Title: Transfer of claims management regulation to the Financial Conduct Authority and Financial Ombudsman Service – FSMA 2000 (Claims Management Activity) Order 2018	De minimis assessment
SI No: Click here to enter text.	**Date: 04/10/2018**
Other departments or agencies: **Financial Conduct Authority**	**Type of regulation:** **Domestic**
Contact for enquiries: **Caroline Heisig** caroline.heisig@hmtreasury.gov.uk **| 0207 270 5502**	**Date measure comes into force:** **01/04/2019**
Cost of Preferred (or more likely) Option £17.8m over 10 years	**Net cost to business per year** (EANDCB in 2016 prices) **£1.9m**

1. What is the problem under consideration? Why is government intervention necessary? (Maximum 5 lines)

The Claims Management Regulation Unit (CMRU) was established in the Ministry of Justice (MoJ) in 2007 as an interim measure. Despite reforms to CMRU's powers, widespread misconduct among claims management companies (CMCs) continues and CMRU lacks sufficient power and resource to supervise the market properly. Carol Brady's independent review made several suggestions to strengthen claims management regulation, including transferring responsibility for regulation to the FCA. This transfer was mandated by the Financial Guidance and Claims Act 2018, and the FSMA (Claims Management Activities Order) 2018 specifies the details of the transfer.

2. What are the policy objectives and the intended effects? (Maximum 5 lines)

A range of conduct issues and other problems exist in the CMC market, including: non-compliance with the existing rules; misleading advertising; information asymmetries; large volumes of speculative and unnecessary claims; and "phoenixing" of unscrupulous companies. Transferring regulatory responsibility to the Financial Conduct Authority (FCA) enables the enactment of the FCA's Senior Managers Regime and allows for the creation of more detailed conduct rules to address these issues that are creating consumer detriment.

The FCA's broader suite of supervision and enforcement powers will more effectively facilitate tougher regulation. Re-authorising CMCs will ensure they are willing and able to comply with the new regime, while the Senior Managers Regime will ensure CMC managers can be held personally accountable for the actions of their businesses. Responsibility for dealing with complaints about CMCs will be transferred from the legal ombudsman (LeO) to the Financial Ombudsman Service (FOS), which will result in a more coherent framework and help smooth the overall transition to FCA.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option (Maximum 5 lines)

The Financial Guidance and Claims Act 2018 specifies that further regulations may be made to detail the transfer of regulation. The FSMA (Claims Management Activity Order) 2018 sets out these further regulations. This IA assesses the impacts of the transfer provisions set out in the SI. In effect, this IA considers the cost to the FCA, FOS, and LeO of the transfer, which will be recouped directly from industry via a levy.

An impact assessment covering the transfer of regulation was published with the primary legislation, and can be found **here**. That IA considered both transfer costs and costs which the FCA would set out in the future, including reauthorisation, the Senior Managers Regime, and ongoing periodic fees. This assessment considers the costs arising from the provisions of the SI specifically, which defines the regulated activities, sectors in scope, exemptions, and territorial scope of the FCA's regulatory powers after the transfer. It also disapplies the FCA's responsibility to carry out a cost-benefit analysis on draft rules for Scotland which have the same effect as the current regulatory framework for England and Wales, and sets out the temporary permissions regime which facilitates the transfer. This assessment considers the costs of this transfer, which have been updated to reflect the FCA's most recent estimation.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

To do this, please set out the following:

- What will businesses have to do differently?

Firms will be required to pay a one-off levy, spread over 2-3 years, collected by the FCA. This will cover the costs of the transfer incurred by the FCA, FOS, LeO and CMR, and have been considered in this assessment.

As part of the transfer of regulation, CMCs will be required to apply for re-authorisation, and adhere to a Senior Managers Regime. Businesses will also stop paying ongoing periodic fees to the CMR and pay them to the FCA. The costs of reauthorisation, the Senior Managers Regime, and ongoing periodic fees are to be determined by the FCA and are not considered in the net impact of the transfer.

- How many businesses will this impact per year?

We estimate that between 900 and 1100 businesses will be impacted per year. According to CMRU, there are currently 1,238 authorised CMCs in operation. The overall number of authorised CMCs has been reducing by an average of 10.9% per year for the last four years. Extrapolating this trend (from a 2018 baseline of 1,238 firms), we estimate that there will be 1,113 authorised CMCs in 2019. The number of new applications for authorisation has trended downwards over the same period, so the number of authorised CMCs could be lower. The FCA's modelling shows they expect to take on 906 firms in 2019.

- What is the direct cost/benefit per business per year?

The net direct cost to business per year (EANDCB at 2016 prices) is £1.9m and the total net present cost is £17.8m over an appraisal period of 10 years.

The average direct cost to each business as a result of the transfer is estimated to be between £1,887 and £2,333 annually.

Further impacts on businesses will arise once the FCA has taken over responsibility for CMC regulation and implements its detailed rules. It is possible that this will result in additional compliance costs and further increases to annual fees, but these are subject to confirmation by the FCA. These will include reauthorisation, the Senior Managers Regime, and ongoing periodic fees. The FCA consultation on rules ran from 5 June to 3 August 2018, and a policy statement will be issued in Q4 2018.

The FCA are currently consulting on fees. They propose that all firms seeking authorisation, even if they had been authorised by the CMR, will need to pay an application fee of £1,200 (firm turnover up to £1m) or £10,000 (firm turnover above £1m). CMCs will then be required to pay ongoing periodic fees, starting from a minimum of £1,000 for firms with a turnover up to £100,000. CMCs with a balance above that threshold will pay £1,000 plus the variable rate per £1,000 on the balance of their income. These fees are the subject of a consultation run by the FCA which closes on 22 October 2018. A policy statement is expected in December 2018. The consultation paper can be found here.

CMCs authorised under the CMRU will already be familiar with an authorisation and compliance process. There may be additional compliance costs for those CMCs brought into regulation for the first time. To mitigate the burden on firms and ensure the consumer journey is not interrupted, the FCA will implement a temporary permissions regime and the government set out transitional provisions in its consultation response, which can be found here.

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
N/A

b) **Disproportionate burdens on small businesses**

These reforms are not expected to have a disproportionate impact on small firms and micro businesses. The vast majority of CMCs are small, and many are defined as micro-businesses. However, in aggregate they serve a very large number of consumers. CMCs of all sizes have the potential to cause significant consumer detriment, and 95% of all CMCs operating the financial services claims sector are classed as small or micro businesses. It is important therefore that the proposals outlined in this impact assessment apply to all CMCs, regardless of their size, if the policy objectives are to be achieved. In addition, the FCA and FOS will ensure that the one-off and ongoing obligations imposed by the transfer and the reauthorisation process are proportionate to the size of the firm.

c) **Significant gross effects despite small net impacts**
N/A

d) **Significant wider social, environmental, financial or economic impacts**
N/A

e) **Significant novel or contentious elements**
N/A

Sign-off for de minimis assessment

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Insurance and Pensions Markets

Signed: ***Becky Morrison*** Date: 01/10/2018

SCS of Better Regulation Unit

Signed: ***Johanna Cowan*** Date: 01/10/2018

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen MP – Economic Secretary to the Treasury*** Date: 04/10/2018