EXPLANATORY MEMORANDUM TO

THE MARKETS IN FINANCIAL INSTRUMENTS (EQUIVALENCE) (SINGAPORE) REGULATIONS 2024

2024 No. 1267

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 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 sets out HM Treasury's determination that Singapore's regulatory and supervisory regime for trading in derivatives is equivalent to the United Kingdom's and allows UK counterparties to fulfil their Derivatives Trading Obligation when they trade derivatives instruments on trading venues in Singapore.

4.2 Equivalence refers to legislative mechanisms inherited from the European Union ('EU') that, for different areas of financial services, allow HM Treasury to determine that the regulatory and supervisory approach taken by an overseas jurisdiction to that area of financial services achieves similar outcomes to the UK's approach. The equivalence framework for financial services exists as a collection of individual provisions across several regulations which regulate different areas of financial services activity.

4.3 The instrument will come into force at the same time as commencement regulations that will commence the revocation of the assimilated EU decision that this instrument replaces, Commission Implementing Decision (EU) 2019/541.

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 the United Kingdom.

4.5 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 The Derivatives Trading Obligation ('DTO'), set out in Article 28 of the Markets in Financial Instruments Regulation (EU) 600/2014, which has been assimilated into UK law, requires financial counterparties, and some non-financial counterparties above a clearing threshold, to conclude transactions of certain, specified classes of derivative, only on specified UK trading venues or specified trading venues in an overseas jurisdiction that have been deemed equivalent by HM Treasury.

5.2 Derivatives are contracts between two or more parties, the value of which are based on an underlying asset.

5.3 The trading venues on which such specified transactions may be concluded are limited to regulated markets, multilateral trading facilities ('MTFs'), organised trading facilities ('OTFs'), and specified trading venues located in an equivalent overseas jurisdiction.

5.4 The DTO aims to increase transparency of derivatives trading and market integrity, by improving information on prices and liquidity in the derivatives markets.

5.5 The European Union in April 2019 granted equivalence to Singaporean trading venues under Article 28(4) of MiFIR on the basis that regulation and supervision of trading venues (more specifically approved exchanges ('AEs') and recognised market operators ('RMOs')) is equivalent to the requirements in MiFIR. The EU then amended this decision in December 2020 to include newly authorised trading venues. The equivalence decision was then assimilated into UK law pursuant to section 3(1) of the European Union (Withdrawal) Act 2018.

5.6 In Singapore, trading venues are authorised by the Monetary Authority of Singapore ('MAS'). The MAS is the central bank and financial regulatory authority of Singapore. An equivalence decision for Singapore establishes that the legal and supervisory arrangements and regulation of trading venues established in Singapore are subject to legally binding requirements which are equivalent to the requirements for UK trading venues and verifies that AEs and RMOs are subject to effective supervision and enforcement, in this case by the MAS.

5.7 Having the Singaporean regime approved as an equivalent overseas jurisdiction for these purposes ensures that UK counterparties can continue to fulfil the DTO when they trade derivatives instruments on AEs and RMOs in Singapore.

5.8 The UK operates its equivalence framework on an "outcomes basis". This requires HM Treasury to consider whether a jurisdiction can be deemed "equivalent" – if its regulatory regime achieves equivalent "outcomes" to that of the UK's regulatory regime.

5.9 HM Treasury considers that the Singaporean regime for regulating and supervising the trading venues it authorises is still equivalent to the requirements of UK MiFIR, on an "outcomes" basis.

5.10 The assimilated MiFIR 28(4) equivalence decision applied to Singapore's regulatory and supervisory oversight of authorised AEs and RMOs. The Annex of that decision listed the authorised AEs and RMOs that UK counterparties can fulfil the DTO on, when trading certain derivatives instruments. Even if further trading venues obtain authorisation in Singapore, they will not benefit from an equivalence decision until this is provided for in legislation.

5.11 HM Treasury remains of the view that the Singaporean regime, as implemented by the MAS, is equivalent on an "outcomes basis", and is therefore comfortable extending the scope of its equivalence decision to all current MAS-authorised markets. Therefore, to ensure that the list of trading venues remains up-to-date and includes all MAS authorised trading venues that have subsequently changed names or received authorisation, the annex needs to be updated.

What was the previous policy, how is this different?

5.12 Since the assimilated EU decision, seven additional RMOs established in Singapore obtained authorisation from the MAS to operate as regulated markets, and the MAS have requested that these RMO's be added to the Annex as equivalent. The decision therefore needs to be re-enacted with an updated annex to reflect these changes in order to maintain the original intention of the equivalence decision.

6. Legislative and Legal Context

How has the law changed?

6.1 In April 2019, the EU granted jurisdictional equivalence to Singaporean trading venues under Article 28(4) of MiFIR by Commission Implementing Decision 2019/5411 ("the assimilated EU decision"). The EU then amended this decision in December 2020 to include newly authorised trading venues into the decision, by Commission Implementing Decision 2020/2127. The equivalence decision (including the list of recognised trading venues set out in the annexes) was "onshored" by the UK, becoming a part of assimilated EU law. However, since then, the MAS have requested that seven RMOs be added to the Annex as equivalent. The assimilated EU decision therefore needs to be replaced with an updated annex to reflect these changes. Section 1 of and Schedule 3 to the Financial Services and Markets Act 2023 ('FSMA 2023') revoked the assimilated EU decision from a date to be appointed. This revocation was commenced by regulation 5(c) of and the Schedule to the Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024 (S.I. 2024/1071).

Why was this approach taken to change the law?

6.2 FSMA 2023 repealed assimilated law relating to financial services, subject to commencement. Section 4 of FSMA 2023 also gave HM Treasury the power to restate legislation. HM Treasury has decided to use the power in Article 28(4) of MiFIR to make this equivalence determination rather than the power in section 4 of FSMA 2023 on this occasion to maintain consistency with previous equivalence decisions while MiFIR remains in force.

7. Consultation

Summary of consultation outcome and methodology

7.1 HM Treasury has not undertaken a consultation on this instrument. Nonetheless, HM Treasury have engaged with the MAS with regards to this instrument.

[1] The UK has two regulations which are numbered 2019/541, this Commission Implementing Decision, and the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations which amended assimilated EU law relating to equivalence. The assimilated EU law that it amended included the Markets in Financial Instruments Regulations, which provides the vires for this SI. It is only a coincidence that these two regulations share the same number.

8. Applicable Guidance

8.1 Guidance is not required in relation to 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, in line with Better Regulation guidance, HM Treasury considers that the net impact of this SI will result in an Equivalent Annual Net Direct Cost to businesses of less than £10 million a year. Due to this limited impact, a de minimis impact assessment has been carried out. A copy of this assessment is published alongside this Explanatory Memorandum on the legislation.gov.uk website.

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 As set out in the Memorandum of Understanding 2between HM Treasury, the Bank, the Prudential Regulation Authority and the Financial Conduct Authority ('The Financial Services Regulators'), HM Treasury may review the equivalence determination periodically or at any time, or in response to changes to the applicable framework. This does not prejudice HM Treasury's ability to revoke the equivalence determination at any time.

10.2 The Financial Services Regulators may also recommend to HM Treasury that a review of the equivalence determination is undertaken in response to material changes in the applicable framework. Furthermore, each regulator may request a review of the equivalence determination if they have concerns arising from their statutory objectives.

10.3 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 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 None.

[2] https://assets.publishing.service.gov.uk/media/5da72160ed915d42a2f38d0a/equivalence_mou_october_2019_web.pdf

12. European Convention on Human Rights

12.1 As the instrument is subject to the 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 (“relevant European Union Acts”).