

Title: Financial Market Infrastructure Administration (England and Wales) Rules 2018 PIR No: N/A Original IA/RPC No: N/A Lead department or agency: HM Treasury Other departments or agencies: Bank of England Contact for enquiries: Precious Oladipo	Post Implementation Review
	Date: 11/07/2023
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 10/08/2018
	Recommendation: Keep
	RPC Opinion: N/A

1. What were the policy objectives of the measure?

Through Part 6 of the Financial Services (Banking Reform) Act 2013, the government legislated to introduce a special administration regime (SAR) for certain Financial Market Infrastructure (FMI) companies – also known as the Financial Market Infrastructure Special Administration Regime (FMI SAR). The scope of this regime applies to the operators of recognised payment systems, recognised central securities depositories, and key service providers to these operators as designated by HM Treasury. The FMI SAR is designed to ensure that such systems can continue to operate efficiently and effectively, and to ensure that critical services are not disrupted in the event of a firm’s failure.

The Financial Market Infrastructure Administration (England and Wales) Rules 2018 (“the Rules”) sets out the detailed procedures for an FMI administration. This includes setting out the respective roles and powers of the involved parties in an FMI administration (i.e. the courts, the administrator, the FMI company, the creditors of the company and the Bank of England).

The objective of the Rules is to clearly set out what procedures the Bank of England and the FMI administrator must follow. For example, it stipulates what information must be included on an FMI administration application (i.e. name, registered address of the FMI company, witness statement), how the FMI administration application should be filed in court, who may attend the hearing of the FMI administration application and on whom the Bank of England must serve notice of the FMI administration application.

The Rules also apply relevant parts of the Insolvency Rules (England and Wales) 2016 with necessary modifications for the purposes of an FMI administration. This is to provide clarity on how an FMI administration procedure would work in practice, including provisions on how creditors are updated during the administration.

2. What evidence has informed the PIR?

HM Treasury considered the frequency of use of the FMI SAR since introduction, how this has impacted on firms and whether the existing frameworks remain fit for purpose in order to inform the PIR. HM Treasury also conducted conversations with the Bank of England, who are responsible for the supervision of firms in scope of the FMI SAR, in order to consider the impacts of the FMI SAR and the extent to which these have changed since the initial assessment

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

The original conclusions of the impact of the Rules found that there would be no significant impact on business, charities or voluntary bodies. It also found that there would be no significant impacts on the public sector.¹ Whilst the original consultation found that if an FMI company were to become insolvent there would be a small impact on the Bank of England, this impact would not be significant.

The FMI SAR has not been utilised since its implementation and does not impose any requirements on firms who have not entered into administration. As such there has been no impact on firms to date. HM Treasury therefore continues to judge that these rules do not carry significant impact or costs on firms in scope. The Bank of England agrees with this assessment.

Whilst the FMI SAR has not yet been used in any administration or insolvency proceedings, given no firms in scope have been placed into administration, HM Treasury continues to judge that the regime will enable the continued functioning of recognised payment systems, recognised central securities depository and designated key service providers to those systems in the event that any of these firms fail. Maintaining the existing regime is therefore important to ensure that there is an effective process in place to manage any future failures of FMI firms. For this reason, HM Treasury judges that the Rules remains fit for purpose and continue to ensure that the FMI SAR is operationally effective.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and 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: ***The Lord Bellamy KC***

Date: 31/07/2023

¹ www.legislation.gov.uk/ukxi/2018/833/pdfs/ukxiem_20180833_en.pdf

Further information sheet

4. What were the original assumptions?

Doing nothing i.e. applying the Insolvency Rules to an FMI administration without modifications.

When producing the Rules, it was considered that without the application of a modified form of the general insolvency rules specific to FMI administration the specific objectives of the FMI SAR would not be met. Relying on general insolvency rules risked lack of clarity as to the specific processes that should be taken in cases of FMI administration. It was assumed that without these procedures, if an infrastructure company were to become insolvent, an administrator or liquidator working under the standard objectives would not necessarily have cause to keep critical or systemically important payment and securities settlement services running. This risked leading to confusion in the courts on what procedures should be followed in the case of an FMI administration, which could result in a disorderly winddown of an FMI system and lead to disruption on the wider economy.

Modifying the application of the Insolvency Rules for an FMI administration

The original assessment considered that the Rules were necessary to set out the special administration procedure for operators of certain FMI systems and restrict the powers of persons other than the Bank of England in relation to the insolvency of FMI companies. It was assumed that ensuring clarity of process was essential to ensure the effective operation of the regime to manage the failure of an FMI firm, as any suspension of service from FMI companies could risk severe disruption to the financial sector and real economy. This option was chosen to mitigate against these risks.

5. Were there any unintended consequences?

As the FMI SAR has not been utilised to date, there have been no unintended consequences.

6. Has the evidence identified any opportunities for reducing the burden on business?

The FMI SAR has not been utilised since its implementation. As the FMI SAR only imposes requirements on firms who are insolvent and entering administration, and because the Rules have not been needed to date, there has been no impact on firms. HM Treasury therefore continues to judge that these Rules do not carry significant impact or costs on firms in scope. The Bank of England agrees with this assessment.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

HM Treasury and the Bank of England are not aware of similar policies having been implemented outside of the UK including in EU Member States.

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

The PIR recommends that the Rules are kept.

The Rules continue to play an important role in ensuring continuity of service and minimising disruption to critical services that are essential to the operation of the financial system during the potential administration of an FMI firm.