa.gov.uk)

<sup>8</sup> This protection is subject to more detailed rules on the jurisdiction of the FOS and the coverage of the FSCS. For instance, only individuals and small businesses are eligible to make claims to the FSCS and the Financial Ombudsman Service. The eligibility definition of a small business for FSCS claims depends on the type of activity. For the purpose of complaints to the FOS, a small business is one with a group turnover of less than £1 million. Further information on the FOS can be found at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk). Further information on the FSCS can be found at [www.fscs.org.uk](http://www.fscs.org.uk).

**The risk of consumer detriment** **3.17** The Government believes that the risk of consumer detriment presented by removing freight forwarders' insurance activity from FSA regulation is low, since the role of the freight forwarder is, in practice, simply one of passing on rights under the policy to the customer. Customers of freight forwarders are typically commercial entities, and with this in mind, the Government's intention is to only exempt from regulation those insurance activities where the customer is a commercial entity. This should further minimise the risk of consumer detriment.

**Question 1**

Do you have any evidence on the potential for consumer detriment arising from freight forwarders' insurance activities?

**The impact on international competitiveness** **3.18** The freight forwarding industry has consistently argued that the cost arising from regulation of its insurance activities puts it at a competitive disadvantage compared to freight forwarders based abroad (especially those in other EU Member States). The industry has argued that freight forwarding is an internationally competitive business and that UK freight forwarders are losing business to competitor firms overseas who offer an identical service but are not subject to similar regulation.

**Question 2**

Do you have any views on the impact of the current requirement for FSA regulation upon the international competitiveness of the UK's freight forwarding sector?

## PROPOSED CHANGES TO THE SCOPE OF FSA REGULATION

**3.19** Given the considerations laid out above, the Government believes it is appropriate to remove freight forwarders' insurance activity from the scope of FSA regulation. However, FSA regulation will still apply to the selling of the original insurance policy to the freight forwarder and, if the insurance is provided by a FSA authorised insurer, the freight forwarder's customer will still be afforded protection associated with the insurance product (e.g. access to the FOS and FSCS, subject to the eligibility limits discussed earlier).

**3.20** The Government's proposed approach is to remove freight forwarders from the scope of FSA regulation by amending the Exemption Order<sup>9</sup>. This Order provides for certain persons to be exempt from the general prohibition on carrying out regulated activities imposed by the Financial Services and Markets Act 2000 (FSMA). Exempt persons are not required to be authorised to carry on regulated activities. Further details on the costs and benefits of this approach, and any other options, are provided in the partial Regulatory Impact Assessment provided alongside this consultation document.

**3.21** This proposed approach will exempt freight forwarders from the general prohibition in respect of any regulated activity of the kind specified by the following articles of the Regulated Activities Order<sup>10</sup> (RAO):

<sup>9</sup> Part IV of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001

<sup>10</sup> Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

- Article 21 (dealing in investments as agent);
- Article 25 (arranging deals in investments);
- Article 39A (assisting in the administration and performance of a contract of insurance); and
- Article 53 (advising on investments)

The RAO defines the perimeter of FSA regulation under powers afforded to it by FSMA.

**3.22** This exemption is restricted to circumstances where a freight forwarder holds a policy of insurance which insures it against loss of, or damage to, goods and makes available to a customer rights under that policy such that the customer can claim directly against the insurer in respect of loss of, or damage to, its goods. For the purpose of this measure, a freight forwarder is defined as a person whose principal business is arranging or carrying out the transportation of goods. A customer is defined as a person who is not an individual who uses the service of a freight forwarder (i.e. the exemption from regulation is only applicable where the freight forwarder's customer is a legal entity).

**3.23** The Government would welcome comments on its draft Statutory Instrument provided in Annex B and, in particular, whether the restrictions placed upon the exemption through the definitions of the freight forwarder and the customer are suitable given the Government's intention in this area.

**3.24** There will be firms whose business activities are similar in nature to those conducted by freight forwarders, and whose insurance activities are, or could be, structured in a way that would fall outside the scope of the IMD. These firms could benefit from a wider exemption from FSA regulation. However, the Government would only consider doing so in areas where the risk of consumer detriment can be shown to be low. The Government would welcome comments on any such business activities, in particular evidence on the risk for any consumer detriment related to such businesses' insurance activities.

#### **Question 3**

Should the Government's proposed approach be widened to include an exemption from legislation for other activities which are similar in nature to freight forwarding and what are the arguments for doing so?

