
DRAFT STATUTORY INSTRUMENTS

2023 No.

FINANCIAL SERVICES AND MARKETS

The Data Reporting Services Regulations 2023

Made - - - - ***

Coming into force - - ***

The Treasury makes the following Regulations in exercise of the powers conferred by sections [3], 4, 84(1), 85(2) and [87(5)] of the Financial Services and Markets Act 2023(a).

[Recite consultation under section 3(6) if section 3 is engaged].

A draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament in accordance with section [85(3)] of that Act.

PART 1

Introductory Provisions

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Data Reporting Services Regulations 2023.
- (2) These Regulations come into force on ***.
- (3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“APA” means a person authorised under regulation 9 to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 or 21 of the markets in financial instruments regulation;

“ARM” means a person authorised under regulation 9 to provide the service of reporting details of transactions to the FCA on behalf of investment firms;

“authorised person” has the meaning given in section 31(2) of FSMA 2000;

“credit institution” has the meaning given in Article 2.1.19 of the markets in financial instruments regulation;

“CTP” means a person authorised under regulation 9 to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of the markets in financial instruments regulation from regulated markets, multilateral trading facilities, organised trading facilities and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“CTP service” means a service of a description of the service provided by a CTP;

“data reporting service” means—

- (a) the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of the markets in financial instruments regulation,
- (b) the service of reporting details of transactions to the FCA on behalf of investment firms, or
- (c) the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 or 21 of the markets in financial instruments regulation from regulated markets, multilateral trading facilities, organised trading facilities and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“data reporting service provider” means an APA, an ARM or a CTP;

“data reporting service rules” has the meaning given in regulation 8(1)(d)(ii);

“direction to tender” has the meaning given in regulation 6(1);

“established in the United Kingdom” means constituted under the law of a part of the United Kingdom with a head office, and if there is a registered office, that office, in the United Kingdom;

“financial instrument” has the meaning given in Article 2.1.9 of the markets in financial instruments regulation;

“investment firm” has the meaning given in Article 2.1A of the markets in financial instruments regulation;

“management body” in relation to a data reporting service provider means—

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the data reporting service provider, and
- (b) any person who effectively directs the business of the provider;

“the markets in financial instruments directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast)(a);

“the markets in financial instruments regulation” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments(b);

“multilateral trading facility” means a “UK multilateral trading facility” within the meaning given in Article 2.1.14A of the markets in financial instruments regulation;

“organised trading facility” means a “UK organised trading facility” within the meaning given in Article 2.1.15A of the markets in financial instruments regulation;

“overseas clearing house” and “overseas investment exchange” have the meanings given in section 313(1) of FSMA 2000(c);

“preferred applicant” has the meaning given in regulation 6(3)(b);

“recognised body” has the meaning given in section 313(1) of FSMA 2000, but does not include—

- (a) an overseas investment exchange, or

(a) EUR 2014/65.

(b) EUR 600/2014, as amended by S.I. 2018/1403. There are other amendments that are not relevant.]

(c) Section 313(1) was amended by S.I. 2013/504. [There are other amendments but none is relevant.]

(b) an overseas clearing house;

“recognised clearing house” has the meaning given in section 285(1)(b) of FSMA 2000(a) but does not include an overseas clearing house;

“recognised CSD” means a legal person established in the United Kingdom who is authorised by the Bank of England for the purposes of Article 16 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(b);

“recognised investment exchange” has the meaning given in section 285(1)(a) of FSMA 2000, but does not include an overseas investment exchange;

“recognition order” has the meaning given in section 313(1) of FSMA 2000;

“register” means the register maintained by the FCA under regulation 4;

“regulated market” means a “UK regulated market” within the meaning of Article 2.1.13A of the markets in financial instruments regulation;

“relevant person” means—

(a) a data reporting service provider,

(b) an authorised person who is not a data reporting service provider, or

(c) a recognised body which is not a data reporting service provider;

“senior management” means natural persons who exercise executive functions within an investment firm, a market operator (as defined in Article 2.1.10) of the markets in financial instruments regulation) or a data reporting service provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;

“the Tribunal” means the Upper Tribunal.

(2) In this regulation, a “person authorised under regulation 9” includes a person whose compliance with these Regulations has been verified by the FCA under regulation 7.

(3) In these Regulations, a reference to an Article of the markets in financial instruments regulations includes a reference to any assimilated law made under that Article.

(4) In Part 3, any reference to a requirement imposed by or under these Regulations includes a reference to a requirement imposed on a person to whom these Regulations apply under—

(a) any assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulation, and

(b) the markets in financial instruments regulation.

PART 2

Authorisation of Data Reporting Services

Prohibition on the provision of a data reporting service

3.—(1) A person must not provide a data reporting service in the United Kingdom as a regular occupation or business unless the person is—

(a) acting in accordance with an authorisation to provide that data reporting service granted under these Regulations,

(a) Section 285(1) was amended by S.I. 2013/504. [There are other amendments but none is relevant.]

(b) EUR 2014/909, [amended by xxx].

- (b) an investment firm which is operating a multilateral trading facility or an organised trading facility where the FCA has verified under these Regulations that the firm complies with these Regulations in respect of the data reporting service concerned,
- (c) a credit institution which is operating a multilateral trading facility or an organised trading facility where the FCA has verified under these Regulations that the institution complies with these Regulations in respect of the data reporting service concerned, or
- (d) a recognised investment exchange operating a trading venue where the FCA has verified under these Regulations that the exchange complies with these Regulations in respect of the data reporting service concerned.

(2) A person who breaches this regulation is to be taken to have contravened a requirement imposed on it under these Regulations.

(3) In this regulation, “trading venue” has the meaning given in Article 2.1.16 of the markets in financial instruments regulation.

Register of data reporting service providers

4.—(1) The FCA must maintain a register of all persons—

- (a) it has authorised to provide a data reporting service under these Regulations, or
- (b) whose compliance with these Regulations it has verified in accordance with regulation 7.

