

EXPLANATORY MEMORANDUM TO
THE MONEY MARKET FUNDS REGULATIONS 2018

2018 No. 698

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument is being made in relation to Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (“the EU MMF Regulation”).

2.2 The EU MMF Regulation will apply in the UK from 21 July 2018. Although the Regulation is directly applicable, HM Treasury must make legislative changes to ensure that the Financial Conduct Authority (“FCA”) is able to authorise money market funds (“MMFs”) and enforce the provisions of the Regulation from the day that the EU MMF Regulation comes into force.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument gives effect to the EU MMF Regulation by amending the Financial Services and Markets Act 2000 (c.8) and relevant secondary legislation to enable applications to be made for funds to be authorised MMFs by the FCA, and for the FCA to exercise its regulatory powers in respect of MMFs.

4.2 Regulation 2 amends the Financial Services and Markets Act 2000 which contains powers of authorisation and intervention for the FCA in respect of unit trust funds and contractual schemes, both of which are types of fund which can be a MMF. The amendments made make provision for an authorised unit trust fund or an authorised contractual fund to become a MMF. The provisions also enable new funds applying to become an authorised unit trust fund or an authorised contractual scheme to make a simultaneous application to be authorised as a MMF.

4.3 Regulation 3 makes amendments to the Open-Ended Investment Companies Regulations 2001 (S.I. 2001/1228) in order to allow open-ended investment companies to apply to become MMFs, or for funds applying to become open-ended investment companies to make a simultaneous application to be authorised as an open-ended investment company which is also a MMF.

- 4.4 Regulation 4 amends the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773) by inserting a new Part 3C into those Regulations. Part 3C sets out that the FCA may direct the manner in which an application may be made for an AIF to be authorised as an MMF, the procedure for refusal of that application and the procedure should the FCA decide to revoke authorisation of the AIF which is an MMF.
- 4.5 Regulation 5 inserts the EU MMF Regulation into the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419). These amendments enable the FCA to use the powers set out in the Financial Services and Markets Act 2000 to enforce requirements which are imposed by the EU MMF Regulation which are directly applicable. The effect is that the FCA will be able to investigate and bring enforcement action against funds directly for breach of the EU MMF Regulation.

5. Extent and Territorial Application

- 5.1 The territorial application of this instrument is the United Kingdom.
- 5.2 This instrument extends 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 Money Market Funds Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 MMFs are fund vehicles that invest in highly liquid, short-term debt instruments (e.g. government bonds and corporate debt). Through their investments, MMFs provide a short-term, stable cash management function to financial institutions, corporations and local governments; this allows investors to spread their credit risk and exposure, rather than relying upon bank deposits.
- 7.2 These Regulations seek to provide the FCA with the powers to authorise authorised unit trusts, authorised contractual schemes, open-ended investment companies and alternative investment funds as MMFs. It also provides the FCA with the powers to enforce the provisions of the Regulation and levy fees for the purpose of supervising MMFs.

Consolidation

- 7.3 HM Treasury does not propose to consolidate any legislation in consequence of this instrument.

8. Consultation outcome

- 8.1 The European Commission’s proposal for the EU MMF Regulation was published in 2013. Prior to the publication of this proposal, the Commission engaged in consultation with representatives from a wide range of organisations, including bilateral and multilateral meetings, and public consultations on shadow banking and

on asset management issues. The Commission also produced an impact assessment on its proposal.

- 8.2 Following negotiations, the European Parliament and European Council reached political agreement on the draft EU Regulation in 2016. The EU Regulation came into force on 20 July 2017.
- 8.3 The FCA conducted a consultation on changes to their Handbook in relation to the EU Regulation, and on their approach to FCA fees to meet the cost of authorising and supervising funds under the Regulation. The consultation was published on 24 January 2018 and closed on 23 March 2018.

9. Guidance

- 9.1 It is not considered necessary to issue specific guidance in connection with these Regulations.
- 9.2 The Treasury has informally engaged with industry representatives during the negotiation phases of the EU MMF Regulation.
- 9.3 The Treasury has also had informal engagement with the FCA on the provisions necessary within UK legislation to ensure that the EU MMF Regulation is implemented fully.

10. Impact

- 10.1 There is an impact on asset management firms which will be required to pay fees associated with the authorisation of MMFs. These fees are set by the FCA in order to meet the cost of authorising and supervising MMFs and are expected to be minimal. As mentioned above, the FCA has consulted on their approach to the fees.
- 10.2 There is no impact on charities or voluntary bodies.
- 10.3 There is no impact on the public sector.
- 10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses, insofar as they manage MMFs.

12. Monitoring & review

- 12.1 A review provision has been included requiring HM Treasury to carry out a review of regulations 2 to 5 from time to time, and publish a report setting out the conclusions of the review by 21 July 2023.

13. Contact

- 13.1 Janice Chui at HM Treasury, Telephone: 02072701081 or Email: Janice.Chui@HMTreasury.gov.uk can answer any queries regarding the instrument.