



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Amendment) Instrument 2022/0940*

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2022/0940* (the **amending instrument**).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

### Summary

1. The amending instrument makes various changes to ASIC instruments to account for the enactment of the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* (**CCIV Act**). The CCIV Act amended the *Corporations Act 2001* (**the Act**) (and other Acts) to establish the corporate collective investment vehicle (**CCIV**) as a new type of company that is used for funds management. The *Corporations Regulations 2001* (**the Regulations**) were also amended to account for CCIVs.
2. The Schedules to the amending instrument modify a number of ASIC instruments to impose broadly equivalent requirements and give broadly equivalent relief in relation to CCIVs to those imposed and given in relation to managed investment schemes (**MISs**).

### Purpose of the instrument

3. The CCIV Act establishes a regulatory framework for CCIVs. The purpose of the amending instrument is to impose appropriate requirements and give appropriate relief in relation to CCIVs. The amendments relate to a range of matters including modifying CCIV constitutions, relief from financial reporting obligations under Part 2M.3 of the Act, relief in relation to offers of convertible notes, issues of shares by ASX-listed sub-funds and retail CCIVs and relief from the duties of a corporate director of a CCIV in Part 8B.3 of the Act.
4. The purpose of the amending instrument is to maintain regulatory parity—to the extent possible—between the MIS framework and the CCIV framework. This is to ensure the efficient operation of the domestic funds management industry and ease of adoption for fund managers wishing to establish a CCIV. The amending instrument does not otherwise make any substantive changes to the policy

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settings of the amended instruments (so far as they concern entities other than CCIVs).

### **Consultation**

5. ASIC engaged with a range of stakeholders (including the industry body, Financial Services Council, and its members, and relevant law firms) to seek their views on amendments to certain ASIC instruments to account for CCIVs.
6. The Office of Best Practice Regulation confirmed that ASIC is not required to prepare a Regulatory Impact Statement for new or amended legislative instruments made for the effective implementation and operation of the CCIV regime.

### **Operation of the instrument**

7. This amending instrument amends 15 ASIC instruments. The nature of the substantive amendments is summarised below. Minor amendments (eg to headings and by the inclusion of legislative notes) have not been summarised below.

#### *ASIC Corporations (Application Form Requirements) Instrument 2017/241*

8. This instrument, among other things, provides relief from the requirement for a responsible entity of a registered MIS to comply with section 1016A of the Act in relation to switching arrangements, in certain circumstances.
9. Part 1 of the Schedule to the amending instrument (**the Schedule**) amends the instrument to provide broadly equivalent relief from section 1016A of the Act in relation to the issue of shares in a retail CCIV that is made in accordance with a voluntary switch arrangement or member approved switch arrangement. New subsection 5B(2) provides for when the exemption will apply; broadly, where the corporate director of the retail CCIV has taken reasonable steps to ensure that it gave a Product Disclosure Statement (**PDS**) and information about the switch arrangement to the member at the appropriate time. Various definitions in the instrument have also been amended to account for CCIVs.

#### *ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700*

10. This instrument provides relief from the requirement in subsection 601GC(1) of the Act that a change to the constitution of a registered MIS must, in certain circumstances, be passed by a special resolution of the members of the scheme. The relief enables responsible entities to change scheme constitutions in prescribed circumstances.
11. Part 2 of the Schedule amends the instrument to provide broadly equivalent relief in relation to retail CCIV constitutions, but from section 1223D of the Act. The title of the instrument will be amended to be *ASIC Corporations (Changing Scheme and Retail CCIV Constitutions) Instrument 2019/700*. Section 1223D sets out how to modify CCIV constitutions and is similar to subsection 601GC(1) in requiring that changes that adversely affect members'

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rights must generally be passed by a special resolution of the members of the CCIV. The amending instrument inserts a new section 6 into this instrument which is to the effect that the corporate director of a retail CCIV may modify the constitution of a retail CCIV, among other things, for consistency with the Australian Passport Rules and in prescribed circumstances where passing a special resolution would be impossible or disproportionately burdensome.

