EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2023 (ADDITION OF RELEVANT ENACTMENTS) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Lucy Rigby KC MP, Economic Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Fayyaz Muneer, Deputy Director for Technology, Innovation and Sustainability at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Timothy Maloney at HM Treasury can be contacted by email at digitalsecuritiessandbox@hmtreasury.gov.uk 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 instrument, relying on the powers set out in section 17(6) of the Financial Services and Market Act of 2023 ("FSMA 2023"), will bring the following relevant enactments into scope of the Financial Market Infrastructure ("FMI") Sandbox powers:

- the National Debt Act 1870 (c. 71);
- the Finance Act 1916 (c. 24);
- the Rehabilitation of Offenders Act 1974 (c. 53);
- the Insolvency Act 1986 (c. 45);
- the Companies Act 1989 (c. 40);
- the Financial Services (Banking Reform) Act 2013 (c. 33);
- the Regulations for the Payment of Dividends (pursuant to section 4(1) of the National Debt Act 1889) 1957;
- the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27));
- the Insolvency (Northern Ireland) Order 1989(c) (S.I. 1989/2405 (N.I. 19)); and
- the Payment Services Regulations 2017(d) (S.I. 2017/752).

4.2 The consequence of this will be that HM Treasury will be able to apply, disapply or modify the effect of these pieces of legislation by way of negative statutory

instrument ("SI") made under sections 13 to 16 of FSMA 2023 when establishing new FMI Sandboxes or modifying existing sandboxes. Any such negative SI will set out in detail the specific changes being made.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland.

5. Policy Context

What is being done and why?

Additional legislation to support the Digital Securities Sandbox

5.1 This instrument brings several additional pieces of legislation into scope of section 17(3) of FSMA 2023. This will facilitate further temporary modifications to UK legislation as part of FMI Sandboxes set up under these powers.

5.2 Section 13 of FSMA 2023 gives the government the power to set up FMI Sandboxes via statutory instrument. FMI Sandboxes are intended to enable firms to utilise developing technologies, such as Distributed Ledger Technology (DLT), in performing the functions of traditional FMI firms, such as the operation of a securities settlement system or operating a trading venue. They do this by providing temporary modifications to existing legislation to participating firms where existing legislation, or its interpretation, would otherwise form a barrier or an obstacle to performing these functions in innovative ways. The list of legislation that can be modified is set out in section 17(3) of FSMA 2023.

5.3 This instrument will allow HM Treasury to use the FMI sandbox powers to apply, disapply or modify the effect of the enactments listed in paragraph 4.1 for the purposes of the Digital Securities Sandbox (DSS). The relevant enactments to be added are the National Debt Act 1870, the Finance Act 1916, the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders (Northern Ireland) Order 1978, the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989, the Companies Act 1989, the Financial Services (Banking Reform) Act 2013, the Regulations for the Payment of Dividends (pursuant to section 4(1) of the National Debt Act 1889) 1957, and the Payment Services Regulations 2017.

5.4 The DSS is the first instance of an FMI Sandbox being established using the powers in Section 13 of FSMA 2023. The DSS enables firms to test and develop digital securities infrastructure in a live market environment using developing technology, including DLT, under a temporarily modified legal and regulatory regime. The sandbox is overseen jointly by the Bank of England and the Financial Conduct Authority. It allows approved firms to operate facilities such as Digital Securities Depositories and trading venues for digital securities, subject to regulatory limits and conditions.

5.5 Participating entities in the DSS are subject to a set of modified legislative requirements, where existing requirements outside of the DSS may act as a barrier or an obstacle to using new technology in the provision of in-scope FMI activities. Some existing legislative requirements are being disapplied within the DSS, with the regulators able to make rules that apply only to firms within the DSS, including to replace existing requirements placed on firms. Under the modified framework, the

regulators also have the power to: waive or modify rules, including those made under FSMA 2000 or other relevant enactments; provide for the application of existing rules to firms of a specified description or for individual firms; and modify (including the power to provide for them not to apply) technical standards.

5.6 The DSS will enable the government, in close collaboration with the regulators, to assess how permanent changes may be needed to the settlement regulatory regimes in future to accommodate new and developing technologies outside of the sandbox. Any permanent changes would require consultation with industry and would follow normal parliamentary processes.

5.7 The pieces of legislation being brought into scope in this instrument have been identified as potentially needing to be modified to support activity in the DSS. This instrument therefore expands the list of relevant enactments. The specific modifications to those enactments will be made separately by a subsequent negative statutory instrument.

5.8 The Government announced at Mansion House in July 2026 that it intends to issue a digitally native, short-dated government debt instrument, known as DIGIT, onto a platform participating in the Digital Securities Sandbox by the end of Q1 2027. This work has helped to identify the legislation being brought into scope by this instrument including modifications that will be made separately that relate specifically to government debt.

What was the previous policy, how is this different?