(2) The FCA must—

- (a) publish the register online,
- (b) ensure that the register contains up to date information on the services which persons on the register are authorised to provide, and
- (c) [as soon as practicable, amend the register as necessary accordingly.]

Application for authorisation to provide a data reporting service

5.—(1) An application for authorisation to provide a data reporting service must be made to the FCA.

(2) An application made under paragraph (1) must be made in such manner as the FCA may direct and contain, or be accompanied by, all the information required to demonstrate, in respect of the data reporting service the applicant wishes to provide, that the applicant meets the obligations under these Regulations.

(3) At any time after receiving an application and before determining it the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The FCA may give different directions, and may impose different requirements, in relation to different applications or categories of application.

Direction to tender

6.—(1) The FCA may give a direction that a tender should take place in connection with the selection of a person to provide a CTP service (a “direction to tender”).

(2) The FCA may consider that a direction to tender is appropriate—

- (a) with a view to consolidating the provision of the service concerned, or
- (b) where it otherwise considers, having regard to the objective of promoting effective market competition, that the provision of the service would be improved by the operation of a tender.

(3) The direction to tender must specify the nature of the CTP service to which the tender applies, by reference to the description of financial instrument for which trade reports are to be collected and, where applicable, the relevant class of assets within that financial instrument.

(4) The FCA must evaluate each application submitted in accordance with the terms of the direction to tender and must make a determination as to whether—

- (a) the applicant is to be awarded a tender contract to provide the CTP service concerned, or
- (b) where the applicant is not authorised under these Regulations to provide the CTP service concerned, the applicant is a person to whom the FCA proposes to award a tender contract subject to the grant of the authorisation (a “preferred applicant”).

(5) If a preferred applicant is not, for any reason, authorised to provide the CTP service to which the tender applies, the FCA may not award a tender contract to that person.

(6) The term to be awarded for the provision of the CTP service under the terms of the tender contract is a maximum period of five years, commencing with effect from a date to be determined by the FCA.

(7) The tender contract is renewable for no more than two years where—

- (a) the FCA intends to give a direction to tender in respect of that service and—
 - (i) significant changes to the arrangements for the selection of a person to provide the service, or to the obligations associated with the provision of the service, are anticipated by the FCA which would not otherwise be in effect before the commencement of the tender, or
 - (ii) following consultation with prospective applicants, the FCA cannot identify any likely participants in the tender other than the incumbent to whom the tender contract was awarded, or
- (b) following a direction to tender, a preferred applicant is not authorised to provide the service concerned.

(8) For the duration of the period during which the tender contract is in effect (including any period during which the tender contract is renewed) only a person who has been awarded a contract to provide the CTP service concerned may provide that service.

Application for verification of compliance

7.—(1) Regulations 5 and 6 apply to an application to the FCA for verification of compliance with these Regulations, as these Regulations apply to an application for authorisation to provide a data reporting service.

(2) Where a direction to tender applies in respect of a data reporting service to which an application for verification relates, regulation 8(1)(b) applies to a verification under paragraph (3) as it applies to an authorisation to provide a data reporting service.

(3) If the FCA decides to verify that an investment firm, credit institution or recognised investment exchange complies with these Regulations, it must give the applicant notice of its decision specifying the data reporting services the verification relates to.

(4) The notice must state the date on which the verification takes effect.

(5) If the FCA proposes to refuse an application, it must give the applicant a warning notice.

(6) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it decides to grant the application, give the applicant notice of its decision complying with paragraphs (3) and (4), or
- (b) if it refuses the application, give the applicant a decision notice.

(7) If the FCA decides to refuse the application, the applicant may refer the matter to the Tribunal.

(8) Regulation 10 applies to a verification under paragraph (3) as it applies to an authorisation to provide a data reporting service, as if for paragraph (1) there were substituted—

“(1) The FCA may cancel a person’s verification under regulation 7(3) where—

- (a) the person requests, or consents to, the cancellation of the verification,

- (b) in the case of a verification for the provision of a CTP service in respect of which a direction to tender is given, the person is not awarded the tender contract,
- (c) the person has not provided the data reporting service to which the verification relates for the preceding six months, or
- (d) the person no longer complies with these Regulations or with data reporting service rules.”.

(9) Regulation 11(1) to (8) applies to a verification under paragraph (3) as it applies to an authorisation to provide a data reporting service.

Conditions for authorisation to provide a data reporting service

8.—(1) The FCA may only grant an application for authorisation to provide a data reporting service if—

- (a) the applicant has complied with all the directions and requirements under regulation 5,
- (b) where a direction to tender applies in respect of the data reporting service concerned, the applicant is a preferred applicant,
- (c) the applicant—
 - (i) is established in the United Kingdom, or
 - (ii) in the case of an applicant wishing to provide a service of a description of the service provided by an APA or an ARM, where the applicant is not established in the United Kingdom, the applicant has established a branch in the United Kingdom,
- (d) the FCA is satisfied that the applicant complies with all the requirements of—
 - (i) these Regulations,
 - (ii) any rules made by the FCA under section 300H of FSMA 2000^(a) in relation to providing a data reporting service, as those rules have effect from time to time (“data reporting service rules”),
 - (iii) the markets in financial instruments regulation,
 - (iv) the assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulation, applicable to the applicant, and
- (e) the FCA is satisfied that the persons who effectively direct the business of the applicant are of sufficiently good repute.

(2) In this regulation, “branch” means a place of business other than the head office or registered office which is part of the applicant, which has no legal personality and which provides a data reporting service.

Determination of an application for authorisation to provide a data reporting service

9.—(1) The FCA must determine an application for an authorisation to provide a data reporting service before the end of the period of six months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it is appropriate to do so.

(3) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) The FCA may grant authorisation to carry out the data reporting services to which the application relates or such of them as may be specified in the authorisation.

(a) Section 300H was inserted by section 11 of the Financial Services and Markets Act 2023.

