

<p><b>Title: The Data Reporting Services Regulations 2024</b></p> <p><b>SI (Statutory Instrument) No: 2024/107</b></p> <p><b>Other departments or agencies:</b> N/A</p> <p><b>Contact for enquiries:</b> <a href="mailto:Lucy.Danton@hmtreasury.gov.uk">Lucy.Danton@hmtreasury.gov.uk</a> <a href="mailto:Alison.Robinson@hmtreasury.gov.uk">Alison.Robinson@hmtreasury.gov.uk</a></p>	<p><b>De minimis assessment</b></p> <p><b>Date: 27/11/2023</b></p> <p><b>Type of regulation: Domestic</b></p> <p><b>Date measure comes into force:</b> 5 April 2024</p>
<p><b>Cost of Preferred (or more likely) Option</b> Under £5m</p>	<p><b>Equivalent Annual Net Direct Cost to Business per year</b> None</p>

**What is the problem under consideration? Why is the government action or intervention necessary?**

The Financial Services and Markets Act 2023 (FSMA 2023) repeals retained EU law relating to financial services. This enables the government to deliver a Smarter Regulatory Framework (SRF) for financial services. Retained EU law will be replaced with rules set by our independent and expert regulators, operating within a framework set by government and Parliament.

This SI replace retained EU law relating to Data Reporting Service Providers (DRSPs) and replaces it with a regulatory framework tailored to the UK. This exercise includes restating, and in some cases modifying, the Data Reporting Services Regulation 2017 (DRSRs), which transposed parts of the EU’s second Markets in Financial Instruments Directive (MiFID II), as well as articles of other EU regulations.

DRSPs are a type of Financial Market Infrastructure (FMI). They are commercial entities that allow investment firms to fulfil their regulatory reporting obligations and ensure market data is accessible and supports effective price formation and best execution. There are three types of DRSPs:

1. Approved Publication Arrangements (APAs) publish trade reports on behalf of investment firms. Investment firms are required to publish information, such as price and size of executed trades they perform, so that market participants can use such information to make investment decisions.
2. Approved Reporting Mechanisms (ARMs) report details about transactions to the FCA on behalf of investment firms, for market surveillance purposes.
3. Consolidated Tape Providers (CTPs) collate trading data for financial instruments from a variety of sources, including APAs and trading venues, and consolidate the data into a continuous, electronic, live data stream. This data stream provides price and volume information for financial instruments that can help market participants to make informed investment decisions and meet regulatory requirements.

Given the important function they serve in financial markets, it is necessary to continue to proportionately regulate DRSPs to ensure they are working in the interests of the investors that rely on the information they provide.

The FCA previously did not have any rule-making powers over DRSPs, except for some limited powers in respect of technical standards and powers of direction which enabled the FCA to establish the current authorisation and verification process for DRSPs.

These were not sufficient to replace the detailed firm-facing rules currently in REUL, once that REUL is repealed. To continue to ensure DRSPs are subject to appropriate regulation, FSMA 2023 therefore introduced a new general rule-making power for the FCA in relation to DRSPs. This SI sets the perimeter within which the FCA can make their rules. For example, it restates the FCA's existing supervisory and regulatory powers and duties over DRSPs but also allows the FCA to set requirements and processes for granting authorisation or verification to DRSPs. The instrument also introduces a power for the FCA to run a tender process to select consolidated tape provider(s) for a particular asset class.

The SI also makes the necessary legislative changes to encourage the emergence of a consolidated tape in the UK. Currently some provisions applying to DRSPs make running a consolidated tape in the UK commercially unattractive, for example, the requirement for CTPs to make data free after 15 minutes. As such, a consolidated tape has failed to emerge in the UK. This means UK firms must purchase market data from individual trading venues or data vendors to get a cross market view, which is costly and burdensome. As part of the Wholesale Markets Review (WMR) HM Treasury consulted on making changes to these provisions in order to facilitate the emergence of a UK consolidated tape. Respondents were supportive of HM Treasury's proposals, which are implemented by this SI.

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

There are two policy objectives to this instrument.

First, the instrument tailors the regulation of DRSPs to the UK, establishing the FSMA model of regulation where the financial services regulators generally take responsibility for setting the direct regulatory requirements currently set out in REUL, acting within a framework set by government and Parliament. This consists mainly of the restatement of current provisions, including the authorisation and verification of DRSPs, enforcement powers, and prohibitions.

Second, the instrument makes the legislative changes necessary to facilitate the emergence of a UK consolidated tape by removing the regulatory barriers inherited from EU legislation that made running a consolidated tape commercially unattractive. The instrument also gives the FCA the power to run a tender process to appoint the UK's consolidated tape provider(s). A consolidated tape will make accessing market data easier and cheaper, making UK markets more attractive and competitive. This forms part of the government's wider work to enhance the competitiveness of UK capital markets.

