

**Consultation on Consolidation and Review of the
Financial Services Regulatory Legislation**

**A Second Consultative Paper on the draft
Regulated Activities Order 2008
and Financial Services (Exemptions) Regulations 2008**

17th January 2008



Financial Supervision Commission Barrantee Oaseirys

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SECTION 1

1. INTRODUCTION

The initial consultative paper on the CAROL project proposed that all regulated activities should be described in detail in subordinate legislation made under the new Financial Services Bill (a Regulated Activities Order (“the Order”)). This approach was supported by 75% of those responding to the first consultative paper. Work was undertaken on the definition of regulated activities and an Order was drafted which not only defines those activities which are regulated activities but also defines a person or activity which is excluded from the scope of the legislation because it was never intended to include such a person or activity (“exclusions”). Exemption Regulations (“the Regulations”) were also drafted for those persons or activities which fall within the scope of a regulated activity but which are exempt from the requirement to hold a licence (“exemptions”). This work was contained in the second CAROL consultation, from which we received comments that enabled us to identify areas where further amendment would benefit the industry.

This consultation covers the amendments made to the Order and the Regulations since the CAROL 2 consultation.

Section 2 of this document gives an overview and highlights the key changes to the current secondary legislation. The attached RoadMap (see Appendix C) shows what has happened to the relevant provisions in the current framework.

It would be much appreciated if we could have your comments on the draft Order and Regulations as soon as possible. The closing date for comments is 15th February 2008.

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SECTION 2

2. EXECUTIVE SUMMARY

2.1 Regulated Activities Order and Financial Services (Exemption) Regulations

Attached as Appendices A and B are the draft Regulated Activities Order (“the Order”) and the draft Financial Services (Exemptions) Regulations (“the Regulations”). To assist in your review of these documents, a RoadMap (Appendix C) is also attached. The RoadMap provides an audit trail of the current legislation and where its provisions are contained; the location of such provisions within the draft legislation; details of changes that have occurred and a brief rationale for the change and the impact to industry that is perceived by such changes.

As noted in CAROL 2, the draft Order consolidates the activities contained within the Banking Act 1998, Investment Business Act 1991 – 93, Fiduciary Service Providers Acts 2000 and 2005 and parts of the Financial Supervision Act 1988 (“the Acts”). In addition, the Order includes a number of “exclusions” (activities which will fall outside the scope of the Financial Services Bill) and defines specific terms used within the Order. The definitions in the new Order generally replicate current definitions but the opportunity has been taken to revise as appropriate.

The draft Regulations contain most of the current exemptions granted under the Acts, with some outdated or unused ones being deleted. These deletions are identified in the RoadMap.

In recognition of the potential for regulatory risk, the opportunity has been taken to review whether it is more appropriate for an activity to be excluded or exempted and the extent to which a combination of individual exclusions and exemptions may be utilised by one entity.

In the light of responses to the first consultative paper where no objections were raised, the exemption for “recognised persons” under s.4 of the Investment Business Act 1991 has been removed.

In the case of the fiduciary services legislation, which contained detailed clarification of the regulated activities, this has resulted in a broader approach being taken in line with other regulated activities. However, the overall impact of this is minimal.

For both the Order and the regulations you will see from the Impact column of the RoadMap, that the majority of the draft legislation has been pure consolidation, with some amendment to wording to simplify the legislation and provide a consistent approach. Where amendments have been made to take account of the comments received since the last consultation it is clearly marked on the RoadMap as a change under CAROL 8.

Some, more material, amendments have been made to particular activities which have been highlighted in the Impact Column of the RoadMap by reference to “Material”. These are –

- a) **Banking Business.** Banking business is now referred to as deposit taking as it also includes building society activities. In addition, acting as an approved manager to managed banks is now a specific class of activity (Class 7).

- b) ***Investment Business.*** Exclusion 2 (d) of Schedule 1 now only applies to unsolicited transactions. The exclusion to legitimately solicited transactions by UK FSA regulated firms has been removed.
- c) ***Collective Investment Schemes.*** The Collective Investment Scheme section has been significantly amended to take account of the conclusions reached by the Funds Review Group and the subsequent changes to the Island's fund structure. The whole sections relating to Schemes will need to be reviewed carefully in both the Regulated Activities Order and Exemption Regulations.
- d) ***Money Services.*** This section is new and takes account of the consultation on Money Services which has been undertaken alongside the CAROL Project. The relevant sections in the Regulated Activities Order and Exemption Regulations will need to be reviewed carefully by interested parties.
- e) ***Management or administration services.*** This is the separation out of existing licensing requirements for management or administration services provided to a licenceholder other than a Class 3 licenceholder (in effect anyone providing these services to deposit takers, investment business, CSPs, TSPs or money service businesses).