Title: The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013	Post Implementation Review
PIR No: N/A	**Date: 23/04/2019**
Original IA/RPC No: N/A	**Type of regulation: Domestic**
Lead department or agency: HM Treasury	**Type of review: Statutory**
Other departments or agencies: Financial Conduct Authority (FCA) and Bank of England	**Date measure came into force:** **07/03/2013**
	Recommendation: Keep
Contact for enquiries: Victoria.Hogg@HMTreasury.gov.uk	**RPC Opinion: N/A**

1. What were the policy objectives of the measure?

This measure implements, in part, Regulation (EU) 648/2012, known as the European Market Infrastructure Regulation (EMIR), principally making amendments to the Financial Services and Markets Act (FSMA) 2000 (c.8) and the Companies Act 1989 (c.40). This regulation repeals provisions in domestic law which are inconsistent with EMIR or no longer required, and ensure that EMIR is fully effective and enforceable in the United Kingdom.

EMIR sets out the requirements and regulatory framework for ‘Over the Counter’ (OTC) derivatives contracts, central counterparties and trade repositories. It mandates that more derivatives trades should be cleared through central counterparties (CCPs) and reported to trade repositories (TRs). Through this and a variety of other mechanisms it is designed to mitigate the systemic risk of a failed derivative trade, absorbing the consequences rather than allowing the effect to spread throughout the market. TR reporting also makes the market more transparent. The measure subject to this PIR sought to ensure that EMIR operates effectively in the UK.

2. What evidence has informed the PIR?

The implementation of the Regulations has been tested in engagement with key stakeholders. We have worked with the regulators, the Bank of England and the Financial Conduct Authority (FCA) to understand their views on this measure. The FCA, having the largest role in implementing this regulation, completed the largest response. Responses from industry were limited as this Regulation primarily impacts the aforementioned regulators.

Regarding EMIR, the 2017 Financial Stability Report from the Bank provided an assessment of the post-crisis reforms to derivatives markets and of whether the objectives have been achieved.

In 2015, in response to a consultation by the European Commission, the European Securities and Markets Agency recommended changes to EMIR which resulted in several legislative proposals at the EU, some of which have concluded and will become EU retained law after EU exit and others that are ongoing. The consultation documents have been considered as part of this review.

3. To what extent have the policy objectives been achieved?

EMIR is effective and enforceable in the United Kingdom. All the main requirements are now fully implemented (with the exception of certain aspects which will take effect at a later date to allow businesses to prepare for them). The fact that this regulation has provided for the effective implementation of EMIR in the UK demonstrate that the objectives have been achieved.

Compliance with this regulation is high, showing that the powers of the Prudential Regulation Authority (PRA) and the FCA in this regulation provide an effective deterrent. The FCA have used their powers to issue an enforcement action against a UK firm for failure to report a large number of derivatives transactions under EMIR.

The reporting requirements have greatly increased transparency of the derivatives market for authorities who can better monitor systemic risk in these markets. The clearing obligation and margin requirements for non-cleared derivatives have helped to mitigate counterparty credit risk. Other requirements (such as timely confirmation, portfolio reconciliation and compression and dispute resolution) have also greatly improved operational risks associated with the derivatives market.

The percentage of outstanding single-currency OTC interest rate derivatives globally that are centrally cleared increased from an estimated 24% at end-2008 to at least 62% at end-June 2017. Derivative markets are now more transparent, and new trade repository (TR) data have enhanced UK authorities' analysis of these markets.

SCS of Securities Markets and Banking

Signed: ***Clare Bolingford*** Date: ***20/05/2019***

SCS of Better Regulation Unit

Signed: ***Gemma Peck*** Date: ***29/05/2019***

Sign-off for Post Implementation Review: Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen MP, Economic Secretary to the Treasury*** Date: ***26/06/2019***

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions? No Regulatory Impact Assessment (RIA) was conducted for this legislation due to the financial impact on UK businesses of the changes contained within this regulation being negligible, in terms of regulatory impact. The changes to the regulatory regime were expected to be no more or less onerous on market participants, with many of the changes simplifying the existing legal and regulatory landscape. Stakeholder views collected as part of this review have not revealed any significant costs of implementation.
5. Were there any unintended consequences? No unintended consequences were identified in the review of this regulation.
6. Has the evidence identified any opportunities for reducing the burden on business? No negative impact on businesses were identified as this regulation primarily regard PRA and FCA powers. Industry representatives broadly welcome the implementation of EMIR within the UK as it helps to mitigate businesses' counterparty and operational risk.
7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business? UK businesses are not at a competitive disadvantage as a result of this measure as EMIR is a directly applicable regulation and therefore applies equally across the EU. The cost of implementation in other Member States is not available.

Recommended Next Steps (Keep, Amend, Repeal or Replace)

EMIR is widely recognised as an important regulatory measure to improve the resilience of the financial system through CCPs and address deficiencies in global derivatives markets. The domestic implementation of this regulation is instrumental in ensuring that EMIR can be effectively implemented in the UK. Therefore, this PIR recommends that the Regulation be renewed.