(5) The FCA may, subject to paragraphs (8) and (9), grant authorisation subject to the imposition of such restrictions on the applicant, taking effect from the grant of the authorisation, as it considers appropriate.

(6) If the FCA decides to grant an application for authorisation, it must give the applicant notice of its decision specifying—

- (a) which data reporting services the applicant has been granted authorisation to provide, and
- (b) any restrictions imposed under paragraph (5).

(7) The notice must state the date on which the authorisation takes effect.

(8) If the FCA proposes to—

- (a) impose a restriction on the applicant, or
- (b) refuse an application,

it must give the applicant a warning notice.

(9) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it decides to grant authorisation without imposing restrictions, give the applicant notice of its decision complying with paragraphs (6) and (7),
- (b) if it decides to grant authorisation subject to the imposition of restrictions on the applicant, give the applicant a decision notice, or
- (c) if it refuses the application, give the applicant a decision notice.

(10) If the FCA decides to—

- (a) grant authorisation subject to the imposition of restrictions on the applicant, or
- (b) refuse the application,

the applicant may refer the matter to the Tribunal.

Cancellation of an authorisation to provide a data reporting service

10.—(1) The FCA may cancel a person's authorisation to provide a data reporting service where—

- (a) the person requests, or consents to, the cancellation of the authorisation;
- (b) in the case of an authorisation to provide a CTP service in respect of which a direction to tender is given, the person is not awarded the tender contract;
- (c) the person has not provided the data reporting service which the person is authorised to provide for the preceding six months;
- (d) the person has obtained the authorisation through false statements or other irregular means;
- (e) the person no longer meets the conditions under which the authorisation was granted;
- (f) the FCA is not satisfied the persons who effectively direct the business of the person are of sufficiently good repute;
- (g) the person has seriously and systematically infringed requirements imposed by or under—
 - (i) these Regulations,
 - (ii) data reporting service rules,
 - (iii) the markets in financial instruments regulation, or
 - (iv) any assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulations.

(2) A request made under paragraph (1)(a) must be made in such manner as the FCA may direct.

(3) The FCA may refuse a request under paragraph (1)(a).

- (4) The FCA must give a person a warning notice where the FCA proposes—
- (a) to cancel a person’s authorisation, other than at the person’s request;
 - (b) to refuse a request under paragraph (1)(a).
- (5) The FCA must, having considered any representations made in response to the warning notice—
- (a) give the person notice of its decision if it decides—
 - (i) not to cancel the authorisation, or
 - (ii) to agree the request under paragraph (1)(a), or
 - (b) give the person a decision notice if it decides—
 - (i) to cancel the authorisation, or
 - (ii) to refuse the request under paragraph (1)(a).
- (6) The person may refer the matter to the Tribunal if the FCA decides—
- (a) to cancel the authorisation, other than at the person’s request, or
 - (b) to refuse the request under paragraph (1)(a).
- (7) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

Variation of an authorisation to provide data reporting services

11.—(1) A data reporting service provider may apply to the FCA to vary its authorisation to enable it to provide one or more additional data reporting services or to remove one or more data reporting services (“an application for a variation”).

(2) An application for a variation must be made in such manner as the FCA may direct.

(3) If the FCA proposes to refuse a person’s application for a variation it must give the person a warning notice.

(4) If the FCA, having considered any representations made in response to the warning notice, refuses a person’s application for a variation, it must give the person a decision notice.

(5) If the FCA, having considered any representations made in response to the warning notice, decides to grant a person’s application for the variation, it must give the person notice of its decision.

(6) If the FCA refuses a person’s application for a variation the person may refer the matter to the Tribunal.

(7) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

(8) The FCA may wholly or partly cancel a variation of a person’s authorisation where the person requests, or consents to, the cancellation.

(9) In this regulation, “authorisation” means an authorisation under regulation 9.

PART 3

Administration and enforcement

CHAPTER 1

The FCA

Functions of the FCA

Consulting the Bank of England

12. The FCA must consult the Bank of England before—

- (a) authorising a recognised clearing house or a recognised CSD to provide a data reporting service;
- (b) varying or cancelling a recognised clearing house's or a recognised CSD's authorisation to provide a data reporting service;
- (c) imposing, varying or withdrawing a restriction on a recognised clearing house's or a recognised CSD's authorisation to provide a data reporting service under regulation 13;
- (d) publishing a statement under section 312E FSMA 2000(a) (public censure) as applied by regulation 19 in relation to a contravention by a recognised clearing house or a recognised CSD;
- (e) imposing a penalty under section 312F FSMA 2000(b) (financial penalties) as applied by regulation 19 in relation to a contravention by a recognised clearing house or a recognised CSD;
- (f) appointing a person to prepare a report under section 166(3)(b) of FSMA 2000 (reports by skilled persons) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (g) exercising a power under section 166A(2) of FSMA 2000(c) (appointment of skilled person to collect and update information) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (h) appointing a person to carry out an investigation under section 167(1) of FSMA 2000(d) (appointment of persons to carry out general investigations) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (i) appointing a person to carry out an investigation under section 168(3) of FSMA 2000 (appointment of persons to carry out investigations in particular cases) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD;
- (j) appointing a person to carry out an investigation under section 169(1)(b) of FSMA 2000(e) (investigations etc. in support of overseas regulator) as applied by regulation 18 in relation to a recognised clearing house or a recognised CSD.

Restrictions on authorisation to carry on data reporting services

13.—(1) If the FCA considers that a data reporting service provider (“P”) has contravened a requirement imposed—

- (a) by or under these Regulations, or
- (b) by data reporting service rules,

it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(2) If the FCA considers that there are objective and demonstrable grounds for believing that a change or proposed change to the management of P poses a threat to—

- (a) the sound and prudent management of P,
- (b) the adequate consideration of the interests of P's clients, or
- (c) the integrity of the market,

it may impose, for such period as it considers appropriate, such restrictions in relation to the carrying on of data reporting services by P as it considers appropriate.

