Title: The Transparency Regulations 2015	Post Implementation Review
PIR No: N/A	**Date: 28/11/2022**
Original IA/RPC No: RPC15-HMT-3030	**Type of regulation: Domestic**
Lead department or agency: HM Treasury	**Type of review: Statutory**
Other departments or agencies: Financial Conduct Authority	**Date measure came into force: 16/09/2015**
	Recommendation: Keep
Contact for enquiries: Sebastian.astin-chamberlain@hmtreasury.gov.uk	**RPC Opinion: N/A**

1. What were the policy objectives of the measure?

The EU Transparency Directive introduced a common European framework for information that must be disclosed about issuers of transferable securities (e.g. shares, bonds) which are admitted to trading on regulated markets.[1] The Directive was first adopted in 2004 and updated in 2013 through the Transparency Directive Amending Directive (TDAD), with the overall aim of ensuring greater transparency for investors in transferable secutities. Its objectives were to allow investors to access a regular flow of regulated information and allow dissemination of that information to the public.

In many places the UK regime was already consistent with the TDAD. Where it wasn't, the UK regime was amended via secondary legislation and through the FCA's Disclosure Guidance and Transparency Rules (DTRs).[2] The Government laid the Transparency Regulations in 2015 ("the Regulations") to implement the Directive, alongside several statutory instruments that updated the UK's domestic regime. The Regulations form a relatively small part of the UK's transparency regime.

The objective of these regulations was to ensure compatibility with the TDAD, and in doing so strengthen incentives for compliance, reduce enforcement costs and improve transparency, whilst not adding disproportionate costs to firms. This included making the following changes which were identified in the original impact assessment as having a direct impact on business (and so are the focus of this PIR):

- **The creation of a procedure allowing the Financial Conduct Authority (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, involving the regulator applying to the Court for a suspension, and other minor technical amendments to sanctions under the regime; and
- Amendments to the transparency rules to align with the TDAD harmonised definition of what constitutes an instrument to be counted towards the **major voting notification thresholds,** in particular the removal of the client-serving intermediary exemption

[1] Consolidated EU Transparency Directive (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02004L0109-20210318)

[2] The FCA's Disclosure Guidance and Transparency Rules (DTRs) provide disclosure guidance, transparency rules, corporate governance rules and the rules relating to primary information providers. (https://www.handbook.fca.org.uk/handbook/DTR/TP/1/1.html)

(implemented through the FCA's DTRs following an amendment to the FCA's rulemaking powers made by the Regulations).

2. What evidence has informed the PIR?

The evidence to support this PIR has been provided by the FCA. The evidence comprised of internal FCA data gathered through the National Storage Mechanism (set out in Annex A), and from the FCA's engagement with issuers and investors.[3] The FCA has in turn provided reflections based on views it has received from firms affected by the removal of the client-serving intermediary exemption

As noted in section 1, the Regulations also enabled the FCA to suspend the **voting rights of shareholders** in the instance of a breach of the transparency rules. Since the introduction of the Regulations, the regulator has not applied to the court for a suspension of voting rights.

3. To what extent have the policy objectives been achieved?

This PIR has concluded that these Regulations, which form a small part of the UK's transparency regime, met their original objectives and that the costs to firms of complying with the changes introduced was no greater than those estimated in the original impact assessment. In particular, the removal of the client-serving intermediary exemption means that the FCA and investors have more information about the ownership of voting rights in equity securities – this information helps the FCA in their regulatory and supervisory oversight of issuers, and may assist investors in making investment decisions.

Whilst the FCA has not used the procedure to suspend the voting rights of shareholders, the FCA considers that the creation of such a procedure may have resulted in indirect benefits in the form of strengthened incentives for compliance, and so reduced enforcement costs and costs of lack of compliance.

Sign-off for Post Implementation Review: Economic Secretary to the Treasury

I have read the PIR, and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***Andrew Griffith*** Date: 28/11/2022

[3] The National Storage Mechanism is the FCA's central storage mechanism for information that issuers are required to disclose under the Listings Rules; Disclosure Requirements and Transparency Rules; and Prospectus Regulation Rules.

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

Amendments to sanctions, including introduction of a new sanction allowing the FCA to suspend the voting rights of shareholders

The original IA set out that this new sanction does not create any new obligations on businesses, as the sanction can only be administered if there is a breach of the existing transparency regime. It also indicated that such a sanction would only be used sparingly and where necessary. Since the introduction of the SI, the regulator has not applied to the court for a suspension of voting rights. The original IA concluded that the other amendments to sanctions were primarily to ensure technical alignment with the TDAD and would not result in impacts on business.

Major shareholding notification requirements

The original IA set out that the transparency regime for major holdings introduced by the TDAD closely reflected the existing UK regime. As such, the changes introduced by this Regulations would not entail a major impact on UK business either in implementation or on an ongoing basis. The IA did identify that harmonisation of standards across the EU through the TDAD would bring benefits for investors who hold large cross-border portfolios. Their administrative costs were expected to fall as firms would be able to apply the same systems and methodology to meeting disclosure requirements in all EU Member States. At the time, the European Commission estimated that these benefits could be €77,000 per firm in reduced ongoing compliance costs, due to the cross-EEA harmonisation of standards.

