

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED ACTIVITIES)
(AMENDMENT) ORDER 2015

2015 No. [XXXX]

- 1.** This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 Recent misconduct has diminished trust in the financial sector, which is an important part of the UK economy. This Order will bring seven major financial benchmarks within the regulatory regime put in place for LIBOR in response to the LIBOR misconduct in 2012. Bringing these seven major benchmarks into the regulatory perimeter will enable close and continuous supervision by the UK regulators, as well as providing specific powers of enforcement against those that manipulate these benchmarks. These legislative changes will therefore restore credibility in fixed income, currency and commodity markets.

2.2 The seven financial benchmarks are:

- Sterling Overnight Index Average (SONIA)
- Repurchase Overnight Index Average (RONIA)
- WM/Reuters (WMR) 4pm London Closing Spot Rate
- ISDAFIX ¹
- London Gold Fixing benchmark²
- LMBA Silver Price
- ICE Brent

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The draft Order has been considered by the JCSI in pre-scrutiny.

3.2 Ahead of the legislation commencing, the FCA are consulting on their draft rules, and will then publish final rules. The government intends for the legislation to commence on 1 April 2015.

¹ It is proposed that the ISDAFIX benchmark will be known as the ICE SWAP RATE from some time in 2015.

² It is proposed that the London Gold Fixing benchmark will be known as LBMA Gold Price from some time in 2015.

4. Legislative Context

4.1 The Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) so as to specify the benchmarks outlined in 2.3.

4.2 The Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013, which specifies the relevant activities, investments and benchmarks for the purposes of criminal offences in Part 7 of the Financial Services Act 2012, is also amended to bring those benchmarks into scope.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 are compatible with the Convention rights.

7. Policy background

- The government is committed to raising standards of conduct in the financial system. On 12 June 2014, the government announced the establishment of the Fair and Effective Markets Review, led by the Bank of England Deputy Governor for Markets and Banking, Minouche Shafik, with Martin Wheatley (Chief Executive Officer, Financial Conduct Authority (FCA)) and Charles Roxburgh (Director General Financial Services, HM Treasury) as co-chairs.
- As a near-term interim output, the Chancellor of the Exchequer asked the review to recommend a list of additional major benchmarks across the Fixed Income, Currency and Commodities (FICC) markets that should be brought into the regulatory framework originally implemented in the wake of the LIBOR misconduct scandal.
- Given the widespread use of benchmarks in financial contracts, it is vital that consumers and market participants are confident that benchmarks – particularly those that lie at the heart of systemically important markets – are credible, trustworthy and accurate. The credibility of a benchmark can be undermined if the benchmark can be distorted, either by accidental errors in its compilation or calculation, through the exposure of participants to conflicts of interest or incentives to manipulate the benchmark, or through abuse of a dominant competitive position in the compilation of a benchmark.
- The objectives of benchmarks regulation, generally, are therefore to ensure that, when financial activities come to depend significantly on a benchmark, protections are

available to deal with risks associated both with the mechanism for producing the benchmark and with the data that go into the benchmark.

- Based on the recommendations from the Fair and Effective Markets Review, bringing these major benchmarks into the regulatory perimeter would enable close and continuous supervision by the UK regulators, as well as providing specific powers of enforcement against those that manipulate these benchmarks.
- The European Commission proposed legislation in September 2013 that will regulate the provision of financial benchmarks at EU level. This legislation is currently being considered by the European Parliament and the Council of the European Union. It is anticipated that this legislation will eventually replace the UK regulatory framework, although not the UK criminal framework. However, the EU Regulation is not expected to be fully in place until 2017 and neither its existence nor its content are yet confirmed.

8. Consultation outcome

8.1 The government published a consultation on the Fair and Effective Markets Review's recommended list of benchmarks on 23 September 2014. This invited responses on the review's criteria, on its recommendations of which major benchmarks should be brought into the UK regulatory perimeter, and on the potential costs and benefits of these changes. This consultation closed on 23 October 2014 and the government received over 20 written submissions to its consultation, including from trade bodies, benchmark administrators, banks and other relevant industry representatives. The government also hosted target industry roundtables for representatives of affected parties.

8.2 Having carefully considered both the written responses to the consultation, and the responses made at industry roundtables for representatives of affected parties, the government's view is that all seven benchmarks recommended by the review be brought into the UK regulatory regime.

8.3 The FCA is currently consulting on these changes to bring additional benchmarks into the regulatory and supervisory regime. This consultation will close on 30 January 2014.

9. Guidance

9.1 The Treasury is not intending to issue any guidance in connection with this Order.

10. Impact

10.1 The main affected groups are the contributing banks, the benchmark administrators and the regulator - the Financial Conduct Authority (FCA). The majority of the costs fall on administrators through staff, and IT costs for compliance with regulation for both transitional costs and annual ongoing costs.

10.2 The impact on the public sector is neutral.

10.3 An Impact Assessment has been prepared for this instrument and will be published alongside the Statutory Instrument

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Government considers that regulating the 7 proposed benchmarks will not have a disproportionate impact on small firms or micro-businesses. It is most unlikely that any entity in scope of this legislation (the UK regulator, benchmark administrators, and submitting firms, including international banks) would be classified as small or micro businesses. Therefore, no direct costs are attributable to them, while their reliance on commercial lending suggests that they would be among the major beneficiaries from enhanced financial stability. Consequently, there is no need to formally exclude small and micro businesses from the scope of the measure and no specific mitigating actions are proposed.

12. Monitoring & review

12.1 The Order will not be reviewed. However, as set out above, the European Commission has proposed legislation that will regulate the provision of financial benchmarks at EU level, and it is anticipated that this legislation will eventually replace the UK regulatory framework (although not the UK criminal framework). This is expected to be fully in place in 2017.

13. Contact

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Ashleigh.Brigden@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.