

2004 No.

## FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Financial  
Promotion and Promotion of Collective Investment Schemes)  
(Miscellaneous Amendments) Order 2004

<i>Made</i>	- - - -	2004
<i>Laid before Parliament</i>		2004
<i>Coming into force</i>	- -	2004

The Treasury, in exercise of the powers conferred upon them by sections 21(5) and (6), 238(6) and (7) and 428(3) of the Financial Services and Markets Act 2000(a), hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2004 and comes into force on [enter date].

(2) In this Order—

“the Financial Promotion Order” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001(b); and

“the CIS Exemptions Order” means the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001(c).

**Amendments to the Financial Promotion Order**

2. The Financial Promotion Order is amended in accordance with Schedule 1 to this Order.

**Amendments to the CIS Exemptions Order**

3. The CIS Exemptions Order is amended in accordance with Schedule 2 to this Order.

(a) 2000 c.8.

(b) S.I. 2001/1335, amended by S.I. 2001/2633, S.I. 2001/3650, S.I. 2001/3800, S.I. 2002/1310, S.I. 2002/1777, S.I. 2002/2157 and S.I. 2003/1676.

(c) S.I. 2001/1060, amended by S.I. 2002/1310, S.I. 2002/2157, S.I. 2003/2067

**Transitional provision: Financial Promotion Order**

4.—(1) Paragraph (2) applies where, immediately before the coming into force of this Order, an individual is a certified high net worth individual within the meaning of article 48 of the Financial Promotion Order.

(2) That individual must, for so long as he holds a current certificate of high net worth, be treated as a certified high net worth individual for the purpose of article 48 of the Financial Promotion Order as substituted by this Order.

(3) For the purposes of this article, a certificate of high net worth—

- (a) means a certificate of high net worth which, immediately before the coming into force of this Order, satisfies the criteria in article 48(3)(a), (c) and (d) of the Financial Promotion Order; and
- (b) is current if it is signed and dated—
  - (i) within the period of twelve months ending with the day on which the communication (referred to in article 48 of the Financial Promotion Order) is made; and
  - (ii) prior to this Order coming into force.

**Transitional provision: CIS Exemptions Order**

5.—(1) Paragraph (2) applies where, immediately before the coming into force of this Order, an individual is a certified high net worth individual within the meaning of article 21 of CIS Exemptions Order.

(2) That individual must, for so long as he holds a current certificate of high net worth, be treated as a certified high net worth individual for the purpose of article 21 of the CIS Exemptions Order as substituted by this Order.

(3) For the purposes of this article, a certificate of high net worth—

- (a) means a certificate of high net worth which, immediately before the coming into force of this Order, satisfies the criteria in article 21(3)(a), (c) and (d) of the CIS Exemptions Order; and
- (b) is current if it is signed and dated—
  - (i) within the period of twelve months ending with the day on which the communication (referred to in article 21 of the CIS Exemptions Order) is made; and
  - (ii) prior to this Order coming into force.

Signatory text

Two of the Lords Commissioners of Her Majesty's Treasury

Address

Date

## SCHEDULE 1

Article 2

## Amendments to Financial Promotion Order

2. For article 48 of the Financial Promotion Order substitute—

**“Certified high net worth individuals**

**48.**—(1) If the requirements of paragraphs (4) and (7) are met, the financial promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is made only to an individual whom the person making the communication believes on reasonable grounds to be a certified high net worth individual; and
- (c) relates only to one or more investments falling within paragraph (8).

(2) “Certified high net worth individual” means an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement with the form and content set out in Part I of Schedule 5(a).

(3) The validity of a statement signed for the purposes of paragraph (2) is not affected by a defect in the form of the statement, provided that the defect does not affect the statement’s meaning.

(4) The requirement of this paragraph is that the communication contains a warning in accordance with paragraphs (5) and (6).

(5) The warning must be in the following terms—

“The content of this promotion has not been approved by an authorised person within the meaning of the Financial Services and Markets Act 2000. Reliance on this promotion for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested.”.

