EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES (OVERSEAS RECOGNITION REGIME DESIGNATIONS) 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.

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

2. Declaration

2.1 Emma Reynolds, Economic Secretary to the Treasury and City Minister at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Rohan Lee, Deputy Director for International Policy and Partnerships at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Roisin Gadd at HM Treasury email: roisin.gadd@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 instrument is made using the powers in the Financial Services and Markets Act 2023 (FSMA 2023) and sets out powers and obligations in relation to HM Treasury's Overseas Recognition Regimes. Overseas Recognition Regimes are legislative provisions that allow HM Treasury to recognise the regulatory framework governing the financial services of any country or territory outside of the United Kingdom ('overseas jurisdiction').

4.2 This instrument gives HM Treasury the power to request information and advice from the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority (the Financial Services Regulators), the power to impose conditions on the application of an Overseas Recognition Regime designation and requires HM Treasury and the Financial Services Regulators to coordinate the discharge of their respective functions in relation to Overseas Recognition Regimes.

4.3 This instrument also makes some amendments to Overseas Recognition Regimes that have already been established. This is to ensure that there is clarity and uniformity across Overseas Recognition Regimes, to make the law clearer and to provide for efficient and effective regulatory arrangements in relation to the provision of financial services or the operation of financial markets.

Assimilated Equivalence Regimes

4.4 The European Union Withdrawal Act 2018 ('EUWA'), as amended by the European Union (Withdrawal Agreement) Act 2020, converted the existing body of directly applicable EU law (including Regulations and Directions) into UK law on 31st December 2020. This was incorporated into the UK's statute book as retained EU law and is now known as assimilated law as per section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

4.5 Assimilated law included the EU's framework for financial services equivalence and more than 270 EU equivalence decisions and 40 EU equivalence regimes.

4.6 Equivalence is a mechanism by which the EU and the UK can recognise relevant standards in another jurisdiction. Granting equivalence can provide a range of regulatory benefits, including enabling overseas firms to provide services directly into the relevant jurisdiction, aligning requirements on UK authorised firms whether they are engaging with domestic or overseas markets or counterparties, or providing regulatory relief by removing duplicative requirements on cross-border business.

4.7 To ensure that assimilated law was operable in a UK-only context, it was necessary to amend certain aspects of the legislation to reflect the UK's position outside the EU. The EUWA therefore also gave ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in assimilated EU law, through Statutory Instruments ('SIs') – this was referred to as "onshoring". Under the onshoring process, the European Commission's role in making equivalence decisions for overseas jurisdictions was replicated and transferred to HM Treasury. Furthermore, the functions of the European Supervisory Authorities with regards to equivalence decisions were replicated and transferred to the Financial Services Regulators.

4.8 Under the EUWA, the UK also made the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (the Equivalence SI) to ensure there was a functioning and coherent equivalence framework. The equivalence framework for financial services therefore exists as a collection of individual provisions across several regulations which regulate different areas of financial services activity, with the Equivalence SI making supplementary provisions in relation to HM Treasury's powers under those other provisions.

Overseas Recognition Regimes

4.9 FSMA 2023 repealed assimilated law relating to financial services, subject to commencement. This was so that it could be brought in line with the UK's domestic model of regulation, where the Financial Services Regulators set rules for firms, operating within a framework established by government and Parliament.

4.10 This means that the government has a programme of work to replace the existing equivalence regimes inherited from the EU with legislation which is tailored to the UK's needs, and which fully reflects the government's outcomes-focused approach to the unilateral regulatory recognition of overseas jurisdictions. These are called 'Overseas Recognition Regimes'.

4.11 Overseas Recognition Regimes are legislative provisions that allow HM Treasury to recognise the regulatory framework governing the financial services of an overseas jurisdiction. They are designed to provide a range of regulatory benefits and support safe and stable cross-border activity in financial services.

4.12 Overseas Recognition Regime provisions can enable overseas firms to provide services directly into the UK, align requirements on UK authorised firms whether they are engaging with UK or overseas markets or counterparties, or provide regulatory relief by removing duplicative requirements on cross-border business. The specific detail of the regulatory treatment depends on the regime. The recognition of a specific overseas jurisdiction's regulatory framework through use of Overseas Recognition Regimes is referred to as a 'designation'.

4.13 Given that the Equivalence SI is listed in Part 2 of Schedule 1 of FSMA 2023, it is also revoked under subsections 1(1) and 1(2)(b) of FSMA 2023. The revocation will commence at a time appointed by HM Treasury (as set out in section 86(3) and section 86(7) of FSMA 2023). Certain provisions in the Equivalence SI will be restated pursuant to sections 4 and 86(5) of FSMA 2023 through this instrument, The Financial Services (Overseas Recognition Regime Designations) Regulations 2025 ('the Overseas Recognition Regimes SI')).

