EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2023 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2023

2023 No. 1410

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 makes consequential amendments arising out of provision in, or made under, the Financial Services and Markets Act 2023 (FSMA 2023).

2.2 FSMA 2023 repeals retained EU law relating to financial services. Retained EU law will be repealed and replaced with rules set by the financial services regulators, operating within a framework set by government and Parliament. This instrument makes consequential amendments resulting from some of those repeals.

2.3 This instrument also makes other miscellaneous consequential amendments arising out of provision in, or made under, FSMA 2023.

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 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 territorial 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 The Economic Secretary to the Treasury (Andrew Griffith) has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018. This is known as "retained EU law" and will be known, after the end of 2023, as "assimilated law" as a result of section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

6.2 Section 1 FSMA 2023 repeals retained EU law relating to financial services, covered by Schedule 1 to that Act, subject to commencement by HM Treasury. The Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023 commenced the first set of repeals, covering nearly 100 pieces of retained EU law in financial services.

6.3 Consequential amendments are needed to other pieces of financial services legislation and, in one case, to other legislation to ensure that they reflect, or are consistent with, certain of those revocations and repeals which take effect on 1 January 2024.

6.4 Section 2 FSMA 2023 introduces amendments, set out in Schedule 2 to FSMA 2023, to certain pieces of retained EU law that will apply during the transitional period before they are revoked by section 1. This instrument makes consequential amendments to reflect one of those Schedule 2 amendments.

6.5 Section 3 FSMA 2023 provides a power for HM Treasury to make further amendments by regulations to the retained EU law that will be revoked by section 1. In exercise of that section 3 power, HM Treasury made the Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 ("the 2023 Regulations") in July 2023. The 2023 Regulations amend pieces of retained EU law relating to payments, including the Payment Card Interchange Fee Regulations 2015 ("the PCIFR 2015"); this instrument makes consequential amendments arising out of amendments made by the 2023 Regulations and applies section 98 and section 101 of the Financial Services (Banking Reform) Act 2013 ("FSBRA") to the Payment Systems Regulator's (PSR's) new direction-making power in regulation 4A of the Payment Card Interchange Fee Regulations 2015 (as amended by the 2023 Regulations).

6.6 In addition, this instrument amends section 50(12) of FSMA 2023 in consequence of section 21(4)(b) of FSMA 2023, to ensure that when paragraph 33(a) of Schedule 17A to FSMA 2000 is amended by section 50, it will provide that the required content of the Bank of England's annual report on its regulation of financial market infrastructure is consistent with its regulatory obligations.

7. Policy background

What is being done and why?

7.1 This instrument forms part of HM Treasury's programme to deliver the Smarter Regulatory Framework for financial services. FSMA 2023 repeals retained EU law in financial services. Retained EU law will be repealed and replaced with rules set by the UK's independent and expert regulators, operating within a framework set by government and Parliament. This instrument makes consequential amendments to reflect those revocations, repeals and amendments of retained EU law.

7.2 In advance of those repeals coming into force, FSMA 2023 makes direct amendments to certain pieces of retained EU law, in order to realise the benefits of reform sooner. That includes the amendment of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("MiFIR") to remove the volume cap mechanism that applies to the trading of equity instruments.

7.3 FSMA 2023 also empowers HM Treasury to make further amendments to retained EU law relating to financial services before its revocation comes into force. In the case of the 2023 Regulations, HM Treasury exercised those powers to amend the Electronic

Money Regulations 2011 and the Payment Services Regulations 2017 to ensure that the FCA has sufficient rulemaking powers in relation to retained EU payments law that falls under its responsibility. The 2023 Regulations also amended the PCIFR 2015 and the Payment Services Regulations 2017, to ensure that the Payment Systems Regulator has sufficient powers of direction in relation to its retained EU payments law that falls under its responsibility.

7.4 This instrument applies section 98 and section 101 of FSBRA to the PSR's new direction-making power in regulation 4A of the PCIFR 2015 in consequence of the insertion of that new power into the PCIFR 2015 by the 2023 Regulations. Section 98 (among other things) requires the PSR, the Bank of England, the FCA and the PRA to coordinate the exercise of their relevant functions with a view to ensuring that each regulator consults the other regulators where it proposes to exercise a relevant function in a way that may materially adversely affect the advancement by other regulators of their objectives. Those objectives now include ensuring compliance with the PCIFR 2015 through directions issued by the PSR under regulation 4A. Section 101 gives the FCA the power to require the PSR to refrain from exercising its powers in Part 5 of FSBRA, and now also in regulation 4A of the PCIFR 2015, where certain conditions are met.

7.5 The instrument also amends section 50(12) of FSMA 2023 in order to ensure that the Bank of England does not, as part of its annual report, need to demonstrate how it has complied with a regulatory requirement that only applies to the PRA. This updates a cross-reference that was inadvertently missed when s.21(4) was inserted into FSMA 2023 as a late-stage Bill amendment.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

8.2 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it related to the modification of retained EU law under HM Treasury's programme to build a smarter regulatory framework for the UK.

9. Consolidation

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

10. Consultation outcome

10.1 HM Treasury has not carried out a consultation, as the changes are consequential amendments to legislation to ensure relevant legislation reflects, or is consistent with, provision made in or under 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 An Impact Assessment has not been prepared for this instrument because the instrument does not directly affect businesses. This instrument makes consequential amendments arising out of provision in, or made under, FSMA 2023.

13. Regulating small business

13.1 The amendments made by this instrument are not expected to have an impact on small businesses, and therefore no action is needed to mitigate the impact on them.

14. Monitoring & review

14.1 We do not plan to do any other monitoring and review because there is no impact on business.

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 (Andrew Griffith) has made the following statement:

"It is not proportionate to include a review clause in this instrument because the SI does not impact on business."

15. Contact

15.1 Matt Molloy at HM Treasury: Matt.Molloy@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 Andrew Griffith, Economic Secretary to the Treasury at HM Treasury can confirm that this Explanatory Memorandum meets the required standard