

EXPLANATORY MEMORANDUM TO
FINANCIAL SERVICES AND MARKETS ACT 2000 (MARKETS IN FINANCIAL
INSTRUMENTS) (AMENDMENT) REGULATIONS 2007
2007 NO. 763

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This statutory instrument amends the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007¹ ("the MiFI Regulation"), the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001², the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001³ and the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2006⁴. These amendments arise as part of giving effect in the UK to the EC's Markets in Financial Instruments Directive ("MiFID").⁵

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

3.1 None.

4. Legislative background

4.1 MiFID replaces the Investment Services Directive⁶ ("the ISD"). Under new arrangements for financial services legislation in the EU, additional detailed provisions were passed under powers in MiFID ("the implementing directive"⁷ and "the implementing regulation"⁸). The UK was required to give effect to the directives in its national law by 31 January 2007 and the measures must come into force on 1 November 2007. The implementing regulation has direct effect and so does not require transposition.

4.2 MiFID does three main things. It:

¹ S.I. 2007/126

² S.I. 2001/1217 amended by S.I. 2006/3414

³ S.I. 2001/2511 amended by S.I. 2006/3385

⁴ S.I. 2006/3413

⁵ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No. L145, 30.4.2004, page 1).

⁶ Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ No. L141, 11.6.93, page 27).

⁷ Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC (OJ No. L241, 2.9.2006, page 26).

⁸ Commission Regulation (EC) 1281/2006 of 10 August 2006 implementing Directive 2004/39/EC (OJ No. L241, 2.9.2006, page 1).

- establishes organisational requirements and rules governing behaviour towards investors for firms ("investment firms") who wish to be authorised to undertake activities linked to the buying and selling of financial instruments such as shares, bonds and derivatives;
- sets a regulatory framework for stock and derivative exchanges and other markets where the organised trading of financial instruments takes place;
- facilitates the carrying on of business by investment firms and stock and derivative exchanges and other organised financial markets across national borders in Europe.

4.3 In addition to this statutory instrument, the main body of eight statutory instruments that implement MiFID, including the MiFI Regulation, was laid on the 18th and 19th December. An earlier statutory instrument implementing MiFID (The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006⁹) came into force on 6th December. Two minor statutory instruments making consequential amendments as a result of the changes to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001¹⁰ ("RAO") were laid on the 31st January.

4.4 A transposition note setting out how the main elements of MiFID, and the Community legislation adopted under it, will be given effect in UK law is attached at Annex A¹¹.

4.5 An Explanatory Memorandum on the Commission's proposal for a directive was approved by the Scrutiny Committee in the House of Lords on 27 January 2004 and the Scrutiny Committee in the House of Commons on 22 January 2003. The Merits Committee, when considering the main body of MiFID implementing legislation, drew it to the special attention of the House on the grounds that it gave rise to issues of public policy likely to be of interest to the House¹².

5. Extent

5.1 These Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy Background

7.1 The intention of MiFID is to encourage the creation of deep and liquid capital markets in the EU and to ensure investors are adequately protected so that they can invest with confidence. As such, MiFID was a key element in the EU's Financial

⁹ Statutory Instrument 2006/ 2975.

¹⁰ S.I. 2001/544 amended by S.I. 2006/3384.

¹¹ The transposition encompasses all the main elements of MiFID.

¹² 6th Report of Session 2006-2007, published 18 January 2007.

Services Action Plan ("the FSAP"), a legislative programme which was designed to make a significant step forward towards establishing a single market in financial services in Europe. The government endorsed the FSAP.

7.2 The European Commission decided that MiFID's predecessor, the ISD, needed to be replaced for two main reasons. Firstly, because it had been ineffective in promoting business across national borders in the single market. Second, because it did not cover important financial services activities such as investment advice, the operation of a multilateral trading facility ("MTF" - an organised market for the trading of financial instruments) and the trading of commodity derivatives .

