

Title: The Insider Dealing (Securities and Regulated Markets) Order 2023 SI No: 582 Other departments or agencies: Financial Conduct Authority (FCA) Contact for enquiries: Charlie.Graham@hmtreasury.gov.uk	De minimis assessment
	Date: 17/04/2023
	Type of regulation: Domestic
	Date measure comes into force: 21 days after the day the SI is made.
Cost of Preferred (or more likely) Option <£5m	Equivalent Annual Net Direct Cost to Business per year: <£5m

1. What is the problem under consideration? Why is government intervention necessary?

Insider dealing is where an individual deals in a financial instrument using inside information. Insider dealing gives an individual an unfair advantage compared to other market participants without access to inside information, undermining financial market integrity. Insider dealing is both a criminal and civil offence in the UK.

The criminal insider dealing offences are set out in the Criminal Justice Act 1993 (CJA).¹ For someone to commit the offence, the person doing the insider dealing must trade in an instrument or security listed in the CJA, and the dealing must occur on a regulated market named in the CJA.

As identified in the 2015 Fair and Effective Markets Review, the scope of markets and instruments relevant for the criminal insider dealing offences is narrower than the scope of the civil market abuse regime under the Market Abuse Regulation (MAR).² This results in behaviour that would be insider dealing under the civil regime not qualifying as insider dealing under the criminal regime. This is due to the lists of securities and markets under the CJA being outdated, rather than an active policy choice. In effect, the outdated lists preclude the Financial Conduct Authority (FCA) from issuing criminal sanctions in all scenarios where it would be warranted.

¹ <https://www.legislation.gov.uk/ukpga/1993/36/part/V>

² Bank of England, Fair and Effective Markets Review - Final Report
<https://www.bankofengland.co.uk/report/2015/fair-and-effective-markets-review---final-report>

These regulations close this gap between the criminal and civil market abuse regimes, allowing the FCA to issue criminal sanctions for insider dealing in all scenarios where it should be able to (that is, if it is warranted due to the severity of the offence and in the public interest).

2. What are the policy objectives and the intended effects?

Both the criminal and civil market abuse offences cover the same types of behaviour – trading on the basis of inside information and disclosing inside information unlawfully. However, the scope of instruments and markets of the criminal insider dealing offences is considerably more limited than that of the civil regime.

The aim of this policy is to align the scope of the criminal and civil market abuse regimes for the purpose of insider dealing, ensuring that the FCA can criminally sanction insider dealing across the broader range of financial instruments and regulated markets in scope of the more recently implemented the civil market abuse regime, where appropriate.

3. What policy options have been considered, including any alternatives to regulation?

Please justify preferred option

Changes to the scope of criminal offences cannot be made without making changes to the legislation.

The alternative of doing nothing would mean that certain financial instruments would not be in scope of the CJA for the purposes of insider dealing and the gap in the FCA's powers would persist, undermining the integrity of the UK's financial markets. In addition, the outdated list of regulated markets named in the CJA means that, for example, insider dealing would not be a criminal offence on a regulated market established since the list was last updated in 2002. As such, doing nothing would not achieve the policy objective of enabling the FCA to tackle instances of insider dealing with the most appropriate tool.

Amending the regulations is the only viable option to achieve the stated policy ambition.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

As set out above, insider dealing is both a criminal and civil offence in the UK. These changes do not expand the scope of what 'insider dealing' is, they only change the availability of criminal sanctions to the regulator when addressing behaviour already covered by the civil regime.

Firms and individuals should already be familiar and complying with the civil regime, meaning that they should not be engaging in insider dealing that will be brought into scope of the criminal regime. The costs to business will be negligible because we would expect firms or individuals to already be complying with their legal requirements, and this SI imposes no additional compliance costs nor any new costs for firms or individuals, such as familiarisation costs.

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) Significant distributional impacts (such as significant transfers between different businesses or sectors)

No – These regulations will apply to those engaging in capital markets transactions and associated activities.

b) Disproportionate burdens on small businesses

No – There is already a clear requirement set out in MAR not to deal on inside information.

c) Significant gross effects despite small net impacts

No – firms should already be complying with MAR.

d) Significant wider social, environmental, financial or economic impacts

No.

e) Significant novel or contentious elements

No.

Sign-off for de minimis assessment: SCS

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

SCS of Securities and Markets

Signed: ***Tom Duggan***

Date: 14/02/2023

SCS of Better Regulation Unit

Signed: ***Linda Timson***

Date: 23/02/2023

Sign-off for de minimis assessment: Minister

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

Signed: ***Andrew Griffith, Economic Secretary to the Treasury***

Date: 14/03/2023