

**EXPLANATORY MEMORANDUM TO**  
**THE REGULATED COVERED BONDS (AMENDMENT) REGULATIONS 2008**

**2008 No. 1714**

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

**2. Description**

2.1 These Regulations, which come into force on 22nd July 2008, make minor amendments to the Regulated Covered Bonds Regulations 2008 (S.I. 2008/346) ("the principal Regulations"). The principal Regulations provide a new legislative framework for covered bonds in the UK in order to meet requirements of EU legislation.

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

3.1 None.

**4. Legislative Background**

4.1 The principal Regulations, which came into force on 6th March 2008, implement Article 22(4) of Council Directive 85/611/EC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for the collective investment of transferable securities ("the UCITS Directive")(as inserted by Directive 2001/109/EC of 21 January 2002). They also implement Article 22(4) of Council Directive 92/49/EC of 18 June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance; and Article 24(4) of Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance. The relevant provisions of each of these Directives are in the same terms.

4.2 Article 22(4) of the UCITS Directive provides that investment limits may be raised:

"...in the case of certain bonds where these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bondholders. In particular, sums deriving from the issues of these bonds must be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of accrued interest."

4.3 The purpose of the principal Regulations is to establish a legislative framework designed to protect bondholders in accordance with the UCITS (and other relevant) Directives. The Government provided an explanatory memorandum to the principal Regulations which was laid before Parliament on 14th February 2008. This explains the

principal Regulations in more detail and sets out the scrutiny history of the relevant EU Directives which they implement. A Transposition Table was annexed to the explanatory memorandum to the principal Regulations and is available on the Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)). These Regulations make minor amendments to the principal Regulations.

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

5.1 This instrument applies to all of the United Kingdom.

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

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The principal Regulations establish a new legislative framework providing specific supervision for the issue of covered bonds in the UK, which complies with the UCITS Directive. The policy objective underlying the principal Regulations was to take account of the existing structure of covered bonds already issued in the UK and create a regime which provides UCITS compliance. This enables issuers of UK covered bonds to benefit from higher prudential investment limits for UCITS firms and provides a more favourable credit risk weighting for investing firms.

7.2 The Government consulted on its proposals in relation to the principal Regulations between 23 July and 15 October last year. Fourteen responses were received and a copy of the Summary of Responses is available on the Treasury website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).

7.3 These Regulations amend regulation 22 of the principal Regulations (sums derived from the issue of regulated covered bonds) to provide that the owner of a relevant asset pool need only use the sums lent to it to acquire eligible property to the extent necessary to comply with arrangements it is required to enter into under regulations 23 and 24(1)(a). The principal requirement is that the asset pool is capable of covering claims attaching to the covered bonds. Regulation 22 of the principal Regulations required all sums lent to be converted into eligible property and kept in the asset pool. This had the effect of leading to inflexibility in administering the asset pool and unnecessary over-collateralisation.

7.4 Amendments are made to regulations 28 and 29 of the principal Regulations which concern the insolvency of the asset pool. The amendment to regulation 28 (realisation of a charge) provides that the claims of "relevant persons" (defined by regulation 27(2)) should rank in relation to each other in the same way where a charge relating to an asset in the asset pool is realised, as in the event of the winding up of the pool owner (as set out in regulation 27(3)). The amendments to regulation 29 (expenses) clarify which payments should be regarded as expenses of the relevant insolvency process and removes references to the assets from which those expenses should be paid. Those references are not considered to be necessary in the light of the continued application of the relevant insolvency legislation (subject to the modifications set out in the schedule to the principal Regulations).

7.5 Minor clarificatory and updating amendments are made to certain definitions and statutory references.

7.6 The amendments made by these Regulations have not been the subject of a general public consultation but representatives of UK bond issuers, service providers, law firms and investors were consulted informally on the main amendments and indicated they were content with the changes.

## **8. Impact**

8.1 A Regulatory Impact Assessment was published with the Regulated Covered Bonds Regulations 2008. These Regulations do not have any additional impacts to those listed in that Regulatory Impact Assessment. This Assessment can be found at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk). No separate Regulatory Impact Assessment has been prepared for these Regulations.

## **9. Contact**

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