

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT FINANCIAL SERVICES AND MARKETS  
ACT 2000 (REGULATED ACTIVITIES)  
(AMENDMENT) ORDER 2020

*Tuesday 19 January 2021*

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**The Committee consisted of the following Members:**

*Chair:* †DAVID MUNDELL

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)

Andrew, Stuart (*Treasurer of Her Majesty's Household*)

Brennan, Kevin (*Cardiff West*) (Lab)

Carter, Andy (*Warrington South*) (Con)

Colburn, Elliot (*Carshalton and Wallington*) (Con)

Coutinho, Claire (*East Surrey*) (Con)

Davies, David T. C. (*Parliamentary Under-Secretary of State for Wales*)

Fletcher, Mark (*Bolsover*) (Con)

† Glen, John (*Economic Secretary to the Treasury*)

Jones, Mr Marcus (*Vice-Chamberlain of Her Majesty's Household*)

† McFadden, Mr Pat (*Wolverhampton South East*) (Lab)

† Pursglove, Tom (*Corby*) (Con)

† Smith, Jeff (*Manchester, Withington*) (Lab)

Spellar, John (*Warley*) (Lab)

Thompson, Owen (*Midlothian*) (SNP)

† Throup, Maggie (*Lord Commissioner of Her Majesty's Treasury*)

Timms, Stephen (*East Ham*) (Lab)

Kevin Maddison, *Committee Clerk*

† **attended the Committee**

# First Delegated Legislation Committee

Tuesday 19 January 2021

[DAVID MUNDELL *in the Chair*]

## Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020

9.25 am

**The Chair:** Before we begin, I remind Members about the social distancing requirements. Spaces available to Members are clearly marked. *Hansard* colleagues would be grateful if you could send any speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk). I call the Minister to move the motion.

**The Economic Secretary to the Treasury (John Glen):** I beg to move,

That the Committee has considered the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020.

It is a pleasure to serve under your chairmanship, Mr Mundell, as we consider the order, which was laid before the House on 26 November last year.

At the spring Budget in 2020, following comprehensive consultation and stakeholder engagement, the Government published their consultation response and the Chancellor announced the Government's intention to legislate to bring pre-paid funeral plan providers within the remit of the Financial Conduct Authority. That will ensure that, for the first time, all providers that sell and administer pre-paid funeral plans will be subject to compulsory and robust regulation. Compulsory regulation in this area is long overdue, and it is right that the Government act to ensure that vulnerable consumers are protected by a coherent and proportionate regulatory regime.

This issue has attracted interest from across the House over a number of years and I thank all Members who have campaigned, spoken and written to me about it in that time, including the hon. Member for Airdrie and Shotts (Neil Gray), the right hon. Member for East Antrim (Sammy Wilson), my hon. Friend the Member for South Cambridgeshire (Anthony Browne), my right hon. Friend the Member for South Holland and The Deepings (Sir John Hayes), and the hon. Member for Bethnal Green and Bow, who is a member of the Committee. The order will introduce a compulsory regulatory regime by amending the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and other related legislation.

A funeral plan is a contract under which a policyholder makes one or more payments to a funeral plan provider, who subsequently provides or pays for a funeral upon the death of the policyholder. Entering into such plans in effect allows policyholders to lock in the price of their future funeral when they purchase the plan. Although there is a voluntary regulatory body in the market, the Funeral Planning Authority, over recent years there have been troubling reports from Fairer Finance and Citizens Advice Scotland of consumer detriment in the sector.

Following those reports, in 2018 the Government launched a call for evidence in order to seek views and information on the potential risk of consumer detriment in the market. The responses to that call for evidence confirmed the existence of consumer harm, which included a lack of clarity for consumers over what is covered by their plan, high-pressure and misleading sales tactics, and a lack of access to redress schemes if things go wrong. The call for evidence also confirmed broad demand in the sector for moving to a compulsory regulatory regime, with 84% of respondents expressing their support.