#### **Question 4**

Do you have any comments on the partial Regulatory Impact Assessment (RIA) in Chapter 4?

#### **Question 5**

Do you have any comments on the draft Statutory Instrument in Annex B?



# 4

## PARTIAL REGULATORY IMPACT ASSESSMENT

### TITLE OF PROPOSAL

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**4.1** Removing freight forwarders' insurance activities from the scope of Financial Services Authority (FSA) regulation.

### PURPOSE AND INTENDED EFFECT

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#### Background, objective and rationale

**4.2** Since the introduction of FSA regulation of the selling of general insurance in the UK on 14 January 2005 following extensive consultation by HM Treasury and the FSA, the Government has considered it necessary for the FSA to regulate freight forwarders' insurance activities in order to comply with the requirements of the Insurance Mediation Directive (IMD)<sup>1</sup>. Following discussions with the UK's freight forwarding industry – initiated by concerns from the industry that other EU Member States are not regulating freight forwarders' insurance activities - HM Treasury has approached the European Commission to discuss whether the insurance activities of freight forwarders should be subject to regulation. Following this dialogue, the Government now believes that it will be possible to comply with the requirements of the IMD without requiring the regulation of freight forwarders' insurance activities. The Government also believes that the potential for consumer detriment in this area is low, and that the cost of regulation borne by the UK's freight forwarding industry has a significant impact on the international competitiveness of the sector.

**4.3** Given these considerations, the Government believes that it is appropriate to remove freight forwarders' insurance activities from the scope of FSA regulation. However, FSA regulation will still apply to the selling of the original insurance policy to the freight forwarder and, if the insurance is provided by a FSA authorised insurer, the freight forwarder's customer will still be afforded protection associated with the insurance product (e.g. access to the FOS and FSCS, subject to certain eligibility limits<sup>2</sup>).

### CONSULTATION

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**4.4** This consultation concerns removing freight forwarders' insurance activities from the scope of FSA regulation. This consultation will run for 12 weeks – with an appropriate adjustment for the Christmas break - and will close on 22 March 2007.

**4.5** This partial Regulatory Impact Assessment (RIA) sets out the options and considers the qualitative, and where possible, quantitative costs and benefits. Risks, unintended consequences and any compliance and enforcement issues have also been incorporated as costs and benefits. Competition issues and the impact on small firms have also been considered.

**4.6** When formally responding to the partial RIA, HM Treasury is seeking comments on the cost-benefit analysis, likely risks and unintended consequences of this proposal, including supporting evidence. If you feel that there are alternative options please

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<sup>1</sup> EU Directive 2002/92/EC

<sup>2</sup> This protection is subject to more detailed rules on the jurisdiction of the FOS and the coverage of the FSCS. For instance, only individuals and small businesses are eligible to make claims to the FSCS and the Financial Ombudsman Service. The eligibility definition of a small business for FSCS claims depends on the type of activity. For the purpose of complaints to the FOS, a small business is one with a group turnover of less than £1 million. Further information on the FOS can be found at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk). Further information on the FSCS can be found at [www.fscs.org.uk](http://www.fscs.org.uk)

suggest these. The feedback to this partial RIA will provide valuable information which will feed into the final RIA following this consultation.

**4.7** The consultation document and partial RIA should be read together.

## OPTIONS

**Do nothing** **4.8** As with all proposals for legislation, HM Treasury has considered the option of making no changes. This would mean that freight forwarders' insurance activities remain inside the scope of FSA regulation. However, the Government believes that this option would have a significant impact upon the international competitiveness of the UK's freight forwarding industry. The Government also believes that the risk of consumer detriment in this area is low.

**HM Treasury's Statutory Instrument** **4.9** HM Treasury is therefore proposing to remove freight forwarders' insurance activities from the scope of FSA regulation through an amendment to the Exemption Order<sup>3</sup>. This Order provides for certain persons to be exempt from the general prohibition on carrying out regulated activities imposed by the Financial Services and Markets Act 2000 (FSMA). Exempt persons are not required to be authorised to carry on regulated activities. Further details on the background, objective and rationale of this policy intention are provided in the consultation document alongside this partial RIA.

