

EXPLANATORY MEMORANDUM TO
THE CENTRAL COUNTERPARTIES (EQUIVALENCE) (INDIA) (RESERVE BANK OF INDIA) REGULATIONS 2023

2023 No. 599

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument is being made in order to specify that the legal and supervisory arrangements in relation to specified central counterparties ('CCPs'), authorised by the Reserve Bank of India ('RBI'), India's central bank and one of its regulatory bodies, are equivalent to the UK's corresponding regime.

2.2 The determination of equivalence conferred by this instrument will fulfil one of the conditions for specified CCPs authorised by the RBI to receive recognition from the Bank of England. Upon being recognised by the Bank, overseas CCPs are able to provide clearing services to UK clearing members and trading venues.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The UK's regulatory framework for CCPs is set out primarily in the European Market Infrastructure Regulation¹, as retained in UK law by virtue of the European Union (Withdrawal) Act 2018 and amended by regulations made under section 8 of that Act. This legislation, as amended and forming part of retained EU law, is referred to in this explanatory memorandum as UK EMIR.

6.2 At the end of the Transition Period on 31 December 2020, around 270 EU equivalence decisions were assimilated into UK law. Equivalence decisions for CCPs,

¹ Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

made by the EU under Article 25(6) of EMIR , were not among those decisions as they were revoked by regulation 9 of The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184) (the ‘TRR Regulations’). HM Treasury elected instead to provide for the UK to conduct its own assessment of CCP regulatory regimes in overseas jurisdictions and then to make its own decisions on whether these regimes are equivalent to the UK’s regime. Article 25(6) of UK EMIR therefore provides that HM Treasury may make regulations for this purpose, and provides for it to specify that:

- the legal and supervisory arrangements of an overseas country ensure that CCPs authorised in that overseas country comply on an ongoing basis with legally binding requirements which are equivalent to the requirements laid down in Title IV of UK EMIR;
- those CCPs are subject to effective supervision and enforcement in that overseas country on an ongoing basis; and
- the legal framework of that overseas country provides for an effective equivalent system for the recognition of CCPs authorised under legal regimes of other countries.

- 6.3 This power in Article 25(6) is being exercised by HM Treasury for the first time in this instrument. However, Regulation 14(1) of the TRR Regulations contained a very similar power, which was exercisable before the end of the Transition Period. HM Treasury exercised that transitional power in relation to EEA states in the Central Counterparties (Equivalence) Regulations 2020 (S.I. 2020/1244). This power is being exercised by HM Treasury for the first time in this instrument.
- 6.4 Article 25(1) of UK EMIR provides that overseas CCPs may only provide clearing services to clearing members or trading venues established in the United Kingdom if the CCP is recognised by the Bank. Article 25(2) sets out the circumstances in which the Bank may recognise an overseas CCP. This includes the requirement that HM Treasury has made an equivalence determination in regulations under article 25(6).
- 6.5 In order to enable CCPs that had already been recognised by the EU to continue operating in the UK while equivalence and recognition decisions were made, HM Treasury established a temporary recognition regime (‘TRR’) in regulations 11 to 26 of the TRR Regulations. Under the TRR, CCPs are able to continue to provide clearing services to UK clearing members and trading venues, if they were able to provide those activities in the EU before the end of the Transition Period and if they met certain conditions to enter, and remain in, the regime. The TRR is currently due to expire on 31 December 2024.
- 6.6 The TRR Regulations also provide for a winding down period (referred to as the “run-off”), for cases where CCPs exit the TRR, in order to enable CCPs to wind down their business with UK firms in an orderly manner. The duration of the run-off period for individual CCPs is determined by the Bank, with the TRR Regulations currently providing that the run-off can last up to 12 months. However, the Financial Services and Markets Bill that is currently before Parliament provides that the Bank can extend a CCP’s run-off period for up to a maximum of three years and 6 months, should the relevant provisions receive Royal Assent as drafted.

7. Policy background

What is being done and why?

