

EXPLANATORY MEMORANDUM TO
THE FINANCIAL MARKETS AND INSOLVENCY (SETTLEMENT
FINALITY) (AMENDMENT) REGULATIONS 2015

2015 No. 347

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 These Regulations implement Article 70 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (CSDs) (“the CSD Regulation”) (OJ No L 257, 28.8.2014, p1). Article 70 amends Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (“the SFD”) to require notice of designation of SFD systems to be given to the European Securities and Markets Authority (“ESMA”) rather than to the Commission. The Regulations make a corresponding change in UK legislation by amending the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

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

3.1 None.

4. Legislative Context

4.1 These Regulations are made in order to transpose an amendment to the SFD as required by the CSD Regulation. Under Article 70(2) of the CSD Regulation, EU Member States must adopt and publish and communicate to the Commission the measures transposing the requirement referred to in paragraph 2.1 by 18 March 2015.

4.2 The CSD Regulation creates a common authorisation, supervision and regulatory framework for CSDs at European level. The CSD Regulation aims to harmonise the timing and conduct of securities settlement in Europe and the rules governing CSDs which operate the infrastructures enabling settlement.

4.3 The CSD Regulation was submitted for scrutiny to the UK Parliament on 23 March 2012. It was cleared by the House of Commons Scrutiny Committee on 16 October 2013 and the House of Lords European Scrutiny Committee on 26 June 2012.

5. Territorial extent and application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 CSDs are systemically important financial market infrastructures that support the issuance, safekeeping and settlement of securities. The CSD Regulation provides a harmonised regulatory and prudential regime for CSDs, harmonises and increases the robustness and resilience of securities settlement arrangements and creates a single market for CSD services.

7.2 The CSD Regulation also amends the notification requirements when the national competent authority designates a payment system or security settlement system under the SFD. Notification must be to ESMA rather than to the European Commission. Under Article 70 of CSD Regulation, this amendment to the SFD must be transposed and notified by 18 March 2015. These Regulations ensure the UK is compliant.

7.3 HM Treasury does not intend at this time to consolidate the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, to which these Regulations only make a very minor amendment.

8. Consultation outcome

8.1 The Government has not consulted on the Regulations. The Government has already consulted widely with Euroclear UK & Ireland, trading venues, CCPs, market participants, registrars, issuers, and shareholders and their trade associations as the CSD Regulation was developed.

9. Guidance

9.1 The Treasury is not intending to issue any guidance in connection with these Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. The Regulations only require the national competent authorities - the Financial Conduct Authority ("FCA") and the Bank of England – to notify ESMA of designation of payments systems, or security settlement systems.

10.2 The impact on the public sector is limited to the FCA and the Bank of England, who will have to now notify ESMA instead of the European Commission of any relevant designations.

10.3 An Impact Assessment has not been prepared as there are no costs on business associated with this instrument.

11. Regulating small business

11.1 The Regulations will have no impact on the regulation of small businesses.

12. Monitoring & review

12.1 Under Article 75 of the CSD Regulation the European Commission is required to review and prepare a general report on the CSD Regulation and submit that report together with any appropriate proposals to the European Parliament and Council by 18 September 2019.

13. Contact

13.1 Charlie Bannister at the HM Treasury Tel: 020 7270 1480 or email charlie.bannister@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.