EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2023 (PANEL REMUNERATION AND REPORTS) REGULATIONS 2023

2023 No. 1273

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument ensures that the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), and the Payment Systems Regulator (PSR) can remunerate members of certain statutory panels for their work on the panel. This is to ensure that the regulators can secure appropriate representation from a range of interests, expertise, and practitioners.

2.2 It also requires the FCA Cost Benefit Analysis Panel, the PRA Cost Benefit Analysis Panel, and the FCA Consumer Panel to produce and publish annual reports on their work. HM Treasury will be required to lay these reports before Parliament.

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 (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.2 The application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

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 Financial Services and Markets Act 2000 (FSMA 2000) requires the FCA and the PRA to establish and maintain a number of statutory panels. See sections 1N to 1QA, 2M, 2MA, 138IA and 138JA of that Act. Similarly, the Financial Services (Banking Reform) Act 2013 (FSBRA) requires the PSR to establish and maintain statutory panels. See section 103(3) of that Act. These statutory panels are part of the requirement for the regulators to make and maintain effect arrangements for consulting stakeholders (see sections 1M and 2L of FSMA 2000 and section 103(1) of FSBRA).

6.2 Section 46 of the Financial Services and Markets Act 2023 (FSMA 2023) inserts sections 1MA and 2LA into FSMA 2000. These new sections disqualify a person from being appointed by the FCA or the PRA to one of the statutory panels where that person receive remuneration from any of the FCA, the PRA, the PSR, the Bank of England or HM Treasury. Section 46 of FSMA 2023 also insert inserts subsections (5A) to (5C) into section 103 of FSBRA. Subsection (5A) of FSMA 2023 contains the same provisions about disqualification of a person from being appointed to a statutory panel established by the PSR.

6.3 Under sections 1MA(2), 2LA(2) of FSMA 2000 and section 103(5B) of FSBRA HM Treasury may make regulations to provide for the disqualification not to apply to a person appointed to a specified statutory panel. This instrument provides for the disqualification not to apply in relation to the following statutory panels:

- The FCA Smaller Business Practitioner Panel (section 1O of FSMA 2000); the Consumer Panel (section 1Q of FSMA 2000) and the FCA Cost Benefit Analysis Panel (section 138IA of FSMA 2000);
- The PRA Cost Benefit Analysis Panel (section 138JA of FSMA 2000);
- A panel established by the PSR under section 103(3) of FSBRA. The PSR has established the Payment System Regulator Panel under this section.

6.4 Under section 47 of FSMA 2023 HM Treasury can require the regulators' statutory panels to produce annual reports on their work and provide these reports to HM Treasury. HM Treasury is required to lay copies of these reports in Parliament, and the relevant panel is required to publish each report in such a manner as it thinks fit.

6.5 This Instrument requires the FCA Consumer Panel, the FCA Cost Benefit Analysis Panel, and the PRA Cost Benefit Analysis Panel to produce annual reports and provide them to HM Treasury.

7. Policy background

7.1 FSMA 2000 and FSBRA require the regulators to establish and maintain statutory panels as part of their general duty to make and maintain effective arrangements for consulting practitioners and consumers. The regulators have regular meetings and discussions with these panels, in which most major policy and regulatory proposals are presented for comment at an early stage. The panels voluntarily publish annual reports on their work and their views on the regulators' work.

7.2 FSMA 2023 repeals retained EU law (REUL) relating to financial services. REUL will generally be replaced with rules set by the financial services regulators, operating within a framework set by government and Parliament.

7.3 With the regulators taking on increased rule-making responsibility, the government considers it important that this is balanced with clear accountability, transparent oversight, and appropriate democratic input, including input from stakeholders during the policy development process.

7.4 FSMA 2023 therefore introduced measures to strengthen transparency around the regulators' engagement with panels and their appointments to the panels. This includes a general prohibition on panel remuneration (in the form of a disqualification from a person being appointed to panel if they received remuneration from the regulators, the Bank of England, or HM Treasury) and HM Treasury's power to require annual reports to be produced and provided to HM Treasury.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 FSMA 2023 made amendments to FSMA 2000 to further ensure the panels' independence from the regulators, by disqualifying persons who received remuneration from the regulators from being appointed to the panels.

7.6 These provisions are not yet in force (apart from the power to make exemption regulations). HM Treasury intends to bring these provisions into force shortly on the same day as this instrument. The disqualification will not be applied to panel appointments made before the prohibitions on remuneration are brought into force. This will ensure that the operations of those panels where members are currently paid, and where the government has accepted the case that they should continue to be paid, are not disrupted.

