# EXPLANATORY MEMORANDUM TO

# THE COLLECTIVE INVESTMENT SCHEMES (TEMPORARY RECOGNITION) AND CENTRAL COUNTERPARTIES (TRANSITIONAL PROVISION) (AMENDMENT) REGULATIONS 2024

## 2024 No. 1215

## 1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Treasury and is laid before Parliament by Command of His Majesty.

## 2. Declaration

2.1 Tulip Siddiq MP, the Economic Secretary to the Treasury at His Majesty's Treasury can confirm that this Explanatory Memorandum meets the required standard.

2.2 Dan Rusbridge, Deputy Director for Personal Finances and Funds, at His Majesty's Treasury can confirm that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Matilda Embling at His Majesty's Treasury Email: Matilda.embling@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 This SI supports the operationalisation of the Government's first equivalence decision under the Overseas Funds Regime ("OFR"). The OFR was legislated for in the Financial Services Act 2021 (2021 c. 22) by amendment to the Financial Services and Markets Act 2000 (2000 c. 8) ("FSMA 2000"). The OFR provides a streamlined route for overseas funds to become recognised for the purpose of marketing to UK retail customers on a country or territorial basis, following an equivalence determination by HM Treasury.

4.2 On 30th January 2024, HM Treasury announced its intention to find the states in the EEA, including the European Union member states, equivalent under the OFR. This was in respect of Undertakings for Collective Investment in Transferable Securities ("UCITS"), except those which are Money Market Funds ("MMFs"). The Government has laid the Financial Services and Markets Act 2000 (Overseas Funds Regime) (Equivalence) (European Economic Area) Regulations 2024 (S.I. 2024/635) to enact this decision, which came into force on 16th July 2024.

4.3 This instrument serves to support the operationalisation of the Government's equivalence decision regarding the EEA states. Currently, a UCITS which had been able to market to UK retail investors before 31st December 2020 and entered the Temporary Marketing Permissions Regime ("TMPR"), can be promoted to the general public, free from the prohibition on the promotion of collective investment schemes in section 238 of FSMA 2000. This instrument amends this TMPR

(contained in the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325)), to extend it for a further year in order to allow sufficient time for funds in scope of the Government's equivalence decision to transition to the more permanent marketing arrangements provided by the OFR and avoid any cliff-edge risks.

4.4 Many funds are structured with sub-funds sitting underneath, forming part of a single umbrella scheme, with OFR recognition able to take place at the sub-fund level (sub-funds are essentially separate pools of assets which may have distinct investment aims). This instrument makes technical amendments to the TMPR to ensure that sub-funds are able to transition smoothly to the OFR on direction by the Financial Conduct Authority ("FCA"), where they are in scope of the Government's equivalence decision, or alternatively apply for recognition under section 272 of FSMA 2000. This instrument also makes other technical changes in relation to how the TMPR accounts for different types of sub-funds.

4.5 This instrument also amends the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184) (the "CCP Regulations"). The CCP Regulations established a temporary recognition regime ("TRR") in the UK, for overseas central counterparties ("CCPs") that were recognised by the EU, and therefore had market access to the UK, before the end of the transition period. Under the UK's current regime, a CCP automatically loses its temporary recognised status if its EU recognition is withdrawn. This amendment will amend the TRR so that this is no longer the case.

***Where does the legislation extend to, and apply?***

4.6 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.7 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

## 5. Policy Context

***What is being done and why?***

5.1 The TMPR is being extended for a further year to allow sufficient time for the FCA to transfer funds from the TMPR to being recognised as part of the OFR equivalence decision, and to avoid any cliff-edge risks.

5.2 The TMPR is also being amended so that sub-funds are treated appropriately. This includes ensuring that sub-funds in scope of the Government's equivalence decision are able to transition smoothly to the OFR (and the pre-existing route for recognition under section 272 of FSMA 2000, if applicable), among other technical changes in relation to how the TMPR accounts for sub-funds, such as with regards to different compositions of umbrella schemes.

5.3 After EU exit, the UK created the TRR for overseas CCPs with prior recognition by the EU, so that UK firms could retain access to those CCPs whilst the CCP's jurisdiction was assessed for equivalence and the CCP for recognition. Equivalence and recognition decisions are the mechanism by which market access is granted to overseas CCPs and are taken by HMT and the Bank of England ("the Bank") respectively. The TRR is due to expire at the end of 2026, having recently been extended by the Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2024 . The TRR also has an associated "run-off" regime which allows CCPs leaving the TRR to continue operating in the UK for a limited

period. This allows time for CCPs leaving the TRR, and the UK firms using them, to wind down their exposures in a safe manner.

