

EXPLANATORY MEMORANDUM TO
THE CREDIT RATING AGENCIES (AMENDMENT) REGULATIONS 2011
2011 No. 1435

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 Regulation (EU) No. 513/2011 of the European Parliament and of the Council of 11 May 2011 (“CRA2”) amends Regulation (EC) No. 1060/2009 of the Parliament and of the Council of 16 September 2009 (“CRA1”) for the purpose of transferring responsibility for regulating credit rating agencies from national authorities to a new European Union agency, the European Securities and Markets Agency (“ESMA”). These Regulations revoke provisions of domestic law that are inconsistent or are no longer required. They also make new provision in relation to ESMA’s information-gathering powers and the enforcement of sanctions and penalties.

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

3.1 None.

4. **Legislative Context**

4.1 These Regulations amend the Credit Rating Agency Regulations 2010, which provide for the implementation of CRA1 in the United Kingdom, to reflect the transfer of regulatory responsibility to ESMA. They require ESMA to obtain authorisation from the High Court (in Scotland, the Court of Session) before requesting records of telephone and data traffic under Article 23c(1)(e) of CRA1 or carrying out on-site inspections under Article 23d. They also implement Article 23d(7) by enabling ESMA to apply for a warrant if a person does not comply with an on-site inspection. The Regulations amend the European Communities (Enforcement of Community Judgments) Order 1972 to ensure that sanctions and periodic penalties imposed by ESMA under CRA1 can be enforced in the United Kingdom.

4.2 *Scrutiny Committee history:* Explanatory Memorandum 10827/10 and Addenda 1 and 2, concerning CRA2, were sent to both scrutiny committees on 17 June 2010. The Lords Select Committee on the European Union cleared the Memorandum from scrutiny on 3 November 2010 after further correspondence. The House of Commons European Scrutiny Committee cleared the Memorandum from scrutiny on 12 November 2010, also after further correspondence.

5. Territorial Extent and Application

5.1 These Regulations apply to all of 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. CRA1 introduced a harmonised approach to the regulation of credit rating activities in the European Union by establishing a registration system for credit rating agencies and requiring registered agencies to comply with various provisions relating to their processes and controls. CRA2 transfers regulatory responsibility for ensuring that credit rating agencies comply with these requirements to ESMA. National competent authorities such as the FSA will, however, continue to play a key role to play in the supervision of credit rating agencies and work collaboratively with ESMA. As already stated, both the House of Lords and the House of Commons cleared CRA2 in November 2010.

7.2. These Regulations make the necessary amendments to the Credit Rating Agencies Regulations 2010 to ensure CRA2 is properly implemented in the United Kingdom. They:

- revoke provisions of the Credit Rating Agencies Regulations 2010 which are inconsistent with CRA2 or are no longer required.
- enable ESMA to enforce in the United Kingdom any sanctions and periodic penalties it might impose under CRA2.
- require ESMA to obtain authorisation from the High Court before requesting records of telephone or data traffic, or carrying out an on-site inspection.

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

- *Consolidation*

7.3. The Commission has recently consulted on further legislative changes in relation to credit rating agencies, and consolidation will be considered as part of the United Kingdom's continuing work in this area.

8. Consultation outcome

8.1. CRA2 was published in the Official Journal on 31 May 2011. It came into force on 1 June 2011, with the transfer of regulatory responsibility taking

place on 1 July 2011. Notwithstanding this rapid timetable, the Treasury has conducted a short informal consultation with key stakeholders, including a roundtable meeting to discuss the proposed Regulations. Key stakeholders were broadly supportive of the changes, and we have taken account of their comments when finalising the Regulations.

9. Guidance

9.1 The Treasury does not propose to produce any guidance in relation to the Regulations. The FSA has the power under the Regulations to issue guidance in relation to its functions under CRA1.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 There will be no impact on small firms.

12. Monitoring & review

12.1 We expect CRA1 and CRA2 to be supplemented by further EU legislation in 2011. These Regulations will be reviewed to ensure that proper effect is given to any additional EU legislation.

13. Contact

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