EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (COLLECTIVE INVESTMENT SCHEMES) (AMENDMENT) ORDER 2025

2025 No. 17

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 Tulip Siddiq, MP, Economic Secretary to the Treasury and City Minister confirms that this Explanatory Memorandum meets the required standard.

2.2 Anna Harvey, Deputy Director for Payments and Fintech at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Taliesin Renouf at HM Treasury (email: taliesin.renouf@hmtreasury.gov.uk or cryptoassets@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 The purpose of this instrument is to ensure that arrangements for qualifying cryptoasset staking do not amount to a collective investment scheme for the purposes of section 235 of the Financial Services and Markets Act 2000 (FSMA). The instrument amends the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062) ("CIS Order") by adding qualifying cryptoasset staking to the list of arrangements which do not amount to a collective investment scheme, as set out in the Schedule to that Order.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 The aim of the instrument is to provide clarity that arrangements for cryptoasset staking do not amount to a collective investment scheme. The Government recognises that existing UK rules for collective investment schemes may not provide appropriate regulation of staking arrangements. The amendment will ensure that firms have clarity

that they are able to offer staking services to their UK customers without being subject to the collective investment scheme rules for this activity. The Government has considered the need for there to be an appropriate degree of consumer protection from the risks associated with the marketing of staking products and considers that this protection is delivered by communications on staking arrangements being provided in compliance with the requirements of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and relevant FCA rules and guidance.

5.2 Staking is a consensus mechanism used by 'proof of stake' blockchains. It is an alternative to cryptoasset 'mining', which is the consensus mechanism used in a 'proof of work' blockchain. Blockchains are distributed ledgers on which various computers performing the function of 'validator nodes' collaboratively enter and validate transactions to achieve consensus on the network's state. On proof of stake blockchains, participants earn the right to operate a validator node by staking a given amount of their cryptoassets (locking them down on a smart contract or via an alternative software solution). As an incentive to operate the node well, participants that are staking their cryptoassets receive rewards from the blockchain in the form of newly minted cryptoassets or a portion of transaction fees on the blockchain. This prospect of a financial return is a common focus of marketing around staking services. Participants who act in bad faith, for example by trying to add falsified transactions, risk losing the tokens they have staked.

5.3 On certain blockchains, stakers are required to stake a set number of their cryptoassets to earn the right to operate a validator node, and this minimum amount can be prohibitively high for individuals. Some firms have therefore offered a service whereby customers' cryptoassets are 'pooled' to meet the minimum staking requirements. The firm will then undertake the staking on behalf of its customers, frequently delegating the actual operation of the validator node to a specialist third party. If the firm then receives additional cryptoassets it will transfer a portion of the reward to its customers.

5.4 These services have a number of characteristics similar to a collective investment scheme, which has given rise to uncertainty as to whether staking is subject to the regulatory framework for collective investment schemes. The Government's view is that it would be undesirable for arrangements for qualifying cryptoasset staking to be treated as a collective investment scheme. The regulations for the establishment, operation and winding up of collective investment schemes were not designed with cryptoasset staking in mind, and their application would represent a significant hindrance to the effective operation of blockchains and staking arrangements provided to customers in the United Kingdom.

What was the previous policy, how is this different?

5.5 Prior to this measure, there has been uncertainty within industry as to whether arrangements for qualifying cryptoasset staking would amount to a collective investment scheme, as the provision of services in connection with cryptoasset staking may, in some cases, appear to satisfy some or all of the elements of the definition in section 235 of FSMA. Should this situation be allowed to persist, it would likely act as a barrier to activity in the United Kingdom, contrary to the Government's aim of having appropriate financial services regulation for cryptoassets.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 19 of FSMA provides that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is (i) an authorised person or (ii) an exempt person.

6.2 Section 22(1) of FSMA provides that an activity is a regulated activity for the purposes of that Act if, among other things, it is an activity of a specified kind which is carried on by way of business and relates to an investment of a specified kind.

6.3 Section 22(5) of FSMA provides that "specified" means specified in an order made by the Treasury. The Treasury has specified various activities and investments in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO").

6.4 Section 22(4) of FSMA provides that "investment" includes any asset, right or interest (including where an asset, right or interest is, or comprises or represents, a cryptoasset).

6.5 Article 51ZE of the RAO provides that establishing, operating or winding up a collective investment scheme is a specified kind of activity.

6.6 The definition of "collective investment scheme" is set out in section 235 of FSMA. Section 235(5) of FSMA provides that the Treasury may by order provide that arrangements do not amount to a collective investment scheme (i) in specified circumstances or (ii) if the arrangements fall within a specified category of arrangement. The CIS Order, made under section 235(5), prescribes particular arrangements which do not amount to a collective investment scheme.

6.7 This instrument adds qualifying cryptoasset staking to the list of arrangements not amounting to a collective investment scheme, as set out in the Schedule to the CIS Order.

6.8 "Qualifying cryptoasset staking" is defined as the use of a qualifying cryptoasset in blockchain validation. "Blockchain validation" means the validation of transactions on a blockchain or a network that uses distributed ledger technology or other similar technology. This drafting approach is intended to create a broad carve out from the collective investment scheme regime, and to avoid additional complexity for firms (with a commensurate increase to regulatory enforcement risk).

