Title: The Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2023	De minimis assessment
SI (Statutory Instrument) No: 2023/999	**Date: 13/09/2023**
Other departments or agencies: **None**	**Type of regulation: Domestic**
Contact for enquiries: Alexander Edwards alexander.edwards@hmtreasury.gov.uk	**Date measure comes into force:** **01/11/2023**
Cost of Preferred Option:<£5mn	**Equivalent Annual Net Direct Cost to Business per year: <£5mn**

1. What is the problem under consideration? Why is government intervention necessary?

Central counterparties ("CCPs") are used by firms to reduce certain risks that arise when trading on financial markets, such as those for derivatives and equities. They sit between the buyers and sellers of financial contracts, providing assurance that the obligations of those contracts will be fulfilled. CCPs have played a vital role in making markets safer following the 2008 financial crisis, when requirements were introduced for many more transactions to be cleared through a CCP. CCPs serve a global market, and UK firms will use overseas CCPs to access specific products, or for reasons of liquidity, cost, or assurance.

This statutory instrument is being made in order to extend the Temporary Recognition Regime ("TRR"), which allows overseas CCPs to provide services to UK clearing members and exchanges, by a period of 12 months. The instrument also extends the transitional regime for qualifying CCPs ("QCCPs"), which allows UK firms to benefit from reduced capital requirements for their exposures to the QCCP, for an additional 12 months after a CCP has submitted an application for recognition in the UK. HMT previously extended these regimes by 12 months in the Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2022 (the "2022 Extension Regulations").

Amendments relating to the Temporary Recognition Regime

The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (the "CCP Regulations") established the TRR for overseas CCPs, allowing them to continue to provide services, activities and classes of financial instrument ("products") in the UK whilst their applications for full recognition are assessed. Section 18(1) of the CCP Regulations set out the length of the original temporary recognition period, which was the period of three years starting on 1 January 2021 (when the EU Exit transition period ("TP"), had ended). It was originally envisioned that this would be sufficient to complete recognition assessments for the CCPs within the regime.

However, in January 2020, the European Market Infrastructure Regulation ("EMIR"), which sets out regulatory and supervisory requirements for CCPs, was amended by the EU to provide for a much more complex process for recognising overseas CCPs than it did previously. The key change is the "tiering" of overseas CCPs according to the financial stability risk they might pose, with more onerous recognition requirements imposed on those CCPs that are, or are likely to become, systemically important. As a result of the adoption of this framework in the UK when EMIR was retained within domestic UK law, the length and complexity of the equivalence and recognition assessments for overseas CCPs (made by HM Treasury and the Bank of England

(“the Bank”) respectively) increased significantly compared to the process originally envisaged when the CCP Regulations were made in 2018.

Without an extension of the original temporary recognition period, overseas CCPs operating in the UK under the TRR would have therefore faced a sudden loss of access to UK firms. Furthermore, UK clearing members would have been unable to continue to clear specific products at these CCPs, requiring them to ‘off-board’ their positions, which could be costly and risky, especially if done at pace. The TRR was put in place to prevent such risks and to avoid the accompanying disruption to firms and markets, as well as to the UK’s financial stability.

Therefore, to avoid a financial stability risk to the UK and to secure more time for all recognition decisions to be delivered ahead of the expiry of the TRR, HM Treasury extended the period during which firms could be deemed to benefit from temporary recognition in the 2022 Extension Regulations, using the powers set out in section 18 (2) of the CCP Regulations. As a result, the TRR is currently due to expire on 31st December 2024.

Given that a significant number of CCPs remain within the TRR, and are expected to still be in it at the end of 2024, HM Treasury is now extending the regime a second time by 12 months. As with the previous extension, this will provide further time for recognition decisions to be completed and will avoid disruption to firms and markets at the end of 2024.

This extension is considered to be proportionate, as it ensures that the TRR can continue to operate as intended, and in a way in which overseas CCPs expect, beyond the end of 2024. It does not result in any significant additional burden on UK or overseas firms, will provide certainty to businesses, and avoid undesirable outcomes which could disrupt international financial markets and cause risks to UK and international financial stability.

Amendments relating to the QCCP transitional regime
Article 497 of the Capital Requirements Regulation (the “CRR”) allows an overseas CCP that has submitted an application for recognition to the Bank, and is waiting for that application to be determined, to be treated as if it were a QCCP for three years from the date it submitted its application. Formerly, firms could benefit from QCCP status for two years after submitting their application for recognition but the 2022 Extension Regulations extended this period by 12 months.

CCPs that submitted their application before the end of the TP are treated as though their application was submitted at the end of the TP on 31 December 2020, which therefore means that they are granted QCCP status until 31 December 2023. This accounts for a significant percentage of firms in the QCCP regime.

The QCCP transitional regime ensures that UK firms with indirect exposures to these QCCPs can continue to benefit from favourable capital treatment. “Indirect exposures” could occur, for example, where a UK firm receives clearing services “indirectly” from the relevant overseas CCP (this means when the UK firm receives clearing services from the CCP via another firm, as opposed to being a direct member of the CCP itself).