*ASIC Corporations (Chapter 5C—Miscellaneous Provisions) Instrument 2017/125*

12. This instrument, among other things, modifies Ch 5C of the Act by providing for the constitution of a registered MIS to incorporate provisions to ensure consistency with the listing rules of an eligible Australian market.
13. Part 3 of the Schedule amends Part 8B.3 of the Act in a broadly equivalent way with respect to retail CCIV constitutions. New section 8 of this instrument inserts a new section 1223J into the Act. Section 1223J clarifies that if a retail CCIV or a sub-fund of a retail CCIV is admitted to the official list of an eligible Australian market or the corporate director is proposing to seek such admission, and the retail CCIV is required for the purposes of the listing rules of an “eligible Australian market” to include a listing rule consistency provision, the constitution of the retail CCIV may include a listing rule consistency provision. “Eligible Australian market” is defined to mean a financial market operated by Sydney Stock Exchange Limited or ASX Limited.

*ASIC Corporations (Exposure Period) Instrument 2016/74*

14. This instrument, among other things, provides exposure period relief for offers of managed investment products under a PDS. Section 1016B of the Act arguably imposes an exposure period on all PDSs, even where the managed investment products are in the same class as the managed investment products able to be traded on a prescribed financial market.
15. Part 4 of the Schedule amends section 8 of the instrument to extend the exposure period relief in relation to an application made in response to a PDS for a managed investment product to also apply in relation to an application made in response to a PDS for a share in a retail CCIV (referable to a sub-fund) if, at the time of lodgement of the PDS, the product is in a class of products that are able to be traded on a prescribed financial market.

*ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251*

16. This instrument, among other things, exempts a registered MIS from the financial reporting obligations in Part 2M.3 of the Act in certain circumstances of insolvency.
17. Part 5 of the Schedule amends the instrument to provide broadly equivalent relief for a retail CCIV in relation to a sub-fund that is being wound up. New section 7B of the instrument is to the effect that a retail CCIV does not have to comply with Part 2M.3 of the Act in relation to a sub-fund if at the date the retail CCIV was obliged to lodge a report, the sub-fund had a liquidator appointed to it. The availability of the relief is subject to the condition that the

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retail CCIV must have adequate arrangements in place to answer questions asked by a member of the sub-fund about the winding up.

*ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357*

18. This instrument, among other things, provides relief from the obligations in sections 1012A, 1012B and 1012C of the Act to give a PDS. The relief applies in specified circumstances in relation to interests in a MIS that are offered or sold as consideration under a foreign scrip bid.
19. Part 6 of the Schedule amends subsection 5(3) of the instrument to provide broadly equivalent relief in relation to shares in a CCIV that are acquired under a foreign scrip bid.

*ASIC Corporations (Registered Schemes—Differential Fees) Instrument 2017/40*

20. This instrument provides relief from the duty of a responsible entity of a registered MIS to treat members who hold interests of the same class equally (paragraph 601FC(1)(d)). The relief is provided in relation to administering a differential fee arrangement that meets certain criteria. A differential fee arrangement, in relation to a registered MIS, is an arrangement for the charging, rebating or waiving of fees by the responsible entity to members of the registered MIS on a basis that differs from that applying to other members who hold interests of the same class. The relief applies in relation to paragraph 601FC(1)(d), in respect of the duty to treat members who hold interests of the same class equally.
21. Part 7 of the Schedule inserts new sections 7 and 8 into the instrument which provide broadly equivalent relief from the duties of the corporate director of a CCIV, in relation to differential fee arrangements administered at the sub-fund level. The title of the instrument will be amended to be *ASIC Corporations (Registered Schemes and CCIVs—Differential Fees) Instrument 2017/40*. The equivalent duties are the duties of the corporate director of a (retail or wholesale) CCIV to treat members of the CCIV who hold shares of the same class equally (see paragraphs 1224D(2)(b) and (3)(b)). The relief applies to differential fee arrangements that meet broadly equivalent criteria to that prescribed for registered MISs. A differential fee arrangement, in relation to a CCIV, is an arrangement for the charging, rebating or waiving of fees by the corporate director or the CCIV (as the case may be) to members of the sub-fund of the CCIV on a basis that differs from that applying to other members of the sub-fund who hold shares of the same class referable to that sub-fund.

*ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649*

22. This instrument, among other things, provides relief from the page length requirements for PDSs in respect of simple managed investment schemes (and other products) and facilitates the use of digital delivery methods for PDSs.
23. Part 8 of the Schedule amends the instrument to provide broadly equivalent relief in respect of simple sub-fund products. Section 5 of the instrument is

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amended so that Schedule 10F of the Regulations provides that the page length requirements for PDSs do not apply to electronic PDSs for simple sub-fund products. Section 6 of the instrument is amended to modify section 1015C of the Act to allow PDSs in respect of simple sub-fund products to be delivered digitally. Section 7 of the instrument is amended to amend regulation 7.9.11.ZF(3)(c)(ii) to make the date display requirement appropriate to a digital format.

*ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82*

24. This instrument, among other things, provides relief so that persons who have been issued convertible notes will not be required to prepare a PDS where they on-sell the underlying quoted securities (once converted) where certain requirements are met.
25. Part 9 of the Schedule amends section 7 of the instrument to cover the circumstance where the issuer of the convertible note is a CCIV in respect of a sub-fund. The amendments also expressly set out (by way of clarification) the requirements for a notice to include all the information required by subsection 713(2) of the Act.

*ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*

26. This instrument, among other things, allows ASX-listed MISs to issue interests under a purchase plan to existing holders without a PDS, subject to certain requirements and conditions.
27. Part 10 of the Schedule amends the instrument to provide broadly equivalent relief for offers or issues of shares in a retail CCIV under a purchase plan. A new subsection 6(4) is inserted into the instrument which provides that for a sub-fund of a retail CCIV, or a retail CCIV admitted to an official list of the ASX, the retail CCIV does not have to comply with provisions of the Act about the requirement to issue PDSs in relation to certain offers or issues of shares under a purchase plan. The section 6(4) exemption is subject to the requirements in section 7. A person relying on the exemption must comply with the conditions in section 8.

*ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497*

28. This instrument, among other things, modifies regulation 7.9.11S of the Regulations by inserting notional subregulations 7.9.11S(5)–(7), which exclude ‘multifunds’, ‘hedge funds’ and ‘funds of hedge funds’ from the shorter PDS regime in particular circumstances.
29. A ‘multifund’, for these purposes, is a ‘simple managed investment scheme’ (within the meaning of regulation 1.0.02) that is offered as part of a collection of registered MISs.

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30. A ‘hedge fund’, for these purposes, is a kind of registered MIS that is promoted by the responsible entity as a ‘hedge fund’ and otherwise satisfies the definition of ‘hedge fund’ in notional subregulation 7.9.11S(7).
  31. A ‘fund of hedge funds’ is defined as a registered MIS that (a) is promoted by the responsible entity using the expression and as being a ‘fund of hedge funds’; or (b) which invests at least 35% of scheme property in a way that gives rise to economic interests in prescribed funds, schemes, or bodies; or (c) is promoted by the responsible entity on the basis that the scheme property will be invested in the way referred to in paragraph (b).
  32. Part 11 of the Schedule inserts new subsection 5(3) into the instrument to provide broadly equivalent relief from the shorter PDS regime in the CCIV context. Subsection 5(3) modifies regulation 7.9.11ZA by inserting new notional subregulations 7.9.11ZA(5)–(7), which exclude ‘multifunds’, ‘hedge funds’ and ‘funds of hedge funds’ from the shorter PDS regime in broadly equivalent circumstances.
  33. A ‘multifund’, for these purposes, is a simple sub-fund (as defined in the instrument) that is offered as part of a collection of financial products which relate to another sub-fund of the same CCIV or a sub-fund of another CCIV.
  34. A ‘hedge fund’, for these purposes, is a sub-fund of a retail CCIV that is promoted by the retail CCIV as a ‘hedge fund’ and otherwise satisfies the definition of ‘hedge fund’ in notional subregulation 7.9.11ZA(7). For the purposes of sub-subparagraph (b)(i)(B) of the definition of ‘hedge fund’, the calculation of the number of interposed entities through which a retail CCIV (in respect of a sub-fund) acquires an economic interest in a financial product is to be performed by reference to each separate vertical stream of interposed entities. For example, where a head retail CCIV (in respect of a sub-fund) directly invests in retail CCIV A (in respect of a sub-fund) and retail CCIV B (in respect of a sub-fund), and both retail CCIVs A and B (in respect of the sub-funds) directly invest in retail CCIV C (in respect of a sub-fund), there are 2 vertical streams, with each stream comprising 2 interposed entities. The first vertical stream comprises retail CCIVs A (in respect of a sub-fund) and C (in respect of a sub-fund). The second vertical stream comprises retail CCIVs B (in respect of a sub-fund) and C (in respect of a sub-fund). There is no single vertical stream comprising retail CCIVs A, B and C.
  35. A ‘fund of hedge funds’ is a sub-fund of a retail CCIV that (a) is promoted by the retail CCIV using the expression and as being a ‘fund of hedge funds’; or (b) which invests at least 35% of the assets of the sub-fund in a way that gives rise to economic interests in prescribed funds, schemes, bodies or sub-funds; or (c) is promoted by the retail CCIV on the basis that the assets of the sub-fund will be invested in the way referred to in paragraph (b).
  36. The instrument also amends the definition of ‘fund of hedge funds’ in relation to a registered MIS to take into account investments of scheme property in a way that gives rise to economic interests in a sub-fund of a CCIV.

