

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (PROSPECTUS)
REGULATIONS 2019

2019 No. 1043

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations make amendments to the Financial Services and Markets Act 2000, the Financial Services Act 2012, the Data Protection Act 2018, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 in order to implement the provisions of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 30 June 2017 (the “EU Prospectus Regulation”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations give effect to the EU Prospectus Regulation by making amendments to the Financial Services and Markets Act 2000, the domestic legislation that currently implements Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (the “Prospectus Directive”). It will ensure UK legislation is compatible with the EU

Prospectus Regulation, and that the EU Prospectus Regulation is fully effective and enforceable in the UK from 21 July 2019.

- 6.2 Part 1 of these Regulations (General) designates the Financial Conduct Authority ('FCA') as the competent authority for the purposes of the EU Prospectus Regulation.
- 6.3 Part 2 of these Regulations (Amendments of the Financial Services and Markets Act 2000) amends Part VI, section 391, section 398 of, and Schedule 11A to, the Financial Services and Markets Act 2000. Except for section 398, these provisions currently implement the Prospectus Directive. Part 2 includes provisions that enable the FCA, under specified conditions to:
 - suspend scrutiny of prospectuses;
 - refuse approval of a prospectus for persons applying for approval that have repeatedly and severely infringed requirements of the EU Prospectus Regulation;
 - restrict, suspend or prohibit trading on a trading facility or admission to trading on a regulated market; and
 - to impose administrative sanctions and penalties as set out in Article 32 of the EU Prospectus Regulation.
- 6.4 Part 3 of these Regulations (Amendments of primary legislation) consequentially amend the Financial Services Act 2012 and the Data Protection Act 2018. The amendments delete references to the Financial Services and Markets Act 2000 that have been deleted by Part 2 of these Regulations.
- 6.5 Part 4 of these Regulations (Amendments of secondary legislation) amends secondary legislation. The amendment of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) is in consequence of the change in the EU Prospectus Regime; the repealing of the Prospectus Directive and the implementation of the EU Prospectus Regulation. The amendments of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) specifies the EU Prospectus Regulation as a "qualifying EU provisions" for the purposes of certain provisions of the Financial Services and Markets Act 2000.
- 6.6 Part 5 of these Regulations (Transitional provisions) introduces transitional provisions for prospectuses approved by the FCA prior to the 21 July 2019.
- 6.7 Part 6 of these Regulations (Review) provides that these Regulations must be reviewed by the Treasury within five years of these Regulation coming into force.
- 6.8 An Explanatory Memorandum relating to the draft proposal for the EU Prospectus Regulation was sent to both EU Parliamentary Scrutiny Committees on 14 December 2015. This Explanatory Memorandum cleared scrutiny in the House of Lords on 20 January 2017 and the House of Commons on 25 January 2017.

7. Policy background

What is being done and why?

- 7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union (EU). Until exit negotiations are concluded, the UK remains a full member of the EU, with all rights and obligations of EU membership still applicable. During this period, the Government will continue to

negotiate, implement and apply EU legislation. These Regulations have been prepared accordingly.

- 7.2 Companies wishing to raise capital through issuing securities – such as shares and bonds – may be required to provide investors with a prospectus. This is a legal document which describes a company’s business, shareholding structure, and details of the securities.
- 7.3 In 2015, the European Commission conducted a consultation which identified shortcomings in the Prospectus Directive regime – the EU framework for the preparation of prospectuses, for both public offers of securities and where securities are admitted to trading on a regulated market. These shortcomings resulted in unnecessary costs and burdens to business, especially smaller business that rely on raising smaller sums of capital but are currently disproportionately impacted by the high costs currently involved in doing so – particularly where a prospectus is required.
- 7.4 In June 2017, the European Parliament and Council adopted the EU Prospectus Regulation to replace the Prospectus Directive. Unlike the Prospectus Directive, which is implemented into UK law through the Financial Services and Markets Act 2000 and the FCA Handbook, the EU Prospectus Regulation will be directly applicable in the UK. However, amendments to domestic legislation are required to implement the EU Prospectus Regulation.
- 7.5 The objective of the EU Prospectus Regulation is to improve the current prospectus regime, principally by making it cheaper and easier for smaller companies to access capital while maintaining a high level of investor protection. The changes introduced by the EU Prospectus Regulation are significant and have been widely welcomed by industry as a marked improvement on the current regime.
- 7.6 Key changes introduced by the EU Prospectus Regulation include:
- the introduction of the EU Growth Prospectus – a lighter, less burdensome document for SMEs (and certain other issuers) to produce when issuing securities to the public or seeking admission to trading on a regulated market; a simplified disclosure regime for secondary issuances;
 - an increase in the information that can be included in the prospectus by reference; and
 - the introduction of a Universal Registration Document (a registration document describing the company’s organisation, business, financial position, earnings and prospects, governance and shareholding structure) to be filed annually, that enables a full prospectus (when prepared) to be approved within a shorter timeframe.
- 7.7 Whilst the EU Prospectus Regulation will apply in its entirety in the UK on 21 July 2019, the Regulation does permit Member States to impose additional requirements beyond those set out in the Regulation in relation to a Prospectus Summary and administrative sanctions.
- 7.8 Each prospectus must contain a summary document, containing the key information (as specified within the EU Prospectus Regulation) for potential investors. If a firm is issuing an investment or insurance-based investment product to retail investors, they must also comply with the Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (the “PRIIPS

