

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (MARKET ABUSE)**  
**REGULATIONS 2014**

**2014 No. 3081**

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 extend the prohibition on market manipulation set out in section 118(8) of the Financial Services and Markets Act 2000 (“FSMA”) until the new civil regime on market abuse under Regulation EU No 596/2014 on market abuse (the “Market Abuse Regulation”) takes effect on 3 July 2016. The prohibition would otherwise cease to apply on 31 December 2014.

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

3.1 There is no particular information to bring to the attention of the Joint Committee on Statutory Instruments.

4. **Legislative Context**

4.1 Part VIII (Penalties for Market Abuse) of FSMA sets out the UK civil regime prohibiting market abuse. Sections 118, 118A and 130A were inserted into Part VIII of FSMA on 1st July 2005 by the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381) for the purpose of implementing Directive 2003/6/EC on market abuse (the “Market Abuse Directive”). Sections 118, 118A and 130A replaced and expanded the definition of market abuse in FSMA to bring the prohibition on market abuse under FSMA in line with the Market Abuse Directive.

4.2 Certain provisions in Part VIII of FSMA, including the category of market abuse set out in section 118(8), were made subject to sunset provisions whereby they would expire on a certain date. The date for expiry of these provisions has been extended a number of times by S.I. 2008/1439, 2009/3128 and 2011/2928, most recently to 31 December 2014. These Regulations will extend the date of expiry of section 118(8) to 3 July 2016, which is the date on which the Market Abuse Regulation will replace the Market Abuse Directive as the new source of European legislation relating to market abuse.

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 (Market Abuse) Regulations 2014 are compatible with the Convention rights.

## **7. Policy background**

- *What is being done and why*

7.1 The UK has a wider definition of market abuse than that established in the EU Market Abuse Directive. This is because the UK decided to retain the scope of its pre-existing market manipulation prohibitions, which included section 118(8) of FSMA, when transposing the Market Abuse Directive into UK law in 2005. Section 118(8) provides for a category of market manipulation that is broader than the corresponding provision in the Market Abuse Directive. In particular, section 118(8) can relate to any form of manipulative behaviour, whereas the Market Abuse Directive requires manipulative behaviour to be in the form of transactions or orders to trade.

7.2 To ensure that the continued need for retention of the broader provisions in section 118 was kept under review, the government made these provisions subject to a sunset clause whereby they would expire after a period of three years unless they were amended to keep them in force. The expiry date has since been extended on three occasions in total – in 2008 and, again, in 2009, in each case pending the outcome of a European Commission review on the Market Abuse Directive which was delayed following the financial crisis, and finally in 2011 when the Commission adopted the proposal for the new Market Abuse Regulation to amend the Market Abuse Directive. The current expiry date is 31 December 2014.

7.4 The Market Abuse Regulation was published in the Official Journal of the European Union on 12 June 2014 and its substantive provisions will be applicable from 3 July 2016. The Market Abuse Regulation aims at enhancing market integrity and investor protection. To this end it updates and strengthens the existing framework in the Market Abuse Directive and incorporates a new concept of market manipulation that is similar in scope to that provided by section 118(8) of FSMA.

7.5 It has therefore been decided to extend the category of market manipulation set out in section 118(8) further until 3 July 2016, when it will be replaced by a prohibition with similar scope under the Market Abuse Regulation. This will ensure continuity of the market manipulation standards in the UK until, as well as after, the Market Abuse Regulation applies.

- *Consolidation*

7.6 There are no current plans to consolidate FSMA. Commercial publishers produce consolidated versions of FSMA, and a free consolidated version will be available on [legislation.gov.uk](http://legislation.gov.uk).

## **8. Consultation outcome**

8.1 The Treasury held a three-month consultation between February and May 2008 to review whether the broader provision in section 118(8) remained justified. At this time, a small majority of the 16 respondents who took part felt it was appropriate to extend this category of market abuse under the UK's civil regime until December 2011, pending the outcome of the European Commission's review of the Market Abuse Directive.

8.2 In September 2011 an informal consultation was undertaken by HM Treasury, involving 17 affected market participants spanning investor groups, financial intermediaries and exchanges. The consultation elicited greater support for retaining the broader provisions, largely reflecting the fact that proposals for the Market Abuse Regulation were shortly about to be put forward, and due to the Commission's policy objectives being widely understood to involve an extension to the general scope of the market abuse prohibitions. The expiry dates set out in the sunset clauses were therefore extended for a further period of 3 years, to reflect the likely period of time the negotiation of the Market Abuse Regulation would take. It was proposed that, on the outcome of the review, the UK would align with the standards imposed by the Market Abuse Regulation in the interim period before the Market Abuse Regulation became applicable.

8.3 Due to the existence of previous reviews, no further consultation exercise has been conducted. It has been decided to extend the sunset measure relating to section 118(8) until the Market Abuse Regulation becomes applicable in July 2016. This will avoid two sets of changes in short order to the market abuse framework operating in the UK which will only temporarily narrow the breadth of the regime.

## **9. Guidance**

9.1 The FCA Handbook contains the Code of Market Conduct (MAR), issued under Part VIII of FSMA, and provides further detail and guidance on the market abuse regime. The Handbook is available on the FCA website: [www.fshandbook.info/FS/html/FCA/MAR/1](http://www.fshandbook.info/FS/html/FCA/MAR/1).

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

10.2 The impact on the public sector is negligible.

## **11. Regulating small business**

11.1 The legislation applies to small business but, like other businesses, should not affect them as the aim of the Regulations is to preserve the current legislative requirements.

## **12. Monitoring & review**

12.1 This policy will not be subject to a review. It will cease to apply when the Market Abuse Regulation becomes directly applicable on 3 July 2016.

## **13. Contact**

Hinna Akhtar at HM Treasury can answer any queries regarding the instrument:  
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