## **3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option**

### **Option 1: 'Do nothing' – do not replace REUL**

The government could choose not to make any replacement legislation when the repeal of the relevant REUL is commenced. This would not be an appropriate option, however, as it would lead to significant regulatory gaps and UK DRSPs would not be subject to suitable regulation.

### **Option 2: Retain EU law – full restatement of REUL**

Following the repeal of the DRSRs, the government could restate the DRSRs without modification to maintain the status quo for firms. This would not be an appropriate option as it would not be in

line with the model envisaged by parliament in FSMA 2023, which grants the FCA a rule making power over DRSPs, in line with the FSMA model of regulation. Restating provisions in existing EU law would prevent the FCA from being able to exercise this power effectively in order to regulate DRSPs, and would mean that there would not have a regime that benefited from the expertise of our operationally independent regulators. This would also not achieve the government's ambitions for agile rulemaking or the removal of EU law from the statute book, and so these provisions would also be less able to keep pace with international developments and changing market practices. This would ultimately impact the international competitiveness of the UK's financial services sector.

Furthermore, by maintaining the regulation in its current form the issues preventing the emergence of a UK consolidated tape are likely to continue, resulting in firms continuing to purchase data from multiple sources.

### **Option 3: Preferred option – Commence the repeal of REUL as it relates to DRSPs and replace it with legislation tailored to the UK**

The preferred option is to commence the repeal of REUL as it relates to DRSPs and replace it with legislation tailored to the UK in line with the FSMA model. Under the FSMA model, the UK's expert financial services regulators are able to make the detailed regulatory requirements which apply to firms within a policy framework set by Parliament and government. This is in line with the decision parliament made in FSMA 2023, to give the FCA a power to make rules over DRSPs.

The FSMA model has been adapted over the years and remains the most appropriate way to regulate financial services in the UK. It ensures that the regulators' real-world, day-to-day experience of supervising financial services firms is central to the regulatory policymaking process. It also provides flexibility for the regulators to make timely updates to regulation to keep pace with changing market conditions and emerging risks.

Replacing REUL as it relates to DRSPs with legislation tailored to the UK will encourage the emergence of a consolidated tape in the UK, and as a result, improve market efficiency and lower costs for firms and investors. This forms part of the government's wider work to make UK markets more attractive and competitive.

#### Detailed policy proposal:

##### *Restatement*

The instrument restates provisions that set the regulatory perimeter or give the FCA specific powers which were not covered by the general rulemaking powers in FSMA 2023. Where necessary, there are some retained provisions that must be amended, either to make legislation more appropriate for UK markets or to make the law clearer and more streamlined.

There are four reasons that explain why the instrument does not restate certain provisions from legislation. First, where they are firm facing requirements (i.e., they apply directly to firms) given that, under the FSMA model, it is generally the responsibility of the FCA to make these. Second, some provisions that confer powers on the FCA overlap with existing powers or with the new rulemaking power given to the FCA in FSMA 2023, and therefore are no longer required. Provisions that are no longer relevant in a UK-only context are also no longer required such as those that reference coordination with other EU member states, for example. Finally, provisions that have previously made a consolidated tape commercially unattractive are not needed.

##### *New provisions*

In some instances, new provisions are required to improve the functioning of the regulations and make them more appropriate for UK markets. The focus of these new provisions mainly centres around giving the FCA a power to run a tender process to select one or more CTP per asset class

or subclass of assets. This reflects the feedback the government received through the WMR consultation. Given the high operational costs of setting up a tape, but the low margins model in which it would operate, the majority of stakeholders argued that a tape would not materialise in an open market competition environment.

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

When REUL is repealed, the detailed rules which apply to firms will be replaced with rules set by the FCA within a framework set by government and Parliament. The FCA are operationally independent and the impact of these rules on firms will be their responsibility.

Where final impacts are dependent on the outcome of policy decisions which sit within the remit of the independent financial services regulators, HMT is content that in such cases, the regulators have appropriate mechanisms to consider the impact of such decisions. FSMA 2000 requires the regulators to produce cost-benefit analyses (CBAs) when they consult on proposed rules. Through FSMA 2023, the government has acted to strengthen this process by requiring the FCA and the PRA to set up panels dedicated to supporting the development and production of the CBA. In future, the regulators will be required to consult these panels on the CBA before they consult publicly on proposed rules.

It is not possible for HM Treasury to pre-judge the rules that the financial services regulators make given they are operationally independent of government. HM Treasury has therefore assessed the direct impact of replacement legislation on firms, rather than any rules that may be made by the regulators in the future.

Until REUL is repealed, provisions in REUL still apply, and firms are required to follow these REUL provisions. Only where HM Treasury's replacement legislation changes the effect of those provisions will there be any impact on firms.