Regulation”). This introduces a standardised disclosure document (called a Key Information Document or KID). The EU Prospectus Regulation allows issuers who are subject to the PRIIPs regulation to substitute information required for a Prospectus Summary with certain elements of their KID. Member States are also given the option to require all issuers to which the PRIIPs Regulation applies, to make this substitution.

- 7.9 HM Treasury decided not to extend this obligation to all issuers, but rather to maintain the flexibility for issuers to decide to substitute information required for a Prospectus Summary with certain elements of their KID, as provided for by the EU Prospectus Regulation.
- 7.10 The EU Prospectus Regulation sets out the minimum level of administrative sanctions for issuers who breach the requirements of the Regulation, allowing Members States to provide for greater sanctions as is deemed appropriate within their national framework. Under current UK legislation, the FCA is permitted to impose administrative sanctions, including unlimited monetary sanctions where an issuer breaches the requirements of Part 6 of the Financial Services and Markets Act 2000, the Prospectus Directive or FCA Rules. HM Treasury has decided to maintain the current regime of administrative sanctions. This approach will provide continuity to industry participants who already operate under such rules whilst allowing the FCA to continue to take a proportionate approach to breaches of the EU Prospectus Regulation.
- 7.11 Through these Regulations, the Financial Services and Markets Act 2000 is modified and amended to give effect to the requirements of the EU Prospectus Regulation. The Financial Services Act 2012, the Data Protection Act 2018 and relevant secondary legislation are consequentially amended.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The amendments made to the Financial Services and Markets Act 2000 and other relevant legislation do not require further consolidation.

10. Consultation outcome

- 10.1 The EU Prospectus Regulation is a directly applicable EU Regulation with requirements and obligations that apply without implementation in domestic law. The domestic legislative requirement is therefore to ensure that existing domestic legislation is consistent with the Regulation. HM Treasury therefore did not carry out a consultation, but has engaged with relevant stakeholders, including members of the FCA’s Listing Authority Advisory Panel on these Regulations.
- 10.2 HM Treasury has extensively consulted with the FCA, as the designated competent authority, in the preparation of these Regulations.
- 10.3 The FCA ran a public consultation of the changes to their Handbook to reflect the application of the Prospectus Regulation. This consultation opened on 28 January 2019 and closed on 28 March 2019 and responses were considered in the

development of their final rules. Their policy statement can be found at the following link: <https://www.fca.org.uk/publications/policy-statement/ps19-12-changes-align-fca-handbook-eu-prospectus-regulation>

11. Guidance

- 11.1 It is not considered necessary to issue specific guidance in connection with these Regulations.

12. Impact

- 12.1 This instrument has no, or no significant, direct impact on business, charities or voluntary bodies. Any impact stemming from the enforcement of these powers is as a result of the EU Regulation, not from these domestic amendments.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there are no direct costs on businesses associated with this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The Prospectus Regulation is designed to simplify the existing regime and reduce the cost and burden of raising capital for all businesses, including small businesses. Key changes the Prospectus Regulation introduces such as the EU Growth Prospectus – a lighter, less burdensome document for Small and Medium-sized Enterprises (and certain other issuers) to produce when issuing securities to the public or seeking admission to trading on a regulated market will be beneficial for small businesses and are a significant improvement upon the current regime.

14. Monitoring & review

- 14.1 These Regulations will be reviewed and a report published setting out the conclusions of the review within five years of these Regulations coming into force.

15. Contact

- 15.1 George Duffin at HM Treasury Telephone: 0207 270 1276 or email: George.Duffin@HMTreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tom Duggan, Deputy Director for the Securities, Markets and Banking team, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.