EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2023 (PRUDENTIAL REGULATION OF CREDIT INSTITUTIONS) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2025

2025 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.

2. Declaration

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

2.2 George Barnes, Deputy Director for Banking Assets and Resolution Strategy, at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Henry Grigg at HM Treasury can be contacted by email at the following address with any queries regarding the instrument: henry.grigg@hmtreasury.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes consequential amendments following the commencement of provisions in, or made under, the Financial Services and Markets Act 2023 (FSMA 2023). FSMA 2023 revokes assimilated law relating to financial services, which will be replaced by rules set by the financial services regulators operating under a legislative framework. This instrument makes consequential amendments resulting from the commencement of the revocations that take effect on 1 January 2026, by virtue of the Financial Services and Markets Act 2023 (Commencement No.10 and Saving Provisions) Regulations 2025 (Commencement Regulations).[1]

Where does the legislation extend to, and apply?

4.2 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.

4.3 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?

5.1 HM Treasury is progressing work to bring the prudential regime for banks, building societies and investment firms into line with the UK's established model for financial

[1] The Financial Services and Markets Act 2023 (Commencement No. 10 and Saving Provisions) Regulations 2025 (https://www.legislation.gov.uk/uksi/2025/873/made)

services regulation, as part of the Smarter Regulatory Framework legislated for under the FSMA 2023. As part of this, the Government confirmed on 12 September 2024 its intention to revoke relevant parts of assimilated law for the prudential regime set out in the Capital Requirements Regulation (CRR).[2] These revocations would allow the Prudential Regulation Authority (PRA) and the Bank of England (the Bank) to replace the revoked legislation with regulator rules and statements of policy.

5.2 Most of the revoked CRR provisions will be replaced by PRA rules. Under Section 5(3) of the Financial Services Act 2021, any references to revoked provisions in the CRR are to be treated as references to the corresponding PRA rule. As a result, the amendments made by this instrument are limited to cases where there would be no corresponding PRA rule to replace the revoked provisions so as to ensure legislative clarity.

What was the previous policy, how is this different?

5.3 This instrument does not make policy changes; rather, it makes consequential amendments to reflect the Government's existing policy in relation to the revocation of the CRR and other assimilated law related to the prudential regime.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 1 FSMA 2023 revokes assimilated law relating to financial services, covered by Schedule 1 to that Act, subject to commencement by HM Treasury. The Commencement Regulations commence, from 1 January 2026, the revocation of certain provisions of the CRR. Consequential amendments are needed to other legislation to ensure that it reflects, or is consistent with, those revocations.

6.2 Regulation 2 amends section 3 of the Banking Act 2009 (the Banking Act), which sets out how certain definitions in the Banking Act should be interpreted and makes two amendments.

- First, it amends the definition of "Common Equity Tier 1 instruments" to reflect the revocation of Article 31 of the CRR. As there is no corresponding PRA rule for Article 31, the definition is amended to refer to only to those CRR provisions not yet revoked.
- Second, it amends the definition of "own funds requirements" to clarify that the definition refers only to the requirements laid down in Articles 92 and 93 of the CRR.

6.3 Regulation 3 amends the definition of "response period" in articles 64(2) and 68(2) of the Bank Recovery and Resolution (No.2 Order) 2014. This definition relates to the period in which an institution must respond to a Bank determination when it exercises its powers to remove impediments to resolvability. The amendments reflect the revocation of both Articles 92a and 494 of the CRR.

6.4 Regulation 4 amends regulation 7(6) of the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019, which allows the PRA and Financial Conduct Authority to make technical standards. As there is no

[2] Policy update, Applying the Financial Services and Markets Act 2000 model to the Capital Requirements Regulation (https://assets.publishing.service.gov.uk/media/66e16b6ec428f0f0a6cb24c9/Applying_the_FSMA_2000_model_of_regulation_to_the_Capital_Requirements_Regulation.pdf).

corresponding PRA rule for Article 49(1) of the CRR, the amendment ensures that regulation 7(6) no longer refers to a revoked CRR provision.

6.5 Regulation 5 amends the definition of "relevant requirement" in regulation 2 of the Bank Levy (Loss Absorbing Instruments) Regulations 2020, which provides conditions for the treatment within the Bank Levy of loss absorbing instruments (such as shares and debt) issued by overseas subsidiaries of UK-based firms. The amendment removes the reference to Article 92a of the CRR, since this has been revoked. The requirement under Article 92a will be covered by the regulation 2(a)(i) of the Bank Levy (Loss Absorbing Instrument) Regulations 2020.

Why was this approach taken to change the law?

6.6 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 These consequential amendments do not alter the overall policy approach to the revocation of the CRR, which the Government consulted on previously. As such, no consultation has been necessary.

8. Applicable Guidance

8.1 No guidance accompanies this instrument.

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 it is not expected to have any impact on business, since it only makes consequential amendments arising out of provision in, or made under, FSMA 2023.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 HM Treasury does not plan to do any other monitoring or review because there is no impact on business. 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, has made the following statement:

"It is not proportionate to include a review clause in this instrument because the SI does not impact on business."

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, Lucy Rigby, has made the following statement regarding Human Rights:
"In my view the provisions of the Financial Services and Markets Act (Prudential Regulation of Credit Institutions) (Consequential Amendments) Regulations 2025 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 makes amendments consequential upon the revocation of assimilated EU law.