



HM Treasury

# Data Reporting Services Regulations 2023

## **Policy Note**

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July 2023





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# Chapter 1

## Context

1.1 This statutory instrument (SI) is part of HM Treasury's programme to deliver a Smarter Regulatory Framework for financial services which is tailored to the UK, as set out in the government's policy statement<sup>1</sup> published alongside this document. Further detail on the government's approach to delivering the programme can be found in the SRF Delivery Plan.<sup>2</sup>

1.2 The Financial Services and Markets Act 2023 (FSMA 2023) repeals retained EU law relating to financial services. This enables the government to deliver a Smarter Regulatory Framework for financial services. Retained EU law will be repealed and replaced with rules set by our independent and expert regulators, operating within a framework set by government and parliament.

1.3 This SI replaces retained EU law related to Data Reporting Service Providers to facilitate the emergence of a UK consolidated tape. A consolidated tape will collect market data used for price formation and best execution into one source. This will improve market efficiency, lower costs for firms and investors and make UK markets more attractive and competitive.

1.4 The government is publishing a near-final version of the SI, alongside this accompanying explanatory policy note. The government welcomes any technical comments on the draft SI by **21 August 2023**.

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<sup>1</sup> [Building a smarter financial services framework for the UK](#)

<sup>2</sup> [Building a smarter financial services framework for the UK – delivery plan](#)

# Chapter 2

## Purpose

**2.1** This note explains the policy background for the Data Reporting Services Regulations, a summary of the policy intent, and how the SI will achieve this. It also sets out the stakeholders likely to be impacted, and how to comment on whether the SI achieves the settled policy intent.

**2.2** This publication is the near-final version of this SI, which is being published for checks, such as any significant errors or oversights in the legal drafting that would mean that the SI would not achieve the desired outcomes explained in this note or that would lead to significant unintended consequences.



# Chapter 3

## Policy background

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

**3.1** Data Reporting Service Providers (DRSPs) are a type of Financial Market Infrastructure (FMI). They are commercial entities that allow investment firms to fulfil their regulatory reporting obligations and ensure market data is accessible and supports effective price formation and best execution. There are three types of DRSPs:

- a) Approved Publication Arrangements (APAs) publish trade reports on behalf of investment firms, who are required to publish information, such as price and size of executed trades they perform, so that market participants can use such information to make informed investment decisions. They are required to publish this information as near to “real time” as possible. If a trade occurs on a trading venue, then the information is made public by the relevant trading venue. If a trade happens off-exchange in an instrument traded on a trading venue then an investment firm must make the details of the trade public through an APA.
- b) Approved Reporting Mechanisms (ARMs) report details about transactions to the FCA on behalf of investment firms, for market surveillance purposes. This information is not made public.
- c) Consolidated Tape Providers (CTPs) collate trading data for financial instruments from a variety of sources, including APAs and trading venues, and consolidate the data into a continuous, electronic live data stream. This data stream provides price and volume information for each financial instrument. This data can help market participants to make informed investment decisions. There are currently no CTPs in the UK.

**3.2** Many of the rules that govern DRSPs are set out in the Data Reporting Services Regulations 2017 (DRSRs), which transposed parts of the Markets in Financial Instruments Directive II (MiFID II), an EU Directive, into UK law when the UK was part of the EU. The DRSRs include rules that apply directly to the DRSPs themselves, including those relating to authorisation and operating requirements (for example how DRSPs collect and disseminate data, and the need for effective governance procedures). The DRSRs also establish the FCA’s supervision and enforcement powers in relation to DRSPs. As part of the onshoring process, the DRSRs were amended to address

deficiencies arising as a result of the UK's withdrawal from the EU and the end of the transition period.

**3.3** DRSPs currently sit outside of the core FSMA 2000 authorisation regime and the FCA does not have any rule-making powers over them, except for some limited powers in respect of technical standards, as well as limited powers of direction enabling the FCA to establish the current authorisation process for DRSPs. These are not sufficient to replace the detailed provisions currently in retained EU law.

**3.4** Some of the rules applying to DRSPs are contained in the Markets in Financial Instruments Regulation (MiFIR) and the MiFID Org Regulation (Commission Delegated Regulation (EU) 2017/565)<sup>3</sup>. The MiFID Org regulation contains several provisions which apply directly to DRSPs operating in the UK. These include requirements relating to setting the price of market data. As set out previously, currently, there is no consolidated tape provider in the UK. Whilst the MiFID II framework attempted to introduce a framework for a consolidated tape, a number of requirements, such as making data available after 15 minutes, made running a consolidated tape commercially unattractive. As such, a consolidated tape has failed to emerge.

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<sup>3</sup> 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

# Chapter 4

## Summary of statutory instrument

4.1 This SI replaces retained EU law related to Data Reporting Service Providers to facilitate the emergence of a UK consolidated tape.

### What does the instrument do?

4.2 The instrument:

- **Requires relevant DRSPs (APAs, ARMs and CTPs) to have appropriate authorisation or verification and stipulates the conditions for authorisation.** Under the instrument, there continues to be a prohibition on providing data reporting services in the UK unless granted authorisation, or in the case of existing authorised investment firms, credit institutions and recognised investment exchanges, verification to do so by the FCA. It will remain an offence to breach this prohibition. The FCA will only be able to grant authorisation if the conditions set out in the instrument are met. The instrument also specifies the circumstances under which the FCA may cancel an authorisation or verification.
- **Allows the FCA to set requirements and processes for granting authorisation or verification to DRSPs.** The instrument requires any applications for authorisation or verification to provide data reporting services in the UK to be made to the FCA. The FCA will have flexibility to stipulate what information must be included in applications for authorisation or verification. The FCA will also be required to maintain and continuously update an online register of all persons authorised or verified to provide a data reporting service in the UK.
- **Introduces a power for the FCA to run a tender process to select the UK's consolidated tape provider(s) for a particular asset class.** The instrument gives the FCA a power to run a tender process to select a single or limited number of consolidated tape providers per asset class, if the FCA deems this is necessary to facilitate the emergence of a consolidated tape in the UK. Any firm selected to run a consolidated tape by the FCA via a tender process must also be authorised or verified by the FCA to provide that service.
- **Re-states the FCA's existing supervisory and regulatory powers and duties.** The FCA will be the regulator responsible for the

