
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply certain provisions of the Companies Act 2006 (c. 46) (“the 2006 Act”) and related legislation with modifications, and make consequential amendments to primary and secondary legislation, in relation to the introduction of a new special resolution regime for central counterparties (“CCPs”) in Schedule 11 (central counterparties) to the Financial Services Act 2023 (c. 29) (“the CCP Schedule”). This replaces the current special resolution regime in Part 1 of the Banking Act 2009 (c. 1) (“the BA09 regime”).

Part 2 of these Regulations applies certain provisions of the 2006 Act with modifications for the purposes of the CCP Schedule, in keeping with similar modifications already made in respect of the BA09 regime. Regulations 3 to 6 make technical modifications to certain provisions in the 2006 Act and in the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 (S.I. 2008/2860), in relation to the use of stabilisation options under the CCP Schedule. These relate to the disapplication of certain rules in relation to transactions effected by instruments made under the CCP Schedule, the modification of shareholders’ rights to call general meetings and amend the articles of association of a company, and the modification of certain rights of shareholders in listed companies and in existing or transitional companies (within the meaning of the 2006 Act).

Part 3 of these Regulations makes consequential amendments to primary and secondary legislation relating to the CCP Schedule, which align with amendments previously made in respect of the BA09 regime. Regulation 7 amends section 85A (resolution of financial institutions) of the Finance Act 1986 (c. 41) so that stamp duty is not payable in respect of transfers made in certain instruments under the CCP Schedule.

Regulation 8 amends section 87(2) (exceptions from restrictions on disclosure) and section 166 (powers to give directions) of the Companies Act 1989 (c. 40)) to allow information which is subject to disclosure restrictions under section 86 (restrictions on disclosure of information) of that Act to be disclosed for the purpose of civil proceedings relating to an assessment of compensation under the CCP Schedule, and to ensure that a direction can be made by an appropriate regulator under section 166 where necessary to facilitate the use of a power under the CCP Schedule, or in connection with the use of such a power.

Regulation 9 amends sections 7A (accounts of companies wholly owned by the Bank) and 90 (making of recommendations within the Bank) of the Bank of England Act 1998 (c. 11) to exclude a company which is a bridge central counterparty for the purpose of the CCP Schedule from the definition of a “qualifying company” for the purpose of section 7A, and to specify that (under section 90) the Financial Policy Committee may not make recommendations in relation to the exercise of the Bank’s powers under the CCP Schedule.

Regulation 10 amends paragraph 34(7) of Part 3 of Schedule 17A (further provision in relation to exercise of Part 18 functions or other FMI functions by Bank of England) to the Financial Services and Markets Act 2000 (c. 8) to replace a reference to the intended use of a stabilisation power under the BA09 regime with a reference to the intended use of such a power under the CCP Schedule.

Regulations 11 to 13 make certain amendments relating to taxes as they apply further to the making of instruments under the CCP Schedule. Regulation 11 ensures that certain transactions arising from such instruments are exempt from Stamp Duty Land Tax. The amendments made in regulation 12 disapply certain aspects of corporation tax in respect of the effects of those instruments, and regulation 13 makes provision concerning the application of relevant debt relief

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under section 259NEB (relevant debt relief circumstances) of the Taxation (International and Other Provisions) Act 2010 (c. 8) in that context.

Regulation 14 amends the circumstances in which Treasury power of direction under section 61 of the Financial Services Act 2012 (c. 21) is exercisable to include circumstances where the Treasury has incurred expenditure in connection with the exercise of any powers under the CCP Schedule.

Regulation 15 makes amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (“the 2001 Regulations”) so that the disclosure of confidential information received by the relevant authorities in the course of discharging functions under the CCP Schedule is permitted, and to ensure that the 2001 Regulations apply in general to the special resolution regime under the CCP Schedule in the same way as they apply to the BA09 regime.

Regulation 16 amends regulations 3(1A), 12(5) and 18A(1) of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) to ensure that actions taken under the CCP Schedule are excluded from the definition of an “enforcement event” for the purpose of those Regulations, and to specify that nothing in the relevant regulations prevents the Bank of England (in the exercise of its powers under the CCP Schedule) from imposing restrictions on the effect of a close-out netting provision, on the enforcement of financial collateral arrangements, or on the effect of a security financial collateral arrangement, close-out netting provision or set-off arrangement.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.