- 7.1 UK EMIR sets out regulatory and supervisory requirements for CCPs, as well as for trade repositories and for derivatives traded on a bilateral basis.
- 7.2 CCPs are 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. The process of transacting through a CCP is known as “clearing”. CCPs have played a vital role in making markets safer following the 2008 financial crisis, and they help substantially in managing potential systemic risk arising from global financial transactions.
- 7.3 Financial firms use clearing services provided by CCPs to reduce the risk arising from trades in certain securities, including derivatives. Derivatives are contracts between two or more parties, the value of which are based on an underlying asset.
- 7.4 Enabling UK firms to access clearing services from overseas CCPs provides these firms with greater commercial choice. Access to overseas CCPs’ services allow UK firms to more easily and directly engage in overseas derivatives markets, including products and clearing services that may not be easily accessible via UK CCPs.
- 7.5 As such, the equivalence determination made in this instrument does not alter the scope, or types, of service that a specified CCP authorised by the RBI is able to provide to UK clearing members and trading venues. Rather it would, if accompanied by a subsequent recognition decision by the Bank for CCP, change the basis on which it is accessing the UK from a temporary regime (the TRR and its run-off) to a non-time limited regime.
- 7.6 In order to grant an equivalence determination, HM Treasury must be satisfied that the regime under assessment meets equivalent outcomes to those of the UK’s regulatory regime.
- 7.7 To determine this in respect of the regulatory framework implemented by the RBI, HM Treasury has undertaken an assessment of their regime, measuring whether it achieves equivalent outcomes against the criteria set out in Article 25(6) of UK EMIR set out in paragraph 6.2 above.
- 7.8 As a guideline for its assessment, HM Treasury has used the Principles on Financial Market Infrastructures (PFMIs)². Put forward by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, the PFMIs are a set of guidelines for appropriate regulation of financial market infrastructures, including for CCPs. The PFMIs are widely adopted internationally. In the UK the standards of the PFMIs for CCPs have been implemented through UK EMIR.
- 7.9 As part of its assessment, HM Treasury received advice from the Bank, providing its view on whether equivalence on an outcomes basis to the UK regime has been achieved by the RBI’s regulatory framework.
- 7.10 HM Treasury has determined through its assessment that, on an outcomes basis, the RBI’s regulatory framework, in relation to CCPs designated by the RBI as a Financial

² [Principles for Financial Market Infrastructures \(bis.org\)](https://www.bis.org/principles/)

Market Infrastructure (FMI)³ is equivalent to that of the UK. This is because the RBI requires CCPs it designates as an FMI to comply with the PFMI. Accordingly, HM Treasury has determined that the RBI's legal and supervisory framework, in relation to CCPs that the RBI has designated a FMI, meets the tests set out in paragraphs 6.2.

- 7.11 As noted in paragraph 7.5, the Bank will conduct, separately, and subsequent to, this instrument coming into force, its own firm-level recognition assessment. This instrument does not prejudice the Bank's recognition assessments and decisions.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 HM Treasury has not undertaken a public consultation on this instrument.
- 10.2 HM Treasury has engaged with and received advice from the Bank in relation to the equivalence determination contained in this instrument.

11. Guidance

- 11.1 No additional guidance will accompany this SI.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full impact assessment has not been prepared for this instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact of this instrument will result in an Equivalent Annual Net Direct Cost to businesses of less than £5 million a year. Due to this limited impact, a de minimis impact assessment has been carried out. A copy of this assessment is published alongside this Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 As set out in the Memorandum of Understanding between HM Treasury, the Bank, the Prudential Regulation Authority and the Financial Conduct Authority, HM Treasury may review the equivalence determination periodically or at any time, or in response to changes to the applicable framework.⁴ This does not prejudice HM Treasury's ability to revoke the equivalence determination at any time.

³ A list of the CCPs designated as FMIs by the RBI is available at www.rbi.org.in.

⁴ <https://www.gov.uk/government/publications/memorandum-of-understanding-equivalence-and-exemptions>

- 14.2 Each regulator may also recommend to HM Treasury that a review of the equivalence determination is undertaken in response to material changes in the applicable framework. Furthermore, each regulator may request a review of the equivalence determination if they have concerns arising from their statutory objectives.
- 14.3 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to HM Treasury (Andrew Griffith) has made the following statement:
- “It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £5 million and the instrument does not apply to activities that are undertaken by small businesses.”

15. Contact

- 15.1 Joshua Lazarus at HM Treasury (Telephone: 07827 525552, or email: Josh.Lazarus@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 John ORegan, Deputy Director for International Policy and Partnerships at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Andrew Griffith MP, Economic Secretary to the Treasury at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.