**4.10** This proposed approach will exempt freight forwarders from the general prohibition in respect of any regulated activity of the kind specified by the following articles of the Regulated Activities Order<sup>4</sup>(RAO):

- Article 21 (dealing in investments as agent);
- Article 25 (arranging deals in investments);
- Article 39A (assisting in the administration and performance of a contract of insurance); and
- Article 53 (advising on investments)

The RAO defines the perimeter of FSA regulation under powers afforded to it by FSMA.

**4.11** HM Treasury's draft Statutory Instrument is included at Annex B.

**4.12** In practice, freight forwarders manage and organise the transport of the customer's goods and insurance is provided as an optional element of the service. The freight forwarder typically does this through the use of an "Open Cover" policy. The forwarder purchases this policy directly from an insurance company or through an insurance broker. The policy is held in the name of the freight forwarder and all customers requiring insurance will be covered by the same policy. However, if the customer decides to take up the insurance option, the rights of the policy are passed to the customer so that in the event of loss of, or damage to, the customer's goods, the customer can make a claim directly against the insurance policy.

**4.13** For the purpose of the draft Statutory Instrument, freight forwarders are defined as persons whose principal business is arranging or carrying out the transportation of goods. However, exemption from the scope of FSA regulation is only applicable where the freight forwarder passes on rights under an insurance policy directly to the

<sup>3</sup> Part IV of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001

<sup>4</sup> Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

customer in respect of loss or damage to the customer's goods. Additionally, the exemption from regulation is only applicable where the freight forwarder's customer is a legal entity.

**Other options 4.14** A different legislative approach would be to amend the RAO directly in order to exclude freight forwarders' insurance activities from the scope of FSA regulation. This approach could be used to achieve the same policy intention as that achieved by the draft Statutory Instrument in Annex B. However HM Treasury believes that this approach would be less transparent than its preferred approach outlined above.

**4.15** HM Treasury would welcome views on the draft Statutory Instrument or any other legislative approach that would achieve the policy intention.

## COST AND BENEFITS

**Groups affected 4.16** The following main groups have been identified as potentially being affected by these proposals:

- freight forwarding firms;
- the logistics industry more widely;
- customers of freight forwarding firms or the logistics industry;
- insurers and insurance brokers involved in the provision of insurance covering loss of, or damage to, the goods of a freight forwarder's customer.

**4.17** There are around 2,500 freight forwarding firms in the UK. Freight forwarding as a sector contributes around £16 billion per annum to the UK's GDP and employs around 15,000 people<sup>5</sup>.

**Benefits 4.18** This measure is deregulatory in nature. Excluding freight forwarders' insurance activities from the scope of FSA regulation will provide a significant benefit to these firms through reduced authorisation and compliance costs. Following implementation of the IMD in the UK, initial estimates are that between 100 and 200 firms in the freight forwarding sector are regulated by the FSA<sup>6</sup>. Freight forwarding firms spent around £4million on FSA registration fees in 2005<sup>7</sup> (with costs to individual firms ranging from £1,500 to £160,000). A regulated freight forwarder will incur additional burdens through higher paperwork requirements and the cost of ensuring ongoing compliance with FSA rules. The FSA estimate that the annual incremental cost of compliance with their *Insurance: Conduct of Business* rules is, on average, around £6,500 for each firm. There is also a one-off 'understanding' cost that a regulated firm will incur upon authorisation as it becomes familiar with the requirements of regulation. This measure will remove that cost for new entrants to the market.

**4.19** Ultimately, these costs will be borne – at least in part – by customers of freight forwarding firms. In an industry where business is highly internationally mobile, the removal of these costs should provide a significant positive impact on the international competitiveness of the UK's freight forwarding sector.

<sup>5</sup> Source: British International Freight Association (BIFA)

<sup>6</sup> Source: FSA

<sup>7</sup> Source: BIFA

**4.20** For those freight forwarders who have decided not to seek authorisation from the FSA, lost revenue was estimated to total £24million in 2005<sup>8</sup>. The removal of the requirement for FSA regulation of freight forwarders' insurance activities will allow these freight forwarders to increase their level of business accordingly.

**4.21** The Government is also aware of concerns that customers of freight forwarding firms who have decided to cease their insurance activities in light of the requirement of FSA regulation have experienced higher premiums or difficulties in obtaining suitable insurance cover when approaching insurers or insurance brokers directly. Anecdotal evidence provided by the British International Freight Association suggests that the cost of equivalent cover may be significantly higher in such circumstances. The Government is also aware of concerns that the number of uninsured goods consignments has increased as the price of cover has increased.

