



# Financial Services and Markets Act 2023

## 2023 CHAPTER 29

### PART 1

#### REGULATORY FRAMEWORK

### CHAPTER 3

#### ACCOUNTABILITY OF REGULATORS

##### *Bank of England regulatory powers*

#### **48 Exercise of FMI regulatory powers**

After section 30C of the Bank of England Act 1998 insert—

#### **“PART 3B**

#### CENTRAL COUNTERPARTIES AND CENTRAL SECURITIES DEPOSITORIES

#### **30D Exercise of functions relating to CCPs and CSDs**

- (1) In exercising its FMI functions in a way that advances the Financial Stability Objective (and subject to that), the Bank must have regard to—
- (a) the regulatory principles in section 30E;
  - (b) the effects generally that the exercise of FMI functions will or may have on the financial stability of countries or territories (other than the United Kingdom) in which FMI entities are established or provide services;
  - (c) the desirability of exercising FMI functions in a manner that is not determined by whether the persons to whom FMI services are provided are located in the United Kingdom or elsewhere.

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- (2) In exercising its FMI functions in a way that advances the Financial Stability Objective the Bank must, so far as reasonably possible, act in a way which, as a secondary objective, facilitates innovation in the provision of FMI services (including in the infrastructure used for that purpose) with a view to improving the quality, efficiency and economy of the services.
- (3) For the purposes of this Part the Bank’s “FMI functions” are the following functions so far as exercisable in relation to FMI entities—
- (a) its function of making rules under FSMA 2000 (considered as a whole);
  - (b) its function of making technical standards in accordance with Chapter 2A of Part 9A of FSMA 2000;
  - (c) its function of preparing and issuing codes under FSMA 2000 (considered as a whole);
  - (d) its function of determining the general policy and principles by reference to which it performs particular functions under FSMA 2000.
- (4) In this Part—
- “FMI entities” means—
- (a) a recognised central counterparty within the meaning of Part 18 of FSMA 2000 (see section 285(1)(b)(i) of that Act),
  - (b) a recognised CSD as defined by section 285(1)(e) of FSMA 2000,
  - (c) a third country central counterparty as defined by section 285(1)(d) of FSMA 2000, and
  - (d) a third country CSD as defined by section 285(1)(g) of FSMA 2000;
- “FMI services” means services provided by FMI entities as part of their business as FMI entities;
- “FSMA 2000” means the Financial Services and Markets Act 2000.

### **30E Regulatory principles**

- (1) These are the regulatory principles referred to in section 30D(1)(a)—
- (a) the need to use the resources of the Bank in the most efficient and economic way;
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, including in a way consistent with contributing towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Bank considers the exercise of its FMI functions to be relevant to the making of such a contribution;
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the responsibilities of the senior management of FMI entities subject to requirements imposed by or under FSMA 2000, including

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- those affecting consumers, in relation to compliance with those requirements;
- (f) the desirability where appropriate of the Bank exercising its FMI functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons;
  - (g) the desirability in appropriate cases of the Bank publishing information relating to persons on whom requirements are imposed as a result of the exercise of the Bank’s FMI functions, or requiring such persons to publish information, as a means of contributing to the advancement by the Bank of its Financial Stability Objective and its objective under section 30D(2);
  - (h) the principle that the Bank should exercise its FMI functions as transparently as possible;
  - (i) the desirability of facilitating fair and reasonable access to FMI services.
- (2) For the purposes of subsection (1) “consumer” has the same meaning as in section 3B of FSMA 2000 (and for these purposes includes in particular persons who receive FMI services).

### **30F Financial Market Infrastructure Committee**

- (1) There is to be a committee of the Bank known as the Financial Market Infrastructure Committee (the “FMI Committee”).
- (2) The FMI Committee is to consist of—
- (a) a chair appointed by the Bank;
  - (b) at least three independent members appointed by the Bank;
  - (c) such other members as may be appointed from time to time by the Bank.
- (3) The person appointed as chair under subsection (2)(a) must be the Governor, or a Deputy Governor, of the Bank.
- (4) A person is an independent member for the purposes of subsection (2)(b) if the person is an officer, employee or agent of the Bank—
- (a) as a result only of their membership of one or more of the Bank’s committees, or
  - (b) is appointed as an independent member to the FMI Committee with the consent of the Treasury.
- (5) For the purposes of subsection (4)(a)—
- (a) the Bank’s committees are—
    - (i) the FMI Committee,
    - (ii) the Financial Policy Committee,
    - (iii) the Monetary Policy Committee, and
    - (iv) the Prudential Regulation Committee;
  - (b) the reference to a person who is an officer, employee or agent of the Bank as result of their membership of one or more of those committees includes a reference to a person who becomes such an officer, employee or agent as a result of their appointment to the FMI Committee under this section.