7.3 MiFID is a significant piece of EU legislation. While MiFID was not subject to regulatory impact assessment at the EU level, the FSA and HMT have undertaken work to consider the costs and benefits of implementing MiFID. The FSA's work (which is discussed in more detail in the regulatory impact assessment¹³) suggests that the cost to UK firms of implementing MiFID could be around £1 billion pounds with ongoing costs of around £100 million¹⁴. The analysis also identified benefits arising from MiFID. Estimates of the benefits are more complex but the most plausible scenario suggests there could be direct annual benefits of some £200 million and second round benefits of some £240 million. Of particular relevance to this Regulation are the estimates of costs that MiFID might impose on financial advisors. MiFID provides an optional exemption for financial advisors, which is transposed in these Regulations. An impact of not exercising the optional MiFID exemption would be to increase firms' capital requirements by some £7,000 per firm, as discussed in more detail in the regulatory impact assessment.

7.4 In changing legislation to give effect to MiFID in the UK, the Treasury has tried to use, as much as possible, language from MiFID itself to avoid adding additional obligations on UK businesses. Where the words from MiFID have not been copied out this has largely been to ensure a coherent fit with existing provisions.

7.5 The Treasury ran a public consultation on the legislative changes necessary to implement MiFID between the middle of December 2005 and the end of March 2006. A copy of a feedback statement on the consultation is available on the EU financial services section of the Treasury's website (www.hm-treasury.gov.uk).

7.6 This Regulation does five things it: introduces transitional provisions consequential on the amendment of the RAO; introduces transitional provision in relation to the contracts of appointed representatives of principals who are investment firms or credit institutions; amends a definition in the EEA Passport Rights Regulations, amends the Disclosure of Confidential Information (Amendment) Regulations and most substantively it transposes an optional exemption contained within MiFID which takes most financial advisors outside of MiFID requirements.

7.7 Exemption for Financial Advisors (Regulations 2-3): Article 3 of MiFID allows Member States to exempt firms receiving and transmitting investment orders and/or providing investment advice from the requirements of the Directive provided

¹³ A copy of the regulatory impact assessment is available on the EU financial services section of the Treasury's website (www.hm-treasury.gov.uk).

¹⁴ Calculated on a 'top-down' basis.

that they are subject to national regulation; are not allowed to hold clients' funds or securities and are only permitted to transmit orders to certain persons. An advantage to firms of having the directive applied to them is that they are then able to do cross border business on the basis of their UK authorisation. A significant disadvantage is potentially more onerous capital requirements.

7.8 There are around 4,700 firms that would fall within the scope of this exemption. Most are smaller financial advisors that operate solely within the UK and would see little benefit from being able to operate across Europe. The UK has therefore opted to exercise this exemption. This was welcomed in the responses to the consultation on the transposition of MiFID. One point raised in the responses was the need for a more flexible approach to breaches of the qualifying conditions – the revised Regulations reflect this.

7.9 To minimise the transition to the new regime the Regulation provides that a UK investment firm complying with the limiting requirements on 1st November automatically becomes an exempt firm on that date. Potentially exempt firms will be able to opt into MiFID, and we expect a number to do so, and the early commencement of part of these Regulations provides time for the firms to do so ahead of November.

7.9 Transitionals consequential on the RAO amendments (Regulations 4-6). The amendments made to the RAO in the 2006 Order in order to transpose MiFID¹⁵ did two main things: made operating a multilateral trading facility a separate specified activity and extended the specified investments of options, futures and contracts for differences as required by MiFID. Operating an MTF was already possible in the UK but the language in the RAO articles that relate to the provision of a service akin to operation of a multilateral trading facility is not very close to that in MiFID, it was therefore decided for the sake of clarity to create a new activity in the RAO.

7.10 The transitional provisions introduced by these Regulations provide that in relation to these two changes to the RAO, where an authorised person has on 31st October 2007 permission under Part 4 of the Act to carry on an approximately equivalent regulated activity or where the authorised person has on 31st October 2007 a permission in relation to an approximately equivalent kind of investment, then their permission is extended to cover the new equivalent category without the need for the person to make an application or for the FSA to amend the permission. This transitional helps minimise the administrative burden on the FSA and the firms of moving to the new MiFID regime.

7.11 Transitional in relation to appointed representatives (Regulation 7): MiFID introduced a new requirement that the contract between the appointed representative and their principal must contain provision requiring the appointed representative to be registered. This was transposed in the Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2006¹⁶. MiFID provides for certain transitionals in relation to tied agents. The Regulations provide an additional transitional that where the contract between the principal and appointed representative

¹⁵ S.I. 2006/3384

¹⁶ S.I. 2006/3414

is made on or before 31st October 2007, the requirement that it contain a registration provision is disapplied.

