EXPLANATORY MEMORANDUM TO

THE MARKETS IN FINANCIAL INSTRUMENTS (MISCELLANEOUS 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.

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

2. Declaration

2.1 Emma Reynolds MP, Economic Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Duggan, Deputy Director for Securities and Markets, at the Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Danielle Close at HM Treasury (Capital.Markets@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 When the UK left the European Union (EU), the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union Withdrawal Act 2018 (EUWA). This is known as assimilated law.

4.2 The Financial Services and Markets Act 2023 (FSMA 2023) repeals assimilated law relating to financial services, subject to commencement.

4.3 Using the powers established by FSMA 2023, this instrument (restatement Statutory Instrument (restatement SI)) retains the key definitions within the Commission Delegated Regulation (EU) 2017/565, otherwise known as the MiFID Org Reg, in domestic financial services legislation. A subsequent commencement SI will be made to revoke the MiFID Org Reg and bring into force this instrument. The Treasury will do this in co-ordination with the Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) implementing rules to replace the firm-facing provisions from the MiFID Org Reg.

Where does the legislation extend to, and apply?

4.4 The extent of this restatement SI (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.5 The territorial application of this restatement SI (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 The MiFID Org Reg specifies the organisational requirements and operating conditions for investment firms, and introduces related definitions. The key definitions in the MiFID Org Reg provide firms with clarity when interpreting the regulatory perimeter.

5.2 Additionally, the MiFID Org Reg provides detailed regulatory requirements and contains key conduct and systems and controls obligations for investment firms. The regulation is broad in scope, covering various requirements including: client categorisation, best execution, research, conflicts of interest, outsourcing, compliance and internal audit functions.

5.3 As part of her Mansion House 2024 speech, the Chancellor announced the government's intention to make further technical changes to the wholesale markets framework. This included a commitment to commence the revocation of the detailed firm-facing regulations within the MiFID Org Reg, to be replaced with rules set by the independent financial services regulator.

5.4 Delegating responsibility for setting these firm-facing regulatory requirements to the regulators. This ensures that our expert regulators' real-world, day-to-day experience of supervising financial services firms is central to the regulatory policymaking process. It allows the regulators to ensure previously EU-wide rules are tailored to the UK market. It also provides flexibility for the regulators to update standards efficiently in response to emerging market trends and risks.

5.5 To deliver on this commitment, the Treasury are laying this instrument to restate regulations that define regulated activity in legislation. The Treasury will make a separate instrument to commence the revocation of the MiFID Org Reg and the regulators will at the same time replace firm-facing provisions from the MiFID Org Reg in their rules.

What was the previous policy, how is this different?

5.6 Previously, all regulations in the MiFID Org Reg, including firm-facing requirements were embedded in legislation. By revoking these detailed regulatory requirements, financial services firms may benefit from the expertise of regulators who can establish replacement rules tailored to the industry's needs.

5.7 The key definitions in the MiFID Org Reg provide clarity when interpreting the regulatory perimeter, making it essential to maintain them in legislation. Most of the definitions from the MiFID Org Reg are already found in the Financial Services and Markets Act 2000 Regulated Activities Order 2001 (RAO). This restatement instrument ensures that the key definitions from the MiFID Org Reg are retained in domestic financial services legislation. It also modifies definitions already in the RAO to clarify the terminology.

6. Legislative and Legal Context

How has the law changed?

6.1 The MiFID Org Reg was introduced in 2017 and supplemented the regulatory framework established by Directive 2014/65/EU of the European Parliament and of the Council (MiFID II).

6.2 FSMA 2023 establishes a number of legislative powers for the government to amend and replace assimilated law related to financial services where necessary.

6.3 Section 4 of FSMA 2023 contains a power to restate assimilated law into domestic legislation. This instrument uses the powers in section 4 to restate the following definitions with appropriate modifications:

- A commodity
- Significant damage to investors' interests or orderly market functioning
- Direct electronic access
- High-frequency trading techniques
- High message intraday rates

6.4 Many definitions in the MiFID Org Reg were incorporated into the RAO to implement MiFID in domestic financial services legislation. However, thus far, modifications have not been made to such provisions. This instrument restates, with appropriate modifications, the following provisions covering:

- Money market-instruments
- Exclusion of certain derivative contracts relating to currencies
- Wholesale energy products that must be physically settled
- Treatment of certain derivative financial instruments
- Exclusion of certain derivative financial instruments
- Further derivative contracts included
- Treatment of certain derivative contracts

6.5 All provisions retained in legislation have been drafted to clarify terminology, without changing the meaning or scope of definitions.

