

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (QUALIFYING EU
PROVISIONS) (NO. 2) ORDER 2013**

2013 No. 3116

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument will give the financial services regulators the power to supervise and enforce the provisions of the Regulation (EU) No. 575/2013 of the European Parliament and of the Council (OJ no L176, 27 June 2013, p1¹) on prudential requirements for credit institutions and investment firms (the “capital requirements regulation”) in the United Kingdom. It also contains four provisions of the Regulation 1060/2009/EC of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (“CRA Regulation”). This is being achieved by specifying the CRR as a ‘qualifying EU provision’ for the purposes of the Financial Services and Markets Act 2000 (“FSMA”). Specifically, this will allow the Prudential Regulation Authority (“PRA”) and Financial Conduct Authority (“FCA”) to exercise their supervisory powers under FSMA in relation to their functions as competent authorities under the EU legislation.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 On 26 June 2013, the European Parliament and Council adopted a package of legislation known as “CRD4” which provides the framework for the authorisation and prudential supervision of banks in the EU. The CRD4 package comprises the capital requirements directive and the capital requirements regulation. The directive must be transposed into UK law by 31 December 2013 and must be applied from 1 January 2014. The regulation applies (with some exceptions) from 1 January 2014.
 - 4.2 The CRD4 package is being transposed into UK law by means of:
 - these Regulations;

¹ For corrigenda to both the Regulation and the Directive, see OJ no L208, 2 August 2013, p68 and p73, and for additional corrigenda to the Regulation see OJ no L321, 30 November 2013, p6..

- the Capital Requirements Regulations 2013;
- Regulations which transpose Article 89 (country-by-country reporting) of the capital requirements directive; and
- rules made by the PRA and FCA.

4.3 Although the capital requirements regulation and the relevant Commission's implementing regulations will be directly applicable, national law will need to make provisions conferring appropriate supervisory and enforcement powers on the PRA and FCA. This will be achieved by designating these regulations as qualifying EU provisions for the purposes of FSMA. Broadly speaking, the effect of this is that functions conferred on the PRA and FCA by the EU provisions are treated as if they are conferred on the PRA and FCA by FSMA.

4.4 The FCA remains responsible for requirements imposed by the CRA Regulation on users of credit rating agencies. Designating the CRA Regulation as a qualifying EU provision for the purposes of various provisions of FSMA allows the FCA to exercise its supervisory and enforcement powers under FSMA for the purposes of its responsibilities under the CRA Regulation.

4.5 The CRD4 package was submitted for scrutiny to the UK parliament on 12th October 2011. It was cleared by the House of Commons European Scrutiny Committee on the 14th March 2012 and House of Lords European Scrutiny Committee on the 14th June 2012.

4.6 The package must be implemented by EU Member States by the transposition deadline of the 1st January 2014.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

- 7.1 The CRD4 package is the EU's main response to the risk management and regulatory issues raised by the financial crisis. The package responds to the latest global standards on bank capital known as Basel III, and also introduces measures to enhance corporate governance and, in some areas improve the consistency of prudential standards across the EU through the creation of a Single Rule Book.
- 7.2 The Financial Services Act 2012 (the "2012 Act") provides for the reform of financial regulation in the UK. In the place of the Financial Services Authority (FSA), it establishes a new system of financial services regulators comprising:
 - An expert macro-prudential authority, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks in the financial sector;
 - A focused micro-prudential regulator, the PRA, to regulate firms that manage complex risks on their balance sheets - specifically, all deposit takers, insurers and some large investment firms; and
 - A focused conduct of business regulator, the FCA, to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.
- 7.3 This Order specifies directly applicable EU law for various purposes under FSMA to allow the two new regulators (the PRA and FCA) to investigate and bring enforcement action for the breach of designating provisions of EU law.
- 7.4 Therefore, this instrument will enable the regulators to implement the rules set out in the CRD4 package as part of the regulatory practices they follow in their everyday operations. The rules this instrument will enable the regulators to implement are set out in the other instruments being laid before Parliament alongside this, entitled 'The Capital Requirements Regulations (2013)' and 'The Capital Requirements Regulations (Country-by-Country Reporting) (2013)' and those the PRA and FCA are issuing.
- 7.5 The provisions of CRD4 that directly impact on business are being transposed into UK law by the PRA and FCA.

- ***Consolidation***

7.6 These Regulations do not amend existing enactments, so consolidation is not merited.

8. Consultation outcome

8.1 HM Treasury has consulted the PRA and FCA in the preparation of this instrument. Due to the minor and technical nature of the instrument, and in line with common practice for secondary legislation that makes minor, technical and transitional provisions, there has been no formal public consultation.

9. Guidance

9.1 None.

10. Impact

10.1 The instrument, in itself, does not impose any additional regulatory burdens on business, charities or voluntary bodies. The impact of the overall change to the regulatory system on business, charities or voluntary bodies, in so far as they are regulated financial services firms, is set out in the overarching impact assessment for the 2012 Act.

10.2 The impact on the public sector is set out in the overarching impact assessment for the 2012 Act.

10.3 The overarching Impact Assessment that covers the changes to the regulatory system provided for by the 2012 Act is available on the Treasury website as Annex H to the following publication:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191571/condoc_fin_regulation_draft_secondary_leg.pdf

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring & review

12.1 HM Treasury will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

13.1 William Lacey at Her Majesty's Treasury Tel: 020 7270 4637 or email: William.Lacey@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.