
EXPLANATORY STATEMENT for
ASIC Redundant Class Orders (Amendment and Repeal) Instrument
2015/826

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001, Friendly Societies Code, National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 and National Consumer Credit Protection Act 2009

The Australian Securities and Investments Commission (ASIC) makes the ASIC Redundant Class Orders (Amendment and Repeal) Instrument 2015/826 under:

- (a) subsections 341(1), 601QA(1), 601YAA(1), 709(3), 741(1), 765A(2), 926A(2), 951B(1), 992B(1), 1020F(1) and 1438(6) and paragraph 911A(2)(l) of the *Corporations Act 2001* (the Act);
- (b) section 158 of the Friendly Societies Code (as it applies as a law of the Commonwealth because of clause 36 of Schedule 4 to the Act);
- (c) paragraph 41(3)(d) of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*; and
- (d) paragraphs 109(3)(d) and 163(3)(d) of the *National Consumer Credit Protection Act 2009*.

Corporations Act 2001

Subsection 341(1) of the Act provides that ASIC may make an order in respect of a specified class of companies, registered schemes or disclosing entities, which relieves directors, the companies, registered schemes or disclosing entities, or their auditors from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act.

Subsection 601QA(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 5C of the Act; or declare that Chapter 5C applies to a person as if specified provisions were omitted, modified or varied.

Subsection 601YAA(1) of the Act provides that ASIC may exempt a person or class of persons, or an estate or class of estates, from all or specified provisions of Chapter 5D of the

Act; or declare that Chapter 5D applies to a person or class of persons, or an estate or class of estates, as if specified provisions were omitted, modified or varied.

Subsection 709(3) of the Act provides that ASIC may approve the use of profile statements for offers of securities of a particular kind.

Subsection 741(1) of the Act provides that ASIC may exempt a person from a provision of Chapter 6D; or declare that Chapter 6D applies to a person as if specified provisions were omitted, modified or varied.

Subsection 765A(2) of the Act provides that ASIC may declare that a specified facility, interest or other thing is not a financial product for the purposes of Chapter 7 of the Act.

Paragraph 911A(2)(l) of the Act provides that ASIC may exempt a person from the requirement to hold an Australian financial services licence for a financial service they provide. This is done by granting an exemption in writing and publishing it in the *Gazette*.

Subsection 926A(2) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.6 of the Act (other than Divisions 4 and 8); or declare that Part 7.6 of the Act (other than Divisions 4 and 8) applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

Subsection 951B(1) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.7 of the Act; or declare that Part 7.7 of the Act applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

Subsection 992B(1) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.8 of the Act; or declare that Part 7.8 of the Act applies in relation to a person or a financial product or class of persons or financial products as if specified provisions were omitted, modified or varied.

Subsection 1020F(1) of the Act provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.9 of the Act and may declare that Part 7.9 of the Act applies in relation to a person or a class of persons as if specified provisions were omitted, modified or varied.

Subsection 1438(6) of the Act provides that ASIC may, by legislative instrument, impose requirements on those who opted into the *Financial Services Reform Act 2001* regime prior to its commencement.

Friendly Societies Code

Section 158 of the Friendly Societies Code (as it applies as a law of the Commonwealth because of clause 36 of Schedule 4 to the Act) provides that ASIC may declare that Division 2 of Part 4B of the Friendly Societies Code and the standards made for Division 2 of Part 4B

have effect in their application in relation to a particular person or persons, or a particular class of persons, either generally or otherwise as provided in the declaration as if a specified provision or provisions of the Division or of those standards were omitted, modified or varied.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

Paragraph 41(3)(d) of Schedule 2 to the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 provides that ASIC may declare that provisions to which Part 5 of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* applies apply in relation to a credit activity, or a class of persons or credit activities, as if specified provisions were omitted, modified or varied.

National Consumer Credit Protection Act 2009

Paragraph 109(3)(d) provides that ASIC may declare that provisions of Chapter 2 of the *National Consumer Credit Protection Act 2009* and definitions in the Act, as they apply to Chapter 2, apply in relation to a credit activity, or a class of persons or credit activities as if specified provisions were omitted, modified or varied.

Paragraph 163(3)(d) provides that ASIC may declare that provisions of Chapter 3 of the *National Consumer Credit Protection Act 2009* and definitions in the Act, as they apply to Chapter 3, apply in relation to a credit activity, or a class of persons or credit activities as if specified provisions were omitted, modified or varied.

1. Background

Under the *Legislative Instruments Act 2003* (Legislative Instruments Act), legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them. To preserve its effect, a legislative instrument must be remade before its sunset date.

To ensure necessary legislative instruments are remade, ASIC has reviewed its legislative instruments and identified a number of instruments that no longer served a regulatory purpose.

The instruments to be repealed are broadly divided into the following categories:

- (a) class orders that are not relied upon;
- (b) class orders that have been superseded either by subsequent ASIC legislative instruments or legislative changes;
- (c) class orders that were transitional in nature; and
- (d) class orders that amended or repealed other ASIC class orders.

2. Purpose of the instrument

The purpose of the ASIC Redundant Class Orders (Amendment and Repeal) Instrument 2015/xxx is to:

- amend ASIC Class Order [CO 05/1270] to remove references to redundant class orders. [CO 05/1270] was made to avoid doubt that particular ASIC class orders were in effect;
- repeal 12 instruments as they are no longer relied upon;
- repeal 12 instruments as they have been superseded;
- repeal 33 instruments as they were transitional; and
- repeal 3 instruments as they were amending or repealing other instruments.

Where an instrument is deemed to no longer serve a regulatory purpose ASIC will repeal it. ASIC will repeal instruments rather than allow them to sunset so that industry is certain of our intentions and confident that, where instruments are removed, this was our intention.

3. Operation of the instrument

Clause 4 of the instrument provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 amends [CO 05/1270] to remove references to redundant class orders.

Schedule 2 repeals 60 class orders that no longer form a necessary and useful part of the regulatory framework.

4. Consultation

In April 2015 ASIC released Consultation Paper 229 *Repealing redundant ASIC class orders* (CP 229). CP 229 proposed that ASIC repeal 58 class orders due to sunset between 1 October 2015 and 1 April 2022.

Following CP 229 ASIC decided to repeal the class orders consulted on within CP 229 as well as 3 class orders that were not consulted on as part of that process but that we consider should be repealed. The three class orders not consulted upon were class orders that amended or repealed other class orders. As a result they have no ongoing legislative effect—the changes they effected have already occurred.

We received two submissions in response to CP 229 which were supportive of both our repeal of the relevant instruments and ASIC's approach to sunseting generally.

Prior to consultation we were interested in whether any of the instruments which ASIC deemed to no longer be relied upon would receive submissions suggesting that they were in fact relied upon. That we received no submissions on this indicates to ASIC that our presumptions were correct and that it is unlikely that the repeal of any of these instruments will adversely affect any party.

We have decided to repeal all of the class orders that we proposed to repeal in CP 229 with the exception of one, ASIC Class Order [CO 91/27]. This instrument was made under a section of the former Corporations Law. Both the section and the instrument were carried over under Part 10.1 of the Corporations Act. The section was repealed in 2010. The repeal of the section had the effect of also repealing the instrument: [Bird v John Sharp & Sons Pty Ltd \(1942\) 66 CLR 233](#).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Redundant Class Orders (Amendment and Repeal) Instrument 2015/826

ASIC Redundant Class Orders (Amendment and Repeal) Instrument 2015/826 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

ASIC Redundant Class Orders (Amendment and Repeal) Instrument 2015/826 repeals 60 ASIC legislative instruments that are no longer required.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Securities and Investments Commission