**Costs 4.22** This measure is deregulatory and will result in no new costs for the freight forwarding industry.

**4.23** FSA regulation provides consumer protection. Ultimately, there is a risk that removing FSA regulation in any area can increase the risk of consumer detriment. However, FSA regulation will still apply to the selling of the original insurance policy to the freight forwarder and if the insurance is provided by a FSA authorised insurer then the freight forwarder's customer will still be afforded the protections afforded by FSA regulation of the insurer.

**4.24** Additionally, this measure is limited to situations where the freight forwarder's customer is involved in a commercial activity. The protection provided by the FOS and FSCS is subject to a small business eligibility limit<sup>9</sup>, and is not applicable in circumstances where the customer is a larger business.

**4.25** The Government believes the risk of consumer detriment is low. The role of the freight forwarder is, in practice, simply one of passing on the policy to the customer. In addition to this, customers of freight forwarders are generally also commercial entities and this further reduces the risk of consumer detriment. Whilst the Government is aware that the FOS does look into a number of cases relating to complaints from consumers and small businesses regarding insurance covering the loss of, or damage to, goods or possessions in transit, the FOS have pointed out that the majority of these cases arise from disputes between the insurer and the customer over unpaid claims and the role of commercial freight forwarders has seldom been the subject of complaints. Such cases will remain within the FOS' jurisdiction whether or not freight forwarders are regulated (subject to the small business eligibility limit).

**4.26** The Government also understands that in this area it is common for insurers to expect that freight forwarders will conduct their insurance activities in accordance with good insurance practice. Insurers typically maintain the existing (pre-FSA regulation) practice of accepting responsibility for any poor practice by the freight forwarder, whether regulated or unregulated.

**4.27** There is a risk of unintended consequences if this measure can be used to exempt an insurance intermediary from the scope of FSA regulation in an area unrelated to the intended scope of the policy. This exemption is not intended, for

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<sup>8</sup> Source: BIFA

<sup>9</sup> Individuals and small businesses are eligible to approach the FSCS and the Financial Ombudsman Service. The eligibility definition of a small business for FSCS claims depends on the type of activity. For the purpose of complaints to the FOS, a small business is one with a group turnover of less than £1 million.

instance, to be used to exempt the passing on of rights under a group payment protection insurance policy from a retailer to a customer. However, given the narrow scope of the draft legislation this risk is minimal.

**Question 1**

Do you agree with the analysis of costs and benefits for the different implementation options, as well as the impact on competition and small firms?

**Question 2**

Are there any alternative ways of removing freight forwarders from the scope of FSA regulation that should be considered?

## SMALL FIRMS IMPACT TEST

**4.28** There are around 2,500 firms in the UK's freight forwarding sector and BIFA estimate that around 90% of these are small firms. Since this proposal is deregulatory in nature, it is likely that it will have a beneficial impact on these small firms.

## COMPETITION ASSESSMENT

**4.29** This proposal is likely to have a positive impact on competition in the market for the provision of insurance cover for the loss of or damage to goods in transit. Reducing regulatory costs will generally lower the barriers to entry in this market.

## ENFORCEMENT, SANCTIONS AND MONITORING

**4.30** This measure effectively removes the FSA's responsibility for enforcing regulation of certain regulated activities under the circumstances defined by the draft legislation in Annex B.

## HOW TO RESPOND

**4.31** The Government welcomes the views of all stakeholders on issues raised in this document. The consultation period begins with the publication of this document and will run for 12 weeks, with an appropriate adjustment for the Christmas break. Please ensure that responses to this consultation reach us by 22 March 2007. We cannot guarantee to consider responses received after this date. Responses should be sent to:

Richard Wronka  
Financial Stability and Risk Team  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ  
Telephone: 020 7270 5389  
Fax: 020 7451 7524  
Email: richard.wronka@hm-treasury.gov.uk

**4.32** This document can be found on HM Treasury's website: <http://www.hm-treasury.gov.uk>.

**4.33** When responding, please state whether you are responding on behalf of an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

## **CONFIDENTIALITY**

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**4.34** All written responses will be made public on HM Treasury's website unless the author specifically requests otherwise in writing.

**4.35** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

**4.36** An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury. HM Treasury will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

**4.37** Subject to paragraphs 4.34, 4.35 and 4.36 if you wish part (but not all) of your response to remain confidential, please supply two versions – one for publication on the website with the confidential information deleted, and another confidential version for use by HM Treasury.