Following further consultation on a new legislative framework, the Government have decided to bring the pre-paid funeral plan market within the remit of the FCA. That will ensure that funeral plan providers are subject to robust and enforceable conduct standards that aim to protect consumers from further harm. Under the current legislative framework, entering into a funeral plan contract is a regulated activity; however, the 2001 order currently excludes plans covered by a trust arrangement or insurance contract from the definition of a funeral plan.

Because all known providers meet those conditions, no pre-paid funeral plan provider is currently, or ever has been, authorised and regulated by the FCA. The draft order will remove those exclusions, with the effect that providers will generally be required to be authorised by the FCA in relation to entering into—that is, selling—funeral plan contracts. The order will also introduce a new regulated activity that will require providers to be authorised by the FCA in relation to the administration of funeral plans, including existing plans.

Those changes to the 2001 order will ensure that the FCA is able to introduce rules to protect consumers at the point of sale, ensure that providers administer the plans properly, and ensure that they have sufficient reserves to pay for funerals as they fall due. Many funeral plan contracts are sold by smaller intermediaries and in particular by funeral directors, a point made to me yesterday in a letter from my right hon. Friend the Member for South Holland and The Deepings. Failing to capture the sale of funeral plan contracts by that large part of the market would result in an ineffective regulatory regime and expose individuals to the risk of unfair selling practices. Therefore this order also makes amendments to the regulated activities order in order to make dealing in funeral plan contracts as an agent a regulated activity. The effect is that all relevant activities undertaken by intermediaries or third-party distributors who promote or sell funeral plans will also be brought within the scope of the amended regulatory regime.

I am mindful that funeral directors are in general not financial services firms, and the Treasury has received many representations from stakeholders concerned about the ability of these small, often family-run businesses to become directly authorised by the FCA. Therefore this order amends the relevant regulations in order to allow intermediaries of funeral plan providers to become appointed representatives of “principal” firms. That means that funeral plan providers, acting as the “principal” firm, must ensure that the representatives whom they appoint to sell or promote their funeral plans comply with the relevant regulatory regimes. For the Committee's benefit, I point out that that is not dissimilar to a travel agent selling insurance but not actually being responsible

individually for being regulated as an insurance provider. It results in a proportionate approach whereby smaller firms that operate as intermediaries will be required to follow the rules that protect consumers, without necessarily needing to undergo full FCA authorisation.

The order also makes consequential amendments to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001.

Finally, the order will bring this sector into the scope of the Financial Ombudsman Service. The Government consider that consumers should have access to the financial ombudsman in respect of both plans purchased after the order comes fully into force and plans that would otherwise have benefited from the complaints procedure of the current voluntary regulator. Accordingly, the order extends the jurisdiction of the financial ombudsman to allow it to deal with complaints in relation to matters that occurred when the funeral plan provider was registered with the Funeral Planning Authority.

I thank the FPA for its work up to this point. I hope that it will continue to operate until the new FCA regime comes into force and I urge providers to retain their registration and, of course, abide by the authority's code of conduct in this transitional period.

Following consultation with the industry, the Treasury has concluded that the majority of providers operating in this market are well run, with properly funded trusts. That is important, because it provides a foundation on which a proper regulatory regime can be based. The Treasury has also found that the reported poor practices have largely been attributed to providers that had chosen not to register with the FPA, demonstrating that in this case a voluntary system of regulation cannot be fully effective because providers can simply choose not to comply.

It is a regrettable fact that bringing a previously unregulated sector into regulation—whatever form that may take—creates a possibility that some providers are not able to meet the threshold for the new authorisation. I therefore cannot rule out the possibility that, in the authorising of those firms under the new regime, it is revealed that some providers are unable to deliver on the promises that they have made to their customers. However, I can assure the Committee that the Treasury and the FCA will monitor the situation very closely and, subject to the facts at the time, stand ready to take any appropriate action.