(a) Section 312E was amended by section 11(5) of the Financial Services and Markets Act 2023.

(b) Section 312F was amended by section 11(6) of the Financial Services and Markets Act 2023.

(c) Section 166A was inserted by paragraph 6 of Schedule 12 to the Financial Services Act 2012 and was amended by section 11(3) of the Financial Services and Markets Act 2023.

(d) Section 167(1) was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012, paragraph 7 of Schedule 2 to the Financial Services Act 2021 and S.I. 2013/423.

(e) Section 169(1) was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

(3) A restriction may, in particular, be imposed so as to require P to take, or refrain from taking, specified action.

(4) The FCA may—

- (a) withdraw a restriction, or
- (b) vary a restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(5) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the data reporting services that P carries on.

(6) Where the FCA proposes to impose a restriction under this regulation, section 55Y of FSMA 2000(a) (exercise of own-initiative power: procedure) applies as if—

- (a) subsections (1A), (1B) and (4A) (applying section 55Y to an exercise of the FCA's power under section 55NA) were omitted,
- (b) each reference to either regulator's own-initiative variation power or own-initiative requirement power were a reference to the FCA's power to impose a restriction under this regulation,
- (c) each reference to the regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only,
- (d) each reference to an authorised person were a reference to P,
- (e) each reference to a variation of permission, or the imposition or variation of a requirement, were a reference to a restriction imposed on an authorisation granted under these Regulations to P, and
- (f) the reference in subsection (12) to section 391(8) were a reference to section 391(8) as applied by these Regulations.

[Financial penalties

14. A penalty imposed on a [data reporting service provider/relevant person] under section 312F of FSMA 2000 as applied by regulation [19] [is payable to the FCA] and may be recovered as a debt owed to the FCA.]

Breach of the prohibition on the provision of a data reporting service

15.—(1) Unless paragraph (2) applies, a person who breaches regulation 3(1) is guilty of an offence.

(2) This regulation does not apply to—

- (a) an authorised person;
- (b) a recognised body.

(3) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

(a) Section 55Y was inserted by section 11 of the Financial Services Act 2012 and was amended by paragraph 10 of Schedule 5 to the Financial Services and Markets Act 2023.

CHAPTER 2

Application of FSMA 2000 for the purposes of the Regulations

Supervision, monitoring and enforcement

16.—(1) Section 1L of FSMA 2000(a) applies with respect to the supervision, monitoring and enforcement of persons on whom requirements are imposed by or under these Regulations, or by data reporting service rules, as it applies to arrangements for supervision, monitoring and enforcement of persons under that Act as if—

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) for subsection (2) there were substituted—

“(2) The FCA must maintain arrangements designed to enable it to determine whether persons in respect of whom requirements are imposed by or under the Data Reporting Services Regulations 2023 or by data reporting service rules are complying with them.”;
- (c) for subsection (3) there were substituted—

“(3) The FCA must also maintain arrangements for enforcing compliance with the provisions of the Data Reporting Services Regulations 2023 and data reporting service rules.”.

Application of Part 9 of FSMA 2000 (hearings and appeals)

17.—(1) Part 9 of FSMA 2000(b) (hearings and appeals) applies with respect to proceedings pursuant to references to the Tribunal under these Regulations and under FSMA 2000 as applied by these Regulations (“relevant proceedings”) as it applies with respect to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

(2) Section 133 of FSMA 2000 (proceedings before the Tribunal: general provision) applies as if—

- (a) in subsection (1)—
 - (i) “(whether made under this or any other Act)” were omitted;
 - (ii) in paragraph (a) “or the PRA” were omitted;
 - (iii) paragraphs (b) and (c) were omitted;
- (b) subsection 1A were omitted;
- (c) in subsection (2) “, (b) or (c)” were omitted;
- (d) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;
- (e) subsection (5A) were omitted;
- (f) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of either of the following decisions—

 - (a) a decision to publish a statement under section 312E(1) as applied by regulation 19 of the Data Reporting Services Regulations 2023;
 - (b) a decision to impose a penalty under section 312F as applied by regulation 19 of the Data Reporting Services Regulations 2023.”.

(3) Section 133A of FSMA 2000 (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if—

(a) Section 1L was inserted by section 6 of the Financial Services Act 2012 and amended by xxx
(b) Part 9 was amended by xxx.

- (a) for subsection (1) there were substituted—
 - “(1) In determining in accordance with section 133(5) (as applied by the Data Reporting Services Regulations 2023) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Data Reporting Services Regulations 2023 or this Act as applied by those Regulations, have had power to take when giving notice.”;
 - (b) in subsection (5) “or the PRA” were omitted.
- (4) Section 133B of FSMA 2000 (offences) applies as if in subsection (1)—
- (a) in paragraph (a) “or the PRA” were omitted;
 - (b) paragraphs (b) and (c) were omitted.

Application of Part 11 of FSMA 2000 (information gathering and investigations)

18.—(1) Part 11 of FSMA 2000(a) (information gathering and investigations) applies with respect to the discharge by the FCA of its functions under these Regulations and data reporting service rules, as it applies with respect to the discharge by the FCA of its functions under FSMA 2000, with the following modifications.

- (2) Part 11 of FSMA 2000 applies as if—
 - (a) each reference to that Act included a reference to these Regulations;
 - (b) each reference to a section or Part of, or Schedule to, that Act were a reference to that section, Part or Schedule as applied by these Regulations;
 - (c) each reference to an authorised person were a reference to a data reporting service provider;
 - (d) each reference to the PRA were omitted;
 - (e) each reference to a regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only.
- (3) Section 165 of FSMA 2000 (regulators’ power to require information: authorised persons etc.) applies as if subsections (4)(b), (7)(b) to (d) and (e), [(8A)] 11(e), 12 and 13 were omitted.
- (4) Sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) of FSMA 2000 do not apply.
- (5) Section 166 of FSMA 2000 (reports by skilled persons) applies as if subsections (10) to (14) were omitted.
- (6) Section 166A of FSMA 2000 (appointment of skilled person to collect and update information) applies as if—
 - (a) for subsection (1) there were substituted—
 - “(1) This section applies if the FCA considers that a person has contravened a requirement in data reporting service rules or a requirement imposed by or under the Data Reporting Services Regulations 2023 to collect, and keep up to date, information of a description specified in those rules or Regulations.”;
 - (b) subsections (9A) and (10) were omitted.
- (7) Section 167 of FSMA 2000 (appointment of persons to carry out general investigations) applies as if—
 - (a) for subsection (1) there were substituted—
 - “(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) Part 11 was amended by xxx.

