

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (OVER THE COUNTER
DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES)
(AMENDMENT) REGULATIONS 2015

2015 No. 348

- 1.** This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the instrument**

2.1 The purpose of this instrument is to amend the transitional provision in the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504) (“the Principal Regulations”) so as to allow for the special resolution regime provided for in Part 1 of the Banking Act 2009 (“the 2009 Act”) to be applied to clearing houses that were recognised under Part 18 of the Financial Services and Markets Act 2000 before 15 March 2013 during the period in which their application for authorisation under Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ No L 201, 27.7.2012, p 1) (“the EMIR regulation”) is in the process of being determined. It also corrects a minor typographical error in the Principal Regulations.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

- 4. Legislative Context**

4.1 Section 102 of the Financial Services Act 2012 (“the 2012 Act”) made amendments to Part 1 of the 2009 Act so as to allow for the application of the special resolution regime provided for in that Part to “UK clearing houses”.

4.2 The term “UK clearing house” was defined by the new section 89G of the 2009 Act. Section 89G was amended by regulation 25 of the Principal Regulations and the term “recognised central counterparty” was substituted for “UK clearing house”.

4.3 As a result of the substitution of the term “recognised central counterparty” for “UK clearing house” in section 89G of the 2009 Act, the special resolution regime will only be capable of being applied to central counterparties providing clearing services that have met the requirements set out in the EMIR regulation, i.e. those clearing houses

which have successfully applied for authorisation by the Bank of England pursuant to Article 14 of the EMIR regulation.

4.4 The purpose of this instrument is to amend the transitional provision in the Principal Regulations so as to allow for the special resolution regime to be applied to those clearing houses whose applications for authorisation under the EMIR regulation have yet to be determined (i.e. to allow for the special resolution regime to be applied to a “CCP RCH” within the meaning of regulation 50 of the Principal Regulations provided that it would have qualified as UK clearing house as defined by section 89G before its amendment by the Principal Regulations).

4.5 This instrument also corrects a minor typographical error in regulation 36 of the Principal Regulations: “Uncertificated” is substituted for “Uncertified” in the relevant places.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The purpose of section 102 of the 2012 Act was to allow for the Bank of England, in appropriate circumstances, to apply the special resolution regime to UK entities that offer clearing services as a central counterparty. When the Principal Regulations amended section 89G of the 2009 Act without making any accompanying transitional provision, the unintended consequence was that entities awaiting authorisation under the EMIR Regulation could not be made subject to the special resolution regime. This was an oversight, and this instrument corrects this error.

- Consolidation

7.2 This instrument makes minor amendments to domestic legislation. Since the amendments are limited in scope, consolidation is not merited.

8. Consultation outcome

8.1 This instrument has not been subject to any consultation.

9. Guidance

9.1 No guidance accompanies this instrument.

10. Impact

10.1 This instrument will only have an impact on a very limited category of business (UK clearing houses offering central counterparty clearing services) in the very unlikely event that it is necessary to apply the special resolution regime to a clearing house during the period in which its application for authorisation under the EMIR regulation is pending final determination. This instrument has no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring & review

12.1 It is not proposed to monitor or review the outcome of the changes effected by this instrument.

13. Contact

Steven Dodkins at HM Treasury can answer any queries regarding the instrument (Tel: 02072701525 or email: steven.dodkins@hmtreasury.gsi.gov.uk).