7.12 Corrections (Regulations 8-9): Regulation 8 makes a correction to the definition of “UK investment firm” in the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001¹⁷. Regulation 9 makes a correction to the commencement provisions of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2006¹⁸ to complete the removal of the confidentiality regime under the Listing Particulars Directive with effect from 1st April 2007.

8. Impact

8.1 A regulatory impact assessment of the effect of all the instruments transposing MiFID on the costs of business is available on the EU financial services section of the Treasury's website (www.hm-treasury.gov.uk).

9. Contact

9.1 Sarah Parkinson at HM Treasury: Tel 020 7270 5912 or e-mail: sarah.parkinson@hm-treasury.x.gsi.gov.uk can answer any queries regarding the regulations.

¹⁷ S.I. 2001/2511 amended by S.I. 2006/3385

¹⁸ S.I. 2006/3414

Annex A - Transposition Note for Directive 2004/39/EC – The Markets in Financial Instruments Directive (MiFID)

The attached table sets out the main elements of the UK's implementation of the Markets in Financial Instruments Directive (MiFID). The directive was passed under the "Lamfalussy" process for EU financial services legislation. Under this process, MiFID is a framework directive designed to provide a high-level approach to the matters it covers and to provide the power for more detailed implementing measures to be included in secondary legislation. The relevant secondary legislation, a directive and a regulation¹⁹, was adopted by the Commission based on advice from the Committee of European Securities Regulators.

MiFID covers the buying and selling and organised trading of shares, bonds, money market instruments, units in collective investment undertakings and derivatives. It aims to create deep and liquid capital markets in the EU and to protect investors using those markets.

Some provisions of MiFID are already given effect in the UK by existing legislation and FSA rules. But changes are needed to give full effect to the directive. Some of the changes go beyond those required under a strict interpretation of the directive. The directive is being implemented through about twelve statutory instruments and changes to the Financial Services Authority's Handbook of rules and guidance. The eleven statutory instruments covered in this transposition table are as follows:

Financial Services and Markets Act 2000 (Modifications of Powers Regulations) 2006 (SI 2006/2975)

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2006

Financial Services and Markets Act 2000 (Regulated Activities)(Amendment No. 3) Order 2006

Financial Services and Markets Act 2000 (EEA Passport Rights)(Amendment) Regulations 2006

Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2006

Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2006

Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2006
Uncertificated Securities (Amendment) Regulations 2006

Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2007

Terrorism Act 2000 (Business in the Regulated Sector) Order 2007

Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment) Regulations 2007

Because Commission Directive 2006/73/EC is based on powers set out in the framework directive, it is covered in the table below under the articles of MiFID to which it relates, rather than as separate pieces of legislation. Commission Regulation 1287/2006 is directly applicable and the only provisions mentioned in the table are those that require additional implementing measures in the UK.

¹⁹ Directive 2006/73/EC and Regulation No 1281/2006.

Glossary

ARR – Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (SI 2001/1217)

ARR(A) - Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2006

Business Order - Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177)

Credit institution – a credit institution authorised under the banking consolidation directive (2006/48/EC) or an institution which would satisfy the conditions for authorisation under that directive if it had its registered office in an EEA State

DCI – Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188)

DCI(A) – Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2006

EO - Financial Services and Markets Act 2000 (Exemption) Order 2001 (SI 2001/1201)

EO(A) - Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2006

FSA – Financial Services Authority

FSMA – Financial Services and Markets Act 2000

Investment firm – a person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis

ISD – Investment Services Directive (Directive 93/6/EC)

Market Operator – a person or persons who manages and/or operates the business of a regulated market.

MiFI - Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2006

MiFI (A) - Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment) Regulations 2007

MiFID – Markets in Financial Instruments Directive (Directive 2004/39/EC)

MPR - Financial Services and Markets Act 2000 (Modifications of Powers) Regulations 2006 (SI 2006/2975)

MTF – defined by MiFID as a multilateral trading facility is a multilateral system, operated by an investment firm or a market operator which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II of MiFID.

OTC – over the counter.

