

**EXPLANATORY MEMORANDUM TO**  
**THE DATA REPORTING SERVICES REGULATIONS 2017**

**2017 No. 699**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These Regulations create a new regulatory regime governing data reporting service providers (“DRSP”) to transpose Title V and parts of Title VI of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (OJ L173, 12/6/2014, p.349) (“MiFID II”). MiFID II replaces and extends Directive 2004/39/EC of the European Parliament and Council of 21 April 2004 on markets in financial instruments (OJ No. L145, 30.4.2004 p.1) (“MiFID I”).

**3. Matters of special interest to Parliament**

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

- 3.1 These Regulations are laid on 22<sup>nd</sup> June and enter into force on 3<sup>rd</sup> January 2018. However, some provisions come into force on 3<sup>rd</sup> July for the purpose of allowing the regulators and the public to make preparations for when the Regulations come fully into force (see regulation 2). For the provisions subject to early commencement, HM Treasury is allowing less than the minimum 21 day period applying by convention between the laying of a statutory instrument subject to the negative resolution procedure in Parliament and its coming into force. The unexpected general election and the consequent dissolution of Parliament on 3 May meant that these Regulations could not be laid as planned. In light of HM Treasury’s obligation to transpose MiFID II into UK law by 3<sup>rd</sup> July 2017, and to ensure that the Financial Conduct Authority (“FCA”) has the necessary powers to authorise or vary the permission of firms undertaking Data Reporting Services under MiFID II, it was not feasible to delay the coming into force date to comply with the 21 day rule. HM Treasury apologises for the inconvenience caused by reducing the time available to the Committee to consider the provisions of the Regulations coming into force on 3<sup>rd</sup> July 2017.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 These Regulations implement an obligation on EU Member States under Title V of MiFID II to regulate DRSPs. A DRSP is one of the following:

- an approved publication arrangement (“APA”), i.e. a person who publishes trade reports on behalf an investment firm to meet various obligations under the Market in Financial Instruments Regulation (“MiFIR”) (OJ L 173, 12.6.2014, p. 84) which complements MiFID II;
- a consolidated tape provider (“CTP”), i.e. a person who collects trade reports for certain financial instruments and consolidates them into a continuous electronic live data stream providing price and volume data;
- an approved reporting mechanism (“ARM”), i.e. a person who reports details of transactions to competent authorities or the European Securities and Markets Authority on behalf of investment firms.

- 4.2 Under Title V the competent authority in the Member State must authorise a DRSP unless it is also a credit institution, investment firm or market operator operating a “trading venue” (a regulated market, multilateral trading facility or organised trading facility), in which case the authority must only verify it complies with the requirements of Title V. DRSPs are then to be made subject to requirements relating to their management bodies and organisation. To implement Title V Parts 2 and 3 of these Regulations put in place a regime for the regulation of DRSPs: Part 2 deals with authorisation (or where applicable verification of compliance with Title V) by the Financial Conduct Authority (“FCA”) and Part 3 sets out operating requirements relating to management bodies and organisation. Part 4 deals with the administration and enforcement of the Regulations by the FCA to implement Title VI of MiFID II which requires member states to give competent authorities suitable powers to supervise and enforce the Directive.
- 4.3 Prior to agreement in Council, MiFID II was submitted to Parliament for scrutiny. It was cleared by the House of Lords European Scrutiny Committee on 27 February 2013, and was cleared by the House of Commons Scrutiny Committee after a debate on the same day.
- 4.4 MiFID II was the subject of the House of Lords European Union Committee’s second report of the 2012-13 session (HL28), “*MiFID II: Getting it Right for the City and EU Financial Services Industry*”. The report was debated in a Motion to Take Note, moved by Lord Harrison on 26 March 2013 (Hansard volume 744). In its response, the government welcomed the report, and set out how it would take the recommendations forward.
- 4.5 Another statutory instrument implementing MiFID II, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488) was made on 28<sup>th</sup> March 2017, having been approved by the House of Commons on 14 March 2017 and the House of Lords on 23 March 2017. The statutory instrument is available to view at: <http://www.legislation.gov.uk/ukxi/2017/488/contents/made>
- 4.6 One further statutory instruments is laid alongside this legislation to complete the transposition of MiFID II: the Financial Services and Markets Act 2000 (Markets in Financial Instruments Regulations) 2017.
- 4.7 A transposition note showing how these Regulations transpose MiFID II accompanies this explanatory memorandum. It will be available from HM Treasury and published on [legislation.gov.uk](http://www.legislation.gov.uk).