(6) The warning must—

- (a) appear at the beginning of the communication;
- (b) precede any other written or pictorial matter;
- (c) be indelible;
- (d) be legible;
- (e) be in a font size consistent with the text forming the remainder of the communication;
- (f) be printed in black, bold type;
- (g) be surrounded by a black border, not less than 3 millimetres in width, which does not interfere with the text of the warning; and
- (h) not be hidden, obscured or interrupted by any other written or pictorial matter.

(7) The requirements of this paragraph are that the communication is accompanied by an indication—

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(a) As inserted by paragraph 4 of this Schedule.

(a) that it is exempt from the general restriction (in section 21 of the Act) on the communication of invitations or inducements to engage in investment activity on the grounds that it is made to a certified high net worth individual;

(b) of the requirements that must be met for an individual to qualify as a certified high net worth individual; and

(c) that any individual who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.

(8) An investment falls within this paragraph if—

(a) it is an investment falling within paragraph 14 of Schedule 1 being stock or shares in an unlisted company;

(b) it is an investment falling within paragraph 15 of Schedule 1 being an investment acknowledging the indebtedness of an unlisted company;

(c) it is an investment falling within paragraph 17 or 18 of Schedule 1 conferring entitlement or rights with respect to investments falling within sub-paragraph (a) or (b);

(d) it comprises units in a collective investment scheme being a scheme which invests wholly or predominantly in investments falling within sub-paragraph (a) or (b);

(e) it is an investment falling within paragraph 21 of Schedule 1 to acquire or dispose of an investment falling within sub-paragraph (a), (b) or (c);

(f) it is an investment falling within paragraph 22 of Schedule 1 being rights under a contract for the sale of an investment falling within sub-paragraph (a), (b) or (c);

(g) it is an investment falling within paragraph 23 of Schedule 1 being a contract relating to, or to fluctuations in value or price of, an investment falling within sub-paragraph (a), (b) or (c),

provided in each case that it is an investment under the terms of which the investor cannot incur a liability or obligation to pay or contribute more than he commits by way of investment.”.

3. After paragraph (1) of article 50 of the Financial Promotion Order insert—

“(1A) The validity of a statement signed in accordance with paragraph (1)(b) is not affected by a defect in the wording of the statement, provided that the defect does not alter the statement’s meaning.”.

4. After that article, insert—

**“Self-certified sophisticated investors**

**50A.**—(1) “Self-certified sophisticated investor” means an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement with the form and content set out in Part II of Schedule 5.

(2) The validity of a statement signed for the purposes of paragraph (1) is not affected by a defect in the form of the statement, provided that the defect does not alter the statement’s meaning.

(3) If the requirements of paragraphs (4) and (7) are met, the financial promotion restriction does not apply to any communication which—

(a) is made only to an individual whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor; and

(b) relates only to one or more investments falling within paragraph (8).

(4) The requirement of this paragraph is that the communication contains a warning in accordance with paragraphs (5) and (6).

(5) The warning must be in the following terms—

“The content of this promotion has not been approved by an authorised person within the meaning of the Financial Services and Markets Act 2000. Reliance on this promotion for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested.”.

(6) The warning must—

- (a) appear at the beginning of the communication;
- (b) precede any other written or pictorial matter;
- (c) be indelible;
- (d) be legible;
- (e) be in a font size consistent with the text forming the remainder of the communication;
- (f) be printed in black, bold type;
- (g) be surrounded by a black border, not less than 3 millimetres in width, which does not interfere with the text of the warning; and
- (h) not be hidden, obscured or interrupted by any other written or pictorial matter.

(7) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that it is exempt from the general restriction (in section 21 of the Act) on the communication of invitations or inducements to engage in investment activity on the ground that it is made to a self-certified sophisticated investor;
- (b) of the requirements that must be met for an individual to qualify as a self-certified sophisticated investor;
- (c) that any individual who is in any doubt about the investment to which the communication relates should consult an authorised person specialising in advising on investments of the kind in question.