PRR – Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511)

PRR(A) - Financial Services and Markets Act 2000 (EEA Passport Rights)(Amendment) Regulations 2006

RAO – Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)

RAO(A) - Financial Services and Markets Act 2000 (Regulated Activities)(Amendment) (No. 3) Order 2006

Regulated market – defined by MiFID as a multilateral system operated and/or managed by a market operator which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way which results in a contract, in respect of the

financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regulatory and in accordance with the provisions of Title III of MiFID. These are the markets with the most detailed regulatory standards operated by stock and derivative exchanges.

RRR – Financial Services and Markets Act 2000 (Recognition Requirements for Recognised Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)

RRR(A) – Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006

USR- Uncertificated Securities Regulations 2001 (SI 2001/3755)

USR(A) – Uncertificated Securities (Amendment) Regulations 2006

Transposition note for Directive 2004/39/EC: the Markets in Financial Instruments Directive (MiFID)

Articles of Directive 2004/39/EC	Objectives	Implementation	Body responsible
1 and 4	Application of MiFID and definitions.	Article 1 requires no independent transposition. Article 4 definitions are transposed along with the provisions to which they relate.	HM Treasury and FSA
2 and Annex I and article 52 of Directive 2006/73/EC	These set the scope of the directive, establishing which services and activities and financial instruments the directive requires to be regulated and provide for exemptions.	<p>The services, activities and instruments falling within MiFID's scope are largely transposed by the RAO. The new activity of operating an MTF is added at article 25D by the RAO(A).</p> <p>MiFID requires a wider set of non-financial derivatives and credit derivatives to be brought inside the scope of UK regulation. This is done through changes to articles 83, 84 and 85 of the RAO made by the RAO(A).</p> <p>Exemptions are transposed by the RAO (as amended by the RAO(A)) and the EO (as amended by the EO(A)).</p>	HM Treasury
3	Member States may choose not to apply the directive to firms who cannot hold client funds and securities and who only receive and transmit orders and give investment advice.	Regulations 2-3 of the MiFI(A) amend MiFI to insert new provision. New regulation 4B ensures that exempt firms do not have the MiFID rights and new regulation 4C applies the limiting requirements to exempt firms.	HM Treasury
5-8 (excluding articles 5(2) and 6(3))	Authorisation of investment firms and withdrawal of authorisation.	<p>The authorisation requirement is transposed principally by section 19 of FSMA, the RAO and the Business Order.</p> <p>The remaining provisions are transposed by existing legislation, largely Part 4 of, and Schedule 6 to, FSMA, and FSA directions in the Perimeter Guidance section of the Handbook. The registration requirement is transposed by section 347.</p> <p>Amendments are made to section 45 of,</p>	HM Treasury and FSA

		<p>paragraph 2 of Schedule 6 to, FSMA (see Schedule 5 to MiFI). Provision transposing article 7(1) is included at regulation 4 of MiFI.</p> <p>Guidance in the FSA's SUP and ENF sections of the handbook are also relevant here.</p>	
9	To ensure that investment firms are run by people of probity and competence.	This is transposed mainly through existing section 41 and Part 5 of, and paragraph 5 of Schedule 6 to, FSMA and the Supervision section of the FSA's Handbook. The legislation is unchanged but some changes are being made to the FSA's Handbook.	HM Treasury and FSA
10	To ensure that investment firms are owned by people of probity.	This is transposed mainly through existing section 41 and Part 12 of, and Schedule 6 to, FSMA. These provisions do not need to be changed to implement this article. FSA rules in the Supervision section of the Handbook are also relevant: SUP 11.4.2R and SUP 16.4.5R.	HM Treasury and FSA
11, 12, 13, 18 (and articles 5 to 23, 25 and 51 of Directive 2006/73/EC)	Investment firms and credit institutions must be members of an investor compensation scheme, and have adequate systems and controls to carry out their business in a way which enables them to discharge their obligations. The systems and controls must include adequate measures to deal with actual and potential conflicts of interest. Investment firms must have adequate capital.	Transposition is mainly through FSA Rules, and see also sections 41 and 213 of, and Schedule 6 to, FSMA. The UK already has a comprehensive set of systems and controls requirements in the Senior Management Arrangements, Systems and Controls Section of the FSA's Handbook. There is substantial overlap between the existing requirements and those in the directive but differences in wording and scope of application. The existing Handbook requirements are being updated to reflect the scope and wording of the directive. The MPR amend section 138 of FSMA to extend FSA's rule-making powers and insert new section 158A of FSMA (guidance on outsourcing by firms).	HM Treasury and FSA
15	Relations with third countries	This is transposed by sections 405 to 408 of FSMA as amended by Schedule 5 to MiFI.	HM Treasury
16 and 17	Ongoing compliance with conditions for authorisation and	These provisions are transposed by Part 4 of, and paragraph 6 of Schedule 1 to, FSMA and FSA rules. Schedule 5 to	HM Treasury and FSA

