EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (PART 8) (DESIGNATION OF THE FINANCIAL CONDUCT AUTHORITY AS A DESIGNATED ENFORCER) ORDER 2013

2013 No. 478

1. This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for the designation of the Financial Conduct Authority as a designated enforcer under Part 8 of the Enterprise Act 2002 and the revocation of the Enterprise Act 2002 (Part 8) (Designation of the Financial Services Authority as a Designated Enforcer) Order 2004 (SI 2004/935) as of 1st April 2013. As a result the Financial Conduct Authority will be able to obtain enforcement orders under Part 8 of the Enterprise Act 2002 (2002 c.40) to protect the collective interests of consumers.

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

3.1 None.

4. Legislative Context

4.1 Section 1A of the Financial Services and Markets Act 2000 (2000 c.8) provides that the body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority. One of the consequences of such renaming is that the Financial Conduct Authority needs to be designated as an enforcer for the purposes of Part 8 of the Enterprise Act 2002 (2002 c.40) in place of the Financial Services Authority. This instrument therefore designates the Financial Conduct Authority under s213(2) of the Enterprise Act 2002 and revokes SI 2004/935.

4.2 BIS has consulted with HMT and the departments are agreed that no transitional provisions are required in the instrument, as the Financial Conduct Authority will be the same legal entity as the Financial Services Authority. HMT is only making express transitional provisions in its legislation which effects the new regulatory regime where acts done by or in relation to the Financial Services Authority before 1st April need to be treated as if done by or in relation to the Prudential Regulatory Authority or the Bank of England on or after that date.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Financial Services Act 2012 (2012 c.21) provides for the reform of financial regulation in the UK. In the place of the Financial Services Authority, it establishes a new system of financial services regulators as of 1 April 2013 comprising:

- An expert macro-prudential authority, the Financial Policy Committee within the Bank of England;
- A focused micro-prudential regulator, the Prudential Regulation Authority; and
- A focused conduct of business regulator, the Financial Conduct Authority, to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

7.2 Section 6 of the Financial Services Act 2012 amends the Financial Services and Markets Act 2000 by inserting a new section 1A into the Financial Services and Markets Act 2000 which provides that the Financial Conduct Authority is recognised as the same corporate entity as the Financial Services Authority, but with a new name.

7.2 As a result of the name change, a new designation recognising the Financial Conduct Authority as an enforcer under Part 8 of the Enterprise Act 2002 is required.

7.3 Part 8 of the Enterprise Act 2002 enables enforcers specified in the Act and others designated by the Secretary of State to apply to the courts for an enforcement order to stop a business from breaching certain legislation, where the breach harms the collective interests of consumers. Such breaches are known as either 'domestic infringements' or 'Community infringements'.

7.4 Part 8 applies to a wide range of both domestic consumer protection legislation and also applies to the UK’s legislation implementing those European Directives specified in the Injunctions Directive (98/27/EC).

7.5 A public body may only be designated as an enforcer if it is independent (Enterprise Act 2002 s.213(3)). In order to be designated it must also have as one of its purposes the protection of the collective interests of consumers.

7.6 The decision to designate the Financial Services Authority for the purposes of section 213 in 2004 was taken in order for there to be a designated enforcer in the

8. Consultation outcome

8.1 Due to the minor and technical nature of this instrument, and in line with common practice for secondary legislation that makes minor transitional/consequential provisions, there has been no public consultation. The Government's approach to transitional provisions was briefly outlined in the consultation document *A new approach to financial regulation: draft secondary legislation* that was published in October 2012. The Government did not receive any substantial comments on this approach.

9. Guidance

9.1 None.

10. Impact

10.1 This instrument does not impose any additional regulatory burdens on business, charities or voluntary bodies. The impact of the overall change to the regulatory system on business, charities or voluntary bodies, in so far as they are regulated financial services firms, is set out in the overarching impact assessment for the Financial Services Act 2012.

10.2 The impact on the public sector is set out in the overarching impact assessment for the Financial Services Act 2012.

10.3 An Impact Assessment has not been prepared for this instrument. Instead the overarching Impact Assessment that covers the changes to the regulatory system provided for by the 2012 Act is available on the Treasury website as Annex H to the following publication: http://www.hm-treasury.gov.uk./d/condoc_fin_regulation_draft_secondary_leg.pdf.

11. Regulating small business

11.1 These instruments will not impose additional burdens on small businesses.

12. Monitoring & review

12.1 The Department for Business, Innovation & Skills will monitor the practical effects of this instrument to ensure it continues to meet its policy aims.

13. Contact

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can answer any queries regarding the instrument.