

**EXPLANATORY MEMORANDUM TO  
THE PROSPECTUS REGULATIONS 2011**

**2011 No. 1668**

1. 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 amend two provisions of the Financial Services and Markets Act 2000, in order to implement part of Directive 2010/73/EU (the “Amending Directive”) of the European Parliament and of the Council. The two provisions concerned are deregulatory in nature, helping businesses, and small businesses in particular, raise equity finance more efficiently. The measures in the Amending Directive update the original EU Directive 2003/71/EC (“The Prospectus Directive”), which dictates when and how a prospectus must be published when securities are offered to the public or admitted to trading on a regulated market.

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

3.1 None.

4. **Legislative Context**

4.1 These Regulations amend part of the Financial Services and Markets Act 2000, which provides for the implementation of the EU Prospectus Directive 2003 in the United Kingdom. The Prospectus Directive seeks to enhance investor protection and improve the efficiency of the single market. Its key innovation is that a prospectus – which must be produced by companies when they make public offers of their securities, or when admitted to trade on a regulated market – approved in one Member State is valid across the EU. This gives issuers a ‘passport’ across the EU in order to help them raise equity finance. The Prospectus Directive originally came into force on 1 July 2005.

4.2 The Amending Directive followed a review by the European Commission, designed to simplify the procedure and reduce the administrative burden faced by issuers, without compromising investor protection.

4.3 The final Amending Directive was agreed at the Permanent Representative Committee (COREPER) on 2 June 2010. The Government’s

European Affairs Committee was notified of the Directive's agreement on 16 June 2010.

4.4 The Amending Directive was then published in the Official Journal on 11 December 2010. Notwithstanding these early implementation measures, the remaining elements of the Directive come into force on 1 July 2012 in accordance with the pan EU deadline.

4.5 The Government submitted an explanatory memorandum dated October 2009 (doc 13688/09). The House of Commons Select Committee on European Scrutiny reported on the draft directive in 31 (2008-09) (28 October 2009), para. 3 and 1 (2009-10) (19 November 2009) para. 20, clearing it after Ministerial correspondence. The House of Lords European Union Committee considered the draft Directive in Sub-Committee A and cleared it from scrutiny on 3 November 2009.

4.6 A Transposition Note is annexed to this Memorandum.

## **5. Territorial Extent and Application**

5.1 These Regulations apply to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Financial Secretary to the Treasury, Mark Hoban MP, has made the following statement regarding Human Rights:

In my view, the provisions of The Prospectus (Amendment) Regulations 2011 are compatible with the Convention rights.

## **7. Policy background**

7.1. The Prospectus Directive 2003 introduced a harmonised EU framework for the production and initial disclosure requirements of a prospectus, which companies are required to produce when making a public offer of securities, or when first admitted to trading on a regulated market. The intention of the prospectus is to ensure investor protection and that adequate information is made available to them to ensure they understand the investment they are making. By creating an EU framework, companies are able to 'passport' their prospectuses, and thus their offerings, across the EU. The Directive establishes a series of thresholds which dictate when a prospectus must be produced. Below these thresholds, a prospectus is not required.

7.2. In 2010, the European Commission undertook a review of the Prospectus Directive. While it found that the framework was broadly operating well, it identified an opportunity to provide further simplification without

compromising investor protection. Two of its amendments increase the thresholds for which a prospectus must be required – the first, being the total size of the offer, and the second, the number of investors an issuer can approach before triggering the requirement to produce a prospectus. Small companies undertaking secondary fundraising are the most likely group to benefit from these measures. Avoiding the costly production of a prospectus is estimated to save UK businesses around £12 million each year.

7.3. In November 2010, in its response to the Government green paper *Financing a Private Sector Recovery*, the Government indicated it would introduce these two measures in the summer of 2011, approximately one year early, in order to help small businesses access equity finance more easily and cost-effectively. Smaller companies will benefit in particular from these increases as they are the group most likely to make relatively small capital raisings of this size, and/or approach a relatively small number of investors. The measures will give them more efficient access to equity finance, as fewer offers will require a costly prospectus to be produced.

7.4. These early implementation measures, and the related statutory instruments bringing them into effect, have undergone relevant Better Regulation and legal scrutiny. A draft of the statutory instruments was also included in the public consultation of 17 March 2011 to 9 June 2011.

7.5. These Regulations make the necessary amendments to the Financial Services and Markets Act 2000. They:

- amend the number of investors to whom an offer of securities may be made before a prospectus is required, from 100 to 150 investors.
- amend the total size of the offer that may be made before a prospectus is required, from €2.5 million Euros to €5 million Euros.

There has been no public interest in these changes which have been anticipated by the industry.

7.6. In Autumn 2011, HM Treasury and the Financial Services Authority will issue a joint consultation on the remaining elements transposing Amending Directive 2010/73/EU of the European Parliament and of the Council. This will consolidate the amendments needed to the Financial Services and Markets Act 2000, in order to bring the Amending Directive in its entirety into effect.

## **8. Consultation outcome**

8.1. The early implementation measures were welcomed by industry following public consultation. Stakeholders noted the benefit for small companies seeking equity finance in introducing these measures early. No comments were provided on the draft statutory instruments, which update the existing UK vehicle for transposing the Prospectus Directive (namely Part 6 of the Financial Services & Markets Act 2000).

## **9. Guidance**

9.1 The Treasury does not propose to produce any guidance in relation to the Regulations.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible; the effect of these cost-saving measures is in fact positive for small companies.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation effectively applies to small business, as this is the group which will benefit from the changes. The impact is deregulatory and cost-saving, by helping small businesses raise equity finance more quickly and cost-effectively.

## **12. Monitoring & review**

12.1 The UK's transposition of the Amending Directive will be subject to a Post Implementation Review five years after it comes into effect. Both these early implementation measures, and the remaining elements of the Amending Directive, will be reviewed simultaneously.

## **13. Contact**

13.1 Camila Saunders at HM Treasury, telephone: 020 7270 4427 or email: [camila.saunders@hmtreasury.gsi.gov.uk](mailto:camila.saunders@hmtreasury.gsi.gov.uk), can answer any queries regarding the instrument.

ANNEX

TRANSPOSITION TABLE

Article of Directive 2010/73/EU	Article of Directive 2003/71/EC	Summary	UK Legislation
1(a)(i)	1. 2(h)	Threshold increase for securities included in offer where total consideration is less than €2.5m is raised to €5m	Financial Services and Markets Act 2000 (FSMA), Schedule 11A, para. 9(1)
3(a)(i)	3.2(b)	Threshold increase from 100 to 150 persons	FSMA, Part 6, section 86(1)(b) & FSA Rule PR1.2.1