
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“the Directive”). The Directive is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order ([S.I. 2006/3384](#)), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 ([S.I. 2007/125](#)), the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 ([S.I. 2006/3386](#)) and the Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006 ([S.I. 2006/3385](#)), and by the Financial Services Authority (“FSA”) using powers under the Financial Services and Markets Act [2000 \(c. 8\)](#) (“the Act”).

Part 2 of the Regulations requires the FSA to be satisfied that the authorisation requirements of the Directive (as to which see Chapter I of Title II and Commission Regulation 1287/2006 of 10 August 2006, OJ No L 241, 2.9.2006, p.1) are met before giving permission under Part 4 of the Act to an investment firm (as defined in section 424A of the Act, inserted by [S.I. 2006/2975](#)) or varying the permission of such a firm (transposing Article 7(1) of the Directive).

Schedule 1 to the Regulations amends Part 13 of the Act. Sections 194A and 195A are inserted into Part 13 to set out new grounds on which the power of intervention under section 196 is exercisable and to set out the additional procedure that the FSA must follow in these cases (transposing Article 62 of the Directive). The new section 194A will apply where the FSA is primarily responsible for ensuring compliance with the Directive. The new section 195A will apply where the home state regulator is primarily responsible for securing compliance with the Directive. Section 199 is amended as a consequence of the amendments to Part 13.

Schedule 2 to the Regulations amends Part 18 of the Act. Section 287 is amended to supplement the particulars which an applicant for recognition as an investment exchange is required to provide to the FSA (transposing parts of Articles 36, 37 and 38 of the Directive). New section 290(1A) requires the FSA to be satisfied that exchanges are complying with directly applicable Community legislation made under the Directive before making a recognition order. New section 290(1B) and (1C) sets time limits within which the FSA must determine applications for recognition as an investment exchange (but not as an overseas investment exchange), and to secure compliance with section 290(1B) sections 303, 306 and 307 are amended to provide for the reports and approvals required under Part 18 to be made within specific time periods (transposing Article 52.1 of the Directive). New section 292A requires exchanges to publish information in compliance with requirements in Articles 38 and 41 of the Directive. New section 293A enables the FSA to obtain information about exchanges’ compliance with directly applicable Community legislation made under the markets in financial instruments directive. Section 296 is amended to provide for the enforcement of directly applicable Community legislation made under the Directive, to give the FSA power to require an exchange to grant it access to the exchange’s premises for the purposes of inspecting the premises and documents on the premises, and to give the FSA power to require an exchange temporarily to cease carrying on a regulated activity (transposing Article 52.2(c) and (g) of the Directive). Further grounds on which the FSA can remove an exchange’s recognition are inserted into section 297 (transposing Article 36 of the Directive).

New Chapter 1A of Part 18 requires persons acquiring or increasing control (as defined in section 301B) to notify the FSA in advance, gives the FSA power in certain cases to refuse to approve

Status: This is the original version (as it was originally made).

an acquisition or increase in control or to object to existing control, makes provision in relation to improperly acquired shares and creates offences in relation to breaches of the control requirements (transposing Article 38.3 of the Directive).

New Chapter 3A of Part 18 makes provision about the “passport” rights of market operators (defined in the Directive) to provide services in another EEA State. New section 312A transposes the rights for EEA market operators under Articles 31.5 and 42.6 of the Directive to make arrangements in the United Kingdom for access to their facilities. New section 312B transposes Article 62.3 of the Directive by giving the FSA power to remove EEA market operators’ passport rights in certain circumstances. New section 312C makes provision for the exercise by recognised investment exchanges of the passport rights under Articles 31.5 and 42.6.

Schedule 3 to the Regulations inserts Part 18A of the Act which gives the FSA power to require the suspension and removal of financial instruments from trading (transposing Articles 14.7, 41 and 50.2(j) and (k) of the Directive). It also requires the FSA to give notice and publish information about decisions to require the suspension or removal of instruments from trading.

Schedule 4 to the Regulations amends Schedule 3 to the Act to make minor alterations to the procedures for the exercise of passport rights under the Directive to establish a branch or provide services in another EEA State (transposing Articles 31 and 32 of the Directive). The amendments relate to the exercise of passport rights by investment firms (defined in the Directive) which are EEA firms or UK firms (in both cases within the meaning of Schedule 3).

Schedule 5 to the Regulations makes amendments to other parts of the Act. Section 39 is amended to make the exemption from financial services regulation for appointed representatives conditional, for those appointed representatives who are tied agents to whom Article 23 of the Directive applies, on the person being registered on the record maintained by the FSA or by the competent authority of another EEA State. New section 39A requires certain other tied agents, to whom section 39 does not apply, to comply with requirements mentioned in Article 23 of the Directive, including the requirement to be registered. There are consequential amendments in section 347. Section 45 is amended to specify additional grounds on which the FSA may cancel the Part IV permission of an investment firm (transposing Article 8 of the Directive). New sections 412A and 412B give effect to the FSA’s duty under Article 12(2) of Commission Regulation 1287/2006 of 10 August 2006 (OJ No L 241, 2.9.2006, p.1) to approve trade-matching and reporting systems which make reports of transactions in financial instruments, and the FSA’s duty to monitor such systems. Various provisions are also amended to provide for the enforcement of directly applicable Community legislation made under the Directive as if it were a provision made by or under the Act. Schedule 5 also makes a number of minor and consequential amendments to the Act.

Schedule 6 to the Regulations makes consequential amendments to primary and secondary legislation.

Part 3 of the Regulations and Schedule 7 make transitional provision in relation to the exercise of passport rights by investment exchanges and investment firms and the registration of tied agents.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing the Directive on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.