EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2023 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

2024 No. 1115

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, confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Danielle Close at HM Treasury: Danielle.Close@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 makes consequential amendments arising out of the commencement of provisions in, or made under, the Financial Services and Markets Act 2023 (FSMA 2023).

4.2 When the UK left the 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. This is now known as "assimilated law".

4.3 FSMA 2023 revokes assimilated law relating to financial services. Assimilated law will be replaced with rules set by the financial services regulators, operating under a legislative framework. FSMA 2023 also makes transitional amendments to assimilated law to implement urgent reforms to the UK's regulation of capital markets as a result of the Wholesale Markets Review. This instrument makes consequential amendments resulting from the commencement of some of those revocations and transitional amendments.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (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 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 This instrument forms part of HM Treasury's programme to reform and improve our capital markets legislation. It makes consequential amendments arising from the revocation of and transitional amendments to assimilated law for certain financial services rules. It is part of the programme to replace assimilated law with rules set by the UK's independent and expert regulators, operating under a legislative framework.

5.2 Schedule 2 FSMA 2023 makes direct amendments to certain assimilated law. This includes amendments to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (providing information for the purposes of transparency and other calculations) which set existing requirements relating to transparency for fixed income and derivatives. These direct amendments revoke existing regulation and give the FCA new rule-making powers to implement a new transparency regime tailored to the UK in their rulebook. This change was made effective by the Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024.

5.3 This instrument makes consequential amendments to reflect the changes made by the aforementioned commencement regulations. They are necessary to ensure the law remains consistent and comprehensive once the direct amendments to assimilated law come into force. This instrument makes consequential amendments to reflect those revocations and amendments of assimilated law.

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. Section 2 FSMA 2023 makes transitional amendments, covered by Schedule 2 to that Act, to certain assimilated law that will apply during the transitional period until HM Treasury commences their revocation under Schedule 1. The Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024 commenced a number of revocations of and transitional amendments to assimilated law.

6.2 Consequential amendments are needed to other financial services legislation to ensure that it reflects, or is consistent with, certain of those revocations and transitional amendments which take effect under the Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2023.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes to ensure that legislation remains consistent and comprehensive following the amendments to legislation commenced in the Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2023.

7. Consultation

7.1 HM Treasury has not carried out a consultation, as the changes are consequential amendments to legislation to ensure relevant legislation reflects, or is consistent with, provision made in or under FSMA 2023.

8. Applicable Guidance

8.1 HM Treasury does not propose to provide any guidance in relation to 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. This instrument 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 There is no, or no significant, impact on the public sector.

10. Monitoring and review

10.1 We do not plan to do any other monitoring and review because there is no impact on business.

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 (Tulip Siddiq) 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, Tulip Siddiq MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2024 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 Assimilated 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 this instrument makes consequential amendments in relation to the revocation of and transitional amendment to assimilated law under FSMA 2023.