- (a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the Data Reporting Services Regulations 2023 (“a person subject to the 2023 Regulations”);
 - (b) a particular aspect of that business; or
 - (c) the ownership or control of a person subject to the 2023 Regulations.”;
- (b) subsection [(1A)] and] (2)(c) were omitted;
- (c) for subsection (4A) there were substituted—
- “(4A) The power conferred by this section may be exercised in relation to a person who has at any time been a data reporting service provider (in addition to a person subject to the 2023 Regulations at the time when the power is exercised) but only in relation to—
- (a) business carried on when the person was a person subject to the 2023 Regulations; or
 - (b) the ownership or control of the person at such a time.”;
- (d) subsections [(4B)], (5A) and (6) were omitted.
- (8) Section 168 of FSMA 2000 (appointment of persons to carry out investigations in particular cases) applies as if—
- (a) for subsection (1) there were substituted—
- “(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that—
- (a) a data reporting service provider may have contravened a requirement imposed by or under the Data Reporting Services Regulations 2023 or data reporting service rules;
 - (b) an authorised person who is not a data reporting service provider may have contravened a requirement by or under those Regulations;
 - (c) a recognised body which is not a data reporting service provider may have contravened a requirement imposed by or under those Regulations;
 - (d) a member of the management body or a person referred to in paragraph (a), (b) or (c) may be responsible for the contravention of a requirement imposed by or under those Regulations; or
 - (e) a person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;
- (b) subsections (2), (4) and (5) were omitted;
- (c) for subsection (6) there were substituted—
- “(6) “Investigating authority” means the FCA.”.
- (9) Section 169 of FSMA 2000 (investigations etc. in support of overseas regulator) applies as if—
- (a) subsection (2A) were omitted;
 - (b) for subsection (13) there were substituted—
- “(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the Data Reporting Services Regulations 2023.”.
- (10) Section 169A of FSMA 2000 (support of overseas regulator with respect to financial stability) does not apply.
- (11) Section 170 of FSMA 2000 (investigations: general) applies as if—
- (a) each reference to the investigating authority were a reference to the FCA;
 - (b) in subsection (1) “or (5)” were omitted;
 - (c) for subsection (3) there were substituted—

“(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the FCA believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;

(d) subsection (10) were omitted.

(12) Section 171 of FSMA 2000 (powers of persons appointed under section 167) applies as if subsections (1A)(c) and (d), (3A) and (7) were omitted.

(13) Section 172 of FSMA 2000 (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.

(14) Section 173 of FSMA 2000 (powers of persons appointed as a result of section 168(2)) does not apply.

(15) Section 174 of FSMA 2000 (admissibility of statements made to investigators) applies as if—

(a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this subsection applies” were omitted;

(b) subsection (3A) were omitted;

(c) in subsection (4) the words from “or (5),” to the end were omitted;

(d) in subsection (5) “, 173” were omitted.

(16) Section 175 of FSMA 2000 (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.

(17) Section 176 of FSMA 2000 (entry of premises under warrant) applies as if—

(a) for subsection (1) there were substituted—

“(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.”
;

(b) in subsection (3A) paragraphs (b) to (d) were omitted;

(c) in subsection (10) “or (5)” were omitted;

(d) in subsection (11)—

(i) in paragraph (a) “87C, 87J,” and “,165A, 169A” were omitted;

(ii) in paragraph (b) “, 173” were omitted.

Disciplinary measures

19.—(1) Chapter 3B of Part 18 (disciplinary measures in respect of recognised bodies) of FSMA 2000 applies with respect to the discharge by the FCA of its functions under these Regulations as it applies with respect to the discharge by the FCA of its functions under FSMA 2000, with the following modifications.

(2) Chapter 3B of FSMA 2000 applies as if—

(a) each reference to a section or Part of FSMA 2000 were a reference [included?] to that section or Part as applied by these Regulations;

(b) each reference to an appropriate regulator or each appropriate regulator were a reference to the FCA;

(c) references to a recognised investment exchange were omitted;

(d) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, or FSMA 2000 as applied by these Regulations.