I will briefly outline the next steps. Once this order is made, there will be an 18-month implementation period before the new regulatory framework comes fully into force. That will allow time for the FCA to design, consult on and implement the regulatory architecture for the new regime. It will also allow time for funeral plan providers and intermediaries to take the necessary steps to familiarise themselves with the new regulatory requirements.

I also fully expect funeral plans to be brought within the scope of the Financial Services Compensation Scheme, but ultimately the scope of the FSCS is determined by the FCA, which will need to consult on the matter. The Government are currently considering whether further legislation is required to ensure that the compensation scheme would operate effectively for consumers if it were extended to cover this sector.

As I said, compulsory regulation in this area is long overdue. We must ensure that vulnerable and elderly consumers in this sector are protected. I therefore commend this order to the Committee.

9.34 am

**Mr Pat McFadden** (Wolverhampton South East) (Lab): I am grateful for your chairmanship, Mr Mundell. I am also grateful to the Minister for his explanation of the order before us. Like many such proposals, this legislation is the culmination of a process that began, I think, about three years ago. As the Minister said, at that time reports by Citizens Advice Scotland and Fairer Finance outlined problems in the marketing of funeral plans, and called for more regulation of the providers. The Fairer Finance report pointed out that a funeral plan looks and feels like a financial services product but is not regulated like one. It also found that 75% of the people it surveyed who had one thought that it already was regulated like a financial services product, and did not realise that it was not.

The calls for regulation were further spurred by reports of high-pressure selling and a lack of understanding, in some cases, of what the plans covered compared with what people expected them to cover. Obviously, at the time of a funeral, such disparities and, perhaps, surprise extra costs, are particularly upsetting to people.

The Government carried out their consultation and most respondents, such as Age UK and the Law Society of Scotland, favoured regulation. However, it should perhaps be pointed out that there were only about 30 responses. That is not a huge number for a Government consultation. Most were in favour.

The Minister mentioned the FPA, and I held a call with it last month, when it was originally thought that the order would be debated before Christmas. That organisation is not in favour of what the Government are doing, and it made a couple of points that I would like the Minister to respond to. First, it believes that the allegations of mis-selling have been exaggerated, and that the proposed regulation will add costs to what are in many cases small, family-owned businesses.

On the plans themselves, the FPA points out that if not all current providers are approved by the FCA under the new regime that could leave some customers with unapproved plans, or plans that they took out with unapproved providers. What will happen in those circumstances? The Government might hope that an approved provider—and there are some quite big operators in the market—would take over the plans. I am sure that in some cases that would happen. However, what if it did not? Where would it leave someone who had bought such a plan? The customer has not done anything wrong and has bought a plan in good faith. The FPA points out that offers of a refund in those circumstances are not really what customers want. They want a plan that covers the cost of their funeral—not to be told to start again. It estimates that there could be up to 40,000 people in that position. I would like the Minister's response about people in those circumstances.

The FPA also disputes the Treasury's estimates of the costs to the sector in the impact assessment provided to the Committee this morning.

Having asked those questions I should make it clear that the Opposition will not oppose the order. The Minister and I debate such things frequently and he knows that I often say that with innovation and change

[Mr Pat McFadden]

in financial products there must also be innovation and change in the regulatory boundary. Plans of the kind we are discussing have been around for some time, but if we look at the 10-year horizon we can see there has been quite big growth. In 2017, when the process began, there were about 200,000 policyholders. I think it has tailed off a bit in the last couple of years, but there is still a substantial number of people who hold such plans.

Of course, the Minister would also expect me to say that as the role of the FCA changes the question of how it is resourced also comes up. The principle in such matters is usually that the fees for the regulation are raised through registration, and so on. Is the Minister confident that the fees raised will allow the FCA to devote the proper resources to the task? Its role is expanding in a number of other ways, such as through the onshoring of lots of European Union regulation.