(8) An investment falls within this paragraph if—

- (a) it is an investment falling within paragraph 14 of Schedule 1 being stock or shares in an unlisted company;
- (b) it is an investment falling within paragraph 15 of Schedule 1 being an investment acknowledging the indebtedness of an unlisted company;
- (c) it is an investment falling within paragraph 17 or 18 of Schedule 1 conferring entitlement or rights with respect to investments falling within sub-paragraph (a) or (b);
- (d) it comprises units in a collective investment scheme being a scheme which invests wholly or predominantly in investments falling within sub-paragraph (a) or (b);
- (e) it is an investment falling within paragraph 21 of Schedule 1 to acquire or dispose of an investment falling within sub-paragraph (a), (b) or (c);
- (f) it is an investment falling within paragraph 22 of Schedule 1 being rights under a contract for the sale of an investment falling within sub-paragraph (a), (b) or (c);
- (g) it is an investment falling within paragraph 23 of Schedule 1 being a contract relating to, or to fluctuations in value or price of, an investment falling within sub-paragraph (a), (b) or (c),

provided in each case that it is an investment under the terms of which the investor cannot incur a liability or obligation to pay or contribute more than he commits by way of investment.”.

5. After Schedule 4 to the Financial Promotion Order insert—

## “SCHEDULE 5

Articles 48 and 50A

## STATEMENTS FOR CERTIFIED HIGH NET WORTH INDIVIDUALS AND SELF-CERTIFIED SOPHISTICATED INVESTORS

## PART 1

## STATEMENT FOR CERTIFIED HIGH NET WORTH INDIVIDUALS

1. The statement to be signed for the purposes of article 48(2) (definition of high net worth individual) must be in the following form and contain the following content—

**“Statement for Certified High Net Worth Individual**

I declare that I am a certified high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.

I understand that this means:

- (a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Services Authority;
- (b) the content of such financial promotions may not conform to rules issued by the Financial Services Authority;
- (c) by signing this statement I may lose significant rights;**
- (d) I may have no right to complain to either of the following—
  - (i) the Financial Services Authority; or
  - (ii) the Financial Ombudsman Scheme;
- (e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a certified high net worth individual because **at least one of the following applies—**

- (a) I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more;
- (b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include —
  - (i) the property which is my primary residence or any loan secured on that residence;
  - (ii) any rights of mine under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a); or
  - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

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

I am aware that it is open to me to seek advice from someone who specialises in advising on investments

Signature

Date”.

## PART II

### STATEMENT FOR SELF-CERTIFIED SOPHISTICATED INVESTORS

2. The statement to be signed for the purposes of article 50A(1) (definition of self-certified sophisticated investor) must be in the following form and contain the following content—

#### “Statement for Self-certified Sophisticated Investor

I declare that I am a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act (Financial Promotion) Order 2001.

I understand that this means:

- (a) I can receive financial promotions that may not have been approved by a person authorised by the Financial Services Authority;
- (b) the content of such financial promotions may not conform to rules issued by the Financial Services Authority;
- (c) by signing this statement I may lose significant rights;**
- (d) I may have no right to complain to either of the following—
  - (i) the Financial Services Authority; or
  - (ii) the Financial Ombudsman Scheme;
- (e) I may have no right to seek compensation from the Financial Services Compensation Scheme.

I am a self-certified sophisticated investor because **at least one of the following applies**—

- (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
- (b) I have made more than one investment in an unlisted company in the two years prior to the date below;
- (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
- (d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on investments.

Signature

Date”.”.

## Amendments to the CIS Exemptions Order

1. For article 21 of the CIS Exemptions Order substitute—

**“Certified high net worth individuals**

**21.**—(1) If the requirements of paragraphs (4) and (7) are met, the scheme promotion restriction does not apply to any communication which—

- (a) is a non-real time communication or a solicited real time communication;
- (b) is made only to an individual whom the person making the communication believes on reasonable grounds to be a certified high net worth individual;
- (c) relates only to units falling within paragraph (8); and
- (d) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment.

(2) “Certified high net worth individual” means an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement with the form and content set out in Part I of the Schedule(a).

(3) The validity of a statement signed for the purposes of paragraph (2) is not affected by a defect in the form of the statement, provided that the defect does not alter the statement’s meaning.

(4) The requirement of this paragraph is that the communication contains a warning in accordance with paragraphs (5) and (6).

(5) The warning must be in the following terms—

“Reliance on this promotion for the purpose of buying the units to which the promotion relates may expose an individual to a significant risk of losing all of the property or other assets invested.”.

