



HM TREASURY

FSMA BULLETIN No.46

September 2006

This FSMA Bulletin provides an update on:

1. legislation adopted after the previous Bulletin;
2. progress on consultations which have closed;
3. new consultations and those still open;
4. consultations planned in the next three months.

Do you have any ideas or thoughts on any aspects of FSMA or FSA regulation which would benefit from simplification or deregulation, or which might merit further examination or review? If so please e-mail fsma.bulletin@hm-treasury.x.gsi.gov.uk

SECTION ONE: LEGISLATION ADOPTED AFTER FSMA
BULLETIN NO.45 (APRIL 2006)

The European Cooperative Society Regulations SI 2006/2078

The European Cooperative Society Regulations give effect in the UK to Council Regulation 1435/2003. The Council Regulation creates a new form of cooperative known as the European Cooperative Society (SCE). The SCE can operate across the European Economic Area on the basis of registration in one Member State, thereby potentially broadening access to European markets for cooperatives which adopt this form. The European Cooperative Society Regulations were laid on 27 July and came into force on 18 August 2006.

SECTION TWO: PROGRESS ON CONSULTATIONS WHICH HAVE CLOSED

Community Investment Tax Relief (CITR)

A consultation was launched in June 2005 on extending CITR to the personal lending activities of Community Development Finance Institutions. Consultation respondents were supportive of an extension and highlighted a range of practical issues that need addressing. As announced in the 2005 Pre-Budget Report, the Government is continuing to consider the case for, and practicalities of, this extension.

Raising the Cap on Credit Union Interest Rates

A consultation document was published in March 2005, proposing to alter a current restriction in the Credit Union Act 1979 which places a cap of 1 per cent a month on credit union interest rates. At the Pre-Budget Report in December 2005 it was announced that, to give flexibility to better serve low-income groups, and following consultation, it is intended that the maximum rate of interest that credit unions can charge on loans will be increased from 1 per cent to 2 per cent per month. This change was implemented on 1 June 2006.

UK Transposition of the Capital Requirements Directive (2006/48/EC and 2006/49/EC)

This consultation closed on 23rd May 2006. It lay out the options for transposing two areas of the directive into UK law. All respondents were content with the Treasury's proposals for transposition and legislation is currently being drafted to that effect. The FSA is responsible for implementing the vast bulk of the directive and recently issued a feedback statement to their most recent consultation.

FSMA Controllers Regime

A consultation on reform of the 'controllers regime' in Part XII of the FSMA closed on 14th June 2006. The proposals would reduce the requirements which apply to everyone to report to the FSA when they hold a controlling relationship over a body regulated by the FSA. A

tighter definition of 'controlling relationship', which is closer to the minimum requirements of EU law is proposed. The result should be a more proportionate regime. The Commission's review of the Banking Consolidation Directive (BCD) is likely to address the vast majority of the simplification measures planned under the review of the controllers regime. The momentum behind this at EU level has increased making it sensible that these are taken forward through the BCD.

UK implementation of EC Markets in Financial Instruments Directive, MiFID (2004/39/EC)

A consultation on Treasury aspects of how MiFID will be implemented in the UK closed on 31st March 2006. Revised legislation should be presented to Parliament before the end of the year.

Myners principles

This consultation, which related to revising current voluntary codes relating to institutional investment decision-making, closed in April 2005. The code makes use of comply-or-explain principles to improve the efficiency of investment decisions. A consultation feedback statement incorporating further aspects of institutional investment decision making is expected to be issued shortly.

Proposed Changes to the Eligibility Rules for Establishing a Pension Scheme

This consultation closed on 23rd December 2005. A formal response was published on 23rd March 2006. Following overwhelming support in the consultation, a new FSA regulated activity related to the operation of personal pension schemes will be introduced in April 2007. The Government has now made the necessary amendments in Parliament to the Financial Services and Markets Act (FSMA) Regulated Activities Order (2001) to include the new activity of 'establishing, operating or winding up' a personal pension scheme. This will help boost competition in the personal pensions market as well as extend consumer protection. A final RIA has also now been published on the HMT website. This will become the basis on which persons are 'eligible' under tax law to establish non-occupational registered pension schemes. The FSA are currently carrying out their

own consultation on the detailed implementation of the new regulated activity and changes to their rulebook.

Financial Promotions in the Workplace

This consultation closed on 16th June 2006. The proposals would enable company pensions administrators to provide written material and make oral promotions about company pensions to employees without needing to be regulated by the FSA. Employers would also be able to communicate to employees about work-related insurance cover without needing to be regulated by the FSA.