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

- 5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is 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**

### *What is being done and why*

7.1 The instrument forms part of the transposition into UK law of MiFID II. MiFID II and MiFIR which update MiFID I in light of the financial crisis and technological change.

7.2 MiFID II and MiFIR create more robust and efficient market structures, and require more trades to be conducted through trading venues in order to promote transparency. They will introduce new safeguards for algorithmic and high frequency trading, and improve competition in essential post-trade services such as clearing. They will provide a stricter framework for commodity derivatives and strengthen investor protection. The aims of the EU legislation are consistent with our overall approach to the regulation of financial markets in the UK.

7.3 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.4 MiFID II places data reporting obligations on investment firms. These data reporting obligations apply in order to both prevent market abuse, and to promote reliable price formation. Title V of MiFID II regulates DRSPs which are third parties that investment firms may use to fulfil these obligations. See paragraph 4.1 for a description of the three types of DRSP: APAs, CTPs and ARMs. More information on their specific roles is set out in paragraphs 7.5 to 7.7.

7.5 APAs publish data about the quantity of financial instruments bought or sold, and the price at which they were exchanged. The publication of this information is part of the transparency regime under MiFID II and MiFIR intended to support the accurate formation of prices.

7.6 CTPs consolidates the trade information provided by APAs into a continuous electronic data stream to make it available to the public on a reasonable commercial basis.

7.7 ARMs transmit transaction reports on behalf of investment firms to national competent authorities (the FCA in the United Kingdom). Firms must submit these reports when they buy or sell financial instruments and the report covers matters such as the quantity of instruments bought or sold, their price, and the firm's client. Transaction reports are collected in order to prevent the manipulation of financial markets, and other forms of market abuse.

7.8 These Regulations implement the authorisation requirements and organisational requirements for DRSPs under Title V and provide the FCA with powers to supervise

and enforce that regime as required by Title VI of MiFID II, which deals with the enforcement and supervision of the Directive and MiFIR.

### ***Consolidation***

- 7.9 This instrument does not amend other legislation so the issue of consolidation does not arise.

## **8. Consultation outcome**

- 8.1 The Treasury ran a public consultation on the transposition of MiFID II which opened on 27 March 2015 and closed on 18 June 2015. The consultation focussed on the regime for firms from non-EU countries; DRSPs; position limits and reporting in commodity derivatives; the regime for unauthorised persons; the regulation of structured deposits; the ability of regulators to remove board members; OTFs; and binary options.
- 8.2 The Treasury received over 30 responses to the consultation document. It has examined and considered each carefully.
- 8.3 Respondents broadly or unanimously agreed with the Treasury's proposed approach.
- 8.4 Where there was confusion about definitions or rules, the Treasury, in liaison with the European Commission, has provided clarification.
- 8.5 Respondents did not wholly agree with the government's proposals to create criminal offences akin to section 89 and 90 (which relate to giving misleading statements or impressions) of the Financial Services Act 2012 specifically aimed at DRSPs. The Government has carefully considered whether it is proportionate to do so. On balance, the Government agrees with respondents that it would not be proportionate to create such offences.
- 8.6 A more detailed analysis of the consultation outcome and the Treasury's policy response to the opinions expressed can be found at:  
<https://www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii>

## **9. Guidance**

- 9.1 It is not considered necessary to issue specific guidance in connection with these Regulations.
- 9.2 The Treasury has had extensive informal engagement with industry representatives during the negotiation and implementation phases of MiFID II and MiFIR.

## **10. Impact**

- 10.1 This Impact Assessment states that the transposition of MiFID II and MiFIR will have an estimated annual net cost to business of £148.5 million. The Treasury do not believe that there will be any impact on charities or voluntary bodies stemming from this SI.
- 10.2 The Treasury do not believe that there will be any impact on the public sector stemming from this SI.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## **11. Regulating small business**

- 11.1 The Regulations apply to activities that are undertaken by small businesses to the extent that small-scale DRSPs operate. However, the Treasury expects the impact on small and micro-business to be relatively low, as set out in the impact assessment.

## **12. Monitoring & review**

- 12.1 The instrument contains a requirement for the Treasury to review the legislation, every five years, and set out the conclusions of each review in a published report. The first report, to be published in the five year period beginning from 3<sup>rd</sup> July 2017, will set out the objectives intended to be achieved by the regulatory provision.

## **13. Contact**

- 13.1 Mark Griffin at HM Treasury Telephone: 020 7270 6651 or email: [Mark.Griffin@hmtreasury.gsi.gov.uk](mailto:Mark.Griffin@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.