6.6 To ensure that relevant definitions are included in other relevant domestic legislation, such as where that legislation contains operative provisions employing those definitions, the restatement instrument amends the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 and the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017. Additionally, cross references in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 have been amended to ensure accuracy.

6.7 The restatement SI also contains a saving provision specifying that the amendments introduced by the regulations contained therein will not apply to operators of a Private Intermittent Securities and Capital Exchange System (PISCES) until the earliest of:

(i) 5 June 2030 (in line with the termination of the FSMA 2023 (PISCES Sandbox) Regulations 2025 (SI 2025/38)); or

(ii) the date on which the FCA publish replacement rules in relation to the MiFID Org Reg in so far as those rules apply to PISCES operators.

6.8 Section 1 of FSMA 2023 repeals assimilated law relating to financial services, listed in Schedule 1, subject to commencement by the Treasury. A separate commencement instrument will commence the repeal of the MiFID Org Reg.

6.9 The commencement instrument will include a saving provision to ensure that the MiFID Org Reg continues to apply to PISCES operators for the same duration as that set out at paragraph 6.7 above. The saving provisions in each of the restatement SI and commencement SI will take effect simultaneously, namely on the date on which the MiFID Org Reg is revoked for all other purposes.

Why was this approach taken to change the law?

6.10 The MiFID Org Reg is being repealed subject to commencement.

6.11 This instrument provides certainty for financial services firms when interpreting the regulatory perimeter. Without having the key definitions from the MiFID Org Reg restated in legislation, firms would be uncertain about whether their activity constitutes a regulated activity and gaps would emerge in the legislative framework.

7. Consultation

Summary of consultation outcome and methodology

7.1 In March 2025, the Treasury published a draft restatement instrument and welcomed technical comments on matters such as significant oversights in the legal drafting that would mean that the legislation would not achieve the desired outcomes.

7.2 The Treasury only received responses to the draft instrument from two financial services industry bodies, which aimed to clarify the legal drafting to ensure it meets the policy intent. Comments on the draft instrument were carefully considered by the Treasury and addressed in the final instrument where appropriate.

8. Applicable Guidance

8.1 No guidance accompanies this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has not been prepared for this instrument because the instrument does not directly affect businesses.

9.2 This instrument will not have any direct impacts on firms. The amendments made, which restate certain definitions within domestic financial services legislation, are immaterial and do not alter the substantive meaning of those definitions. As a result, firms—who are already familiar with the existing definitions—will not be required to take any further action to understand or comply with the law.

9.3 As noted in section 7, responses received during the consultation on the draft instrument focused on clarifying the legal drafting. The respondents agreed that the instrument maintained the meaning of the relevant definitions.

Impact on businesses, charities and voluntary bodies

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

9.5 The legislation applies to all businesses who engage in regulated investment business, including small or micro businesses.

9.6 This instrument places no significant impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Treasury's approach to monitoring this legislation will be through ongoing engagement with the financial services industry to monitor its initial and ongoing impact. FSMA 2000 also requires the regulators to keep under review any rules they have made.

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, Emma Reynolds, Economic Secretary to the Treasury made the following statement:

10.3 "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."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Regulation 8(2) corrects an incorrect cross reference in Schedule 3 to the RAO. As the provision correcting the error is minor in terms of its substance, significance and proportion of the overall instrument, the Treasury has taken the decision that it is not appropriate to provide copies of this instrument to those who purchased the previous instrument free of charge. The SI Registrar has been consulted in taking that decision as per the requirement in paragraph 4.7.6 of Statutory Instrument Practice.

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 Markets in Financial Instruments (Miscellaneous Amendments) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under EUWA, the European Union (Future Relationship) Act 2020 or the Retained Assimilated 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 this instrument replaces assimilated law using powers in FSMA 2023.