

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (TRANSPARENCY)
REGULATIONS 2014

2014 No. 1261

- 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 These Regulations transpose in part Article 1(5) of Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 (OJ L 294/13, 6.11.2013 p.15) (“the 2013 Directive”) which substitutes Article 6 of Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (as amended) (“the 2004 Directive”).
- 2.2 The purpose of the Regulations is to give the Financial Conduct Authority (“the FCA”) the power to remove from its rules (the “transparency rules”) the requirement for share issuers to produce interim management statements or quarterly reports (“quarterly reporting”) which, following the substitution of Article 6 of the 2004 Directive by Article 1(5) of the 2013 Directive, are no longer required.
- 2.3 The transposition deadline for the 2013 Directive is 26 November 2015, but the Government is committed to legislate to allow the FCA to remove the requirement for quarterly reporting before that deadline.

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

- 3.1 None.

4. Legislative Context

- 4.1 The 2004 Directive provides for the harmonisation of transparency requirements across the EU by requiring issuers of securities admitted to trading on a regulated

market to disclose a minimum level of information to the public. The 2004 Directive was amended by the 2013 Directive, following a review by the European Commission. The 2013 Directive was adopted by the European Parliament and the Council on 22 October 2013 and published in the Official Journal on 6 November 2013.

- 4.2 The UK transposed the 2004 Directive by way of provisions in Part 6 of FSMA and by transparency rules made by the FCA in exercise of powers conferred on the FCA by Part 6. In particular, section 89C(4) of FSMA specifies that the FCA may make rules requiring an issuer to make public, or to notify to the FCA, information required by Article 6 of “the transparency obligations directive”, which is defined as the 2004 Directive in section 103(1) of FSMA. As a result, the FCA’s power to make such rules is currently for the purposes of Article 6 of the 2004 Directive.
- 4.3 Article 1(5) of the 2013 Directive substitutes Article 6 of the 2004 Directive so that the quarterly reporting requirement imposed on share issuers is replaced by a reporting requirement imposed on all issuers active in the extractives industry.
- 4.4 To enable the FCA to make rules only to dispense with the requirement for quarterly reporting, these Regulations modify the definition of “the transparency obligations directive” in section 103(1) of FSMA as it applies in section 89C(4)(b) of FSMA. The modification will mean that the power of the FCA to make rules for the purposes of Article 6 of the transparency obligations directive is a power to make rules for the purposes of Article 6 of the 2004 Directive as substituted by the 2013 Directive.
- 4.5 These Regulations modify rather than amend FSMA because Article 1(5) of the 2013 Directive is being transposed only in part, i.e. to give the FCA power to remove requirements for quarterly reporting. The Government will consider appropriate transposition of the remaining provisions of the 2013 Directive at a later stage.
- 4.6 These Regulations will be reviewed when the Treasury takes the next step to transpose the 2013 Directive. The Treasury anticipates that amendments to FSMA will be required to empower the FCA to make rules for the purposes of other provisions of the 2013 Directive. It is expected therefore that an instrument which contains amendments to FSMA to transpose the 2013 Directive will repeal these Regulations.
- 4.7 A transposition note has not been produced for these Regulations because only Article 1(5) of the 2013 Directive is being transposed, and only in part.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The removal of quarterly reporting achieves two main policy objectives. Firstly, the removal of quarterly reporting will reduce burdens on listed companies, especially those which are SMEs. Secondly, in line with the recommendations of the 2012 Kay Review of equity markets and long term decision making¹, the removal seeks to prevent short-term investment decisions.
- 7.2 The requirement for quarterly reporting has been criticised because it is not necessary for investor protection. Relevant to investor protection are the obligations of companies to make prompt disclosure of inside information to the market (in accordance with Directive 2003/6/EC of the European Parliament and Council on insider dealing and market manipulation (market abuse)) and to publish prospectuses in respect of significant new issues of securities (in accordance with Directive 2003/71/EC of the European Parliament and Council on the prospectus to be published when securities are offered to the public or admitted to trading), which will remain in place. The requirement in the 2004 Directive for yearly and the half-yearly financial statements, which are prepared in accordance with applicable accounting standards and give high quality and comparable information to investors, also remains. Listed companies will still be able to publish quarterly information if there is a demand for this from investors.
- 7.3 These Regulations will give the FCA the power to remove from its rules the requirement for share issuers to produce interim management statements or quarterly reports. Government policy is to transpose the removal of the quarterly reporting requirement before the transposition deadline.
- Consolidation
- 7.4 These Regulations modify FSMA. As described in paragraph 4.6 above, the Treasury anticipates that these Regulations will be repealed by future regulations which amend FSMA to transpose other parts of the 2013 Directive.

8. Consultation outcome

- 8.1 The Government has not consulted on the Regulations. The FCA will consult prior to amending its transparency rules.

¹The final report published July 2012 and related documents are available here:
<https://www.gov.uk/government/consultations/the-kay-review-of-uk-equity-markets-and-long-term-decision-making>

9. Guidance

- 9.1 The Treasury is not intending to issue any guidance in connection with these Regulations.

10. Impact

- 10.1 The Regulations will empower the FCA to amend its transparency rules which apply to issuers with shares on a regulated market. The Regulations themselves have no impact on business. However, the rules made by the FCA pursuant to the modification in the Regulations will have a direct and beneficial impact on listed companies.
- 10.2 The impact on the public sector is neutral, there is no impact.
- 10.3 An Impact Assessment has not been prepared for this instrument as there are no costs on business associated with early transposition of the removal of the quarterly reporting requirement.

11. Regulating small business

- 11.1 As indicated in paragraph 10, the Regulations will empower the FCA to amend its transparency rules to remove the requirement for quarterly reporting. In particular, this will benefit small listed companies. The Regulations themselves do not directly regulate (small) businesses.

12. Monitoring & review

- 12.1 The Treasury does not expect to formally review the Regulations. As described in paragraph 4.6 however, the Treasury will review the Regulations when the Treasury takes the next step to transpose the 2013 Directive; and it is expected that an instrument which contains amendments to FSMA to transpose the 2013 Directive will repeal these Regulations.

13. Contact

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Rayhan.Oddud@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.