(3) Section 312E of FSMA 2000 (public censure) applies as if—

(a) for subsection (1) there were substituted—

“(1) If the FCA considers that—

- (a) a relevant person has contravened a relevant requirement, or
 - (b) a member of the management body, or another member of the senior management, of a relevant person is responsible for the contravention of a relevant requirement by the relevant person,
- it may publish a statement to that effect.”;
- (b) in subsection (2) paragraphs (b) to (d) were omitted;
 - (c) subsection (3) were omitted;
 - (d) in subsection (4) from “has the meaning” to the end, there were substituted “, “management body”, “relevant person” and “senior management” have the meanings given by regulation 2 of the Data Reporting Services Regulations 2023.”.
- (4) Section 312F of FSMA 2000 (financial penalties) applies as though for subsection (1) there were substituted—
- “(1) If the FCA considers that a relevant person has contravened a relevant requirement, it may impose a penalty of such amount as it considers appropriate on—
- (a) the relevant person;
 - (b) a member of the management body of the relevant person if the FCA considers the member is responsible for the contravention;
 - (c) another member of the senior management of the relevant person if the FCA considers the member is responsible for the contravention.”.
- (5) Section 312G of FSMA 2000 (proposal to take disciplinary measures) applies as if for subsection (1) there were substituted—
- “(1) If the FCA proposes to impose a sanction in respect of any person under section 312E or 312F (as applied by the Data Reporting Services Regulations 2023) it must give the person a warning notice.”.
- (6) Section 312H of FSMA 2000 (decision notice) applies as if—
- (a) for subsection (1) there were substituted—
- “(1) If the FCA decides to impose a sanction in respect of any person under section 312E or 312F (as applied by the Data Reporting Services Regulations 2023) it must give the person a decision notice.”;
- (b) subsection (3A) were omitted;
 - (c) for subsection (4) there were substituted—
- “(4) If the FCA decides to impose a sanction in respect of any person under section 312E or 312F (as applied by the Data Reporting Services Regulations 2023) the person may refer the matter to the Tribunal.”.
- (7) Section 312I of FSMA 2000 (publication) applies as if it were substituted as follows—
- “After the FCA publishes a statement under section 312E (as applied by the Data Reporting Services Regulations 2023) it must send a copy of the statement to—
- (a) the person concerned, and
 - (b) any person to whom a copy of the decision notice was given under section 393(4) (as applied by regulation 23 of the Data Reporting Services Regulations 2023).”.
- (8) Section 312J of FSMA 2000 (statement of policy) applies as if—
- (a) in subsection (1)—
 - (i) the reference to section 312FA were omitted from paragraph (a);
 - (ii) paragraph (c) were omitted;
 - (b) in subsection (5) the reference to section 312FA were omitted.

Information given by an auditor

20. Sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: person with close links) and 344 (duty of auditor or actuary resigning etc. to give notice) of FSMA 2000(a) apply with respect to the auditor of a data reporting service provider as if—

- (a) each reference to an authorised person were a reference to a data reporting service provider;
- (b) each reference to a regulator were a reference to the FCA;
- (c) each reference to “the appropriate regulator” were a reference to the FCA;
- (d) references to an actuary were omitted;
- (e) sections 342(2), 343(2) and 344(4) were omitted.

Restrictions on disclosure of information

21. Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of FSMA 2000(b) apply with respect to information received under these Regulations and under FSMA 2000 as applied by these Regulations as they apply with respect to information received under FSMA 2000 as if—

- (a) each reference to that Act included a reference to these Regulations;
- (b) each reference to a section or Part of that Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348—
 - (i) in subsection (2), for “In this Part” there were substituted “In sections 348, 349 and 352 as applied by the Data Reporting Services Regulations 2023”;
 - (ii) subsections (2A) and (5)(da) were omitted;
- (d) in section 352—
 - (i) in subsection (1) “or 350(5)” were omitted;
 - (ii) subsection (4) were omitted;
 - (iii) in subsection (5) “or (4)” were omitted;
 - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

Application of Part 25 of FSMA 2000 (injunctions and restitution)

22.—(1) Part 25 of FSMA 2000(c) (injunctions and restitution) applies for the purposes of these Regulations and FSMA 2000 as applied by these Regulations, with the following modifications.

(2) Part 25 FSMA 2000 applies as if—

- (a) each reference to that Act included a reference to these Regulations;
- (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;

-
- (a) Section 342 was amended by paragraph 4 of Schedule 13 to the Financial Services Act 2012 and S.I. 2013/3115 and 2019/632. Section 343 was amended by paragraph 5 of Schedule to the Financial Services Act 2012 and S.I. 2013/3115 and 2019/632. Section 344 was amended by paragraph 6 of Schedule 13 to the Financial Services Act 2012.
 - (b) Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016, paragraph 9 of Schedule 12 to the Financial Services and Markets Act 2023 and S.I. 2016/1239. Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, 2007/1093, 2011/1043 and 2019/681. Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).
 - (c) Part 25 was amended by xxx.

- (c) each reference to a regulator, the regulator concerned or the appropriate regulator were a reference to the FCA;
 - (d) references to the Secretary of State were omitted;
 - (e) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, or that Act as applied by these Regulations.
- (3) Section 380 of FSMA 2000 applies as if subsections (6) to (12) were omitted.
- (4) Section 381 of FSMA 2000 (injunctions in case of market abuse) does not apply.
- (5) Section 382 of FSMA 2000 (restitution orders) applies as if subsections (9) to (15) were omitted.
- (6) Section 383 of FSMA 2000 (restitution orders in case of market abuse) does not apply.
- (7) Section 384 of FSMA 2000 (power of FCA or PRA to require restitution) applies as if—
- (a) in subsection (1)—
 - (i) the reference to an authorised person were a reference to a data reporting service provider, and
 - (ii) the reference to a recognised investment exchange were omitted;
 - (b) subsections (2) and (3) and references to those subsections were omitted;
 - (c) subsections (7) to (13) were omitted.

Application of Part 26 of FSMA 2000 (notices)

23.—(1) Part 26 of FSMA 2000(a) (notices) applies with respect to the giving of notices under these Regulations and under FSMA 2000 as applied by these Regulations as it applies with respect to the giving of notices under FSMA 2000, with the following modifications.

- (2) Part 26 of FSMA 2000 applies as if—
- (a) each reference to that Act included a reference to these Regulations;
 - (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;
 - (c) each reference to a regulator or to the regulator concerned were a reference to the FCA;
 - (d) references to the PRA were omitted.
- (3) Section 387 of FSMA 2000 (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (4) Section 388 of FSMA 2000 (decision notices) applies as if subsections (1A) and (2) were omitted.
- (5) Section 391 of FSMA 2000 (publication) applies as if—
- (a) in subsection (1) the reference to a warning notice falling within subsection 1(ZB) were to a warning notice given under [section 312G as applied by these Regulations];
 - (b) subsections (1ZA) and (1ZB) were omitted;
 - (c) in subsection (4A) the reference to sections 391A, 391B, 391C[, 391E and 391F] were omitted;
 - (d) subsections (5A), (6A), (8A), [(8AA)], (8B)[, (8BA)and (8C)[, (8D), 8E and 8G] were omitted;
 - (e) for subsection (11) there were substituted—

“(11) Section 425A(b) (meaning of “consumers”) applies for the purposes of this section as if—

(a) Part 26 was amended by xxx.