4.14 The Schedule attached to this instrument lists all the Overseas Recognition Regimes that this instrument applies to, for the purposes of the definition.

4.15 Given the gradual revocation of assimilated law, the definition of an Overseas Recognition Regime designation, for the purposes of this instrument, includes the definition of decisions that would be made on the basis of equivalence as well as a designation made under any provision listed in the Schedule. This ensures that equivalence decisions are also covered by the powers in this instrument until each assimilated equivalence regime is restated. The Schedule will be updated to include each Overseas Recognition Regime that HM Treasury goes on to establish.

Where does the legislation extend to, and apply?

4.16 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.17 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 FSMA 2023 repealed assimilated law relating to financial services, subject to commencement. This was so that it could be brought in line with the UK's domestic model of regulation, where the Financial Services Regulators set rules for firms, operating within a framework established by government and Parliament.

5.2 This means that the government has a programme of work to replace the existing equivalence regimes inherited from the EU with legislation which is tailored to the UK's needs, and which fully reflect the government's outcomes focused approach to the unilateral regulatory recognition of overseas jurisdictions.

5.3 Assimilated EU law on financial services equivalence will be restated through a series of regulations establishing Overseas Recognition Regimes. This instrument contains powers and obligations in relation to both assimilated EU law on financial services equivalence, and Overseas Recognition Regimes as they are implemented. This is to ensure there is a central piece of legislation containing the processes underpinning the UK's unilateral regulatory recognition of overseas jurisdictions.

What was the previous policy, how is this different?

Power to impose conditions on an overseas jurisdiction

5.4 HM Treasury has the power to apply conditions to equivalence decisions through two separate mechanisms:

(a) The European Commission had the power to impose conditions, and HM Treasury inherited this power through the EUWA 2019.

(b) In some assimilated legislation, there is also an express power to apply conditions: the most relevant example of this would be Article 48a of Regulation (EU) No 600/2014 of the European Parliament and of the Council (the Markets in Financial Instruments Regulation (MiFIR)). HM Treasury can therefore use that power to impose conditions when making equivalence decisions under those regimes.

5.5 To bring consistency across regimes this instrument contains a power in regulation 3 to impose conditions or limitations on the application of a designation, applicable to all equivalence decisions and enactments listed in the Schedule.

5.6 Whether to apply conditions or not is at the discretion of HM Treasury. Conditions are specific changes to the effect of a designation under a particular Overseas Recognition Regime. The ability to apply conditions allows HM Treasury to ensure that designating an overseas jurisdiction's regulatory framework is compatible with the specified policy outcomes. For example, a designation could apply stronger requirements to larger or higher risk overseas firms in order for such firms to benefit from the designation. Attaching conditions to regulatory recognition decisions is entirely within international norms and gives HM Treasury appropriate flexibility in decision-making.

Power to request information and advice from the Financial Services Regulators

5.7 Regulation 4 of the Equivalence SI outlined that HM Treasury may by notice require the Financial Services Regulators to provide information and advice specified, or of a description specified, in the notice to support with equivalence decisions. The advice had to be provided during such "reasonable period as may be specified in the notice". This instrument includes a similar power in regulation 4, enabling HM Treasury to require the Financial Services Regulators to provide any information or advice that HM Treasury consider necessary in either making, amending, or revoking an Overseas Recognition Regime designation.

5.8 This regulation allows HM Treasury to request advice from the Financial Services Regulators in connection with Overseas Recognition Regimes, and assimilated equivalence regimes before they are restated. The scope of advice that the Financial Services Regulators will be asked to provide will be agreed on a case-by-case basis, through the commissioning letter process (regulation 4(1)) but will be centred on the 'Matters to Consider' that are specified within each Overseas Recognition Regime, and the Memorandum of Understanding ('MoU') that has been agreed with the Financial Services Regulators (see link at paragraph 11.1 below).

5.9 Regulation 6 of this instrument ensures that protections on the disclosure of confidential information set out in the Financial Services and Markets Act 2000 apply in relation to information received by the Bank of England when providing information or advice to HM Treasury. This has the same effect as a provision in regulation 5 of the Equivalence SI.

Obligation to coordinate functions and enter into a Memorandum of Understanding

5.10 Regulation 6 of the Equivalence SI sets out an obligation for HM Treasury and the Financial Services Regulators to coordinate the discharge of their respective functions in respect of equivalence determinations and the provision of information and advice, and to prepare and maintain an MoU.

5.11 The MoU is intended to provide clarity on aspects of the operational processes and coordination of activities between HM Treasury and the Financial Services Regulators which are not set out in legislation. In addition, the obligation to publish the MoU and lay it before Parliament provides transparency about the underpinning processes.