## **FREEDOM OF INFORMATION CONTACT**

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**4.38** Any Freedom of Information Act queries should be directed to:

Correspondence and Enquiry Unit  
Freedom of Information Section  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Telephone: 020 7270 4558  
Fax: 020 7270 4681  
Email: [public.enquiries@hm-treasury.x.gsi.gov.uk](mailto:public.enquiries@hm-treasury.x.gsi.gov.uk)

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## CONSULTATION DOCUMENT

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**4.39** The consultation document is published with this document and should be read in conjunction with it. A copy of the consultation document can be found on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

## HOW THIS CONSULTATION IS BEING CONDUCTED

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**4.40** This consultation is being conducted in line with the Code of Practice on Consultation. The criteria are listed below (a full version can be found at <http://www.cabinet-office.gov.uk/regulation/consultation/code.htm>). The six consultation criteria are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about who may be affected, what questions are being asked, and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows Better Regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you have concerns as to how this consultation is being conducted, please contact:

Christine Ermgassen  
Enterprise Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Telephone: 020 7270 5543  
Email: [christine.ermgassen@hm-treasury.x.gsi.gov.uk](mailto:christine.ermgassen@hm-treasury.x.gsi.gov.uk)



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## CONSULTATION LIST

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Association of British Insurers  
British Association of Removers  
British International Brokers Association  
British International Freight Association  
The Despatch Association  
The Federation of Independent Removers and Storers  
Financial Ombudsman Service  
Financial Services Authority  
Freight Transport Association  
Institute of Chartered Shipbrokers  
National Courier Association  
National Guild of Removers  
Rail Freight Group  
Removals Industry Ombudsman Scheme  
Road Haulage Association  
Self Storage Association of the UK  
United Kingdom Warehousing Association



2007 No.

## FINANCIAL SERVICES AND MARKETS

Financial Services and Markets Act 2000 (Exemption) (Amendment)  
Order 2007

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Order in exercise of the powers conferred by sections 38 and 428(3) of the Financial Services and Markets Act 2000<sup>(1)</sup>:

**Citation and commencement**

1. This Order may be cited as the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 and comes into force on [ ].

**Amendment of the Financial Services and Markets Act 2000 (Exemption) Order 2001**

2. In Part IV of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001<sup>(2)</sup>, after paragraph 50<sup>(3)</sup> insert—

*“Freight forwarders*

51.—(1) A freight forwarder is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 21 (dealing in investments as agent), 25 (arranging deals in investments), 39A (assisting in the administration and performance of a contract of insurance) or 53 (advising on investments) of the Regulated Activities Order<sup>(4)</sup> in the circumstances set out in sub-paragraph (2).

(2) The circumstances are where a freight forwarder (“F”)—

- (a) holds a policy of insurance which insures F against liability for loss of or damage to goods which F transports or of which F arranges the transportation, and
- (b) makes available to a customer rights under that policy such that the customer may claim directly against the insurer in respect of loss or damage covered by the policy to goods transported by F or of which F arranges the transportation.

(1) 2000 c. 8.

(2) S.I.2001/1201, amended by S.I. 2003/1467; there are other amending instruments but none is relevant.

(3) The Treasury is currently consulting on amending the Exemption Order to insert a paragraph 50 (policyholder advocates).

(4) S.I.2001/544, to which there are amendments not relevant to this Order.

(3) In this paragraph—

- (a) “freight forwarder” means a person whose principal business is arranging or carrying out the transportation of goods;
- (b) “customer” means a person who is not an individual who uses the service of a freight forwarder.”.

Two of the Lords Commissioners of Her Majesty’s Treasury

2007

#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 (SI 2001/1201) (“the Schedule”), which provides for certain persons to be exempt from the general prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (c.8) (“the Act”).

This Order exempts a freight forwarder from requiring authorisation in respect of the activities specified in articles 21, 25, 39A and 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) in circumstances where the freight forwarder makes available to a customer rights under a policy of insurance held by the freight forwarder in respect of loss or damage to goods such that the customer has direct rights against the insurer in respect of loss or damage to the goods consigned for which the freight forwarder may be liable.

A Regulatory Impact Assessment of the effect of this instrument on the costs of business is available from the HM Treasury website or from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Copies have been placed in the libraries of both Houses of Parliament.



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