

## Freight forwarders, Storage firms and the FSA

The last e-alert I sent out on this changing area was on the 3<sup>rd</sup> January 2007.

On the 19<sup>th</sup> June, the Treasury released a summary of the responses to the consultation paper. They also released what is described as "NEAR-FINAL VERSION OF STATUTORY INSTRUMENT TEXT".

There are two, highly significant, departures from the text of the original draft Statutory Instrument which was released by the Treasury on the 21<sup>st</sup> December 2006.

Firstly, the new draft Statutory Instrument will, if it passes into law, now grant exemption, not only to freight forwarders, but also to storage firms.

As with the original draft, the proposal is that the exemption will apply where the dealing is with a customer, where that customer is not an individual person.

The second, perhaps more significant, change is that the Treasury has taken on board the precise point raised in our last e-alert, the relevant passage of which I quote for convenience:

*"Whereas the wording of the Treasury paper speaks in very broad terms of a removal of the general prohibition from application to freight forwarders and refers to the use of an open cover and circumstances where the benefit of such cover is passed directly to the customer, the actual draft Statutory Instrument which is appended to the paper refers to circumstances where the freight forwarder holds a policy covering his liability and where he makes rights thereunder available direct to his customer.*

*Clearly if the actual legislation, when, and if, introduced, would only benefit the customer to the extent of the liability, if any, of the freight forwarder, this is a markedly more restricted scenario.*

*Since the intention, as described in the Treasury paper, seems to be much wider, it is to be hoped (to put it mildly) that the consultative process will shake this out."*

Whilst we, as lawyers, were not invited to participate in the consultative process, fortunately one of those reading our last e-alert did pass on this exact point to the Treasury and their input is, indeed, acknowledged by the Treasury in their Summary of Responses which, at paragraph 2.11, states:

*“Most respondents thought that the draft Statutory Instrument met the policy intention set out in the consultation document. One respondent suggested that the draft Statutory Instrument should be redrafted, as there were concerns that the wording of paragraph 51(2) did not reflect the contents of the consultation paper. They felt that paragraph 51(2) suggested that the freight forwarder holds a freight liability policy and the customer is assigned rights under this policy. They considered that this was in conflict with paragraph [sic] 3.5 and 4.12 of the consultation paper, which refer to the freight forwarder taking out an “Open Cover” policy. Another respondent also suggested that the term “liability” be removed.”*

The new version of the Statutory Instrument, when it passes into law, will have effect where a freight forwarder or a storage firm holds a policy of insurance in its own name in respect of “loss of or damage to goods” which the freight forwarder or the storage firm is transporting or arranging to transport or, respectively, storing or arranging or store.

The exemption from the general prohibition in respect of regulated activities operates where the freight forwarder or storage firm makes available to the customer rights under the policy enabling the customer to claim directly against the insurer.

I will issue a further e-alert when the Statutory Instrument takes effect and formally amends the Financial Services and Markets Act 2000 (Exemption) Order 2001.

In the meantime, the very marked disparity between the expressed objective of the amending legislation and the wording of the original Statutory Instrument has been redressed.

The Treasury paper of the 19<sup>th</sup> June states that the Statutory Instrument will be laid before the House shortly and I understand that it is anticipated that this will be before the end of the current parliamentary session.

It remains to be seen on what exact date the new legislation will come into force. This will be covered by the future e-alert.

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