5.4 As it stands, continued EU recognition is a condition for CCPs to remain in the TRR. This means that, if a CCP is derecognised by the EU before UK authorities have completed their equivalence assessment for the relevant jurisdiction or recognition process for the CCP, the CCP will automatically move out of the TRR and into the run-off regime. This has meant that several CCPs have moved into the run-off regime as a result of decisions not taken by UK authorities. This amendment removes continued EU recognition as a condition for remaining in the TRR, in order to ensure that a loss of EU recognition does not in itself result in a CCP moving out of the UK's TRR.

5.5 In addition, the Financial Services and Markets Act 2023 ("FSMA 2023") repeals assimilated law relating to financial services, subject to commencement by HM Treasury. Assimilated law will be replaced with rules set by our independent and expert regulators, operating within a framework set by government and Parliament. At the start of 2024, HM Treasury commenced the new framework for the regulation of CCPs set out in FSMA 2023, with new rule-making powers, statutory objectives and accountability arrangements for the Bank. Following on from this, HM Treasury is now working with the Bank to repeal and replace the regulatory regime for CCPs that is currently in the UK's assimilated EU law European Market Infrastructure Regulation . This will include bringing forward reforms to the overseas regime for CCPs. The TRR ensures that market access continues while this work is ongoing.

***What was the previous policy, how is this different?***

5.6 The TMPR was previously due to end in 2025 and it will now end in 2026, to support the smooth transition of EEA funds from this temporary regime to the OFR.

5.7 Previously, the TMPR would have worked ineffectively in several respects:

5.7.1 It was intended that recognition of a fund under the TMPR should end if its operator failed to make an application for recognition under the OFR or section 272 of FSMA 2000, in the relevant time period specified by the FCA in a direction (known hereafter as the "FCA landing slot"). The power the FCA has to make such a direction in relation to recognition under the OFR was not appropriately cross-referenced. This meant that a failure by a fund operator to make an application for recognition under the OFR within the FCA landing slot would be unlikely to bring the recognition of that fund under the TMPR to an end.

5.7.2 Similarly, the OFR was not appropriately cross-referenced within the conditions for a new sub-fund to be added to the TMPR for an existing umbrella scheme. This would mean that, contrary to the policy intention, once the FCA made a direction for an umbrella scheme and its sub-funds to apply for recognition under the OFR, new sub-funds of that umbrella could continue to be added to the TMPR.

5.8 Previously, the policy was that umbrella schemes should all have the same conditions for new sub-funds to be added. However, the policy now is to provide for different conditions depending on the composition of the umbrella schemes. This includes distinguishing between umbrella schemes that: have a mixture of MMF and non-MMF sub-funds; comprise only MMF sub-funds; and comprise only non-MMF sub-funds.

5.9 Regarding the amendment to the CCP Regulations, CCPs operating within the UK TRR were previously required to have ongoing EU recognition in order to remain

within the regime. This meant that if a CCP had its EU recognition revoked, it would automatically move out of the UK's TRR and into the run-off regime. The run-off regime allows for continued market access into the UK and a CCP may stay in the run-off for a maximum of three and a half years, with the Bank responsible for determining the length of time a CCP may stay in the run-off based on financial stability considerations. This amendment will ensure that a loss of EU recognition will not in itself result in a CCP moving out of the UK's TRR.

5.10 A CCP may still move out of the TRR and into the run-off if their application for permanent recognition is denied by the Bank. The Bank will also retain the ability to move a CCP out of the TRR for financial stability reasons. HMT considers this to be a sufficient backstop for the TRR, given its nature as a temporary regime designed to ensure continuity and stability for the UK market.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The TMPR will now end six years after 31st December 2020 (the IP completion date for the UK's exit from the European Union).

6.2 Where a fund operator fails to apply for recognition within the FCA landing slot, temporary recognition for that fund will end. This was the intent of the legislation, but the OFR was not appropriately accounted for in previous amending legislation. A defect has also been corrected in the legislation.

