

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (QUALIFYING EU
PROVISIONS) ORDER 2013**

2013 No. 419

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This Order identifies the directly applicable provisions of EU law which are specified as qualifying EU provisions and directly applicable EU provisions for the purposes of various provisions in the Financial Services and Markets Act 2000 (“FSMA 2000”). The effect of the Order is to apply certain provisions of FSMA for purposes connected with specified EU provisions – mostly to do with enforcement. The effect of this is, for example, that the FCA and the PRA will be able to investigate and bring enforcement action for breach of the specified EU law using FSMA powers. EU law covered includes for example the regulation on OTC derivatives, central counterparties and trade repositories (generally known as EMIR); any directly applicable regulation made under the UCITS directives; and the emission allowance auctioning regulation.

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

3.1 It is envisaged that this Order will be amended over time to specify additional directly applicable provisions of EU law as they are adopted. The Order has therefore been drafted in a manner to accommodate future amendments. This means that separate “lists” of provisions have been provided for in relation to different purposes, even though the content of the lists is very similar and could, arguably, have been combined (see for example article 4(4) to (7)).

4. **Legislative Context**

4.1 This Order is being made by the Treasury in exercise of the powers conferred by the following sections of the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012: 1A(6)(d); 1L(2)(b); 2A(6)(d); 39(4)(b); 66(2)(b), (2A)(b); 168(4)(k); 204A(2), (4); 293A; 296(1A), 297(2A)(c); 312E(2), (3); 380(6)(a), (9); 382(9)(a), (12); 384(7)(a), (10); and paragraph 23(2) of Schedule 1ZA, paragraph 31(2) of Schedule 1ZB and paragraphs 14(2)(d), 26(2)(c), 30(c) and 36(2)(b) of Schedule 17A to that Act.

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 Financial Services Act 2012 provides for the reform of financial regulation in the UK. In the place of the Financial Services Authority (FSA), it establishes a new system of financial services regulators comprising:

- An expert macro-prudential authority, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks in the financial sector;
- A focused micro-prudential regulator, the PRA, to regulate firms that manage complex risks on their balance sheets - specifically, all deposit takers, insurers and some large investment firms; and
- A focused conduct of business regulator, the FCA, to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

7.2 This Order specifies directly applicable EU law for various purposes under FSMA to allow the two new regulators (the PRA and FCA) to investigate and bring enforcement action for the breach of EU law.

8. Consultation outcome

8.1 HM Treasury has consulted the FSA and the Bank of England in the preparation of this instrument. Due to the minor and technical nature of the instrument, and in line with common practice for secondary legislation that makes minor, technical and transitional provisions, there has been no formal public consultation.

9. Guidance

9.1 None.

10. Impact

10.1 The instrument, in itself, does not impose any additional regulatory burdens on business, charities or voluntary bodies. The impact of the overall change to the regulatory system on business, charities or voluntary bodies, in so far as they are regulated financial services firms, is set out in the overarching impact assessment for the 2012 Act.

10.2 The impact on the public sector is set out in the overarching impact assessment for the 2012 Act.

10.3 An Impact Assessment has not been prepared for this instrument. Instead the overarching Impact Assessment that covers the changes to the regulatory system provided for by the 2012 Act is available on the Treasury website as Annex H to the following publication: http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf.

11. Regulating small business

11.1 This instrument will not impose additional burdens on small businesses.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

Chris Goodspeed at HM Treasury Tel: 0207 270 5690 or email: christopher.goodspeed@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.