

<p>Title: The Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Deferment of Provisions in Resolution Instruments) Regulations 2023</p> <p>SI (Statutory Instrument) No: Click here to enter text.</p> <p>Other departments or agencies: None</p> <p>Contact for enquiries: Edward.Henley@hmtreasury.gov.uk</p>	De minimis assessment
	Date: 09/11/2023
	Type of regulation: Domestic
	Date measure comes into force: 31/12/2023
<p>Cost of Preferred (or more likely) Option</p> <p>Under £5m</p>	<p>Equivalent Annual Net Direct Cost to Business per year (EANDCB in 2019 prices) None</p>

<p>1. What is the problem under consideration? Why is Government intervention necessary?</p> <p>Schedule 11 of the Financial Services and Markets (FSM) Act 2023 introduced an expanded resolution regime for central counterparties (CCPs). CCPs are entities used by firms to reduce certain risks that arise when trading on financial markets, such as derivatives and equities markets. They sit between the buyers and sellers of financial instruments, providing assurance that contractual obligations will be fulfilled. There are three CCPs in scope of this regime, and they are integral to the UK's financial system.¹</p> <p>Schedule 11 provides the Bank of England (the Bank), as the UK's Resolution Authority, with an expanded toolkit to mitigate the impact of a CCP failure and the subsequent risks to financial stability and public funds. This toolkit allows the Bank to allocate losses to clearing members and the CCP itself, avoiding the loss falling to the taxpayer and aiming to prevent contagion within the financial sector.</p> <p>In using this toolkit, the Bank is able to make instruments imposing a number of obligations on clearing members during the course of a resolution. Given the Bank's objectives to prevent contagion and protect financial stability, it may be necessary for the Bank to defer ('suspend') or waive an obligation imposed under a resolution instrument. This provides the Bank with the necessary flexibility to protect financial stability and take account of clearing members' individual circumstances.</p>
<p>2. What are the policy objectives and the intended effects?</p> <p>The overall policy objective of this SI is to ensure the Bank has the flexibility to fulfil its objective to protect financial stability. This legislation will set out the process by which the Bank may suspend, or waive a provision in a resolution instrument, and then subsequently enforce a suspended provision, ensuring that the Bank has the necessary flexibility to respond to the specific circumstances of the resolution.</p> <p>The legislation will set out that the parameters within which the Bank may suspend an obligation for a period of no longer than 18 months. The Bank may enforce or waive an obligation within that period, and the obligation will automatically be waived if notice of an intention to enforce is not given within the 18 months. The SI will also set out the notification requirements for any</p>

¹ ICE Clear Europe, LME Clear and LCH

decision made under this legislation, as well as the process for the Bank reviewing a suspended obligation.

**3. What policy options have been considered, including any alternatives to regulation?
Please justify preferred option**

There are three potential policy options:

Option 1: Do nothing

This option would not set the parameters within which the Bank is able to suspend or waive provisions in a resolution instrument.

This option is not considered practical as it would result in a lack of clarity for the Bank and for clearing members on what process the Bank would take when suspending or waiving provisions in a resolution instrument. This may disrupt effective resolution planning and potentially limit the effectiveness of a resolution.

Option 2: Limit the maximum period for a deferral of obligations to 18 months (preferred option)

This option ensures that the Bank of England have the necessary clarity on the process to be followed when exercising a resolution instrument and sets the parameters within which the Bank is able to exercise its power to suspend or waive provisions in a resolution instrument.

HM Treasury judges that the timeframe of 18 months strikes a sensible balance, allowing clearing members time to repair their finances if necessary whilst avoiding the risk of obligations hanging over clearing members for an extended period of time.

Option 3: Set alternative timeframes and parameters for the Bank to exercise its deferment and waiver powers

There is an option to set the parameters for the Bank to defer obligations to a different timeframe (e.g. shorter or longer than 18 months). HM Treasury judges that having a deferment window shorter than 18 months may give insufficient time for clearing members to repair their finances (if necessary) and thereby meet their obligations, while a period longer than 18 months would leave obligations hanging over a clearing member for too long. It would also be possible to set restrictions on the Bank's ability to waive obligations to make them dependent on specific timeframes, for instance unless obligations had first been suspended for a number of months. However, this would infringe on the Bank's ability to deal with a resolution in a flexible manner and may limit the effectiveness of a resolution. In light of these conflicting pressures, HM Treasury considers alternative timeframes and parameters on deferment and waiver powers to be inappropriate.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.