Regulatory Reform Order: A Second Consultation on Proposed Changes to the Financial Services And Markets Act 2000

Consultation on the Government's proposals to amend various provisions in the Financial Services and Markets Act 2000 (FSMA) closed on 21 June 2006. The proposals will be implemented by a Regulatory Reform Order (RRO) made under the Regulatory Reform Act 2000 (RRA). We will lay the draft Order on 9 October and the measures should come into force around December 2006-January 2007.

Proposed Changes to the Eligibility Rules for Establishing a UK Implementation of EC Transparency Directive (2004/109/EC)

This consultation on how the UK proposes to implement this EC Directive closed in June 2005. The Directive relates to financial reporting by listed companies to markets and also increases the transparency of ownership of listed companies. A consultation feedback statement is expected to be issued shortly. The FSA consultation on implementation closed in June 2006, HMT will also shortly be seeking views on the implications of extending the civil liability regime for transparency disclosures.. The primary legislative vehicle for implementation will be the Company Law Reform Bill.

SECTION THREE: NEW CONSULTATIONS AND THOSE STILL OPEN

Consultation on the Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2006.

Consultation on proposal to allow exemption from Financial Services Regulation for custodial and insurance-based Tenancy Deposit schemes. ODPM proposes to introduce custodial and insurance-based Tenancy Deposit schemes. Both kinds of scheme potentially fall within the definition of a collective investment scheme in FSMA. The Consultation was launched on 1 June 2006 and closes on 24 August 2006.

FSA Information Gateways to the Gambling Commission, Financial Reporting Council and The Pensions Regulator

A consultation document on the introduction of new information exchange gateways between the FSA and the Gambling Commission, the FSA and the Financial Reporting Council (and certain of its operating bodies), and the FSA and the Pensions Regulator, was published in June 2006. Comments are invited by 29 August 2006.

Home Reversions and Ijara products

The Regulation of Financial Services (Land Transactions) Act received Royal Assent on 19th December 2005. A consultation was launched on 31 March on changes to the Financial Services and Markets Act 2000 (Regulated Activities) Order which are necessary to provide for the FSA regulation of home reversion schemes and Ijara products. The consultation closed on 23 June 2006. The Regulations have now been made and will, if approved by Parliament, come into force on 6th April 2007 with a transitional provision coming into effect on 6th November.

Implementing the Third Money Laundering Directive

The Directive was adopted in October 2005 and will need to be implemented into UK law by December 2007. The aim of the Directive was to update European legislation in line with the Financial

Action Task Force recommendations. A consultation on our proposals for implementation into UK legislation was launched on 31 July 2007 and closes on 20 October 2007.

Changes to the Financial Services Compensation Scheme (Mesothelioma)

Section 3 of the Compensation Act 2006 relating to damages for mesothelioma includes a power for the Treasury to make regulations, including enabling the FSA to make rules concerning the Financial Services Compensation Scheme concerning certain pre-FSMA cases, these should facilitate the speeding up of payment of claims to mesothelioma victims. The consultation was launched on 8 September 2006 to run until 6 October.

Payments Services Directive

Commission proposal for a Payment Services Directive. Following on from the publication of the Commission's proposed draft Payment Services Directive on 1 December 2005, on 3 July HMT published a consultation document and partial RIA, which will run for a 12-week period. The purpose of the consultation is to inform the UK negotiating position in the Council. A revised RIA will be published, following the collation and assessment of the responses to the ongoing consultation.

SECTION FOUR: CONSULTATIONS PLANNED IN THE NEXT THREE MONTHS

Minor Changes UK Implementation of the EC Collateral Directive (2002/47/EC)

A consultation which proposes to alter the way this EC Directive is implemented in the UK should be issued in October. Relatively minor proposed changes relate to the priority given to financial collateral compared to other classes of creditor in cases of insolvency. A consultation will be launched some time in autumn 2006.

Amendment to the supervisory review process for cross-border mergers and acquisitions

A discussion paper that explains the current Commission proposal for amending the supervisory review process in six EC directives and sets out a number of questions aimed at establishing a UK negotiating position. The paper will also include feedback from the March consultation on the FSMA Controllers Regime.

Limited Liability Partnerships

FSMA currently exempts bodies corporate but not general, limited partnerships or limited liability partnerships from collective investment scheme regulation. A consultation seeking views on the proposal to exclude certain general, limited and limited liability partnerships from the definition of collective investment schemes. A consultation will be launched some time in autumn 2006.

Review of the regulation of travel insurance sold as part of a package

The Treasury has previously committed to review the way in which travel insurance sold as part of a package is regulated by early 2007 (travel insurance sold in this way is not currently subject to statutory regulation). A consultation will be launched some time in autumn 2006.