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- (6) Before appointing a person under subsection (2)(b) the Bank must—
- (a) be satisfied that the person has knowledge or experience which is likely to be relevant to the FMI Committee’s functions, and
  - (b) consider whether the person has any financial or other interests that could substantially affect the functions as member that it would be proper for the person to discharge.

### **30G Functions of the Financial Market Infrastructure Committee**

- (1) The following functions of the Bank are to be exercised by the Bank acting through the FMI Committee (and, except as authorised by this section, are not to be exercised in any other way)—
- (a) its FMI functions;
  - (b) such other functions of the Bank as the court of directors may specify as functions that are to be discharged by the FMI Committee.
- (2) The FMI Committee may arrange for such of its functions as it thinks fit to be carried out only by, or after consultation with, the Governor of the Bank.
- (3) Except as provided by subsection (4), the FMI Committee may delegate such of its functions as it thinks fit to—
- (a) a member of the FMI Committee;
  - (b) a sub-committee of the FMI Committee consisting of members of the FMI Committee or one or more such members and one or more officers, employees or agents of the Bank;
  - (c) an officer, employee or agent of the Bank;
  - (d) a committee consisting of officers, employees or agents of the Bank.
- (4) The FMI Committee may not delegate under subsection (3) its FMI functions under FSMA 2000 of making rules or technical standards (but this does not prevent arrangements under subsection (2) being made in respect of such functions).

### **30H Information**

- (1) The Bank must publish a statement setting out the following matters in respect of the FMI Committee—
- (a) the number of members and whether each such member is a Bank member or an independent member;
  - (b) if the Committee includes any Bank members, the role of each such member within the Bank;
  - (c) arrangements for meetings and how proceedings at meetings are conducted;
  - (d) arrangements for the taking of decisions otherwise than at meetings;
  - (e) arrangements for any functions to be carried out by, or after consultation with, the Governor of the Bank (including details of the functions to which such arrangements relate);
  - (f) arrangements for the delegation of functions.
- (2) If there is a material change in any of the matters contained in the statement the Bank must publish an updated statement.

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- (3) Publication under this section is to be made in such manner as the Bank considers best designed to bring the statement to the attention of the public.
- (4) For the purposes of subsection (1)—
  - (a) a person is an independent member if they are appointed in accordance with section 30F(2)(b) and (4);
  - (b) a person is a Bank member if they are an officer or employee of the Bank who is not appointed as mentioned in paragraph (a).

### **30I Recommendations by Treasury**

- (1) The Treasury may at any time by notice in writing to the FMI Committee make recommendations about aspects of the economic policy of His Majesty's Government to which the Bank should have regard—
  - (a) when considering how to advance the Financial Stability Objective and the objective under section 30D(2), and
  - (b) when considering the application of the regulatory principles set out in section 30E.
- (2) The Treasury must make recommendations under subsection (1) at least once in each Parliament.
- (3) The Treasury must—
  - (a) publish in such manner as they think fit any notice given under subsection (1), and
  - (b) lay a copy of it before Parliament.
- (4) The FMI Committee must respond to each recommendation made under subsection (1) by notifying the Treasury in writing of—
  - (a) action that the Bank has taken or intends to take in accordance with the recommendation, or
  - (b) the reasons why the Bank has not acted or does not intend to act in accordance with the recommendation.
- (5) The notice under subsection (4) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).
- (6) Where the FMI Committee has given notice under subsection (4) in relation to a recommendation, it must by notice in writing update the Treasury on the matters mentioned in subsection (4)(a) and (b) before the end of each subsequent period of 12 months.
- (7) Subsection (6) does not apply if the Treasury have notified the FMI Committee in writing that no update (or further update) is required.
- (8) The FMI Committee is not required under subsection (4) or (6) to provide any information whose publication would in the opinion of the Committee be against the public interest.”