Finally, given that we are debating this matter this morning, perhaps we should say a word about the difficult circumstances that people have been in with funerals over the past year. Every faith and tradition has its own way of saying goodbye to loved ones. In my family, it is an Irish funeral tradition, which usually involves a full wake, an open coffin in someone's house, a full funeral mass and some kind of gathering afterwards. It is a big occasion.

The ability to say goodbye properly is so important to grieving families, whatever people's faith or tradition. There are many ways of having a funeral, but what they all have in common normally is that family and friends come together to bid a final farewell to a loved one they have lost. With covid, that has not been possible over the past year, at least not in anything like the normal way. We have had around 90,000 covid deaths, but the funeral rules have applied to everybody, regardless of the cause of death.

Nobody in the past year has been able to have a proper funeral. The numbers are severely restricted. Wakes cannot happen. People cannot visit somebody's home to pay their respects in the usual way. That has caused an awful lot of heartbreak to grieving relatives, and is a very painful consequence of the pandemic. Perhaps we have not talked enough about what the country is going through. We should record our thanks to funeral directors throughout the country who have tried to deal with this in the most sensitive way, trying not only to look after the dead but to help families under the severe restrictions. Of course, funeral directors have also had to do what they could to protect their own staff, with personal protective equipment and other measures, when handling funerals.

I spoke to one funeral director in my constituency yesterday, Susan Ellsmore. She runs a relatively new company; it is only three years old. She spoke of the difficulties imposed by the inability to have face-to-face contact with grieving families, of the pain imposed on families by the restrictions on numbers, with families having to make terrible decisions about who can come to the funeral and who cannot, of the financial pressures that people are under trying to pay for funerals when they might have lost their jobs or had their hours cut, and of the broader effects on the country of so many

people not being able to say goodbye properly and, in a way, having grief and the normal displays of grief delayed.

I conclude by thanking Susan, and all companies like hers that have had to cope with those awful consequences of the pandemic. In a debate that is about regulation we should not forget the most human side of all this, and the impact that the past year in particular has had on grieving families.

9.42 am

**John Glen:** I am very grateful to the right hon. Gentleman for his thoughtful remarks. I echo his sentiments about the contribution that funeral directors make up and down the country, in very difficult circumstances over the recent period. I understand the trauma that exists out there and it is obviously incredibly challenging to enact regulations that are appropriate but still cause massive distress. He raised a number of substantive points, which I will happily respond to. Obviously, we did not start out seeking to regulate at any cost and without due consultation. I accept that the number of responses was relatively modest, but there was a clear consensus from them.

I acknowledge the points that the right hon. Gentleman made on behalf of the existing voluntary body, the Funeral Planning Authority, which is not in favour of the regulation, but the reality, as I said, is that for many of its members this is not an issue; the issue comes with those that do not choose to register with the FPA and the burden of distress that those firms cause. That is why we are having to act.

The right hon. Gentleman asked about the costs for small firms. I explained the model by which small firms will be able to act as essentially intermediaries in terms of selling these products, and the relationship with the FCA not being a direct one. I accept that the issue about current providers and plans that would, subsequent to the authorisation process, potentially not be authorised, and the attendant consumer detriment, is a legitimate one that we cannot resolve at this point. As I said, it is a matter that the FCA would keep under review. I accept that the issue exists, but that does not mean that we should not tackle the fact that we need to regulate going forward, and we need to regulate for those that have come before.

The right hon. Gentleman asked about FCA resourcing, which is obviously a matter for the FCA to resolve. Notwithstanding the challenges that it faces at different times with different issues, it has a good reputation for doing this sort of work, and we expect to work very closely with it. I have regular conversations—indeed, I will have one today—with the chief executive of the FCA, and I will keep the matter under close review.

I think this is the right thing for the Government to be doing. It is based on evidence, cross-party support and clearly, as matters move forward and the detail of the work and the regulations come into play, there will be an opportunity to debate the measure further in the House.

*Question put and agreed to.*

9.46 am

*Committee rose.*