Why is it being changed?

7.7 The regulators currently remunerate members of certain statutory panels to ensure that those members can afford the opportunity cost of taking time from their regular work to sit on the panel. This instrument will allow this practice to continue, where the government considers that is appropriate in order to ensure that the panels have appropriate representation from a range of interests, expertise, and practitioners. This will ensure that the regulators can continue to benefit from expert, independent input in carrying out their functions.

7.8 The requirement on the FCA Consumer Panel and the new Cost Benefit Analysis Panels to produce annual reports, and the requirement for these reports to be laid before Parliament by HM Treasury will ensure that Parliament has access to these reports when carrying out its scrutiny of the work of the financial services regulators.

What will it now do?

7.9 The effect of this instrument will be to allow the regulators to remunerate members of the specified statutory panels for their work on that panel. The only remuneration a regulator will be able to provide to persons sitting on one of its panels is for their work on that panel. This instrument will enable the FCA to remunerate members of the Smaller Business Practitioner Panel, the Consumer Panel and certain members of the FCA Cost Benefit Analysis Panel, and the PRA to remunerate certain members of the PRA Cost Benefit Analysis Panel for their work on that panel.

7.10 In addition, it will allow the PSR to appoint persons who are paid for their work on a panel of the FCA or the PRA or who are remunerated by, but not employees of, those regulators to the PSR Panel. This is to ensure that the PSR can continue to recruit members effectively. Potential members may otherwise choose to decline appointment to the PSR panel, given the smaller size and narrower remit of the PSR, compared to the FCA and PRA.

7.11 The FCA Consumer Panel, the FCA Cost Benefit Analysis Panel and the PRA Cost Benefit Analysis Panel will be required to produce annual reports, publish them, and provide them to HM Treasury. HM Treasury will then be required to lay copies of the reports before Parliament. This will improve scrutiny of the regulators by providing a further independent opinion on their work for Parliament to draw on.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend any other instrument and so there is no plan to consolidate the legislation.

10. Consultation outcome

10.1 There has been no consultation because the measure disqualifying remunerated persons was introduced and debated during the passage of FSMA 2023.

11. Guidance

11.1 HM Treasury does not propose to provide any guidance in relation to this instrument.

12. Impact

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

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

12.3 A full Impact Assessment has not been prepared for this instrument. The instrument does not directly affect businesses. The cost will be for the regulators in remunerating panel members, and is expected to be minimal. In particular, any increase in costs compared to the status quo will be minimal as many of these panel members are already remunerated. The main cost increase would be from remunerating members of the Cost Benefit Analysis (CBA) panels, which are new.

12.4 Illustratively, the total expenditure on fees and expenses for the Consumer Panel was between £143,000 and £300,000 in the three years up to 2021/22. The Panel's annual report does not contain a breakdown of how much of this was fees and how much expenses.[1]

12.5 To cover their costs, the regulators each impose a levy on regulated financial services firms. The increase in costs for the regulators from remuneration of panel members would not necessarily require a corresponding increase in the levy, and the regulators are required by FSMA 2000 to produce a Cost Benefit Analysis and consult publicly when they propose to alter the levy.

12.6 Benefits are likely to accrue in the long-term for business and consumers. The panels will be able to better represent relevant stakeholders, and so lead to higher-quality early comment on policy. The availability of annual reports to Parliament will help Parliament in its scrutiny of the regulators' actions. However, this impact cannot be quantified at this stage.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

[1] *Annual Report 2021/22*, Financial Services Consumer Panel, 2022

14. Monitoring and review

14.1 The regulators are required to report annually on their recruitment to statutory panels: see paragraph 11(1)(ic) of Schedule 1ZA, and paragraph 19(1)(bb) of Schedule 1ZB, to FSMA 2000 and paragraph 7(2)(bb) of Schedule 4 to FSBRA.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Economic Secretary to HM Treasury (Bim Afolami) has made the following statement:

14.3 It is not proportionate to include a review clause in this instrument because the instrument does not directly affect businesses, as set out in section 12 of this document.

15. Contact

15.1 Will Mikola at HM Treasury Telephone: 0786 606 0097 or email: will.mikola@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Catherine McCloskey, Deputy Director for Financial Services Strategy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 Bim Afolami, Economic Secretary to HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.