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37. This instrument provides relief from sections 1012A–1012C of the Act in relation to the acquisition of certain interests in a MIS. The instrument is to the effect that a PDS is not required where a member of a MIS seeks to acquire additional interests in the MIS that are of the same class as the member’s current interests, and the member has previously paid a total of at least \$500,000 for the purchase of those interests.
38. Part 12 of the Schedule inserts new section 6 into the instrument to provide broadly equivalent relief in the CCIV context. The obligations (in sections 1012A–1012C of the Act) to provide a PDS do not apply where a person who holds shares in a CCIV (referable to a sub-fund), for which they paid at least \$500,000, seeks to acquire additional shares of the same class (and referable to the same sub-fund).

*ASIC Class Order [CO 13/656]*

39. This instrument, among other things, provides relief from the duty of a responsible entity of a registered MIS to treat members who hold interests of the same class equally (see paragraph 601FC(1)(d)). The relief is provided in various circumstances.
40. Part 13 of the Schedule inserts new section 4A into the instrument which provides near-equivalent relief from the duty of the corporate director of a retail CCIV to treat members of the CCIV who hold shares of the same class equally (see paragraph 1224D(2)(b)). Relief is provided in circumstances where complying with the duty would prevent the corporate director from:
- a. not making an offer of shares to a member of the retail CCIV with a registered address outside Australia, New Zealand and, in the case of an Australian passport fund, each host economy of the fund (subject to additional criteria);
  - b. offering shares to some members of a sub-fund of the retail CCIV who would be acquiring shares as wholesale clients at an earlier time than other members (subject to additional criteria);
  - c. dealing with complaints made by members of a sub-fund of the retail CCIV who acquire shares as wholesale clients differently from complaints by other members of the sub-fund; and
  - d. offering and issuing shares in accordance with *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*.
41. Relief under paragraph 4(a)(i) of the instrument has not been extended to CCIVs as the ASX Rules do not contain an equivalent rule to ASX Rule 7.7 that is relevant to the CCIV context.

*ASIC Class Order [CO 13/721]*

42. This instrument:

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- a. exempts the responsible entity of a registered MIS that is an exchange traded fund (ETF) from the requirement to comply with their duty to treat members who hold interests of the same class equally (see paragraph 601FC(1)(d)) in certain circumstances;
  - b. provides relief to a responsible entity of registered MIS that is an ETF or a managed fund from the ongoing disclosure requirements in section 1017B of the Act in certain circumstances;
  - c. modifies section 609 of the Act to provide for, among other things, circumstances in which a member of a registered MIS that is an ETF does not have a relevant interest in securities;
  - d. modifies section 671B of the Act to clarify how the requirements in relation to giving information about substantial holdings to specified persons and entities apply where the person holds interests in a registered MIS that is an ETF.
43. Part 14 of the Schedule provides broadly equivalent relief in the CCIV context. The most significant amendments are:
- a. new section 5A, which provides relief from the equivalent duty for the corporate director of a retail CCIV (paragraph 1224D(2)(b)) where complying with the duty would prevent the corporate director from permitting only authorised participants to withdraw from a sub-fund of the CCIV, where the sub-fund is an ETF; and new section 8A, which provides relief from the duty to the extent it would prevent the corporate director of a retail CCIV from providing information to authorised participants (in relation to a sub-fund of the retail CCIV that is an ETF) before other members about specified matters;
  - b. new section 10A, which provides relief from the ongoing disclosure requirements in section 1017B of the Act where a sub-fund of a CCIV is an ETF or a managed fund, and shares in the CCIV referable to that sub-fund are in a class that are able to be traded on a financial market operated by ASX or Cboe;
  - c. the insertion of new notional subsections 609(20A)–(20E) into the Act so that, among other things, a member of a sub-fund of a CCIV who is an authorised participant in relation to the sub-fund, is declared not to have a relevant interest in securities that form part of the assets of the sub-fund merely because the sub-fund has an acquisition or withdrawal facility (where the sub-fund is an ETF and subject to additional criteria);
  - d. the insertion of new notional subsection 671B(7C) into the Act to clarify how the requirements in section 671B of the Act apply to a member of a sub-fund of a CCIV that has an acquisition and withdrawal facility, where the sub-fund is an ETF.
44. Part 14 of the Schedule also repeals the requirements in paragraphs 5(c) and 7(b) of the instrument. These provided that a criterion for relying on the



