

EXPLANATORY MEMORANDUM TO

THE PUBLIC OFFERS AND ADMISSIONS TO TRADING REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Financial Services and Markets Act 2023 (FSMA 2023) repeals retained EU law relating to financial services. This enables the government to deliver a Smarter Regulatory Framework for financial services. Retained EU law will be replaced with rules set by our independent regulators, operating within a framework set by government and Parliament.
- 2.2 This instrument replaces the Prospectus Regulation and creates a new framework for the offering of securities to the public and the admission of securities to trading in the UK. This instrument will come fully into force alongside the commencement of the repeal of retained EU law relating to prospectuses.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to the whole United Kingdom.
- 4.2 The territorial application of this instrument is to the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury, Bim Afolami, has made the following statement regarding Human Rights:

“In my view the provisions of the “Public Offers and Admissions to Trading Regulations 2023” statutory instrument are compatible with the Convention rights.”

6. Legislative Context

- 6.1 When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018. This is known as “retained EU law”. From 1st January 2024 this will become “assimilated law” as a result of the Retained EU Law (Revocation and Reform) Act 2023.
- 6.2 The relevant retained EU law is Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017. This piece of legislation became part of UK law by virtue of the European Union (Withdrawal) Act 2018 and is referred to as the UK Prospectus Regulation.

- 6.3 The remainder of UK regulation in this area is largely contained in Part 6 (Sections 73A-103) of the Financial Services and Markets Act 2000 (FSMA 2000), which covers, among other matters, the regulation of prospectuses and public offers of securities.
- 6.4 Section 1 FSMA 2023 repeals retained EU law relating to financial services, covered by Schedule 1 to that Act, subject to commencement by HM Treasury. Commencement of the repeal of relevant retained EU law that is replaced by this instrument will be dealt with in a separate commencement instrument.
- 6.5 This instrument exercises powers in Part 5A of FSMA 2000 – the Designated Activities Regime (DAR) – to create a new regulatory framework that will replace the UK Prospectus Regulation. The DAR was created by FSMA 2023 in order to provide a proportionate framework for regulating activities related to financial markets, exchanges, instruments, products or investments, including those currently regulated through retained EU law.
- 6.6 In accordance with the role that HM Treasury has in setting the perimeter of financial services regulation, Part 5A of FSMA 2000 gives HM Treasury the power to designate an activity in order to bring it into regulation under the DAR. The FCA is responsible for making rules related to each designated activity. Any person conducting a designated activity will be required to follow the rules and regulations related to it.
- 6.7 This instrument also amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO 2001) to create a new regulated activity for operating an electronic system for public offers of certain securities.

7. Policy background

What is being done and why?

- 7.1 This instrument forms part of HM Treasury’s programme to deliver the Smarter Regulatory Framework for financial services. It replaces the Prospectus Regulation and creates a new framework for the offering of securities to the public in the UK. In establishing this new framework, this instrument delivers on the recommendations of the 2021 Lord Hill UK Listing Review¹, which the government accepted in full. Lord Hill proposed to reform the Prospectus Regime to meet these key objectives:
- to facilitate wider participation in the ownership of public companies and remove the disincentives that currently exist for those companies to issue securities to wider groups of investors.
 - to improve the efficiency of public capital raising by simplifying regulation and removing the duplications that currently exist in the UK Prospectus Regime.
 - to improve the quality of information investors receive under the Prospectus Regime
 - to make the regulation in this area more agile and dynamic, capable of being quickly adapted and updated as times change.

¹ https://assets.publishing.service.gov.uk/media/603e9f7ee90e077dd9e34807/UK_Listing_Review_3_March.pdf

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 A prospectus is a disclosure document that provides information to investors on a public offer of securities. The Prospectus Regulation, which the UK inherited from the EU, sets out prescriptive detail on what a company must publish to raise capital on public markets. It regulates two separate but overlapping activities: when a person or company makes an offer to the public of transferable securities (a ‘public offer of securities’), and when a company applies for its securities to be admitted to trading on a regulated market (an ‘admission to trading’).
- 7.3 The Prospectus Regulation requires that, unless an exception applies, a prospectus must be published when these activities are undertaken. The exceptions include offers made solely to qualified investors, offers made to fewer than 150 persons (excluding professional investors), and offers of unlisted securities where the offer is less than €8 million.

What will it now do?

- 7.4 This instrument sets out the framework for the new UK Prospectus Regime. It:
- creates a general prohibition on public offers of securities, followed by a series of exceptions from this prohibition;
 - establishes a new regime for securities ‘admitted to trading’ on a regulated market or multilateral trading facility (MTF); and
 - creates a new regulated activity of operating an electronic system for public offers of certain securities.
- 7.5 A ‘public offer of securities’ is a broad term which is used in the current UK Prospectus Regulation to refer to any situation in which an issuer offers its securities to the public. This includes traditional capital raising (through ‘admissions to trading’ above) as well as the raising of capital from the public off stock markets, and often on a much smaller scale; for example, activity that occurs in the crowdfunding sector.
- 7.6 This instrument creates a general prohibition on public offers of securities, followed by a series of exceptions from this prohibition (set out in Schedule 1). Many of the exemptions from the requirement to publish a prospectus that exist in the current Prospectus Regulation, such as offers solely to qualified investors and where the offer is made to fewer than 150 persons, will remain part of the new regime as kinds of offer that are exceptions to the public offer prohibition. Others will be amended or deleted as they are no longer necessary. Taken together, these will set the perimeter of the regime in future.
- 7.7 In establishing the new regime, this instrument retains the concept of a prospectus as an important part of the regulation of public offers of securities admitted to trading on regulated markets. A ‘necessary information test’, specifying the key information that issuers must provide in prospectuses, is retained to ensure that an overall standard of regulation for a prospectus remains in statute. This is set out in regulation 23 of the instrument.
- 7.8 The instrument also retains the statutory compensation liability regime for prospectuses, whereby any person responsible for a prospectus will be required to compensate anyone who has acquired securities to which a prospectus relates and has suffered a loss as a result of any untrue or misleading statement in a prospectus or any