The costs and benefits of introducing these regulations are as follows.

Costs

It is estimated that there will be minimal annual direct costs to business in the form of a one-off direct cost as a result of this legislation, associated with the costs of businesses familiarising themselves with this legislation. There are no significant ongoing or direct costs associated with

the Regulations. Ad hoc costs are defined as costs that are neither annual nor one-off and may occur when necessary or needed. The reasoning for this estimation is as follows:

Direct costs

These Regulations only set the parameters within which the Bank is able to defer (suspend) or waive an obligation during a resolution and provides for the process of this deferment. The powers that will be used during the resolution have already been provided under Schedule 11 of the FSM Act 2023. As such, these Regulations do not themselves carry any direct costs.

The Bank's deferment and waiver powers would only be utilised in the unlikely scenario of a central counterparty entering resolution. As such, there is no inherent annual impact of these Regulations.

However, the Government estimates that there will be a one-off direct cost to clearing members familiarising themselves with these Regulations. Following the FCA's methodology for calculating familiarisation costs,² we estimate a one-off cost of £499.20 would arise for clearing members (4 compliance staff to read ~4 pages of legal text [approx. 0.32 days each – 2.6 hours] at a cost of £48 per hour).

$$4 \text{ staff} \times 2.6 \text{ hours} \times £48 \text{ per hour} = £499.20$$

Based on Futures Industry Association (FIA) data,³ there are a maximum of 215 clearing members currently with memberships of CCPs within the scope of the CCP resolution regime. However, this figure is likely to far exceed the actual number of clearing members, given that some clearing members will likely be members of different clearing services within the same CCP. Therefore, the estimated cost would be, at most, approximately £107,328 as the total one-off familiarisation costs for that year. However, the actual figure is likely to be far lower.

$$215 \text{ clearing members} \times £499.20 = £107,328.00$$

$$3 \text{ CCPs} \times £499.20 = £1497.60$$

	Number of entities	Familiarisation Cost
Clearing members	215	£107,328.00
CCPs	3	£1497.60
Total	218	£108,825.60

Indirect costs

As above, these Regulations only set the parameters within which the Bank is able to suspend or waive an obligation during a resolution, and provides for the process where such a decision is made.

The Bank already holds powers to impose such obligations under Schedule 11 of the FSM 2023 Act. Setting these parameters will not impact any potential costs imposed by the Regulations but will set the parameters within which the Bank can cater for the varied scenarios of a resolution, taking into account the financial situation of the CCP among other things.

In any case, compensation under the CCP resolution regime is assessed by reference to the 'No Creditor Worse Off' (NCWO) safeguard. Under the NCWO safeguard, if clearing members bear a higher cost as a result of resolution action than they would have incurred had the CCP

² Taken from FCA publication on analysing costs and benefits of policies, which can be found at <https://www.fca.org.uk/publication/corporate/how-analyse-costs-benefits-policies.pdf>

³ Taken from FIA data on Clearing Members and Concentration, which can be found <https://www.fia.org/fia/clearing-members-and-concentration>

entered insolvency instead, then they are entitled to compensation. Costs for clearing members during a resolution, when compared to the CCP going into insolvency, are therefore assumed to be zero. This was outlined in the full impact assessment conducted for the wider CCP resolution regime as part of the FSM Act 2023.⁴

Benefit

It is not possible to quantify the monetised benefits of the Regulations as these will depend on the specific circumstances of the resolution regime and the nature of the obligations that are deferred. However, these Regulations provide greater certainty and clarity for industry around the Bank's ability to defer an obligation and will allow the Bank to protect financial stability as far as possible.

5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

- a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
None
- b) **Disproportionate burdens on small businesses**
None
- c) **Significant gross effects despite small net impacts**
None
- d) **Significant wider social, environmental, financial or economic impacts**
None
- e) **Significant novel or contentious elements**
None

Sign-off for de minimis assessment: SCS

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

SCS of Banking Assets and Resolution Strategy

Signed: ***George Barnes***

Date: 19/10/2023

SCS of Better Regulation Unit

Signed: ***Phil Witcherley***

Date: 20/10/2023

Sign-off for de minimis assessment: Minister

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

Andrew Griffith MP, Economic Secretary to the Treasury

⁴ Full impact assessment can be found at <https://bills.parliament.uk/publications/49053/documents/2621>

Signed: ***Andrew Griffith***

Date: 07/11/2023