	monitoring of investment firms and credit institutions	MiFI amends paragraph 6 to secure that FSA's enforcement powers extend to Regulation 1287/2006. FSA rules in SUP 15 and guidance in COND 1.2.2 of the Handbook also transpose these articles.	
5(2), 14 & 26	That MTFs meet certain minimum standards of operation to protect investors.	The UK already has provisions dealing with MTFs, in the RRR for MTFs operated by exchanges, and in the Market Conduct section of the FSA's Handbook for those run by investment firms and credit institutions. MiFID requires these provisions to be updated. For MTFs run by exchanges these articles are transposed by the RRR, as amended by the RRR(A), see in particular new paragraph 9A of the Schedule to the RRR. The provisions dealing with MTFs run by investment firms and credit institutions are being implemented by changes to the FSA's Handbook.	HM Treasury and FSA
19 (and articles 3, 24, 26 to 45 and 47 to 49 of Directive 2006/73/EC)	To ensure that clients are treated honestly, fairly and professionally by investment firms and credit institutions. This includes ensuring that clients get adequate information about the firms and their products and services, and that firms have adequate information about clients when providing investment advice or discretionary portfolio management services, or where the client is buying higher risk investments.	These provisions are transposed mostly by FSA rules. The UK already has extensive obligations in this area in the Conduct of Business section of the FSA's Handbook. The provisions in MiFID are less detailed in some areas and more detailed in others than those in the FSA's current rules and involve some differences of substance. The FSA are revising the relevant conduct of business provisions in their Handbook. The MPR amended section 145 of FSMA to enable FSA's financial promotion rules fully to transpose MiFID.	HM Treasury and FSA
20	Provision of services through medium of	This is transposed by FSA rules in COBS 2.4.4 in the Handbook.	FSA

	another firm.		
21 (and articles 44 and 46 of Directive 2006/73/EC)	To ensure investment firms and credit institutions when buying and selling financial instruments on behalf of clients do so in line with a policy designed to obtain the most favourable possible terms for the client.	This is transposed by FSA rules. The FSA already has a similar regulatory obligation, known as "best execution", in the Conduct of Business provisions of its Handbook. The provisions in MiFID have a wider scope and some difference in detail. The FSA are revising the existing provisions in their Handbook.	FSA
22 (and articles 47 to 49 of Directive 2006/73/EC)	To ensure investment firms and credit institutions treat the orders of different clients fairly and do not seek to unfairly profit themselves from knowledge of the orders of their clients.	These provisions are transposed by FSA rules. The FSA already has similar obligations, known as "client order handling", in the Conduct of Business provisions of its Handbook. The provisions in MiFID have some differences of detail from the existing rules. The FSA are revising the existing provisions in the Handbook.	FSA
23	To allow investment firms and credit institutions to do business through tied agents (ie firms who are not themselves regulated but act on behalf of a regulated firm) if their Member State permits.	The UK already permits firms to use tied agents, known domestically as "appointed representatives" under section 39 of FSMA and the ARR. Whilst the concepts are similar, there are some differences of detail between the domestic regime and MiFID. Schedule 5 to the MiFI revises sections 39 and 347 of FSMA (the latter deals with the FSA's register), and inserts section 39A to bring the domestic provisions into line with MiFID. The ARR(A) revise the ARR. FSA rules in the Supervision section of their Handbook also transpose this article, and are being revised.	HM Treasury and FSA
24 (and article 50 of Directive 2006/73/EC)	To enable clients who are sufficiently knowledgeable to look after their own interests to enter into transactions with investment firms and credit institutions without the firms having to comply with conduct of	The UK already has a system of client categorisation and requirements for firms in respect of the classification of clients. This is included in the Conduct of Business section of the FSA's Handbook. MiFID introduces different rules in respect of what type of person can fit in each category of client and the information firms must provide to clients about their classification. The FSA are revising the existing provisions	FSA

