

EXPLANATORY MEMORANDUM TO
THE REGULATED COVERED BONDS (AMENDMENT) REGULATIONS 2011

2011 No. 2859

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 Is to amend the Regulated Covered Bonds Regulations 2008 to improve the legislative regime for regulated covered bonds, which implements Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (“UCITS”) (the 2009 Directive).

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

3.1 None.

4. **Legislative Context**

4.1 The Regulated Covered Bond Regulations 2008 provide for the establishment of a UK covered bonds regime that is compliant with Article 52(4) of Council Directive 2009/65/EC of 13 July 2009 (previously Article 22(4) of Council Directive 85/611/EC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (“UCITS Directive”).

4.2 These Regulations amend the Regulated Covered Bond Regulations to improve the protection given to bondholders under the UK covered bond regime. Provision is made for issuers to designate a regulated covered bond as being supported by a single class of assets and liquid assets; and additional obligations are imposed on the issuer, for example to meet a fixed level of overcollateralization, and to appoint an “asset pool monitor”.

5. **Territorial Extent and Application**

5.1 This instrument applies to the United Kingdom.

6. **European Convention on Human Rights**

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

7.1 The first UK covered bonds were issued in 2003, without the benefit of dedicated legislation. To support the development of the UK covered bond market, a legislative framework for UK covered bonds was introduced in 2008 – the Regulated Covered Bonds Regulations 2008.

7.2 In April 2011, the Government and the FSA published a Review of the UK's regulatory framework for covered bonds. The review consulted on a set of proposals to raise transparency in the UK regulated covered bond market and make the UK regime more readily comparable with European peers.

7.3 In light of this review, these regulations will:

- Give issuers of covered bonds the option (but not the obligation) to declare that their bonds are backed by only a single type of asset.
- Exclude securitisations as eligible assets for covered bonds.
- Set a minimum level of credit protection for investors in covered bonds.
- Create a formal requirement for UK covered bond programmes to appoint an asset pool monitor.
- Clarify the FSA's powers to require issuers to publish information for investors.

7.4 There are no viable alternatives to regulation, since European law and investors favour regulated covered bonds. These proposals will improve existing regulation to make sure it meets its policy objectives.

- **Consolidation**

7.5 The Treasury does not have plans to consolidate the Regulated Covered Bonds Regulations 2008 at this time. Commercial publishers produce consolidated versions of the Act, and of secondary legislation made under it, both in electronic and hard copy versions.

8. Consultation outcome

8.1 The Government and FSA consulted for 12 weeks in April 2011 on the review of the UK's regulatory framework for covered bonds. The consultation received 16 formal written responses, from both issuers and investors in regulated covered bonds and from a number of other organisations with an interest in the UK covered bond market. The Treasury and the FSA also received informal responses from a number of other firms.

8.2 The majority of respondents agreed with the proposals, which were developed through discussions with industry, and saw them as making UK covered bonds more attractive by bringing them closer into line with European competitors.

9. Guidance

9.1 The Financial Services Authority will be publishing guidance for issuers and investors.

10. Impact

10.1 The impact on business, charities or voluntary bodies is a saving of £25.6 million per annum.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The Treasury is required to review the operation and effect of the Regulations within five years from the date on which they come into force, and publish a report.

13. Contact

Ed Lidington at HM Treasury Tel: 020 7270 5266 or email: coveredbondreview@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.