EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES ACT 2012 (RELEVANT FUNCTIONS IN RELATION TO COMPLAINTS SCHEME) (AMENDMENT) ORDER 2024

2024 No. 1006

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Tulip Siddiq MP, Economic Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Fayyaz Muneer, Deputy Director for Prudential Banking, at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jeanie Watson at HM Treasury email: Jeanie.Watson@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This legislation amends the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014 (S.I. 2014/1195), excluding from the complaints scheme rules made by the Financial Conduct Authority using powers granted to them under regulations 22 and 34 of the Securitisation Regulations 2024 (S.I. 2024/102).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The Financial Services Act 2012 (c. 21) requires the regulators to set up a complaints scheme to address complaints related to certain functions, but the FCA's rule-making powers made under Financial Services and Markets Act 2000 ("FSMA 2000") are excluded.

5.2 However, the Financial Services Act 2012 does not automatically exclude rules made under the Financial Services and Markets Act 2023 (c. 29) ("FSMA 2023"). As a result, the FCA's rule-making powers derived from FSMA 2023 that are relied upon

in the Securitisation Regulations 2024 will not be excluded from the complaints scheme.

5.3 This statutory instrument ensures that for the purposes of the complaints scheme and the Securitisation Regulations 2024, rules made under FSMA 2023 are treated in the same way as rules made under FSMA 2000.

What was the previous policy, how is this different?

5.4 Without this instrument, the FCA's rule-making powers under FSMA 2023, contained in the Securitisation Regulations 2024, would remain subject to the complaints scheme.

5.5 This would make the FCA accountable to the Financial Regulators Complaints Commissioner (FRCC) for complaints about such rules made under the Securitisation Regulations 2024. These rules were not intended to be in scope of the complaints scheme.

6. Legislative and Legal Context

How has the law changed?

6.1 This statutory instrument amends article 2(h) of the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014 by excluding from the complaints scheme the FCA's rule-making powers under regulations 22 and 34 of the Securitisation Regulations 2024.

Why was this approach taken to change the law?

6.2 This amendment ensures that the FCA's rule-making powers under both FSMA 2000 and FSMA 2023 are treated consistently in relation to the complaints scheme, insofar as the Securitisation Regulations 2024 are concerned. It is necessary to make this legislative amendment in this way, in order to have the required effect.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation on this amendment was not undertaken. The legislation is not designed to change the policy outcome, as originally intended, but rather to ensure there is consistency in the way the law applies.

7.2 HM Treasury has consulted the Financial Conduct Authority on this issue.

8. Applicable Guidance

8.1 No additional guidance will accompany this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no impact positive or negative on business. The legislation only affects the extent to which the FCA's rule-making powers are subject to the complaints scheme.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this legislation only affects the rule-making powers of the FCA.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the legislation only affects the rule-making powers of the FCA.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is general review by officials.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Tulip Siddiq MP, Economic Secretary to the Treasury has made the following statement:

"It would be disproportionate to include a statutory review clause in this legislation as it does not introduce new economic impacts on businesses, nor on voluntary or community bodies."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

"In my view the provisions of The Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) (Amendment) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").