
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Companies Act 1985 (c. 6), the Companies Act 2006 (c. 46), the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090), the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084) and the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. (N.I.) 2004 No 307) in consequence of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“MiFID”). MiFID is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126 amended by S.I. 2007/763 and 2160) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384) and by the Financial Services Authority using powers under the Financial Services and Markets Act 2000 (c. 8).

Regulations 2 to 5 and 7 update the class of companies and limited liability partnerships which should not be able to take advantage of accounting and auditing exemptions otherwise conferred by the Companies Acts 1985 and 2006 when the instruments implementing MiFID come into force (on 1st November 2007). References to “an ISD investment firm” are replaced by references to “a MiFID investment firm”. The amendments to the Companies Act 1985, the Companies (Northern Ireland) Order 1986 and the regulations applying to limited liability partnerships have effect for financial years ending on or after 1st November 2007, subject to transitional provision in regulation 8 exempting companies which will be MiFID investment firms but which were not ISD investment firms from the accounting and audit requirements for their transitional financial years.

Article 2 of the Gibraltar Order permits Gibraltar-based investment firms to be treated as having an entitlement corresponding to the entitlement of investment firms authorised in other EEA states under Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ No L 141, 11.6.1993, p.27) to establish a branch or provide services (“the passport rights”) in the United Kingdom. Regulation 6 amends article 2 to permit Gibraltar-based investment firms to be treated as having an entitlement corresponding to the entitlement of investment firms authorised in other EEA states under MiFID to exercise passport rights in the United Kingdom.

A transposition note has been prepared which sets out how the main elements of MiFID are transposed into United Kingdom law. A Regulatory Impact Assessment of the effect of the instruments transposing MiFID on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.