

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL MARKET INFRASTRUCTURE ADMINISTRATION (ENGLAND**  
**AND WALES) RULES 2018**

**2018 No. 833**

**1. Introduction**

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

**2. Purpose of the instrument**

2.1 These Rules give effect to Part 6 of the Financial Services (Banking Reform) Act 2013 (c.33) (the 2013 Act). Part 6 established a new special administration procedure for operators of certain financial market infrastructure systems (known as “FMI administration”), and restricts the powers of persons other than the Bank of England (“the Bank”) in relation to the insolvency of infrastructure companies. These Rules set out the procedure for FMI administration under that Part.

**3. Matters of special interest to Parliament**

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

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 Part 6 of the 2013 Act makes provision for the special administration procedure known as FMI administration to apply to operators of certain infrastructure systems and service providers to those systems as designated by the Treasury under Part 6 of the 2013 Act.

4.2 Section 411(1B) of the Insolvency Act 1986 (as applied by section 121(3) of the 2013 Act) empowers the Lord Chancellor, with the concurrence of the Treasury, to make Rules to give effect to Part 6 of the 2013 Act. Section 411(2)(b) further provides that the Rules may contain such incidental, supplemental or transitional provisions that are necessary or expedient.

4.3 The Rules introduced by this instrument exercise those powers to give effect to Part 6 by setting out the procedure for making an application for an FMI administration order (Part 2) and by applying (with modifications) specified provisions of the Insolvency (England and Wales) Rules 2016 (S.I 2016/1024).

**5. Extent and Territorial Application**

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

- 7.1 Certain payment and securities settlement systems (financial market infrastructure) are vital to the efficient operation of the financial system. Any suspension of service provision by the operators of those systems is likely to cause a severe disruption to the functioning of the wider financial sector and the real economy. Part 6 of the 2013 Act provides for an FMI administration procedure to apply to the operators of these financial market infrastructure systems and their service providers as designated by the Treasury (referred to in the Act as “infrastructure companies”<sup>1</sup>) in the event of their insolvency. These Rules set out the procedure for making an FMI administration application in respect of an infrastructure company.
- 7.2 The FMI administration procedure (set out in the Rules introduced by this instrument) is a modification of normal corporate administration, with the overarching objective of ensuring continuity of service and minimising disruption to the critical services that are vital to the efficient operation of the financial system. Absent such a procedure, 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.
- 7.3 These Rules set out the role of the Bank, the infrastructure company, creditors and other authorities during an FMI administration.
- 7.4 These Rules modify the Insolvency (England and Wales) Rules 2016 so that they are consistent with the 2013 Act, and the overarching objectives of an FMI administration as set out in the 2013 Act. These objectives include ensuring that these critical payment and settlement services continue to be provided. Continuity of service will allow the efficient operation of the financial system to be maintained during an FMI administration.
- 7.5 The FMI administration rules provide for the Bank to perform some of the functions that are performed by creditors in a normal insolvency. This is consistent with the Bank’s mission to maintain and enhance UK financial stability, and with the Bank’s statutory responsibility for the supervision of recognised payment systems, specified service providers to recognised payment systems and the operators of securities settlement systems.

In line with this objective, the rules:

- require a copy of the statement of affairs of the firm in administration to be sent to the Bank so that the Bank has access to the information necessary to carry out its duties;
- allow the Bank to set the remuneration of the administrator. This is in line with other special administration procedures such as the bank administration

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<sup>1</sup> Section 112(2) of the 2013 Act sets out the definition of an infrastructure company, as amended by S.I 2017/1064, subject to the transitional and saving provisions in regulation 7 of that instrument.

procedure. Creditors can appeal to the court if they consider the administrator's remuneration to be excessive;

- allow the Bank to decide if pre-administration costs can be paid to the administrator;
- provide for notification and copies of key documents and decisions to be sent to the Financial Conduct Authority (FCA) and where relevant to the Payment Systems Regulator (PSR) and to the Prudential Regulation Authority (PRA); and
- provide for service of an FMI administration application on the operator of the recognised payment system or securities settlement system (or, if there is more than one such system, each one) where their service provider is subject to an FMI administration.

## **8. Consultation outcome**

- 8.1 These rules were subject to public consultation by the Treasury in 2016/17 (Rules on ensuring the effective functioning of a financial market infrastructure special administration regime<sup>2</sup>). The consultation ran from 11 November 2016 to 15 January 2017.
- 8.2 The consultation asked whether there should be further changes to the proposed Rules for the FMI administration procedure. The government received six written responses to the consultation which were received from payment systems and service providers. One respondent agreed with the proposals and had no comments. Most respondents agreed with the application and modification of the company insolvency rules. Some respondents expressed concerns that customers (i.e. the operators of recognised payment systems or securities settlement systems) of designated service providers would not be made aware when their service provider was being put into administration.
- 8.3 Having considered the consultation responses, changes to the Rules have been made so that customers of designated service providers (i.e. the operator of the recognised payment system or securities settlement system) will be served a copy of the service provider's FMI administration application by the Bank. Furthermore, the administrator will serve a notice of its appointment on the operator(s). This notice will inform the customers that an FMI administrator has been appointed and the date of the appointment. Having made these amendments, the government considers that it has addressed the concerns that were raised in the consultation.
- 8.4 A more detailed analysis of the consultation outcome and the Treasury's response to the opinions expressed can be found at: [www.gov.uk/government/organisations/hm-treasury](http://www.gov.uk/government/organisations/hm-treasury).

## **9. Guidance**

- 9.1 No guidance is being issued on this instrument since it is largely based on existing insolvency rules and practice which will be familiar to insolvency practitioners and their advisers.

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<sup>2</sup> <https://www.gov.uk/government/consultations/rules-on-ensuring-the-effective-functioning-of-a-financial-market-infrastructure-special-administration-regime>

## **10. Impact**

- 10.1 The impact on business is not significant. There is no impact on charities or voluntary bodies.
- 10.2 There is no impact on the public sector. If an ‘infrastructure company’ was to become insolvent, there would be a small impact on the Bank of England but such impact would not be significant.
- 10.3 A de-minimis impact assessment has been carried out. In line with Better Regulation guidance, the Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a full business impact assessment was not required.

## **11. Regulating small business**

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

## **12. Monitoring & review**

- 12.1 The Rules contain provision for their review. At the end of a five-year period beginning with the day on which these Rules come into force, the Lord Chancellor will carry out a review. The review will consider the extent to which the objectives of the regulatory system established by these Rules have been met, and whether those objectives could be met with a system that imposes less regulation. The conclusions of that review will be set out in a published report.

## **13. Contact**

- 13.1 Connie Chen at Her Majesty’s Treasury, Telephone: 0207 270 5856 or email: [connie.chen@hmtreasury.gov.uk](mailto:connie.chen@hmtreasury.gov.uk), can answer any queries regarding the instrument.