

EXPLANATORY MEMORANDUM TO
THE DATA REPORTING SERVICES REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 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 for financial services. Retained EU law will be repealed and replaced with rules set by the independent financial services regulators, operating within a framework set by government and Parliament.

2.2 This instrument replaces retained EU Law in relation to Data Reporting Services Providers (DRSPs) and establishes a new legislative framework for the regulation of DRSPs. DRSPs, a type of financial market infrastructure, are commercial entities that allow investment firms to fulfil their regulatory reporting obligations. They also ensure market data is accessible and supports effective price formation and best execution.

2.3 The exercise to replace retained EU law 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. The instrument also makes the necessary legislative changes to encourage the emergence of a consolidated tape in the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury, Bim Afolami has made the following statement regarding Human Rights:

“In my view the provisions of the Data Reporting Services Regulations are compatible with the Convention rights.”

6. Legislative Context

- 6.1 When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018. This is known as “retained EU law”. From 1st January 2024 this will become “assimilated law” as a result of the Retained EU Law (Revocation and Reform) Act 2023.
- 6.2 The retained EU law that concerns DRSPs, and is therefore being replaced by this instrument includes:
- The DRSRs 2017, which established the regime for regulating DRSPs
 - Paragraphs 17 and 34 to 39 of Annex 3 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR), which establishes FCA powers to make technical standards in relation to DRSRs that are replaced by the section 300H FSMA 2023 rule-making powers, and
 - Articles 84 to 89 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (MiFID Org Regulation), which establishes firm-facing obligations on DRSPs to be replaced by FCA rules.
- 6.3 FSMA 2023 contains a number of new legislative powers, which work together as a set of tools as the government repeals retained EU law to deliver a Smarter Regulatory Framework for financial services.
- 6.4 Section 1 FSMA 2023 repeals retained EU law relating to financial services, listed in Schedule 1 to that Act, subject to commencement by HM Treasury.
- 6.5 Section 4 of FSMA 2023 contains a power to restate retained EU law into domestic legislation as it had effect immediately before its repeal. Section 4 also permits the Treasury to modify the legislation that is being restated where it considers that to be necessary or desirable for or in connection with one or more of a specified set of purposes. These purposes include promoting effectiveness in the functioning of financial markets and facilitating the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term. This instrument uses the section 4 powers to restate parts of the DRSRs with appropriate modifications, which are aligned to those purposes.
- 6.6 Separately, Section 11 of FSMA 2023 inserts new section 300H into FSMA 2000 which establishes a general rule-making power for the FCA in relation to DRSPs. Going forward, it will be the responsibility of the FCA to make firm-facing rules in relation to DRSPs within the powers established by FSMA 2023.
- 6.7 The commencement of the repeal of relevant legislation will be dealt with in a separate commencement instrument to come into force concurrently with these regulations and FCA rules made under section 300H FSMA 2023, to ensure there is no overlap or gap in the regulation of DRSPs.

7. Policy background

What is being done and why?

- 7.1 This instrument forms part of HM Treasury’s programme to deliver the Smarter Regulatory Framework for financial services. It establishes a new legislative framework for the regulation of DRSPs allowing relevant retained EU law to be repealed through a separate commencement SI.

What did any law do before the changes to be made by this instrument?

- 7.2 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:
- (a) 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 informed investment decisions. They are required to publish this information as near to “real time” as possible. If a trade occurs on a trading venue, then the information is made public by the relevant trading venue. If a trade happens off-exchange (i.e., directly between two parties) in an instrument traded on a trading venue then an investment firm must make the details of the trade public through an APA.
 - (b) Approved Reporting Mechanisms (ARMs) report details about transactions to the FCA on behalf of investment firms, for market surveillance purposes. This information is not made public.
 - (c) 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 each financial instrument. This data can help market participants to make informed investment decisions. There are currently no CTPs in the UK.
- 7.3 Many of the rules that govern DRSPs are set out in the DRSRs, which transposed parts of MiFID II, an EU Directive, into UK law when the UK was part of the EU. The DRSRs 2017 included rules that apply directly to DRSPs themselves, including those relating to authorisation and operating requirements (for example, how DRSPs collect and disseminate data, and the need for effective governance procedures). The DRSRs also established the FCA’s supervision and enforcement powers in relation to DRSPs. As part of the onshoring process, the DRSRs were amended to address deficiencies arising as a result of the UK’s withdrawal from the EU and the end of the transition period.
- 7.4 Before FSMA 2023, the FCA did not have any rule-making powers over DRSPs, except for some limited powers in respect of technical standards, as well as limited powers of direction enabling them to establish the current authorisation process. These were not sufficient to replace the detailed provisions currently in retained EU law.
- 7.5 Some of the requirements applying to DRSPs are contained in MiFIR and the MiFID Org Regulation. The MiFID Org regulation contains several provisions which apply directly to DRSPs operating in the UK, including requirements relating to setting the price of market data.