	business obligations.	in the Handbook.	
25 (and article 12(2) of Regulation 1287/2006)	To ensure that regulators get information from investment firms and credit institutions about transactions to help curb market abuse.	<p>The UK already has transaction reporting requirements in the Supervision part of the FSA's Handbook. The FSA are revising the existing provisions in its Handbook to give effect to the wider scope of the MiFID transaction reporting requirements.</p> <p>Schedule 5 to MiFI inserts new sections 412A and 412B of FSMA which allow the FSA to approve and monitor trade-matching and reporting systems (as required by Regulation 1287/2006). The FSA is also revising its Handbook to take account of this change.</p> <p>Section 293A of FSMA, inserted by Schedule 2 to MiFI, allows FSA to obtain information for the purpose of monitoring investment exchanges' compliance with this article.</p>	HM Treasury and FSA
6(3), 31 and 32	To ensure that investment firms can do business outside of the Member State in which they are based without facing additional authorisation requirements (so-called "passporting").	<p>This is transposed by existing Schedule 3 to FSMA amended by Schedule 4 to MiFI, the PRR amended by the PRR(A) and changes to FSA guidance in SUP 13, 14 and 17 of the Handbook.</p> <p>Passporting rights for market operators operating an MTF are inserted as sections 312A and 312C of FSMA by Schedule 2 to MiFI.</p>	HM Treasury and FSA
33, 34, 35 and 46	To ensure open access across the EEA to exchanges, clearing houses and securities settlement bodies for investment firms; the right for users of regulated markets to choose where they settle transactions; regulated markets and MTFs have open access to clearing and settlement infrastructure across the EEA.	This is principally transposed by paragraphs 4, 7B, 7C, 7D and 21A of the Schedule to the RRR as amended or inserted by the RRR(A), and paragraph 28 of Schedule 1 to the USR inserted by the USR(A). FSA SUP App 3.6.26 is also relevant.	HM Treasury

36 to 39, 41 to 43 and 47	To ensure that regulated markets are operated in a manner which protects investors and ensures they operate in an efficient manner	<p>The recognition system and existing obligations placed on investment exchanges are contained in Part 18 of FSMA and the RRR. In the UK to run a regulated market it will be necessary to be a recognised investment exchange under FSMA.</p> <p>Part 18 of FSMA is amended by Schedule 2 to the MiFI, see in particular amendments to sections 287 and 297 and new section 292A. The RRR are amended by the RRR(A), see in particular amendments to paragraphs 1 to 4 and 8 of the Schedule to the RRR and new paragraphs 7B and 7E. FSA rules in REC, COBS and MAR sections of the Handbook also transpose these articles.</p> <p>Article 38(3) of MiFID requires that the FSA is notified in advance of the acquisition of a controlling stake in a recognised exchange, and has the opportunity to block the acquisition where it threatens the market being run properly. This is transposed by new Chapter 1A of Part 18 of FMSA inserted by Schedule 2 to MiFI.</p> <p>New Part 18A of FSMA inserted by Schedule 3 to MiFI transposes article 41.</p> <p>New sections 312A and 312C of FSMA inserted by Schedule 2 to MiFI transpose new passporting rights for market operators in article 42, and the EO(A) makes a consequential amendment to the EO.</p> <p>Article 47 does not require transposition.</p>	HM Treasury and FSA
40	To ensure financial instruments admitted to trading on regulated markets are capable of being traded in a fair, orderly and efficient	The UK currently enforces a similar principle to that in MiFID through paragraph 4(2)(b) of the Schedule to the RRR. To accommodate the extra detail in MiFID, the RRR(A) inserts new paragraph 7A to the Schedule to the RRR.	HM Treasury