(6) The warning must—

- (a) appear at the beginning of the communication;
- (b) precede any other written or pictorial matter;
- (c) be indelible;
- (d) be legible;
- (e) be in a font size consistent with the text forming the remainder of the communication;
- (f) be printed in black, bold type;
- (g) be surrounded by a black border, not less than 3 millimetres in width, which does not interfere with the text of the warning; and
- (h) not be hidden, obscured or interrupted by any other written or pictorial matter.

(7) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that it is exempt from the restriction on the promotion of unregulated schemes (in section 238 of the Act) on the grounds that the communication is made to a certified high net worth individual;
- (b) of the requirements that must be met for an individual to qualify as a certified high net worth individual;

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(a) As inserted by paragraph 4 of this Schedule.

(c) that any individual who is in any doubt about the units to which the communication relates should consult an authorised person specialising in advising in participation in unregulated schemes.

(8) A unit falls within this paragraph if it is in an unregulated scheme which invests wholly or predominantly in the shares in or debentures of an unlisted company.

(9) “Unlisted company” has the meaning given in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.”

2. After paragraph (1) of article 23 of the CIS Exemptions Order insert—

“(1A) The validity of a statement signed in accordance with paragraph (1)(b) is not affected by a defect in the wording of the statement, provided that the defect does not affect the statement’s meaning.”

3. After that article, insert—

**“Self-certified sophisticated investors**

**23A.—**(1) “Self-certified sophisticated investor” means an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement with the form and content set out in Part II of the Schedule.

(2) The validity of a statement signed for the purposes of paragraph (1) is not affected by a defect in the form of the statement, provided that the defect does not affect the statement’s meaning.

(3) If the requirements of paragraphs (4) and (7) are met, the scheme promotion restriction does not apply to any communication which—

(a) is made only to an individual whom the person making the communication believes on reasonable grounds to be a self-certified sophisticated investor;

(b) relates only to units falling within paragraph (8); and

(c) does not invite or induce the recipient to enter into an agreement under the terms of which he can incur a liability or obligation to pay or contribute more than he commits by way of investment.

(4) The requirement of this paragraph is that the communication contains a warning in accordance with paragraphs (5) and (6).

(5) The warning must be in the following terms—

“Reliance on this promotion for the purpose of buying units to which the promotion relates may expose an individual to a significant risk of losing all of the property or other assets invested.”.

(6) The warning must—

(a) appear at the beginning of the communication;

(b) precede any other written or pictorial matter;

(c) be indelible;

(d) be legible;

(e) be in a font size consistent with the text forming the remainder of the communication;

(f) be printed in black, bold type;

(g) be surrounded by a black border, not less than 3 millimetres in width, which does not interfere with the text of the warning; and

(h) not be hidden, obscured or interrupted by any other written or pictorial matter.

(7) The requirements of this paragraph are that the communication is accompanied by an indication—

- (a) that it is exempt from the scheme promotion restriction (in section 238 of the Act) on the communication of invitations or inducements to participate in unregulated schemes on the ground that it is made to a self-certified sophisticated investor;
  - (b) of the requirements that must be met for an individual to qualify as a self-certified sophisticated investor;
  - (c) that any individual who is in any doubt about the investment to which the invitation or inducement relates should consult an authorised person specialising in advising on investments of the kind in question.
- (8) A unit falls within this paragraph if it is in an unregulated scheme which invests wholly or predominantly in the shares in or debentures of an unlisted company.
- (9) “Unlisted company” has the meaning given in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001.”.

4. After article 30 of the CIS Exemptions Order insert—

“SCHEDULE

Articles 21 and 23A

STATEMENTS FOR CERTIFIED HIGH NET WORTH INDIVIDUALS AND SELF-CERTIFIED SOPHISTICATED INVESTORS

PART I

STATEMENT FOR CERTIFIED HIGH NET WORTH INDIVIDUALS

1. The statement to be signed for the purposes of article 21(2) (definition of high net worth individual) must be in the following form and contain the following content—

**“Statement for Certified High Net Worth Individual**

I declare that I am a certified high net worth individual for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

I understand that this means—

- (a) I can receive promotions, made by a person who is authorised by the Financial Services Authority, which relate to units in unregulated collective investment schemes that invest wholly or predominantly in unlisted companies;
- (b) the schemes to which the promotions will relate are not authorised or recognised for the purposes of the Financial Services and Markets Act 2000.