omission of information required to be included by the necessary information test. This is set out in regulation 30 of the instrument.

- 7.9 As set out above, this instrument makes several key changes to the UK Prospectus Regime.
- 7.10 Firstly, under the Prospectus Regulation, the detailed prospectus requirements for securities ‘admitted to trading’ on a regulated market or MTF are set in legislation. Securities are admitted to trading when they are listed on a regulated market or MTF and can thereby be bought and sold. This instrument instead exempts securities admitted to trading on a regulated market or MTF from the prohibition in legislation and, using the DAR, provides the FCA with powers to regulate this activity in their rulebook. This is set out in regulations 10, 11, 14, and 15 of the instrument.
- 7.11 On regulated markets such as stock exchanges, the FCA will be given enhanced rulemaking responsibilities to specify when a prospectus is required, what a prospectus should contain, and address the manner and timing of validation and publication, among other matters.
- 7.12 MTFs have a different regulatory model, with operators making their own rules with oversight from the FCA. This instrument gives the FCA certain rulemaking powers over MTFs operating as primary markets whose rules allow access to retail investors. Such MTFs must, where specified, describe an admission document as an ‘MTF admission prospectus’. Such documents will be required to adhere to certain common standards and carry certain protections for both issuers and investors.
- 7.13 Secondly, it expands the scope of relevant securities covered by the public offers regime to cover certain types of non-transferable securities (NTS), such as minibonds. This is set out in regulation 5 of the instrument. The existing obligations under the UK Prospectus Regulation apply to offers of ‘transferable securities’, and the new regime will continue to apply to such securities. However, certain previously-unregulated NTS will also be included within the scope of the new public offers regime in order to ensure better investor protection under the new regime. In practice, this approach means that offers of such securities will need to be made through a platform operated by a public offer platform, such as a crowdfunding platform.
- 7.14 Thirdly, under the current Prospectus Regulation, a public offer of unlisted securities of €8 million or above requires a prospectus. Under this instrument, a prospectus will no longer be required for such offers; instead, this instrument creates a new exception for offers of securities at or above £5 million which are made through a public offer platform.
- 7.15 Alongside this, to allow for the intended changes above, the instrument creates a new regulated activity covering the operation of a public offer platform, such as a securities-based crowdfunding platform, by amending the RAO 2001. This is set out in regulation 46 of the instrument.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under and does not trigger the statement requirements under the European Union (Withdrawal) Act.
- 8.2 However, this instrument relates to the withdrawal of the United Kingdom from the European Union because it relates to the repeal and replacement of retained EU law

under HM Treasury's programme to deliver a smarter regulatory framework for the UK.

9. Consolidation

9.1 There are no current plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 There have been two consultations which form the basis of this legislation: a consultation on the regulation of NTS in April 2021 following Dame Elizabeth Gloster's Report² of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc., and a government consultation on the Prospectus Regime³ in July 2021. Both were widely welcomed by industry and the government confirmed its intentions to move forward with proposals largely as consulted, bringing certain NTS, including but not limited to minibonds, within scope of the new Public Offer Regime, and proceeding with the proposed reforms to the Prospectus Regime.

10.2 In preparing this instrument, HM Treasury has worked with the FCA, the regulator responsible for the review and approval of prospectuses.

10.3 Given the FCA will need to make rules under this new regime, the new regime will therefore not come into force until the FCA has consulted on changes to its rules as part of its rulemaking process.

11. Guidance

11.1 HM Treasury has not issued any guidance with this instrument.

11.2 The FCA will, in due course, publish revised rules for the Prospectus Regime under the powers afforded to it in this instrument.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by some small businesses. An Impact Assessment is submitted with this Explanatory Memorandum and published alongside it on the [legislation.gov.uk](https://www.legislation.gov.uk) website. This includes an assessment of the instrument's impact on small businesses.

14. Monitoring & review

14.1 The instrument includes a statutory review provision in line with the requirements of the Small Business, Enterprise and Employment Act 2015.

² https://assets.publishing.service.gov.uk/media/5fda3d698fa8f54d60878b2f/Gloster_Report_FINAL.pdf

³ <https://www.gov.uk/government/consultations/uk-prospectus-regime-a-consultation>

15. Contact

- 15.1 Brandon Thompson at HM Treasury, (Brandon.Thompson@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Tom Duggan, Deputy Director for Securities and Markets, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Bim Afolami, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.