(b) Section 425A was inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010 and amended by S.I. 2013/655 and 2013/3115. There are other amendments but none is relevant.

- (a) subsection (2)(c) were omitted;
- (b) for subsection (3) there were substituted—
 - “(3) The services within this subsection are data reporting services within the meaning of the Data Reporting Services Regulations 2023.”;
- (c) subsection (7) were omitted.”.

(6) Sections 391A (publication: special provisions relating to capital requirements), 391B (publication: special provisions relating to transparency obligations), 391C (publication: special provision relating to UCITS), 391E (publication: special provision relating to insurance distribution) and 391F (publication: special provisions relating to the prospectus regulation) of FSMA 2000 do not apply.

(7) Section 392 of FSMA 2000 (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—

- “(a) regulation 10(4)(a) of the Data Reporting Services Regulations 2023 (including that provision as applied by regulation [7] of those Regulations);
- (b) section 312H as applied by those Regulations;
- (c) section 385 as applied by those Regulations.”.

(8) Section 395 of FSMA 2000 (the FCA’s and PRA’s procedures) applies as if—

- (a) for subsection (1) there were substituted—
 - “(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give—
 - (a) a supervisory notice, warning notice or decision notice, or
 - (b) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”;
- (b) in subsection (2)(a) for “any of the paragraphs (a) to (c)” there were substituted “paragraph (a)”;
- (c) in subsection (2)(b) for “(d)” there were substituted “(b)”;
- (d) in subsection 2(c)—
 - (i) for “(d)” there were substituted “(b)”;
 - (ii) for “(b) or (c)” there were substituted “(a)”;
- (e) subsection 3(b) and (4) were omitted;
- (f) in subsection (9) “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii)” were omitted;
- (g) subsection (9A) were omitted;
- (h) for subsection (13) there were substituted—
 - “(13) “Supervisory notice” means a notice given in accordance with section 55Y of FSMA 2000 as applied by regulation [13] of the Data Reporting Services Regulations 2023.”.

(9) In paragraph (1), “notices under these Regulations” does not include a notice under—

- (a) regulation 7(3) or (6)(a);
- (b) regulation 9(6)(a) or (11)(a);
- (c) regulation 10(5)(a) (including that provision as applied by regulation 7).

Application of Part 27 of FSMA 2000 (offences)

24.—(1) Part 27 of FSMA 2000(a) (offences) applies with respect to offences under these Regulations and FSMA 2000 as applied by these Regulations as it applies with respect to offences under FSMA 2000, with the following modifications.

(2) Part 27 of FSMA 2000 applies as if—

- (a) each reference to that Act included a reference to these Regulations [and data reporting service rules];
- (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;
- (c) references to the Secretary of State were omitted;
- (d) references to a regulator or the appropriate regulator were references to the FCA.

(3) Section 398 of FSMA 2000 (misleading FCA or PRA: residual cases) applies as if—

(a) for subsection (1) there were substituted—

“(1) A person who, in purported compliance with any requirement imposed by or under the Data Reporting Services Regulations 2023, knowingly or recklessly gives information which is false or misleading in a material particular to—

- (a) the FCA, or
- (b) another person, knowing that the information is to be provided to, or to be used for the purposes of providing information to the FCA,

is guilty of an offence.”;

(b) subsection (1A) were omitted.

(4) Section 399 of FSMA 2000 (misleading the CMA) of FSMA 2000 does not apply.

(5) Section 400 of FSMA 2000 (offences by bodies corporate) applies as if subsection (6A) were omitted.

(6) Section 401 of FSMA 2000 (proceedings for offences) applies as if—

- (a) subsection 1(c) were omitted;
- (b) subsections (3A), (3AB) and (3B) were omitted.

(7) Section 402 of FSMA 2000 (power of FCA to institute proceedings for certain other offences) does not apply.

(8) Section 403(7) of FSMA 2000 (jurisdiction and procedure in respect of offences) applies as if the words from “or an offence” to the end were omitted.

Application of section 413 of FSMA 2000 (protected items)

25. Section 413 of FSMA 2000 (protected items) applies for the purposes of these Regulations as it applies for the purposes of that Act.

Application of section 415AA of FSMA 2000 (application of powers to formerly authorised persons)

26.—(1) Section 415AA of FSMA 2000 (application of powers to formerly authorised persons) applies for the purposes of these Regulations and FSMA 2000 as applied by these Regulations as if—

- (a) each reference to an authorised person were a reference to a data reporting service provider;

(a) Part 27 was amended by section 95 of and paragraphs 37, 38 and 40 of Schedule 9 to the Financial Services Act 2012 and S.I. 2013/1881 and 2016/1239. [There are other amendments but none is relevant.]

- (b) each reference to a section of that Act were a reference to that section as applied by these Regulations;
- (c) subsection (1)(b) and (c) were omitted;
- (d) in subsection (2) “, and in sections 207 to 209,” were omitted.

FCA: penalties, fees and exemption from liability in damages

27.—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages) of Schedule 1ZA to FSMA 2000(a) apply with respect to the discharge by the FCA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under FSMA 2000, with the following modifications.

- (2) Those paragraphs apply as if—
 - (a) each reference to penalties imposed under that Act included a reference to penalties imposed under these Regulations;
 - (b) each reference to a section or Part of that Act included a reference to that section or Part as applied by these Regulations;
 - (c) each reference to the functions of the FCA included a reference to its functions under these Regulations.
- (3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—
 - (a) its powers under these Regulations and under Part 25 of FSMA 2000 as applied by these Regulations;
 - (b) its powers in relation to investigation of offences under these Regulations or under FSMA 2000 as applied by these Regulations;
 - (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under these Regulations or under FSMA 2000 as applied by these Regulations.
- (4) Paragraph 21 applies as if regulated persons included data reporting service providers.
- (5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations and under FSMA 2000 as applied by these Regulations.