	manner to protect investors.		
27, 29, and 44	To ensure investors have adequate information available about expressions of interest in the trading of shares when making their investment decisions.	<p>MiFID requires that specific rules are introduced for trading in shares on regulated markets and MTFs and on an OTC basis.</p> <p>Article 27 is transposed by FSA rules. Articles 29 and 44 are transposed new section 286(4A) and (4B) of FSMA (inserted by the MPR) and new paragraph 4A of the Schedule to the RRR inserted by the RRR(A). The FSA is making changes to the Market Conduct section of its Handbook to impose obligations on MTFs run by investment firms and credit institutions, and on OTC trading.</p>	HM Treasury and FSA
28, 30 and 45	To ensure investors have adequate information about completed transactions in shares when making their investment decisions. MiFID provides much more specific obligations about the information that must be made available after a transaction has been completed and the circumstances in which the release of such information can be deferred.	<p>Currently recognised investment exchanges are subject only to a general obligation to ensure investors have adequate information about share trading through paragraph 4(2)(a) of the Schedule to the RRR.</p> <p>Article 28 is transposed by FSA rules. Articles 30 and 45 are transposed new section 286(4C) and (4D) of FSMA inserted by the MPR and new paragraph 4B of the Schedule to the RRR inserted by the RRR(A). The FSA is making changes to the Market Conduct section of its Handbook to impose obligations on MTFs run by investment firms and credit institutions, and on OTC trading.</p>	HM Treasury and FSA
48 to 51	To ensure that responsibilities for enforcing the directive are clearly delineated and that the relevant regulatory bodies have adequate powers to discharge their responsibilities; and that there are appropriate administrative sanctions available.	<p>The FSA as the UK's financial services regulator will have responsibility for enforcing MiFID in the UK: for its responsibilities see generally Part 1 of, and Schedule 1 to, FSMA.</p> <p>The FSA already has extensive powers of enforcement under FSMA. The powers MiFID requires regulators to have are similar to those the FSA already possesses, but in some cases slightly broader. FSA's main relevant powers (including administrative sanctions) are in Parts 4, 5, 11, 13, 14,</p>	HM Treasury

		<p>18, 25 and 27 of FSMA. Section 354 is FSA's duty to cooperate with other regulatory authorities.</p> <p>The main changes to FSA's enforcement powers are made by Schedule 1 to MiFI, paragraphs 7 and 8 of Schedule 2 to MiFI, Schedule 3 to MiFI which inserts new Part 18A of FSMA, and paragraphs 5, 7 to 11, 13 to 15 and 17 of Schedule 5 to MiFI.</p> <p>FSA guidance in ENF section of the Handbook is also relevant here.</p>	
52 and 53	To ensure that decisions under MiFI are subject to a right to apply to the Courts and that there are extra-judicial methods of redress.	<p>Many decisions under FSMA are subject to a right to refer the matter to the Tribunal, and in the absence of such a right there is a right to seek judicial review. Provision to transpose article 52 in relation to exchanges is made by paragraphs 4 and 12 to 14 of Schedule 2 to MiFI.</p> <p>For extra-judicial methods of redress see Parts 15 and 16 of FSMA.</p>	HM Treasury
54, 58 and 63	Safeguards surrounding the disclosure of confidential information and exchange of information with third countries.	This is transposed by sections 348 and 349 of FSMA and the DCI as amended by the DCI(A).	HM Treasury
55	Auditors' duties to report.	This is transposed by the FSMA 2000 (Communications by Auditors) Regulations 2001 (SI 2001/2587).	HM Treasury
56 to 62	To ensure that regulators across the EEA have the powers to enable them to work effectively together to deal with the challenges posed by regulating firms doing business on a cross-border basis.	<p>The FSA already has the authority, under provisions in Parts 11 and 23 of FSMA and the DCI to co-operate with other regulatory bodies. FSA's powers of intervention in relation to incoming firms are at Part 13 of FSMA.</p> <p>Relevant changes to implement MiFID are made by Schedule 1 to MiFI which amends Part 13 of FSMA, Schedule 2 to MiFI which inserts new section 312B of FSMA and the DCI(A).</p>	HM Treasury and FSA
64 - 73	Procedural provisions under MiFID,	Article 66 is transposed by amendments to articles 83 to 85 of the RAO made by	HM Treasury

	<p>amendments to other Community legislation, transposition and transitional provisions</p>	<p>the RAO(A); article 67 is transposed by FSA rules; article 68 is transposed by FSA rules and Schedule 3 to FSMA; consequential amendments resulting from article 69 are at Schedule 6 to MiFI; provision transposing article 71 is at Part 3 of, and Schedule 7 to, MiFI, regulation 7 of the DCI(A) and in regulation 15 of the PRR(A).</p> <p>The remainder of these provisions do not require specific transposition.</p>	<p>and FSA</p>
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