

EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONSEQUENTIAL AMENDMENTS OF REFERENCES TO RULES AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. 854

1. Introduction

1.1 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 The primary purpose of this instrument is to make consequential changes as a result of the Financial Services Act 2021 ('the FS Act').

2.2 These consequential changes are made as a result of the transfer of certain prudential requirements set out in UK legislation to the Prudential Regulation Authority ('the PRA'), in order to implement remaining aspects of the Third Basel Accord ('the Basel 3 Standards').

2.3 Consequential changes are also made as a result of the Financial Conduct Authority's ('the FCA's') introduction of the Investment Firms Prudential Regime ("IFPR"), a bespoke prudential regime for investment firms that do not pose a systemic risk to the financial system (otherwise known as non-systemic investment firms).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The UK, as a member of the G20, is committed to the implementation of the international Basel standards on banking, including the standards referred to as Basel 3, which were updated after the global financial crisis of 2007 to 2008.

6.2 The FS Act enables the implementation of the remaining Basel 3 standards by giving powers to HM Treasury to revoke provisions of the Capital Requirements Regulation (CRR). Following repeal, the PRA can write rules on the subject areas which have been transferred to their responsibility ("CRR Rules").

6.3 When making CRR rules, the PRA is subject to an accountability framework – set out

in sections 144C to 144E (contained in Part 9D) of the Financial Services and Markets Act 2000 (“FSMA”)¹ – which seeks to ensure the PRA has regard to a number of relevant policy areas when making these rules.

- 6.4 The FS Act also introduced a bespoke prudential regime for non-systemic investment firms – the IFPR – by placing an obligation on, and providing powers for, the FCA in sections 143C to 143E of FSMA to introduce prudential rules for investment firms (‘Part 9C rules’).
- 6.5 When making Part 9C rules, the FCA is subject to an accountability framework – set out in sections 143G to 143I of FSMA² – similar to that for the PRA’s CRR rules.
- 6.6 This instrument is part of a package of instruments which supports the introduction of the IFPR and Basel implementation. This instrument and those which preceded it, give effect to sections 1 to 5 of, and Schedules 1 to 4 to, the FS Act.
- 6.7 This instrument was preceded by:
 - The Financial Services and Markets Act 2000 (Prudential Regulation of FCA Investment Firms) (Definitions for the purposes of Part 9C) Regulations 2021 which set certain definitions for the purpose of Part 9C.
 - The Capital Requirements Regulation (Amendment) Regulations 2021 (2021 No. 1078) which revoked certain pieces of legislation.
 - The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (2021 No. 1376) which primarily focused on consequential changes following the revocations.
 - The Financial Services and Markets Act 2000 (Consequential Amendments of References to Rules) Regulations 2021 (2021 No. 1388) which made minor consequential changes.
 - The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 will make further minor, consequential changes and has been laid before Parliament.

7. Policy background

What is being done and why?

Basel implementation

- 7.1 In response to the financial crisis, the Basel Committee on Banking Supervision (BCBS) agreed the Basel 3 standards. The UK played an active role in negotiating and agreeing these standards and has always been committed to their implementation.
- 7.2 These standards sought to strengthen the existing prudential framework, notably by improving the quality and quantity of financial resources banks are required to maintain and expanding requirements to ensure a wider set of risks that banks are exposed to are covered.
- 7.3 Prior to the end of implementation period completion day, the UK had implemented the majority of the earlier Basel standards through EU law.
- 7.4 The UK has now implemented the remaining Basel 3 standards through rules made by

¹ As inserted by Schedule 2 to the FS Act.

² As inserted by Schedule 2 to the FS Act.

the PRA. This includes some of those standards contained in the EU's 2nd Capital Requirements Regulation (CRR2).³

The Investment Firms Prudential Regime

- 7.5 Prior to 1 January 2022, many investment firms were subject to the CRR framework for credit institutions, while others were exempt from the CRR and related requirements.
- 7.6 Investment firms differ from credit institutions (banks and building societies) in that they do not accept deposits or typically grant traditional loans; instead, investment firms provide investment services and perform investment activities. This means that, whilst there is some overlap, the risks posed and faced by investment firms, and the impact of those risks, are different from those of credit institutions.
- 7.7 As such, the CRR framework in its previous form did not appropriately cater for the differences between credit institutions and investment firms and was disproportionate, burdensome, and inappropriate to the risks these firms faced.
- 7.8 To seek to address these issues, the FCA has created a tailored regime specifically for non-systemic investment firms (the IFPR), to fulfil its duty introduced in the FS Act. PRA-designated investment firms (systemic investment firms) will continue to remain subject to the CRR framework.
- 7.9 The firm-facing IFPR rules are contained in the FCA handbook.⁴

Basel 3 and IFPR consequential amendments

- 7.10 As a result of IFPR introduction and Basel implementation, this instrument updates references and terms in the Financial Conglomerate and Other Financial Groups Regulations 2004 ("the FICOD Regulations"). The FICOD Regulations implemented the EU Financial Conglomerates Directive ('EU FICOD') which set out a prudential regime for financial conglomerates, or large financial groups that operate in the insurance sector and/or in the banking and investment services sector.
- 7.11 This instrument amends the FICOD Regulations in the following ways:
- Amending the definition of "financial conglomerate" so that, instead of referring to EU FICOD, it refers to the FCA Handbook.
 - Amending the definition of "financial sector" to refer to the PRA Rulebook and updated definitions in the UK CRR.
 - Updating cross-references to the FCA Handbook and PRA Rulebook, following the implementation of the IFPR and changes to the PRA Rulebook to implement the international Basel standards.
- 7.12 This instrument also makes amendments to Commission Delegated Regulation (EU) 2015/35⁵ ("Solvency II") to update references in that piece of legislation to rules made

³ Regulation 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation(EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

⁴ The IFPR rules are contained in the legal instruments FCA 2021/38, FCA 2021/39, FCA 2021/49, FCA 2021/50 and FCA 2021/51. See also the FCA's IFPR website for IFPR discussion paper, consultations and policy statements.

⁵ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC

by the PRA and the FCA. This is to ensure that the references capture the changes that have been made to the rulebook and handbook, respectively, as a result of the IFPR and the transfer of CRR rules to the PRA.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not related to EU withdrawal or the future relationship.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 HM Treasury ran a public consultation on the implementation of certain aspects of Basel 3 and the IFPR which closed on in January 2021. This included reference to using powers in the FS Act (including to make consequential amendments) that are being used to make provisions in this instrument. A more detailed analysis of the consultation outcome and the Treasury's policy response to the opinions expressed has been published.⁶

10.2 This SI has not been consulted on because the amendments in it are consequential and do not contain substantive policy.

11. Guidance

11.1 HM Treasury does not propose to issue guidance on the content of these Regulations.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 The impact of the measures in this instrument are already accounted for in the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (2021 No. 1376) de minimis assessment.⁷

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the amendments made here are consequential on PRA and FCA rules and the FS Act 2021, which have already considered the impact on small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the

of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.

⁶ See 'Implementation of the Investment Firms Prudential Regime and Basel 3 standards: Consultation response' [here](#).

⁷ See the de minimis impact assessment [here](#).

requirements of the Small Business, Enterprise and Employment Act 2015 the Economics Secretary to the Treasury (Richard Fuller MP) has made the following statement:

“It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £5 million and the number of small businesses in scope is very low.”

15. Contact

- 15.1 Basia Armstrong at HM Treasury, Basia.Armstrong@HMTreasury.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Fayyaz Muneer, Deputy Director for Green and Prudential, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury (Richard Fuller MP) can confirm that this Explanatory Memorandum meets the required standard.