CHAPTER 3

Application of secondary legislation for the purposes of the Regulations

Service of notices

28. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(b) (“Notice Regulations”) apply in respect of any notice or document to be given by the FCA under these Regulations, or under FSMA 2000 as applied by these Regulations, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;
- (b) each reference to that Act included a reference to these Regulations and to that Act as applied by these Regulations;
- (c) each reference to a section of that Act were a reference to that section as applied by these Regulations.

(a) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016 and S.I. 2013/1773. [There are other amendments but none is relevant.]

(b) S.I. 2001/1420. [There are amendments but none is relevant.]

Disclosure of confidential information

29. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(a) apply for the purposes of section 349 of FSMA 2000 (exceptions from section 348) as applied by regulation 22.

Communications by auditors

30. The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001(b) apply with respect to the auditor of a data reporting service provider as if—

- (a) each reference to an authorised person were a reference to the data reporting service provider;
- (b) in regulation 1(2) (citation, commencement and interpretation) “relevant requirement” means a requirement which is imposed by or under these Regulations;
- (c) in regulation 2(2)(a)(ii) (circumstances in which an auditor is to communicate) the reference to functions were a reference to the FCA’s functions under these Regulations and under FSMA 2000 as applied by these Regulations;
- (d) in regulation 2(2)(b) the reference to threshold conditions were a reference to the conditions in regulation [8] of these Regulations.

PART 4

Amendments of primary and secondary legislation

Amendment of FSMA 2000

31. In sections 300H(5) (rules relating to investment exchanges and data reporting service providers) and 312E(4) (public censure) of FSMA 2000, for “Data Reporting Services Regulations 2017 (S.I. 2017/699)” substitute “Data Reporting Services Regulations 2023”.

Amendment of the Financial Services and Markets Act 2000 (Recognition requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001

32. In paragraph 9I of the Schedule to the Financial Services and Markets Act 2000 (Recognition requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001(c) (provision of data reporting services)—

- (a) in sub-paragraph (a), for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”;
- (b) omit paragraph (c).

Amendment of the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014

33. For Article 2(f) of the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014(d) (relevant functions of the FCA), substitute—

“(f) its functions under the Data Reporting Services Regulations 2023.”.

(a) S.I. 2001/2188. [There are amendments but none is relevant.]
(b) S.I. 2001/2587, amended by S.I. 2013/472. [There are other amendments but none is relevant.]
(c) S.I. 2001/995. Paragraph 9I was inserted by S.I. 2017/701 and amended by S.I. 2019/662
(d) S.I. 2014/1195. Article 2(f) was inserted by S.I. 2017/701.

Amendment of the Public Interest Disclosure (Prescribed Persons) Order 2014

34. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(a) (prescribed persons), in paragraph (m)(ii) of the entry relating to the Financial Conduct Authority, for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”.

Amendment of the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999

35. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999(b) (prescribed persons), in paragraph (m)(ii) of the entry relating to the Financial Conduct Authority, for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”.

PART 5

Amendment of assimilated legislation

Amendment of the markets in financial instruments regulation

36. In the markets in financial instruments regulation—

- (a) in Article 2 of Title 1 (definitions)—
 - (i) in paragraph 18, for “, or by regulation 17 of the Data Reporting Services Regulations 2017” substitute “or, for the purposes of the Data Reporting Services Regulations 2023, the FCA”;
 - (ii) in paragraphs 34 to 36, for “under regulation 10 or 12A of the Data Reporting Services Regulations 2017” in each place it occurs, substitute “under regulation 9 of the Data Reporting Services Regulations 2023”;
- (b) in Chapter 1 of Title 2, in Article 7(2) (authorisation of deferred publication), for “under regulation 14 of the Data Reporting Services Regulations 2017” substitute “under data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”;
- (c) in Chapter 2 of Title 2, in Article 11(4) (authorisation of deferred publication), for “under regulation 14 of the Data Reporting Services Regulations 2017” substitute “under data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”;
- (d) in Article 21(5) of Title 3 (post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives), for “under regulation 14 of the Data Reporting Services Regulations 2017” substitute “under data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”;
- (e) in Article 26(7) of Title 4 (obligation to report transactions), for “regulation 16(3)(d) of the Data Reporting Services Regulations 2017” substitute “under data reporting service rules (within the meaning of regulation 2(1) of the Data Reporting Services Regulations 2023)”.

(a) S.I. 2014/2418. Paragraph (m) of the Schedule was inserted by S.I. 2017/701. There are other amendments that are not relevant.

(b) S.R. 1999/401. Paragraph (m) of the Schedule was inserted by S.R. 2022/290. There are other amendments that are not relevant.

Amendment of Commission Delegated Regulation (EU) 2017/565

37. In Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive(a)—

- (a) in Article A1(1)(b) for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”;
- (b) in Article 1(17)(c) (subject matter and scope), for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”;
- (c) in Article 2(17)(c) (definitions), for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”;
- (d) in Article 70(1) (prompt fair and expeditious execution of client orders and publication of unexecuted client limit orders for shares traded on a trading venue) for “Data Reporting Services Regulations 2017” substitute “Data Reporting Services Regulations 2023”.

PART 6

Miscellaneous

Transitional provision

38. [Arrangements to preserve register maintained under 2017 Regulations]

39. [Arrangements to preserve any applications for authorisation/verification in train under 2017 Regulations]

40. [Arrangements to continue enforcement action begun under 2017 Regulations – see eg modifications to s. 167 to refer to 2023 Regulations]

41. [Arrangements for transition to FCA rules in respect of matters previously covered by 2017 Regulations]

Review

42.—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 2 to [xxx],
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The review must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision made under regulations 2 to [xxx],
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of five years beginning with [xxx].

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

(a) EUR 2017/565, as amended by S.I. 2018/1403 and 2021/774. [There are other amendments that are not relevant.].

Name
Name

Date

Two of the Lords Commissioners of His Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

xxx

DRAFT