
STATUTORY INSTRUMENTS

2023 No. 1190

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2023
(Resolution of Central Counterparties: Deferment of
Provisions in Resolution Instruments) Regulations 2023**

<i>Made</i>	- - - -	<i>8th November 2023</i>
<i>Laid before Parliament</i>		<i>9th November 2023</i>
<i>Coming into force</i>	- -	<i>31st December 2023</i>

The Treasury make these Regulations in exercise of the powers conferred by section 84(2) of, and paragraph 85(1) of Schedule 11 to, the Financial Services and Markets Act 2023(1).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Deferment of Provisions in Resolution Instruments) Regulations 2023.

(2) These Regulations come into force on 31st December 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(4) In these Regulations, “maximum period” has the meaning given in regulation 2(1) (suspension of a provision in a resolution instrument).

Suspension of a provision in a resolution instrument

2.—(1) The Bank(2) may suspend a provision in a resolution instrument in relation to any person for a maximum period of eighteen months beginning with the date upon which the provision is first suspended.

(2) If the Bank suspends a provision in a resolution instrument for less than the maximum period, it may, on one or more occasions, suspend the provision for a further period, provided that any period of suspension ends no later than the date on which the maximum period ends.

(3) Paragraph (2) applies regardless of whether the decision to suspend the provision for a further period is made before or after the previous period of suspension ends.

(1) 2023 c. 29.

(2) “Bank” is defined in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023 (interpretation).

(4) Where the Bank suspends more than one provision in the same resolution instrument, it may specify different periods of suspension in respect of each provision.

(5) Where a provision in a resolution instrument applies to more than one person, the Bank may suspend that provision in relation to any, some or all such persons.

(6) Where the Bank suspends a provision in relation to more than one person, it may specify different periods of suspension in respect of each person.

(7) The Bank may end the suspension of a provision in a resolution instrument before the date specified in the notice made under regulation 6 (notice of decision to suspend or waive), without waiving the provision, after carrying out a review under regulation 7 (review of decision to suspend) (and see regulation 8 (subsequent enforcement)).

Waiver of a provision in a resolution instrument

3.—(1) The Bank may waive a provision in a resolution instrument in relation to any person at any time.

(2) Where a provision in a resolution instrument applies to more than one person, the Bank may waive the application of that provision in relation to any, some or all such persons.

(3) The waiver in paragraphs (1) and (2) takes effect upon the date specified in the notice given by the Bank in accordance with regulation 6.

(4) If a provision—

(a) is, or has previously been, suspended under regulation 2 in relation to a person; and

(b) is one where the Bank has not given notice to that person before the date on which the maximum period ends of a decision to end the suspension and enforce the provision, or to enforce a provision which had previously been suspended, under regulation 8,

it must be treated by the Bank as having been waived in relation to that person.

Matters to which the Bank must have regard

4.—(1) The Bank must have regard to the matters in paragraph (2) before making any of the following decisions in relation to a provision made in a resolution instrument—

(a) a decision to suspend, or to suspend for a further period under regulation 2(2), the provision;

(b) a decision to waive the provision;

(c) a decision to end the suspension of the provision (see regulation 2(7)).

(2) The matters to which the Bank must have regard are—

(a) the expected impact of enforcement of the provision on the special resolution objectives⁽³⁾;

(b) the expected impact of enforcement of the provision on any person to whom the provision applies;

(c) the expected impact of the suspension or waiver of the provision on any person to whom the provision would continue to apply;

(d) the likelihood of the provision being successfully enforced, including whether that likelihood would be affected by the proposed suspension;

(3) “Special resolution objectives” is defined in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023.

- (e) whether suspension or waiver of the provision would create a material risk of public funds being required to stabilise the CCP⁽⁴⁾;
- (f) whether the special resolution objectives could be met to the same extent by other means.

Consultation with the Treasury

5.—(1) The Bank must consult the Treasury if any of the circumstances set out in paragraph (2) apply.

(2) The circumstances are—

- (a) the Bank intends to suspend a provision in a resolution instrument;
- (b) the Bank intends to waive a provision in a resolution instrument;
- (c) the Bank has undertaken a review of a decision to suspend a provision in a resolution instrument in accordance with regulation 7 with no more than three months remaining until the end of the maximum period for that suspended provision, and intends to—
 - (i) make a decision to suspend the provision for a further period under regulation 2(2); or
 - (ii) take no further action in respect of the suspended provision.

Notice of decision to suspend or waive

6.—(1) The Bank must give notice to any person in respect of whom it intends to suspend, suspend for a further period or waive a provision in a resolution instrument (“the recipient”) as soon as reasonably practicable after making such a decision to suspend, suspend for a further period or waive a provision.