The QCCP transitional regime was initially put in place by the EU to ensure continuity for EU firms with exposures to third country CCPs, while both jurisdictional equivalence and CCP recognition were being determined. By retaining the regime following the UK’s exit from the EU, UK authorities aimed to ensure continuity for UK firms with exposures to these CCPs, whilst also guaranteeing a smooth transition to the post-EU exit regulatory framework. This was intended to provide certainty and stability to participants in international financial markets. If the regime were to expire, UK firms with the types of exposures referenced above will face a sudden and

disruptive increase in their capital requirements. This increase would occur because, under the CRR, the capital requirements for exposures to QCCPs are much less onerous than for exposures to non-QCCPs. The higher capital charges for UK firms with exposures to an overseas CCP that no longer benefits from QCCP status would likely prohibit continuation of business with that CCP, as the higher capital requirements would render it uneconomic.

As with the 2022 Extension Regulations, extending the QCCP transitional regime by an additional year, through the powers set out in section 497(3) of the CRR, will avoid this disruption for UK firms at the end of the transitional period (the end of 2023 in a number of cases). This will also allow UK authorities to deliver a long-term solution to moving firms out of the transitional regime via the Smarter Regulatory Framework. Furthermore, by addressing the expected disruption faced by firms as well as international financial markets, the extension will be a proportionate way of maintaining the status quo for an additional, time-limited period.

2. What are the policy objectives and the intended effects?

HM Treasury is making this instrument to extend the TRR and the QCCP transitional regime for an additional 12 months. This will ensure that overseas CCPs within the TRR, and the UK firms they serve, do not face a sudden cliff-edge loss of access at the end of 2024. It will also ensure that UK firms who access QCCPs do not face a sudden and disruptive increase in their capital requirements when the relevant transitional period expires for each QCCP.

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

Amendments relating to the Temporary Recognition Regime

Do Nothing – If the period during which firms are deemed to benefit from temporary recognition is not extended, overseas CCPs within the TRR would not be able to continue their activities in the UK following the 31 December 2024. This option is not considered appropriate, as it would lead to UK firms suddenly losing access to these overseas CCPs, which in turn could create significant disruption to UK financial stability and international financial markets. Furthermore, without an extension, the TRR would not continue to operate as intended (and expected) beyond the end of 2024. This could disrupt international financial markets and cause risks to UK and international financial stability.

Preferred option – To amend the CCP Regulations to extend the temporary deemed recognition period by 12 months, to allow overseas CCPs to continue their activities in the UK whilst they await full recognition. This is the preferred option, as it maintains the status quo, and it is not viable for all recognition assessments for all relevant CCPs to be completed ahead of the current expiration date of the TRR in December 2024. This option would address the financial stability risk which could materialise if overseas CCPs were to suddenly lose access to UK financial markets.

Amendments relating to the QCCP transitional regime

Do Nothing – If the QCCP transitional regime is not extended, UK firms with exposures to these QCCPs will face a sudden and disruptive increase in their capital requirements. This option is not considered appropriate due to the disruption it would cause to firms, as well as to international financial markets. In addition, without an extension, UK firms with exposures to a QCCP will be subject to higher capital requirements, and the risk of firms unwinding their positions at the CCP in order to avoid this impact is high.

Preferred option – To amend the transitional regime for QCCPs provided for in Article 497 of the CRR, extending it by an additional 12 months. This is the preferred option, as it maintains the status quo for an additional, time-limited period and does not impose any significant

burden on UK or overseas firms. Furthermore, the extension would avoid the disruptive increase in capital requirements for UK firms, whilst allowing UK authorities to deliver a long-term solution to moving firms out of the transitional regime via the Smarter Regulatory Framework.

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

To do this, please set out the following:

- What will businesses have to do differently?

The amendments to the TRR and QCCP transitional regime under this instrument do not impose additional requirements or administrative burdens on businesses, other than familiarisation costs.

- How many businesses will this impact per year?

There are currently a total of 38 overseas CCPs either in the TRR or the transitional regime for QCCPs. Whilst the overseas CCPs in the TRR will be used by a significant number of UK financial services firms, it is likely that the number of UK firms with exposures to the small number of overseas CCPs in the transitional regime for QCCPs is, itself, small.

- What is the direct cost/benefit per business per year?

Minimal. It is assumed the affected firms will incur costs (time and labour) in familiarising themselves with the relevant instrument, especially in reading and comprehension. HM Treasury calculates familiarisation costs as an approximation of the time spent reading the instrument on the basis of the word length of the instrument, the difficulty of the text based on the Flesch Reading Score and the hourly rate of an external legal expert that a business may procure to read the instrument. The instrument will preserve the status quo, so the only costs for firms would be familiarisation costs which are considered in the table below. We do not expect these costs to be a concern to businesses, who are largely body corporates with a medium-to-high turnover.

Number of words in SI (rounded up to nearest 100)	Words read per minute	Hourly rate (£)	Number of businesses affected	Familiarisation costs per firm (£) (rounded to 2 significant figures)	Total familiarisation costs (£) (rounded to 2 significant figures)
300	100	330	38	£17	£646

It is acknowledged that the real-world impact may vary from these figures but this standard EANBCD assessment resulting in a figure of £646 can give confidence that the impact will be significantly below the £5 million threshold.

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)**

No

b) **Disproportionate burdens on small businesses**
   No
c) **Significant gross effects despite small net impacts**
   No
d) **Significant wider social, environmental, financial or economic impacts**
   No
e) **Significant novel or contentious elements**
   No

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 Securities and Markets Team

Signed: ***Tom Duggan*** Date: 23/08/2023

SCS of Better Regulation Unit

Signed: ***George Chapman*** Date: 25/03/2023

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.

(Name, Ministerial role)

Signed: ***Andrew Griffith MP, Economic Secretary to the Treasury*** Date: 12/09/2023