6.9 Given the pace of development and technological change in the sector, a narrower and more technical definition, for example, one that referenced underlying technology or protocols, would be likely to become outdated quickly and may not capture arrangements which should be included. It could also create an arbitrage risk, as firms look to develop business models that fall outside the scope of regulation.

Why was this approach taken to change the law?

6.10 This is the only possible approach to make the necessary change.

7. Consultation

Summary of consultation outcome and methodology

7.1 In October 2023, HM Treasury published its response to the consultation and call for evidence on the future financial services regulatory regime for cryptoassets.[1]

[1] Available at: https://www.gov.uk/government/consultations/future-financial-services-regulatory-regime-for-cryptoassets

7.2 The proposals in the consultation were primarily focused on incorporating cryptoassets into the existing FSMA framework. The consultation was broadly structured in two parts, reflecting the recommended phasing of regulation. The first part set out concrete consultation proposals for a range of priority core cryptoasset activities. The second part was a call for evidence on activities, such as decentralised finance and sustainability, where we asked respondents for further evidence before consulting on specific proposals.

7.3 The consultation received a total of 131 responses. Around 50% of these were from firms and around 25% from trade associations. 12% of responses were from members of the public or universities, 4% from law and consulting firms, 3% from not-for-profits / consumer associations and 4% came from other categories of respondent (e.g. media organisations).

7.4 Overall, respondents welcomed the consultation's ambitious approach with additional praise for the United Kingdom for being one of the leading jurisdictions in taking a proactive step in regulating the cryptoassets sector.

7.5 The consultation included questions on the Treasury's proposed approach to regulating cryptoasset staking. The feedback made it apparent that clarifying the regulatory treatment of cryptoasset staking is a key priority for many stakeholders. The government therefore signalled its intent to carve out cryptoasset staking activities from the scope of the collective investment scheme regime.

7.6 In addition, the Government has engaged with the Financial Conduct Authority in preparing this instrument.

8. Applicable Guidance

8.1 The Government will not be issuing further guidance relating to this measure.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A separate impact assessment has not been produced for this instrument as we do not expect this measure to result in any quantifiable cost/benefit to firms. This is because the changes made by the instrument will reduce existing uncertainty over the regulatory uncertainty in relation to whether staking is a CIS. It will not entitle or require firm to become complaint or familiar with new regulatory requirements.

9.2 As a consequence of this instrument, firms that currently offer, or want in future to offer, services in connection with cryptoasset staking should be able to do so in the manner they currently do, or planned to, providing those arrangements also comply with other relevant regulatory regimes such as (but not limited to) the anti-money laundering and financial promotions regimes. We estimate transition costs (in terms of changes to IT/websites, governance and change costs, and costs of training staff) and steady state costs/benefits will therefore be £0.

9.3 While firms will not be required or entitled to do anything differently, any legislative change will inevitably result in some familiarisation costs. When conducting the cost benefit analysis for the cryptoasset financial promotions regime introduced in 2023, the FCA estimated that the average familiarisation and legal costs for firms communicating cryptoasset promotions would be £2,200 per firm. The statutory

instrument introducing the financial promotions regime was 14 pages long, compared to <2 pages for this measure. The financial promotions regime was also accompanied by lengthy rules and guidance documents. It will not be necessary for any additional material to accompany this measure. In our view, it is therefore reasonable to assume the familiarisation costs for this measure to be in the hundreds of pounds for any firms affected.

9.4 We estimate at least 30 firms will benefit from the additional clarity this legislation will provide. This is based on a review of services offered by firms registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and of the top 20 cryptoasset exchanges globally that appear to offer staking as a service to UK customers.

9.5 Given the small number of firms affected, and assuming familiarisation costs in the hundreds of pounds per firm, we expect the total familiarisation costs of this measure will be minimal.

Impact on businesses, charities and voluntary bodies

9.6 There is no, or no significant, impact on business, charities or voluntary bodies because it will not entitle or require them to do anything differently or require them to update their systems or become familiar with a new regulatory regime.

9.7 As a consequence, firms that currently offer, or want in future to offer, services in connection with arrangements for cryptoasset staking should be able to do so in the manner they currently do, or planned to, providing those arrangements also comply with other relevant regulatory regimes, including but not limited to relevant provisions of the anti-money laundering and financial promotions regimes.

9.8 The legislation does not impact small or micro businesses.

9.9 There is no, or no significant, impact on the public sector because the measure will not entitle or require the public sector to do anything differently to what it is required or entitled to do at present.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Given the very narrow policy objective, the Government does not intend to put in place a dedicated programme of monitoring and evaluation. To the extent the measure may have any unforeseen consequences, the Government expects to identify these through routine industry engagement and cooperation with the Financial Conduct Authority.

10.2 In line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury has confirmed that it would not be proportionate to include a statutory review clause, as the instrument makes a technical amendment to clarify the legal treatment of staking arrangements, and the impact on business is not expected to be significant.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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.