5.12 Although the MoU is not itself legally binding, it serves a key function in the process of making equivalence decisions. Therefore, this instrument replicates the power to coordinate functions and prepare and maintain an MoU, making it applicable with respect to Overseas Recognition Regimes. This provision is contained in regulation 5.

Interaction with other legislation being prepared by HM Treasury

5.13 The function of HM Treasury to determine the equivalence of overseas jurisdictions in financial services regulations will remain in each assimilated equivalence regime until and unless they are revoked. As Overseas Recognition Regimes are established, HM Treasury will also be able to make designations under Overseas Recognition Regimes by way of regulations. This instrument makes supplementary provision in relation to HM Treasury's powers under those pieces of legislation.

6. Legislative and Legal Context

How has the law changed?

6.1 Sections 4 and 86(5) of FSMA 2023 provide that any revoked legislation can be saved, which can include restating that legislation by amending primary legislation or subordinate legislation, or by making new subordinate legislation. This means that HM Treasury is restating provisions included in the Equivalence SI in this statutory instrument (the Overseas Recognition Regimes SI).

6.2 In addition, under section 4(2) of FSMA 2023, when restating legislation, HM Treasury may make such modifications to that legislation as it considers necessary or desirable for or in connection with:

(a) The purpose of making the law clear or more accessible; or

(b) One of the purposes set out in section 3(2) FSMA 2023 (e.g., facilitating the international competitiveness of the UK).

6.3 This provides for the power for HM Treasury to make changes to the Equivalence SI in order to align it with the UK's new Overseas Recognition Regimes, as is done in this instrument. These are also the powers that are exercised when restating assimilated equivalence regimes and amending them into Overseas Recognition Regimes.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 HM Treasury has not undertaken a public consultation on this instrument.

8. Applicable Guidance

8.1 A Guidance Document on the Financial Services Overseas Recognition Regimes was published in July 2025 and provides further explanation of the policy that this instrument will implement.[1]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An impact assessment has not been prepared for this instrument because this instrument does not directly affect firms, but rather complements different instruments implementing the Overseas Recognition Regime for each area of financial services activity, to provide a comprehensive framework for the implementation of Overseas Recognition Regimes.

9.2 The impact on firms from the implementation of Overseas Recognition Regimes will flow principally from firm-level recognition decisions made by the Financial Services Regulators after an overseas jurisdiction has been designated by HM Treasury. Nonetheless, any impacts on firms that will follow from each Overseas Recognition Regime, or any instruments that will designate a particular overseas jurisdiction for the purposes of an Overseas Recognition Regime, would be included as part of the impact assessment accompanying those instruments.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument only enables HM Treasury to coordinate activities with the Financial Services Regulators and impose conditions on designations but does not give power to HM Treasury to designate an overseas jurisdiction. This will be contained within the sector-specific Overseas Recognition Regime instruments. The impact of the powers contained within this instrument will depend on whether HM Treasury goes on to designate a particular overseas jurisdiction under a specific Overseas Recognition Regime, and, in some cases, whether the Financial Services Regulators then go on to recognise individual firms.

9.4 The legislation impacts small or micro businesses in the same way as it impacts other businesses. The impact will be dependent on designations being made for particular overseas jurisdictions, and, in some cases, firm level decisions being made by the Financial Services Regulators. Any impact from the designation of a particular overseas jurisdiction will be included in the impact assessment accompanying the instrument that implements that designation.

9.5 There is no, or no significant, impact on the public sector because this instrument only enables HM Treasury to coordinate activities with the Financial Services Regulators and impose conditions on designations but does not give power to HM Treasury to designate an overseas jurisdiction. The impact of the powers contained within this instrument will depend on whether HM Treasury goes on to designate a particular overseas jurisdiction under a specific Overseas Recognition Regime, and, in some cases, whether the Financial Services Regulators then go on to recognise individual firms.

[1] https://www.gov.uk/government/publications/overseas-recognition-regimes-guidance-document

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to the monitoring of this legislation is to maintain an ongoing dialogue with the Financial Services Regulators on the functioning of Overseas Recognition Regimes. The implementation of any specific Overseas Recognition Regime will also be reviewed as part of any review, statutory or otherwise, of the regime itself.

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 HM Treasury (Emma Reynolds) 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 instrument does not apply to activities that are undertaken by small businesses."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 A copy of the Memorandum of Understanding: Overseas Recognition Regimes is published on GOV.UK[2] and deposited in the Libraries of the House.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury (Emma Reynolds) has made the following statement regarding Human Rights:

"In my view the provisions of The Financial Services (Overseas Recognition Regime Designations) 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").

[2] https://www.gov.uk/government/publications/memorandum-of-understanding-overseas-recognition-regimes