Removal of the client-serving intermediary exemption

The original IA assumed a total cost of £1,031.25 per notification (£1000 per disclosure for the holders of the instruments, plus £31.25 for each announcement by the issuers), and estimated that the removal of the exemption would result in a a 10% increase in notifications above the 2014 baseline – an increase of around 800 notifications, leading to an estimated annual cost to business of £844,594. Data on the actual number of notifications received by the FCA following the removal of the exemption can be found in the Annex.

5. Were there any unintended consequences?

No unintended consequences were identified.

6. Has the evidence identified any opportunities for reducing the burden on business?

This PIR has found that the overall burden on business as a result of these Regulations was no greater than that estimated in the original IA.This PIR has not identified any clear opportunities for reducing the burden on business. However, as set out below, the UK will consider the findings of this PIR in the round when implementing the outcomes of the financial services Future Regulatory Framework Review.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are

comparable or now form part of retained EU law, or how other countries have implemented international agreements?

The TDAD harmonised the transparency regime for major holdings across the EU, including introducing a maximum harmonised methodology for aggregating of major holdings. As set out above, this harmonisation across the EU through the TDAD was expected to bring benefits for investors who hold large cross-border portfolios, through a reduction in administrative costs as they can apply the same systems and methodology to meeting disclosure requirements. The UK has retained the same methodology since leave the EU, meaning that investors will still benefit from this reduction in administrative costs.

With regards to the removal of the client serving exemption, which is the most significant change to be evaluated by this PIR, other EU member states did not have such an exemption, therefore no comparison can be drawn.

Recommended Next Steps (Keep, Amend, Repeal or Replace)

The PIR recommends that the regulations are kept.

These Regulations represent a small part of the UK transparency regime. The Financial Services and Markets Bill introduced to Parliament on 22 July 2022 implements the outcomes of the financial services Future Regulatory Framework Review, repealing retained EU law relating to financial services and enabling the Treasury and the financial services regulators to replace it with regulation designed specifically for UK markets.

These Regulations will be repealed as part of this process and the Treasury and the FCA will have the opportunity to consider the findings of this PIR in the round, and decide whether any reforms are needed to the UK transparency regime.

Annex A – removal of the client serving exemption

The client serving exemption was an exemption from disclosure requirements under the UK's transparency regime prior to the implementation of the TDAD. It provided an uncapped exemption from disclosure for certain financial instruments that are held by an intermediary acting in a 'client-serving capacity' (subject to certain conditions). The reason for this exemption was that these holdings do not represent a genuine economic interest in the issuer, and so would not be used to exert influence over the management of the issuer. For example there would have been an exemption where a financial intermediary took a 'long' position in a derivative which entitled the intermediary to acquire shares, in order to execute an order for a 'short' position by a client. The TDAD contains no equivalent exemption. Instead, however, firms can include such instruments within the exemption for their 'trading book', which exempts instruments from disclosure requirements unless they aggregate to 5% of the voting rights in a company. At this point a notification must be made.

The original IA estimated both the cost of each individual notification, and the expected increase in notifications of the removal of the client-serving intermediary exemption.

The IA identified the main cost involved in processing a transparency disclosure would be compliance costs related to staff time. While costs are difficult to estimate as practices differ between firms, the IA concluded that £1,000 represents the best estimate for the cost of additional disclosures for the firms expected to be affected by the removal of the client-serving intermediary exemption.

The IA estimated that for issuers, each announcement to the market of a major holding costs between £12.50 and £50. For calculating estimated costs, the mid-point of £31.25 was used.

The IA considered the possible increase in notifications due to the removal the exemption and considered the 'best estimate' to be a 10% increase in notifications from the 2014 baseline (an additional approx. 800 notifications).

This PIR has considered the actual number of notifications following the removal of the exemption, based on the following FCA data. These figures represent the total number of notifications of changes in major holdings made each year, it is not possible to disaggregate notifications which arise directly as a result of the removal of the exemption.

Year[4]	Number of notifications	Change in notifications (2014's 8,811 notifications as a baseline)
2016	8,780	+7% (592)
2017	7,539	-9% (-649)
2018	12,793	+36% (4,605)
2019	14,116	+42% (5,928)
2020	13,292	+38% (5,104)

This data shows little change in the overall number of notifications in the years immediately following the introduction of this SI, with the number increasing in the first year, but then decreasing in the second. It then shows a significant increase from 2018 onwards. However,

[4] Data is provided from 2016 onwards as this change come into force in November 2015.

these figures reflect the overall number of notifications, which will change year on year due to other changes in the market, and, in particular, from 2018 onwards, changes made by firms to prepare for the UK's intended departure from the EU. The FCA's best estimate is that the overall impact on business of the removal of the client-serving exemption was no greater than that estimated in the original IA.