5.9 Before this instrument, section 17(3) of FSMA 2023 listed the enactments which could be modified for the purposes of an FMI sandbox. The list included financial services and markets legislation, company law, settlement finality legislation, uncertificated securities legislation, financial collateral legislation, government stock legislation, money laundering legislation and relevant assimilated EU legislation relating to market abuse, markets in financial instruments, central securities depositories, organisational requirements for investment firms, and prospectuses. It did not include the additional legislation now identified as necessary to provide legal clarity to support activities in the DSS.

5.10 The policy is different because the legislation listed in paragraph 4.1 was not identified when the original DSS regulations were drafted. These items of legislation have been identified as a result of additional analysis related to live activity in the DSS, including the upcoming issuance of DIGIT. The changes support DSS activity by clarifying the application of legislation to DLT-based market activity.

5.11 We anticipate that future modifications could be made to the legislation listed at paragraph 4.1 to include clarifications to 1) disapply legislative requirements where they are not needed in the DSS, or 2) ensure that legislative requirements continue to apply in the context of the DSS where this is desirable. The specific nature of these changes will be set out in a subsequent SI(s).

5.12 Regarding clarifications that ensure legislative requirements continue to apply in the DSS, this is in line with the principle that sandbox entrants should be subject to existing requirements, unless there is a clear need to modify them to facilitate innovation. For instance, in the case of the Payment Services Regulations ("PSRs"), we anticipate making changes that would ensure that entities in the DSS are caught by provisions in the PSRs that ordinarily apply to Central Securities Depositories (CSDs).

5.13 Another example is legislation relating to the rehabilitation of offenders, where we intend to extend the scope of provisions applicable to "recognised CSDs" to include Digital Securities Depositories (DSDs), for example requirements to disclose spent convictions to relevant regulators. We intend to follow a similar approach to the modification of the Financial Services (Banking Reform) Act 2013 and legislation relating to insolvency. Again, the changes themselves will be set out in a negative SI in future.

5.14 Certain amendments concern the upcoming DIGIT issuance. For instance, regarding the disapplication of legislative requirements where they are not needed in the DSS, we intend to modify or disapply parts of the National Debt Act 1870, the Regulations for the Payment of Dividends 1957, and the Finance Act 1916 which are not relevant to issuances taking place using DLT. The principle of amending legislation to remove outdated requirements, to enable digitalisation, is in line with the rationale for the DSS, and the specific nature of the changes will be set out in a future negative SI.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends section 17(3) of FSMA 2023 by adding the National Debt Act 1870, the Finance Act 1916, the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders (Northern Ireland) Order 1978, the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989, the Companies Act 1989, the Financial Services (Banking Reform) Act 2013, the Regulations for the Payment of Dividends (pursuant to section 4(1) of the National Debt Act 1889) 1957, and the Payment Services Regulations 2017 into the scope of the FMI Sandbox powers.

Why was this approach taken to change the law?

6.2 This approach was taken to enable the necessary changes to apply in the relevant FMI Sandboxes, and particularly the DSS. This is consistent with the objective of testing temporary modifications to legislation, and so consistent with the purpose of the powers set out in FSMA 2023.

7. Consultation

Summary of consultation outcome and methodology

7.1 A formal consultation was not undertaken for this instrument. However, HM Treasury previously consulted on the implementation of the DSS and has engaged with both the Bank of England and the Financial Conduct Authority on this instrument. The changes made by this instrument are based on stakeholder feedback.

8. Applicable Guidance

8.1 HM Treasury does not propose to provide any guidance in relation to this instrument.

8.2 The Bank of England and the Financial Conduct Authority have published operational guidance for the Digital Securities Sandbox and will continue to supervise sandbox activity in accordance with the framework established for the sandbox.

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 negligible. This is because no legislative changes are being made that will directly impact firms - any temporary modifications to the legislation being brought into scope will be made via subsequent negative SIs.

9.2 A de minimis Impact Assessment was produced for the first DSS SI - The Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023 (S.I. 2023/1398), and can be found on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, direct impact on business, charities or voluntary bodies because this instrument only adds enactments to the list of relevant enactments in section 17(3) of FSMA 2023. It does not itself modify the regulatory obligations of firms or other persons.

9.4 The legislation does not directly impact small or micro businesses.

9.5 There is no, or no significant, direct impact on the public sector. The Bank of England and the Financial Conduct Authority will continue to oversee the Digital Securities Sandbox under the existing supervisory framework.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 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 (Lucy Rigby KC MP) has made the following statement:

"It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £10 million and the number of small businesses in scope is very low."

10.2 For each FMI Sandbox, under section 14 of FSMA 2023 the government is required to report to Parliament, setting out the activity that has taken place and the efficiency and effectiveness of the FMI Sandbox. If the government intends to make permanent changes to legislation after the FMI Sandbox, it can use the powers set out at section 15 of FSMA 2023, subject to Parliamentary approval.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The activity in the DSS will enable HMT, working with the regulators, to determine how UK legislation should be permanently amended to accommodate developing technology.

11.2 Subject to parliamentary approval of this SI the Treasury will prepare a negative statutory instrument to make textual modifications to the legislation listed at paragraph 4.1.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury (Lucy Rigby KC MP) has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services and Markets Act 2023 (Digital Securities Sandbox) (Addition of Relevant Enactments) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.