- 7.6 As set out previously, currently, there is no consolidated tape provider in the UK. Whilst the MiFID II framework attempted to introduce a framework for a consolidated tape, a number of requirements, such as making data available after 15 minutes, made running a tape commercially unattractive. As such, a consolidated tape has failed to emerge.

What will it now do?

- 7.7 This instrument sets the perimeter of the DRSP regime – including the authorisation and supervisory regime – and the powers that the FCA have over DRSPs, including the ability to run a tender process to select one or multiple consolidated tape provider(s).
- 7.8 This instrument restates the existing supervisory and regulatory powers of the FCA over DRSPs. Under this instrument, DRSPs must have appropriate authorisation or verification and there continues to be a prohibition on providing data reporting services in the UK unless granted authorisation (or, in the case of existing authorised investment firms, credit institutions, and recognised investment exchanges, verification). It will remain an offence to breach this prohibition. Applications for authorisation or verification to provide data reporting services in the UK must be made to the FCA. The FCA will have the flexibility to stipulate what information must be included in applications for authorisation or verification. The FCA will also be required to maintain and continuously update an online register of all persons authorised or verified to provide a data reporting service in the UK.
- 7.9 This instrument also restates the FCA’s existing supervisory and regulatory powers and duties, including in relation to registration, investigation, and enforcement. The instrument also makes provision for an appeal process for firms subject to regulatory decisions made under these regulations.
- 7.10 Finally, this instrument introduces new provisions that facilitate the emergence of a consolidated tape. Most notably, it introduces a power for the FCA to run a tender process to select the UK’s consolidated tape provider(s) for a particular asset class. Any firm selected to run a consolidated tape by the FCA via a tender process must also be authorised or verified by the FCA to provide that service. This reflects the feedback received through the Wholesale Markets Review consultation, where market participants suggested that a tender process would make it easier for UK authorities to ensure that the correct governance arrangements are in place, help mitigate conflicts of interest, and ensure that the costs for firms connecting to a tape and accessing data from a tape remain low. It is the government’s view that such a process would therefore help promote competition at the tender point while ensuring the emergence of a UK consolidated tape.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it relates to HM Treasury’s programme to deliver a Smarter Regulatory Framework for the UK.

9. Consolidation

- 9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 The substantive policy change this instrument facilitates – namely, the framework for a UK consolidated tape – was consulted on through the Wholesale Markets Review (WMR).¹ The WMR was launched in 2021 and consulted industry on a number of specific changes to the UK’s equity, fixed income, derivatives and commodities regimes, as well as to rules on market data. All respondents to the WMR supported the government’s proposal to help facilitate the emergence of a consolidated tape. A very limited number of respondents suggested the tape should be publicly run, but the majority agreed that the private sector is best placed to run it.
- 10.2 A draft of this instrument was then published on 10 July 2023 and the government welcomed technical legal comments by 21 August 2023.
- 10.3 Responses to the draft instrument came from a small number of financial services industry bodies and law firms. Comments on the draft instrument were carefully considered by HM Treasury. Some were adopted within the instrument. Many of these aimed to clarify the legal drafting to meet the policy intent, for example, clarifying the grandfathering of existing authorisations and verifications from the DRSRs 2017.
- 10.4 Specific consultation of affected stakeholders was also carried out, such as the Bank of England and the Northern Ireland Office.

11. Guidance

- 11.1 HM Treasury does not propose to provide any guidance in relation to this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the impact of this SI is small (the cost to businesses is < £5m per year). A de minimis Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on legislation.gov.uk.

13. Regulating small business

- 13.1 The legislation applies to small businesses in theory, although currently no small businesses carry out the activities regulated in this instrument.
- 13.2 The instrument does not introduce new regulatory requirements for small businesses, but instead removes or reduces existing regulatory burdens.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to HM Treasury (Bim Afolami) has made the following statement:

¹ [Wholesale Markets Review](#)

- 14.2 “It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £10 million.”
- 14.3 The approach to monitoring this legislation is engagement with industry to ensure understanding and that nothing in this instrument has unintended consequences.

15. Contact

- 15.1 Lucy Danton at HM Treasury (email: DRSR@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Tom Duggan, Deputy Director for Securities and Markets at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Bim Afolami, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.