
Changes to legislation: There are currently no known outstanding effects for the
Financial Services and Markets Act 2023, PART 2. (See end of Document for details)

SCHEDULES

SCHEDULE 11

CENTRAL COUNTERPARTIES

PART 2

PRE-RESOLUTION POWERS OF THE BANK OF ENGLAND

Removal of impediments to the exercise of stabilisation powers etc

- 2 (1) The Bank may give directions to a CCP to take measures which the Bank considers are required to address impediments to the effective exercise of the stabilisation powers.
- (2) The power conferred by sub-paragraph (1) includes (but is not limited to) a power to direct the CCP—
- (a) to enter into or revise an agreement for the provision of services relating to the provision of critical clearing services;
 - (b) to limit its maximum individual and aggregate exposures to loss;
 - (c) to produce information which is relevant to the exercise of the stabilisation powers, and to provide that information to the Bank;
 - (d) to dispose of specified assets;
 - (e) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;
 - (f) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;
 - (g) to make specified changes to its recovery plan, rules or contractual arrangements;
 - (h) in order to ensure that it is possible for the performance of critical clearing services to be legally or operationally separated from the performance of other functions—
 - (i) to change its legal or operational structure, or
 - (ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;
 - (i) to change its operational and financial arrangements so as to separate specified classes of assets from other specified classes of assets;
 - (j) to restrict netting sets in relation to specified classes of assets;
 - (k) to establish a parent company in the United Kingdom.
- (3) Where a CCP is a subsidiary of a company incorporated in the United Kingdom, the Bank may give directions to its parent company requiring the parent company to establish a separate holding company as a parent of the subsidiary for the purpose of—

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- (a) facilitating the exercise of the stabilisation powers, or
 - (b) ensuring that the exercise of a stabilisation power does not have an adverse effect on any other entities in the group.
- (4) Before giving directions under this paragraph the Bank must have regard to the potential impact of the direction on—
- (a) the CCP or entity in question,
 - (b) the market for financial services within the United Kingdom, and
 - (c) the financial stability of the United Kingdom.
- (5) Where the CCP in question is a PRA-authorized person, the Bank must consult the PRA before giving directions under this paragraph.
- (6) Directions under this paragraph—
- (a) must be in writing,
 - (b) may be given with general effect or with respect to a particular CCP or class of CCPs, and
 - (c) may be varied or revoked.
- (7) Nothing in this paragraph limits the powers of the Bank under section 296 or 296A of, or paragraph 9B of Schedule 17A to, FSMA 2000.
- (8) In this paragraph, “recovery plan” in relation to a CCP, means a plan required under paragraph 29B of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (S.I. 2001/995).

Commencement Information

- I1** Sch. 11 para. 2 not in force at Royal Assent, see [s. 86\(3\)](#)
- I2** Sch. 11 para. 2 in force at 31.12.2023 by [S.I. 2023/1382](#), [reg. 8\(b\)](#)

Safeguards relating to directions under paragraph 2

- 3 (1) A direction given to a relevant person under paragraph 2 must be accompanied by a notice which—
- (a) states when the direction takes effect (see sub-paragraphs (2) and (3)),
 - (b) gives the Bank’s reasons for giving the direction, and
 - (c) specifies a reasonable period within which the person may make representations to the Bank about the direction.
- (2) The direction may, if the Bank considers it necessary, take effect—
- (a) immediately it is given to the relevant person, or
 - (b) on a later date specified in the direction.
- (3) In any other case the direction takes effect when—
- (a) it has been confirmed by a notice under sub-paragraph (5), and
 - (b) the period during which the direction may be referred to the Upper Tribunal (under sub-paragraph (6)) has expired and, if the matter was so referred, the reference and any appeal against the Tribunal’s determination, has been finally disposed of.

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- (4) Where representations are made by the relevant person within the period specified under sub-paragraph (1)(c), the Bank must, within a reasonable period, consider those representations and decide—
 - (a) whether to confirm or revoke the direction, and
 - (b) if the direction is revoked, whether to give a different direction.
- (5) The Bank must—
 - (a) if no representations are made within that specified period, give the relevant person written notice that the direction is confirmed, and
 - (b) if representations are made, give the relevant person written notice of its decision under sub-paragraph (4).
- (6) If the relevant person is aggrieved by the confirmation of the direction, the person may refer the matter to the Upper Tribunal.
- (7) A notice under sub-paragraph (5)(a) or (b) confirming the direction must—
 - (a) inform the relevant person of the right to refer the matter to the Upper Tribunal, and
 - (b) indicate the procedure on such a reference.
- (8) A notice given under sub-paragraph (5)(b) of a decision by the Bank to give a different direction must comply with sub-paragraph (1).
- (9) The Bank must prepare and publish a statement of its policy with respect to the giving of directions under paragraph 2.
- (10) The Bank may alter or replace a statement of policy published under this paragraph.
- (11) The Bank must publish a statement as altered or replaced under sub-paragraph (10).
- (12) No directions may be given under paragraph 2 before the statement of policy under sub-paragraph (9) has been published.
- (13) In this paragraph “relevant person” means—
 - (a) a CCP, or
 - (b) a parent of a CCP.

Commencement Information

- I3** Sch. 11 para. 3 not in force at Royal Assent, see **s. 86(3)**
- I4** Sch. 11 para. 3(1)-(8)(12)(13) in force at 31.12.2023 by S.I. 2023/1382, **reg. 8(b)**
- I5** Sch. 11 para. 3(9)-(11) in force at 29.8.2023 by S.I. 2023/779, **reg. 4(ddd)(i)**

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