(2) The notice must—

- (a) specify—
 - (i) the resolution instrument to which it relates;
 - (ii) which provisions in that resolution instrument are being suspended, or being suspended for a further period, and which provisions are being waived (including where the resolution instrument is to be suspended or waived in full);
 - (iii) for each provision to be suspended, or to be suspended for a further period, the date on which the suspension or further period of suspension will begin, and the date on which the suspension will end;
 - (iv) for each provision to be waived, the date on which the waiver takes effect;
- (b) state that the Bank must review the decision to suspend any provision in the resolution instrument in accordance with these Regulations, and state that, further to such a review the Bank may decide to—
 - (i) end the suspension of the provision and enforce it;
 - (ii) waive the suspended provision, or
 - (iii) suspend the provision for a further period.
- (c) state that the Bank must notify the recipient as set out in this regulation, if it decides to take any of the actions set out in sub-paragraph (b);
- (d) in respect of each provision to be suspended, state the date on which, if the Bank has not given notice of a decision under regulation 8 in relation to the provision, the provision

(4) “CCP” is defined in paragraph 154 of Schedule 11 to the Financial Services and Markets Act 2023.

must be treated by the Bank as having been waived under regulation 3(4) (treatment of a provision as waived);

- (e) state that the Bank must not take further action in respect of any provision which has been waived.

(3) The Bank must provide the Treasury with a copy of any notice given under this regulation as soon as reasonably practicable.

Review of decision to suspend

7.—(1) The Bank must review each decision to suspend, or to suspend for a further period, a provision in a resolution instrument before the end of each review period.

(2) A review period is—

- (a) in relation to the first review, the period of three months beginning with the date on which the suspension of the provision began as notified under regulation 6(2)(a)(iii), and
- (b) in relation to any subsequent reviews, the period of three months beginning with the day on which the previous review was completed.

(3) Paragraph (1) applies until the suspension ends in accordance with these Regulations.

(4) If, following a review, the Bank takes no action in respect of a suspended provision—

- (a) that provision remains suspended until the date on which the suspension will end, as specified in the notice given under regulation 6;
- (b) the Bank is not required to notify any person.

Subsequent enforcement

8.—(1) If the Bank makes a decision to end the suspension of a provision in a resolution instrument and to enforce that provision, or to enforce a provision which had previously been suspended, it must give notice to the person in respect of whom the provision is to be enforced, stating the date from which enforcement can take place.

(2) Where a resolution instrument provides for a notice period to apply in relation to the enforcement of the suspended, or previously suspended, provision—

- (a) the Bank can enforce the provision on or after the first business day following the end of the relevant period;
- (b) “the relevant period” in sub-paragraph (a) means a period equivalent to the notice period provided for in the resolution instrument in relation to the suspended, or previously suspended, provision, beginning with the date of deemed service of the notice given under this regulation.

(3) Where a resolution instrument does not provide for a notice period to apply in relation to the suspended, or previously suspended, provision, the Bank can enforce the provision on or after the first business day following the date of deemed service of the notice given under this regulation (see regulation 9 (giving of notices)).

Giving of notices under these Regulations

9. Paragraph 151 of Schedule 11 to the Financial Services and Markets Act 2023 (giving of notices, documents etc) applies to notices given under these regulations as if they were notices given under a provision of the Schedule, and the reference to “deemed service” in regulation 8(3) has the meaning given in the Regulations to which that paragraph refers.

8th November 2023

Andrew Stephenson
Steve Double
Two of the Lords Commissioners of His
Majesty's Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern certain instruments (“resolution instruments”) issued by the Bank of England (“the Bank”) when a central counterparty is failing or likely to fail (under the special resolution regime set out in Schedule 11 to the Financial Services and Markets Act 2023 (c. 29) (“the 2023 Act”) (central counterparties)). “Resolution instruments” are defined in paragraph 79 of that Schedule (resolution instruments: effect and supplementary matters) and are the means by which some of the Bank’s powers under the special resolution regime are exercised. These Regulations make provision for and in connection with the suspension or waiver of provisions made under resolution instruments.

Regulation 2 makes provision for the suspension by the Bank of provisions made in a resolution instrument, including specifying a maximum period for such a suspension. Regulation 3 makes provision for the Bank to waive the application of provisions made in a resolution instrument. Regulation 4 sets out the matters to which the Bank must have regard when making a decision to suspend, or to suspend for a further period, a provision, to waive a provision or to end the suspension of a provision.

Regulation 5 requires the Bank to consult the Treasury before making a decision to suspend a provision, to waive a provision, to suspend a provision for a further period of time where less than three months remain until the expiry of the maximum period for which that provision can be suspended (in accordance with regulation 2) or to take no further action in respect of such provision.

Regulation 6 sets out the requirements for the Bank to notify the persons to whom a provision in a resolution instrument applies of any decision to suspend, suspend for a further period of time or waive that provision in respect of them.

Regulation 7 sets out the requirements for the Bank to review any decision to suspend, or suspend for a further period of time, a provision in a resolution instrument in accordance with three-month review periods. Regulation 8 requires the Bank to notify the person in respect of whom a provision has been suspended (or has previously been suspended) if the Bank makes a decision to enforce that provision.

Regulation 9 provides that the procedural requirements under paragraph 151 of Schedule 11 to the 2023 Act (giving of notices, documents etc) apply where the Bank is giving notices under these Regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.