I am a certified high net worth individual because **at least one of the following applies**—

- (a) I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more;
- (b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more. Net assets for these purposes do not include—
  - (i) the property which is my primary residence or any loan secured on that residence;

- (ii) any rights of mine under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(a)</sup>; or
- (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on unregulated collective investment schemes.

Signature

Date”.

PART II  
STATEMENT FOR SELF-CERTIFIED SOPHISTICATED INVESTORS

2. The statement to be signed for the purposes of article 23A(1) (definition of self-certified sophisticated investor) must be in the following form and contain the following content—

**“Statement for Self-certified Sophisticated Investor**

I declare that I am a self-certified sophisticated investor for the purposes of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

I understand that this means—

- (a) I can receive promotions, made by a person who is authorised by the Financial Services Authority, which relate to units in unregulated collective investment schemes that invest wholly or predominantly in unlisted companies;
- (b) the schemes to which the promotions will relate are not authorised or recognised for the purposes of the Financial Services and Markets Act 2000.

I am a self-certified sophisticated investor because **at least one of the following applies**—

- (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
- (b) I have made more than one investment in an unlisted company in the two years prior to the date below;
- (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
- (d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.

**I accept that I can lose my property and other assets from making investment decisions based on financial promotions.**

I am aware that it is open to me to seek advice from someone who specialises in advising on unregulated collective investment schemes.

Signature

Date”.”.

<sup>(a)</sup> S.I. 2001/544, to which there are amendments not relevant to this Order.

**EXPLANATORY NOTE**

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

This Order amends the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (“the Financial Promotion Order”) and the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (S.I. 2001/1060) (“the CIS Exemptions Order”).

The Financial Promotion Order, inter alia, sets out, pursuant to the power in section 21(5) and (6) of the Financial Services and Markets Act 2000 (c.8) (“the Act”), a number of exemptions from the restriction on financial promotions in section 21 of the Act. The CIS Exemptions Order sets out, pursuant to the power in section 238(6) and (7) of the Act, a number of exemptions from the restriction on promotions in section 238(1) of the Act.

This Order amends the exemptions contained in both the Financial Promotion Order and the CIS Exemptions Order relating to certified high net worth individuals (article 48 of the Financial Promotion Order and article 21 of the CIS Exemptions Order) and certified sophisticated investors (article 50 of the Financial Promotion Order and article 23 of the CIS Exemptions Order).

Articles 2 and 4 of and Schedule 1 to this Order are made under sections 21(5) and (6) and 428(3) of the Act. Articles 3 and 5 of and Schedule 2 to this Order are made under sections 238(6) and (7) and 428(3) of the Act.

The amendments to the certified high net worth individuals exemptions (paragraph 1(2) of Schedule 1 amends the exemption in the Financial Promotion Order and paragraph 1(2) of Schedule 2 amends the exemption in the CIS Exemptions Order) take the form of revised exemptions being substituted for the previous exemptions so that—

- (a) it will not be necessary for a certified high net worth individual to have a current certificate of high net worth;
- (b) certified high net worth individuals have to sign a revised statement;
- (c) in so far as the meaning is not altered, a defect in the form of that statement shall not affect its validity; and
- (d) a new requirement to include a warning, with a set form and appearance, in any promotion made to a certified high net worth individual is introduced.

The amendment to the certified sophisticated investor exemptions (paragraph 1(3) of Schedule 1 amends the exemption in the Financial Promotion Order and paragraph 1(2) of Schedule 2 amends the exemption in the CIS Exemptions Order) takes the form of inserting an additional paragraph (1A) in to each of those exemptions so as to provide that in so far as the meaning is not altered, a defect in the wording of the statement to be signed by a certified sophisticated investor shall not affect its validity.

Finally this Order inserts into the Financial Promotion Order and the CIS Exemptions Order a new exemption for self-certified sophisticated investors. This exemption has the effect that financial promotions or promotions relating to unregulated collective investment schemes can be made to self-certified sophisticated investors providing they contain a warning and meet certain requirements. A self-certified sophisticated investor is an individual who has signed, within the period of twelve months ending with the day on which a promotion is made, a statement in the form and manner set out in the relevant Order.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Enterprise Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.