
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in part, Directive [2003/6/EC](#) of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation⁽¹⁾ (“the Market Abuse Directive”) and the following measures which were made under Article 17 of the Market Abuse Directive:

Commission Regulation [\(EC\) No 2273/2003](#) of 22 December 2003 implementing Directive [2003/6/EC](#) of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments⁽²⁾;

Commission Directive [2003/124/EC](#) of 22 December 2003 implementing Directive 2003/6 of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation⁽³⁾; and

Commission Directive [2004/72/EC](#) of 29 April 2004 implementing Directive 2003/6 of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions⁽⁴⁾.

Implementation of the Market Abuse Directive is also being effected by the Financial Services Authority (FSA) using its powers under the Financial Services and Markets Act 2000(c. 8) (“the Act”) and by the Investment Recommendation (Media) Regulations 2005 (S.I.2005/382), which give effect to Article 6.5 of the Market Abuse Directive and to Commission Directive [2003/125/EC](#) of 22 December 2003⁽⁵⁾ to the extent that these are not dealt with by FSA rules.

Regulations 3 and 8 amend existing references to behaviour which is in conformity with ‘price stabilising rules’ in the Act and in the Criminal Justice Act 1993 (c. 36) so that this extends to behaviour which is in conformity with the relevant provisions of Commission Regulation [\(EC\) No 2273/2003](#).

Regulations 6 and 7 make miscellaneous consequential amendments to the Act.

Regulation 9 revokes the Traded Securities (Disclosure) Regulations 1994 (S.I. [1994/188](#)) and regulation 11 repeals paragraph 5 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I. [2001/995](#)) as these provisions are superseded by the amendments made to Part 6 of the Act.

Regulation 10 amends the Prescribed Markets and Qualifying Investments Order (S.I. [2001/996](#)) so as extend the scope of markets to which certain provisions of Part 8 of the Act apply to include ‘regulated markets’ within the meaning in Article 1.13 of Council Directive [1993/22/EC](#) of 10 May 1993 in investment services in the securities field⁽⁶⁾, and amends the scope of the qualifying instruments covered by Part 8 to include all ‘financial instruments’ within the meaning in Article 1.3 of the Market Abuse Directive.

Regulation 4 and Schedule 1 amend Part 6 of the Act. Part 6 already enabled the FSA to make rules in relation to the continuing obligations of issuers whose securities are admitted to the official list.

(1) OJ No L96, 12.4.2003, p.16.

(2) OJ No L336, 23.12.2003, p.33.

(3) OJ No L339, 24.12.2003, p.30.

(4) OJ No L162, 30.4.2004, p.70.

(5) OJ No L339, 24.12.2003, p.73

(6) OJ No L141, 11.6.1993, p.27

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

Rules made under Part 6 (which are to be known as “Part 6 rules” in accordance with section 73A(1)) may now relate not only to securities admitted to the official list but to any financial instrument admitted to trading on a regulated market.

Paragraph 6 of Schedule 1 inserts sections 96A, 96B and 96C into Part 6 of the Act. Section 96A requires the FSA to ensure that certain inside information is disclosed and that lists of those with access to inside information are drawn up. It also requires the FSA to ensure that persons discharging managerial responsibilities within an issuer and persons connected to them disclose certain details of their transactions in shares of that issuer.

Section 96B defines “persons discharging managerial responsibilities” and “connected persons” for the purposes of Part 6 of the Act. Section 96C enables the FSA to suspend trading in a financial instrument in accordance with the disclosure rules in the same manner as it may already suspend trading in listed securities under section 78 of the Act.

Paragraphs 3, 4, 5, 7, 8, 9, 10 and 11 of Schedule 1 make miscellaneous consequential amendments to Part 6 of the Act.

Regulation 5 and Schedule 2 amend Part 8 of the Act. Paragraph 1 of Schedule 2 replaces the definition of market abuse in section 118 of the Act and makes a number of consequential amendments to bring it into line with the Market Abuse Directive. Section 118(4) and (8) retains the definitions of market abuse which are broader than those in Articles 1 to 5 of Directive [2003/6/EC](#) and already in section 118 of the Act. Section 118(9) provide that these provisions are due to cease on 30 June 2008; section 118A(6) does the same for the related provisions in section 118A.

Paragraph 1 of Schedule 2 also inserts sections 118B and 118C, which define who are “insiders” and what constitutes “inside information” for the purposes of Part 8 of the Act.

Section 119 of the Act requires the FSA to publish a code containing guidance on whether or not behaviour amounts to market abuse. Paragraph 2 of Schedule 2 amends section 119(2) so that the code may specify descriptions of behaviour that are or are not accepted market practices in relation to specified markets for the purposes of Part 8 of the Act. It also inserts section 119(2A) which provides that the FSA, in determining what are and what are not accepted market practices, must have regard to the procedures laid down in Articles 2 and 3 of Commission Directive [2004/72/EC](#).

Paragraph 3 of Schedule 2 inserts section 130A into Part 8 of the Act. Section 130A(1) and (2) effectively amends and replaces the existing section 118(3) and (4) of the Act; section 130A(3) effectively amends and replaces the definitions in the existing section 118(10) of the Act.

Paragraph 4 of Schedule 2 inserts section 131A into Part 8 of the Act. This provision gives effect to Article 11.3 of Commission Directive [2004/72/EC](#), which requires Member States to ensure that persons notifying competent authorities of cases of suspected market abuse are not liable for any breach of disclosure of information.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business may be obtained from the Capital Markets and Governance Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. A transposition note showing how the main provisions of this directive will be transposed into UK law is available from the same address. Both documents are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both of these documents have been placed in the libraries of both Houses of Parliament.