

EXPLANATORY MEMORANDUM TO
THE MARKETS IN FINANCIAL INSTRUMENTS (INVESTOR REPORTING)
(AMENDMENT) REGULATIONS 2022

2022 No. 1297

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument amends Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 which supplements Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms.
- 2.2 The purpose of this instrument is to implement changes to the investor reporting regime that the government consulted on as part of the Wholesale Markets Review (WMR). The aim of the WMR is to deliver a rulebook that is fair, outcomes-based and supports competitiveness, whilst ensuring the UK maintains the highest regulatory standards. The changes in this instrument specifically alleviate regulatory burdens on investment firms by removing unnecessary reporting requirements for retail clients.

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 United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury (Andrew Griffith) has made the following statement regarding Human Rights:
- “In my view the provisions of the Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of the powers conferred by Articles 50 and 51(1) and paragraphs 4 and 9 of Schedule 3 to, Regulation (EU) No 600/2014. The instrument is subject to the negative procedure.
- 6.2 This instrument is part of a wider package of reforms to the UK's framework for wholesale capital markets, the Wholesale Markets Review (WMR). The WMR was

established to improve the UK's regulation of secondary markets, taking advantage of the new freedoms in financial services following the UK's withdrawal from the EU. It is part of the government's broader vision to improve the competitiveness of the UK's financial services sector, while maintaining high regulatory standards. Its aim is to promote openness and competitiveness by allowing domestic and international investors to access the most liquid markets and achieve the best prices for their investments; deliver a fair and proportionate regime, focused on outcomes rather than prescriptive rules and; support economic growth, innovation and wealth creation across society by ensuring the regulatory framework can facilitate investment in both the short and long-term.

- 6.3 A number of changes that the government consulted on as part of the WMR between July to September 2021 are being taken forward as part of the Financial Services and Markets (FSM) Bill. Where legislative changes are needed but respondents indicated that fast implementation was not paramount, the government will deliver them in due course using the powers in the FSM Bill.
- 6.4 The changes in this instrument also follow on from the Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (SI 2021/774), which made a series of small, initial amendments to retained EU law and related legislation, to alleviate regulatory burdens on industry. It removed several unnecessary reporting requirements, without compromising investor protection standards, for firms trading with professional or sophisticated clients. The changes in this Bill mirror two changes that were included as part of SI 2021/774 but extends them to dealings with retail clients.

7. Policy background

What is being done and why?

- 7.1 The Treasury and the FCA have consulted with industry representatives and market participants to identify obligations that the Markets in Financial Instruments Regulations (MiFIR) imposes on persons that are costly for firms to implement and fail to serve their intended objectives.
- 7.2 Following on from this engagement, on 30 June 2021 the Government brought forward SI 2021/774 to remove unnecessary reporting obligations for professional clients and eligible counterparties. These included removing the requirement for investment firms providing portfolio management services to inform professional clients whenever the overall value of their portfolio depreciated by 10% and thereafter at multiples of 10%. It also made electronic communication the default mode of communication for wholesale clients. The government did not make these changes for retail clients as part of SI 2021/774 because it wanted to consult more widely on the potential impact of these changes.
- 7.3 In July 2021, the WMR consultation sought respondents' views on extending these changes to dealings with retail clients. Feedback from the WMR consultation showed that there is wide ranging support to remove the requirement for firms providing portfolio management services to inform retail clients whenever the overall value of their portfolio depreciates by 10% and thereafter at multiples of 10%.
- 7.4 Subsequent HMT engagement with market participants revealed that the loss reporting rule is not useful and can be detrimental to investors' best interests. For example, evidence showed that it can cause investors to panic and disinvest after the

value of their investment has dropped, thereby losing money when the markets rebound. Instead, firms and investors would prefer to be allowed to agree between them what reporting is appropriate based on their specific circumstances. This instrument therefore revokes this obligation for retail clients, thereby allowing investment firms and their clients to jointly agree the most appropriate reporting arrangements.

- 7.5 Respondents to the WMR also supported making electronic communication the default method of communication for retail clients. Under existing rules, paper is considered the default means of communication in most cases. However, this requirement is outdated and no longer reflects the way in which businesses communicate with their clients. Firms have said that many retail clients already opt in to receive electronic communications. Additional feedback from firms indicates that communicating with their retail clients electronically can reduce the costs associated with paper communications. However, the government believes it is important to retain an opt in, so that clients who want to receive paper-based communications can if they choose to do so. This will ensure that the needs of all investors are met.
- 7.6 This instrument therefore makes electronic communications the default method for investment firms when communicating with their clients. To give firms time to adjust to this change, these changes will come into force six months from the laying date. To limit unnecessary burdens on firms it also specifies that retail clients who have already elected to receive electronic reporting do not need to be asked if they want to elect for paper-based reports instead.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not engage the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 HM Treasury undertook a formal consultation on these issues as part of the Wholesale Market Review (WMR) and the response was published on 1 March 2022¹. HM Treasury received over 40 responses to the part of the consultation about the amendments in this instrument, including representatives from across the financial services sector. Since the consultation closed, HMT has also conducted follow-up engagement to further explore the impact that these changes could have on industry stakeholders and investors. HMT has also engaged extensively with the FCA on the changes included in this instrument.

11. Guidance

- 11.1 No further guidance is being published alongside the instrument.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057897/Wholesale_Markets_Review_Consultation_Response.pdf

12. Impact

- 12.1 There is no, or no significant, additional cost on business, charities or voluntary bodies. The provisions in the instrument are expected to reduce costs on certain businesses.
- 12.2 The impact on the public sector is that the instruments being amended impact the FCA rules. Where required, impact assessments for the individual instruments being amended by the instrument are published on legislation.gov.uk.
- 12.3 An Impact Assessment has not been prepared for the instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de minimis impact assessment has been carried out.

13. Regulating small business

- 13.1 The legislation applies to small businesses. However, it does not introduce new regulatory requirements for small businesses, but instead removes or reduces existing regulatory burdens.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is engagement with industry to ensure that burdens for firms are reduced and investor protection is not impacted. The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Andrew Griffith has made the following statement:

“It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £5 million and there are no factors present which make it particularly desirable to include a review clause.”

15. Contact

- 15.1 Cassie McGoldrick at HM Treasury: Cassie.McGoldrick@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 The Economic Secretary to the Treasury (Andrew Griffith) at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.