6.3 The requirements for adding new sub-funds to the TMPR cater for four separate scenarios:

6.3.1 MMF sub-funds can be added to the TMPR in respect of umbrellas only containing non-MMF TMPR recognised sub-funds any time before the FCA landing slot for the non-MMF sub-funds in that umbrella begins (noting the following paragraph would apply once an MMF sub-fund is added).

6.3.2 MMF sub-funds can be added to the TMPR in respect of umbrellas containing MMF TMPR recognised sub-funds before the FCA landing slot for the MMF sub-funds in that umbrella begins, should the FCA issue landing slots for MMFs in future.

6.3.3 Non-MMF sub-funds can be added to the TMPR in respect of umbrellas containing non-MMF TMPR recognised sub-funds before the FCA landing slot for the non-MMF sub-funds in that umbrella begins.

6.3.4 From the time this legislation comes into force, non-MMF sub-funds will be prohibited from being added to the TMPR in respect of umbrellas which only contain MMF TMPR recognised sub-funds.

6.4 This SI will also revoke regulation 19(2) and 19(3) of the CCP Regulations. The TRR is legislated for in Part 6 of the CCP Regulations, and regulation 19 sets out the circumstances in which a firm will cease to be taken as recognised for the purpose of the TRR. This revocation will mean that loss of EU recognition no longer means that a CCP loses temporary recognition in the UK. It also makes some minor and technical amendments to reflect this revocation.

***Why was this approach taken to change the law?***

6.5 The legislation has been amended to ensure funds can transition effectively from the TMPR and become recognised under the OFR, without any cliff-edge risks, which could be caused by the TMPR coming to an end before all the relevant funds have

become recognised under the OFR. These amendments also ensure that different compositions of umbrella schemes are accounted for and that the conditions of TMPR recognition work as intended. This is the only possible approach to make the necessary changes.

6.6 In relation to the amendment to the CCP Regulations, this approach will ensure that the provision linking the UK TRR to the EU no longer exists in legislation. However, the Bank of England will remain able to remove a CCP from the TRR should they deem the CCP to be a financial stability risk as per regulation 19(4) of the CCP Regulations.

6.7 HMT considers that this amendment is desirable for the purpose of providing for efficient and effective regulatory supervisory arrangements in relation to the provision of financial services or the operation of financial markets, as it will ensure that a loss of EU recognition does not in itself result in a CCP moving out of the UK's TRR.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 No public consultation was undertaken for this statutory instrument as a full consultation was run in advance of legislating for the OFR. This consultation and the Government's response can be found at: https://www.gov.uk/government/consultations/overseas-funds-regime-a-consultation.

7.2 No public consultation was undertaken for the amendment to the TRR as this is a small technical amendment, which makes use of the powers in section 3 of FSMA 2023 to modify legislation referred to in Schedule 1 in relation to the transitional period.

7.3 In accordance with the requirement under section 3(6) and (7) of FSMA 2023, the Treasury has consulted the FCA, PRA and the Bank of England with regards to these regulations and they agreed with the regulations being made.

## 8. Applicable Guidance

8.1 No guidance is required.

# Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impact of this SI is small (the cost to businesses is < £10m per year). A de minimis Impact Assessment is published alongside the Explanatory Memorandum on the legislation.gov.uk website. The only costs for UK businesses of this legislation will be familiarisation costs. These are estimated to come to £132,422 for all businesses effected.

***Impact on businesses, charities and voluntary bodies***

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument is only anticipated to create small familiarisation costs.

9.3 The legislation does not impact small or micro businesses other than to create small familiarisation costs.

9.4 There is no, or no significant, impact on the public sector because this instrument is only anticipated to create small familiarisation costs.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The approach to monitoring of this legislation is to continue to engage with the asset management sector, the FCA, the Bank of England and relevant other government departments to understand any impact.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Economic Secretary to the Treasury has made the following statement: "It is not appropriate in the circumstances to make provision for review in this legislation as it would be disproportionate, taking into account the economic impact of the regulatory provisions in this legislation, on activity carried on by businesses for the purposes of such businesses or voluntary or community bodies for the purposes of such bodies."

# Part Three: Statements and Matters of Particular Interest to Parliament

## 11. Matters of special interest to Parliament

11.1 None.

## 12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Collective Investment Schemes (Temporary Recognition) and Central Counterparties (Transitional Provision) (Amendment) Regulations 2024 are compatible with the Convention rights."

## 13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because it relates to temporary market access regimes put in place following the UK's withdrawal from the European Union.