

**EXPLANATORY MEMORANDUM TO**  
**THE TRANSPARENCY REGULATIONS 2015**

**2015 No. 1755**

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

2. **Purpose of the instrument**

2.1 These Regulations implement in part Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ No L 294, 6.11.2013 p.13) (the "2013 Directive").

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

3.1 None

4. **Legislative Context**

4.1 Directive 2004/109/EC (OJ No L 390, 31.12.2004, p.38) (the "Transparency 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 Transparency Directive was amended by the 2013 Directive which was adopted on 22 October 2013 and published in the Official Journal on 6 November 2013. Member States are required to transpose the 2013 Directive by 26 November 2015.

4.2 In the UK the Transparency Directive is transposed by Part 6 of the Financial Services and Markets Act 2000 ("FSMA") which provides power to make transparency rules, for the enforcement of transparency obligations, and penalties for breaches of those obligations; and by transparency rules made by the Financial Conduct Authority ("FCA") under Part 6 of FSMA.

4.3 The 2013 Directive is transposed by these Regulations and two earlier statutory instruments: the Financial Services and Markets Act 2000 (Transparency) Regulations 2014 (S.I. 2014/1261) and the Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), and by amendments to the FCA transparency rules.

4.4 These Regulations make amendments to Part 6 of FSMA. They also amend FSMA provisions concerning disregarded holdings in the definition of "controller" and for the purposes of acquisitions and disposals of major shareholdings in authorised persons (in Part 12 of FSMA), and in recognised investment exchanges (in Chapter 1A of Part 18 of FSMA). The FCA intends to make amendments to transparency rules under the provisions of FSMA amended by regulations 2 and 5,

and for that reason those regulations are brought into force on 1 November 2015 rather than on the transposition date of 26 November 2015. Regulation 3 which transposes Article 21(2) of the Transparency Directive is also brought into force on 1 November 2015.

4.5 Explanatory Memorandum 16353/11 relating to the 2013 Directive was sent to both Parliament European scrutiny committees on 12 November 2011. The House of Commons EU Economic and Financial Affairs and International Trade Sub-Committee reported the Directive as politically important and cleared the document from scrutiny on 11 January 2012. It was cleared by the House of Lords EU Economic and Financial Affairs and International Trade Sub-Committee on 16 February 2012.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

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

In my view the provisions of the Transparency Regulations 2015 are compatible with the Convention rights.

## **7. Policy background**

7.1. The Transparency Directive established minimum pan-European standards for the issuers of securities that are traded on regulated markets. They were expected to ensure appropriate transparency through a regular flow of information to the markets, including regular financial information, information on major holdings of voting rights and information pursuant to the Market Abuse Directive (2003/6/EC) (OJ No L 96, 12.4.2003, p. 16).

7.2. The Commission consulted on modernising the Transparency Directive in 2010. A proposal followed and the Directive was adopted in 2013. The major changes to the existing EU transparency regime introduced by this Directive are:

- The abolition of the requirement for quarterly financial reporting.
- Country-by-country financial reporting requirements introduced for large extractive and logging companies to report the payments they make to governments.
- Harmonisation of major shareholding notification requirements through mandating a) holdings of all instruments equivalent to holding equity, rather than just equity itself, count towards the notification thresholds and b) harmonising the methodology for aggregating these holdings.
- Minimum sanctions that Member States must be able to apply to breaches of transparency rules.

7.3. The significant changes made by the legislation are as follows:

- Regulation 2 amends the transparency rules in order to align them with the 2013 Directive's harmonised definition of what constitutes an instrument to be counted towards the major voting notification thresholds.
- Regulation 3 formalises the requirement for the FCA to ensure central storage of regulated information.
- Regulation 4 creates a procedure allowing the FCA to suspend the voting rights of shareholders in the instance of a serious breach of the transparency rules relating to notification of acquisitions or disposals of major shareholdings. This procedure involves the regulator applying to the Court for a suspension. Regulation 4 also amends FSMA's rules about the publication of sanctions and penalties to ensure compliance with the 2013 Directive.
- Regulation 5 amends various definitions in Part 6 of FSMA, including of "issuer" and "home state", to ensure consistency with the 2013 Directive.
- Regulation 6 amends the shareholdings that can be 'disregarded' for the purposes of various control regimes under FSMA. This implements a new exemption in the 2013 Directive whereby voting rights established in relation to share buy-backs or stabilisation programmes do not have to be counted for the purpose of disclosure against major holdings thresholds.
- Consolidation

7.4 The Transparency Regulations 2015 amend FSMA, so the question of consolidation does not arise.

## **8. Consultation outcome**

8.1 The Government engaged UK stakeholders on transposition of this final phase of the Directive through a joint consultation paper launched with the FCA in March 2015. Responses received to the consultation were considered closely with the FCA. On the legislation, responses favoured the approaches suggested by HM Treasury. On the specific issue of how to introduce the new sanction suspending voting rights for serious breaches of the rules, two respondents gave useful suggestions for the factors that should be considered in determining what constitutes a 'serious' breach.

8.2 This paper gave respondents two months to respond, in order to ensure HM Treasury and the FCA had adequate time to consider the responses ahead of the transposition.

8.3 In August 2015, HM Treasury made a draft version of the Regulations available for comments until early September. A comment from the sole response received has been integrated into the Regulations.

## **9. Guidance**

9.1 The Treasury is not planning to issue any further guidance on these Regulations. The FCA will issue a policy statement in order to set out detailed rules on the implementation of the 2013 Directive.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is estimated to be £84.5k-4.2m per year. These business costs relate to likely additional disclosures from major voting rights holders and issuers and reflect necessary changes to FCA rules necessary in order for there to be an accurate transposition. The variation takes account of the uncertainty over the likely volume of additional disclosures.

10.2 There are no foreseeable impacts on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

## **11. Regulating small business**

11.1 The legislation applies to issuers of securities and major holders of voting rights in listed companies, and so regulates small businesses.

11.2 The FSMA transparency regime and the FCA's Transparency Rules and Disclosure Rules are already in place and the requirements on businesses, including small businesses, are not significantly amended by this legislation.

## **12. Monitoring & review**

12.1 The Government will review this legislation and publish a report with conclusions by October 2020.

## **13. Contact**

Katie Dunn at HM Treasury Tel: 0207 270 1986 or email:  
[Katie.Dunn@hmtreasury.gsi.gov.uk](mailto:Katie.Dunn@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.