*What will businesses have to do differently?*

The only direct impact of replacement legislation on DRSPs that we expect from this SI is familiarisation costs. This is because this SI does not have any direct firm-facing impacts – instead, it sets the perimeter within which the FCA can make rules, with such rules then directly impacting firms. As above, HM Treasury is unable to pre-judge the rules that the financial services regulators make given they are operationally independent of government.

Firms are, however, likely to engage lawyers or consultants to understand the legislation and accompanying guidance. Larger DRSPs tend to have in-house counsel so, although these changes will take up their employees' time, the costs are likely to be absorbed within their existing resources.

In future, the FCA will also set new rules using the powers given to them in FSMA 2023. It is likely that firms will face ongoing costs in areas where the FCA uses its new powers to make new rules. The FCA have carried out a detailed analysis on what business will have to do differently upon the implementation of its proposals relating to DRSPs in its CP 23/15. The government is unable to pre-judge the final rules that the FCA will make because they are operationally independent of government, so it is for the FCA to judge the impact of its own rules through mechanisms such as

a cost benefit analysis that were strengthened by FSMA 2023. The FCA's cost benefit analysis will assess any differences they propose compared to the current regime in REUL.

*How many businesses will this impact per year?*

Currently, only eight firms operate a DRSP in the UK (eight operate an ARM and/or APA and there are no CTPs). These are the only businesses that will be directly impacted by the changes in this instrument.

*What is the direct cost/benefit per business per year?*

### Costs

The only costs are likely to be familiarisation costs for reasons set out above. It is assumed the affected firms could incur costs (time and labour) in familiarising themselves with the relevant instrument. HM Treasury calculates familiarisation costs as an approximation of the time spent reading the instrument on the basis of the word length of the instrument, the difficulty of the text based on the Flesch Reading Score and the hourly rate of an external legal expert that a business may procure to read the instrument.

Number of words in SI (rounded up to nearest 100)	Words read per minute	Hourly rate (£)	Number of businesses affected	Familiarisation costs per firm (£) (rounded to 2 significant figures)	Total familiarisation costs (£) (rounded to 2 significant figures)
9900	100	385	8	£640	£5000

Note of methodology: We have based the cost of this legal advice on the government guidelines on solicitors' hourly rates, using an hourly rate of £385, based on the following assumptions:

- a. As legal expertise in financial services resides predominantly among City law firms, we have used a London, rather than UK-wide value for legal costs.
- b. As this work will be undertaken by a variety of individuals with varying levels of experience at different firms, therefore we have used the middle range value for a Solicitor/Associate with 2-5 years' experience.

It is assumed that, as legal experts, readers will generally be familiar with this type of literature so we have taken the upper bound of the reading speed of difficult text, i.e. 100 words per minute. Furthermore, it is assumed that this form of familiarisation will be undertaken on a one-off basis. These assumptions are the same as the approach that HM Treasury took in its assessment of impact of financial services-related SIs made under the European Union (Withdrawal) Act.

### Benefits

It is not possible to quantify the ongoing benefits of the changes made by this SI as benefits will be decided by the approach taken by the FCA to its rules, which the government is unable to pre-judge. However, the government expects the repeal of REUL and its replacement with a new framework that is tailored to the UK will benefit firms in several ways. In particular, firms will benefit from the more proportionate approach that will stem from replacing detailed EU provisions which were designed to apply across the EU with rules set by the UK's expert and independent regulators.

Beyond this, replacing REUL will enable firms to benefit from a streamlined and accessible legislative framework for financial services, where rules adapt over time in an agile manner and in response to changing practices.

Specifically on the consolidated tape, there is likely to be many ongoing benefits to firms and investors participating in UK markets. It will be much cheaper for market participants to access the market data they need to make informed investment decisions. However, the exact benefit of this will be assessed by the FCA given the requirement and regime for the tape will lie in rules made by the FCA, which the government is unable to prejudge.

**5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) 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.

**b) Disproportionate burdens on small businesses**

Not directly from this instrument. The FCA will do their own Cost Benefit Analysis on their consolidated tape regime.

**c) Significant gross effects despite small net impacts**

No.

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

No.

**e) Significant novel or contentious elements**

No. Although the government expects this SI to encourage the emergence of the first consolidated tape in the UK, it is not a novel concept. Other countries do have them, most notably the US and Australia. Moreover, the idea of a consolidated tape is certainly not novel to the UK or the EU – MiFID II had the intention to create a consolidated tape.

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 Policy team**

Signed: ***Tom Duggan***

Date: 01/11/2023

**SCS of Better Regulation Unit**

Signed: ***Phil Witcherley***

Date: 16/11/2023

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.***

***(Name, Ministerial role)***

Signed: ***Bim Afolami, Economic Secretary to the Treasury***

Date: 23/11/2023

### **Further information sheet**

Please provide additional evidence in subsequent sheets, as required.