supervision and enforcement of these regulations. To allow for effective regulation by the FCA, the instrument restates the FCA's existing supervisory and regulatory powers from retained EU law into domestic legislation, including in relation to registration, investigation and enforcement. The instrument also makes provision for an appeal process for firms subject to regulatory decisions made under these regulations.

- **Makes amendments to other legislation.** The instrument amends existing legislation where necessary to enable the establishment of a regulatory framework which will encourage the emergence of a consolidated tape. This includes the revocation of existing firm-facing requirements which sit in retained EU law, for example, regulations establishing obligations on CTPs regarding the disclosure of information and maintenance of records. Going forward, such firm-facing requirements will be the responsibility of the FCA to determine using its new general rule-making power over DRSPs under section 300H FSMA.

## **What will change in comparison to the previous retained EU law provisions?**

### *Retained but amended provisions*

**4.3** The instrument restates provisions that set the regulatory perimeter or give the FCA specific powers which are not covered by the general rulemaking power in section 300H FSMA. Where necessary, the instrument amends retained provisions, using powers in FSMA 2023, to make them more appropriate for the UK's capital markets. The instrument also amends retained provisions to create a more streamlined regime so that the law is clearer or more accessible.

### *Deleted provisions*

**4.4** The instrument deletes provisions for four reasons. These are:

- d) If they are firm-facing requirements (i.e., they apply directly to firms). It will be the responsibility of the FCA to determine firm facing requirements relating to DRSPs under the FSMA model. Provisions that are deleted because they are firm facing include Regulations 13-16 of the DRSRs which impose certain obligations on DRSPs to provide certain information free of charge or have certain systems in place.
- e) To address overlaps. Specifically, provisions which confer powers on the FCA which overlap with existing powers or with the new rulemaking power in relation to DRSPs given to the FCA under section 300H FSMA. Other provisions conferring supervision and enforcement powers on the FCA overlap with those established in FSMA 2000 which are to be applied with modification through these regulations.

- f) Provisions that are no longer relevant in a UK-only context, such as those transitional provisions implemented to tackle deficiencies following EU exit.
- g) Provisions that have previously made running a consolidated tape commercially unattractive, including providing data for free after 15 minutes. These will all be deleted and not replaced.

#### *New provisions*

**4.5** In some instances, new provisions are required to improve the functioning of the regulations and make them more appropriate for UK markets. The focus of these new provisions mainly centres on giving the FCA a power to run a tender process to select one or more consolidated tape provider (CTP) per asset class or subclass of assets. This reflects the feedback received through the Wholesale Markets Review consultation, where market participants suggested that a tender process would make it easier for UK authorities to ensure that the correct governance arrangements are in place, help mitigate conflicts of interest, and ensure that the costs for firms connecting to a tape and accessing data from a tape remain low. It is the government's view that such a process would therefore help promote competition at the tender point while ensuring the emergence of a UK consolidated tape. The FCA has already indicated that it intends to appoint one tape provider per asset class.

#### **What will not change in comparison to the previous retained EU law provisions?**

**4.6** The instrument will restate provisions that set the regulatory perimeter or give the FCA specific powers which are not covered by the rulemaking powers over DRSPs introduced by FSMA 2023. These include, for example, the authorisation process for DRSPs, and supervisory and enforcement powers to allow for the effective regulation of DRSPs.

#### **What are the firm facing impacts going to be?**

**4.7** The repeal of retained EU law and its replacement with a new framework that is tailored to the UK will benefit firms in several ways. In particular, firms will benefit from the more proportionate approach that will stem from replacing detailed EU provisions which were designed to apply across the EU with rules set by the UK's expert and independent regulators. Beyond this, replacing retained EU law will enable firms to benefit from a streamlined and accessible legislative framework for financial services, where rules adapt over time in an agile manner and in response to changing practices.

**4.8** The instrument amends rules set out in retained EU law, therefore the only direct cost we expect these firms to be impacted by is familiarisation costs. To comply with the new regime, firms are likely

to engage lawyers or consultants to understand the legislation and accompanying guidance.

4.9 As the FCA is operationally independent, it is not possible for the government to prejudge the rules it will make. The regulators have appropriate mechanisms to consider the impact of such decisions through their statutory consultation and cost benefit analysis framework, which were enhanced through FSMA 2023.

# Chapter 5

## Stakeholders and contact

5.1 This SI will impact DRSPs as well as firms and individuals that use their services.

5.2 The policy set out in this note is now settled and HM Treasury intends to legislate by the end of this year, subject to Parliamentary time allowing. This legislation will come into force at the same time as the FCA makes new rules.

### **Comment on this SI**

5.3 This is a near-final version of this SI, which is being published for checks.

5.4 HM Treasury will consider technical comments on this draft SI, focussed on any changes that need to be made to this draft instrument to achieve the policy intent set out in section four of this policy note.

5.5 Any comments should be provided to [DRSR@HMTreasury.gov.uk](mailto:DRSR@HMTreasury.gov.uk) by 21 August 2023.

# Chapter 6

## Further information

6.1 For further information, please see HM Treasury's [Policy statement – Building a smarter financial services framework for the UK](#)



## **HM Treasury contacts**

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

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