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exemptions from the unequal treatment duty for a responsible entity of an ETF only applied where ASIC had not notified the responsible entity in writing that it was excluded from reliance on the exemption.

*ASIC Class Order [CO 13/1200]*

45. This instrument provides relief from the requirement in section 1017D of the Act to provide periodic statements for retail clients for financial products that have an investment component. The relief is provided in respect of quoted ED securities and interests in an ETF or managed fund whose interests are in a class of interests that can be traded on the ASX or Cboe. 'ETF' and 'managed fund' are defined in the instrument as types of registered MISs which satisfy certain criteria.
46. Part 15 of the Schedule amends the instrument to provide relief for broadly equivalent interests in a listed CCIV, being shares in a CCIV that are referable to a sub-fund (that is an ETF or managed fund) and can be traded on the ASX or Cboe. The definitions of 'ETF' and 'managed fund' have been modified to extend to a sub-fund of a CCIV which satisfies the relevant criteria.

**Documents incorporated by reference**

47. The amendments to *ASIC Class Order [CO 13/656]* refer to *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*. The instrument is available on the Federal Register of Legislation.

**Legislative authority**

48. The amending instrument is made under sections 341, 601QA, 655A, 673, 741, 951B, 1020F and 1243 of the Act.
49. Subsection 341(1) relevantly provides that ASIC may make an order in writing in respect of a specified class of companies or disclosing entities, relieving any of the directors, or the companies or disclosing entities themselves, or the auditors of the companies or disclosing entities, from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Act.
50. To make an order under subsection 341(1), section 342 requires that ASIC must be satisfied that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 of the Act would:
  - (a) make the financial report or other reports misleading; or
  - (b) be inappropriate in the circumstances; or
  - (c) impose unreasonable burdens.
51. The amendments to the *ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251* modify how the requirements in Part 2M.3 apply in relation to CCIVs in certain circumstances of insolvency. ASIC is satisfied that complying with the financial reporting obligations in Part 2M.3 by a retail

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CCIV in relation to a sub-fund would be inappropriate in the circumstances where a liquidator has been appointed to the sub-fund and would impose unreasonable burdens.

52. Section 1243 of the Act was introduced as part of the CCIV Act. It gives ASIC the power to make exemption and modification orders in relation to certain parts of Chapter 8B of the Act.
53. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend any such instrument.
54. The instrument is a disallowable legislative instrument.

#### **Statement of Compatibility with Human Rights**

55. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the [Attachment](#).

## Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### *ASIC Corporations (Amendment) Instrument 2022/0940*

#### Overview

56. *ASIC Corporations (Amendment) Instrument 2022/0940* makes various amendments to 15 ASIC instruments to account for the establishment of the corporate collective investment vehicle as a new type of company that is used for funds management.
57. *ASIC Corporations (Amendment) Instrument 2022/0940* makes amendments to the following instruments to provide—to the extent possible—regulatory parity between the MIS framework and the CCIV framework:
- (a) *ASIC Corporations (Application Form Requirements) Instrument 2017/241*
  - (b) *ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700*
  - (c) *ASIC Corporations (Chapter 5C—Miscellaneous Provisions) Instrument 2017/125*
  - (d) *ASIC Corporations (Exposure Period) Instrument 2016/74*
  - (e) *ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251*
  - (f) *ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357*
  - (g) *ASIC Corporations (Registered Schemes—Differential Fees) Instrument 2017/40*
  - (h) *ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649*
  - (i) *ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82*
  - (j) *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547*
  - (k) *ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497*

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(l) *ASIC Corporations (Top-up Disclosure Statements Relief) Instrument 2016/1054*

(m) *ASIC Class Order [CO 13/656]*

(n) *ASIC Class Order [CO 13/721]*

(o) *ASIC Class Order [CO 13/1200]*

Assessment of human rights implications

58. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

59. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.