PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT RESOLUTION OF CENTRAL COUNTERPARTIES (MODIFIED APPLICATION OF CORPORATE LAW AND CONSEQUENTIAL AMENDMENTS) REGULATIONS 2023

DRAFT FINANCIAL SERVICES AND MARKETS ACT 2023 (RESOLUTION OF CENTRAL COUNTERPARTIES: PARTIAL PROPERTY TRANSFERS AND SAFEGUARDING OF PROTECTED ARRANGEMENTS) REGULATIONS 2023

DRAFT PAYMENT AND ELECTRONIC MONEY INSTITUTION INSOLVENCY (AMENDMENT) REGULATIONS 2023

Tuesday 28 November 2023

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not later than

Saturday 2 December 2023

The Committee consisted of the following Members:

Chair: Ian Paisley

† Afolami, Bim *(Economic Secretary to the Treasury)*
† Antoniazzi, Tonia *(Gower)* (Lab)
† Benton, Scott *(Blackpool South)* (Ind)
Byrne, Ian *(Liverpool, West Derby)* (Lab)
Foy, Mary Kelly *(City of Durham)* (Lab)
† Green, Chris *(Bolton West)* (Con)
† Green, Damian *(Ashford)* (Con)
† Hall, Luke *(Thornbury and Yate)* (Con)
† Howell, Paul *(Sedgefield)* (Con)
† Largan, Robert *(High Peak)* (Con)
† Mak, Alan *(Havant)* (Con)
† Mumby-Croft, Holly *(Scunthorpe)* (Con)
† Murray, James *(Ealing North)* (Lab/Co-op)
† Owen, Sarah *(Luton North)* (Lab)
† Shanks, Michael *(Rutherglen and Hamilton West)* (Lab)
† Turner, Karl *(Kingston upon Hull East)* (Lab)
† Wheeler, Mrs Heather *(South Derbyshire)* (Con)

Kenneth Fox, *Committee Clerk*

† attended the Committee

Seventh Delegated Legislation Committee

Tuesday 28 November 2023

[Ian Paisley *in the Chair*]

Draft Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023

2.30 pm

The Economic Secretary to the Treasury (Bim Afolami): I beg to move,

That the Committee has considered the draft Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023.

The Chair: With this it will be convenient to consider the draft Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements) Regulations 2023 and the draft Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023.

Bim Afolami: I will lay out three sets of draft regulations. First, I will address the two statutory instruments that relate to the expanded resolution regime for central counterparties, otherwise known as CCPs, which is how I will refer to them. The regulations make necessary technical and consequential legislative changes and provide legal protection for certain contractual arrangements to ensure that the regime operates as intended.

Resolution is the framework for managing the failure of certain financial institutions. Within that framework, the Bank of England is the UK's resolution authority and leads on resolution processes once instigated. The UK's existing resolution regime for banks and building societies was introduced in 2009. That was partially extended to CCPs in 2014. A new bespoke and expanded regime for CCPs was created this year under schedule 11 to the Financial Services and Markets Act 2023, recently passed in this House.

CCPs are firms that provide clearing services for large volumes of financial trading activity. They sit between buyers and sellers and guarantee the terms of a trade. They are systemically important pieces of market infrastructure. Without them, the financial system cannot function effectively. The failure of a CCP, and the resulting loss of its clearing services, could lead to serious consequences for financial markets, financial stability and public funds.

The UK's expanded resolution regime will enhance the Bank of England's resolution powers, and ensure that the UK is aligned with international standards on CCP resolution. To implement the expanded CCP resolution regime fully, the Government must lay a number of statutory instruments, two of which are in Committee today.

The draft regulations on the modified application of corporate law and consequential amendments make the necessary changes to certain existing legislation to ensure that the expanded CCP resolution regime can function as intended. The modifications have two principal impacts. First, they mirror changes to company law that apply within the bank resolution regime. Secondly, they make wider consequential amendments broadly to ensure that certain consequences for CCPs in the resolution process are consistent across the existing and expanded regime. That maintains continuity with the existing resolution regime for CCPs.

Turning to the second set of draft CCP regulations, schedule 11 to the Act gives the Bank of England the power to make partial property transfer and write-down instruments when resolving a CCP. The partial property transfers and safeguarding of protected arrangements regulations will ensure that the statutory instruments do not affect protected arrangements that underpin the effective operation of financial markets, including set-off and netting arrangements.

Netting is one of the mechanisms through which a CCP reduces risk in financial markets. Multiple financial obligations are aggregated to calculate a net obligation amount. That means that losses in one position, on one trade, can be offset with gains in another position, in another trade. Given the importance of that function to the operation of clearing services, the draft safeguarding regulations ensure that set-off and netting arrangements are protected when the Bank of England uses its property transfer powers. That is particularly relevant for partial property transfers, where the Bank of England can transfer all or some of the rights and liabilities of a CCP.

The Bank of England also has the power to write down liabilities, meaning that it can cancel, modify or change a security, or the form of an unsecured liability owed to the CCP. The draft safeguarding regulations also restrict the Bank of England in making write-down instruments in cases where there are protected arrangements, such as those relating to netting. In doing so, the regulations ensure that usual market practice continues and that disruption to financial markets is minimised when the Bank of England takes action, while also providing certainty for market participants as to how they will be treated during resolution proceedings. Together, these regulations ensure that a resolution can be conducted as effectively as possible, while reducing the impact on normal market functions.

Now I come to the third and final set of regulations. These regulations, which relate to the payment and electronic money institutions special administration regime, otherwise catchily known as PSAR, will expand the application of the existing insolvency arrangements for electronic money and payment institutions, so that they apply to firms in Northern Ireland and Scottish limited liability partnerships, otherwise known as LLPs, as they already do in England and Wales, as well as for companies in Scotland.

The payments and e-money sectors have expanded rapidly over the last decade. As the sector has grown, the Government have become concerned that the application of standard insolvency procedures to the failure of these firms was leading to negative outcomes for customers. In order to manage these risks, in 2021 the Government legislated for a special administration regime to provide for the prompt return of client assets should such a firm fail. This regime was delivered through the Payment and Electronic Money Institution Insolvency Regulations 2021 and the accompanying rules. Those regulations established the special administration regime in England and Wales, and for companies in Scotland.

This regime created special administration objectives, which an administrator will have to follow when conducting an administration of a payment or electronic money institution. These objectives are to ensure the return of customer funds as soon as practicable, ensure timely engagement with payment systems operators, the Payment Systems Regulator, the Treasury, the Financial Conduct Authority and the Bank of England, either to rescue the institution as a going concern or to wind it up.

One further statutory instrument is required to ensure that the regime can effectively apply to Scottish LLPs and to firms in Northern Ireland. The distinct nature of both Scottish and Northern Irish insolvency law required this SI to be prepared to a different timetable than the original regulations—so, this is effectively a tidying-up measure in that regard—in order to ensure that the regime can operate effectively under both legal frameworks.

In conclusion, by expanding the application of the regime to the relevant firms in Northern Ireland and to Scottish LLPS, these regulations will ensure that we have robust arrangements to manage the potential insolvency of payments and electronic money firms throughout the United Kingdom.

2.37 pm

James Murray (Ealing North) (Lab/Co-op): It is a pleasure to serve on this Committee with you as Chair, Mr Paisley, and to make brief remarks in relation to these three statutory instruments on behalf of the Opposition.

I begin by thanking the Minister for outlining the detail of the regulations. Throughout the debates on the Bill that became the Financial Services and Markets Act 2023, it was my hon. Friend the Member for Hampstead and Kilburn (Tulip Siddiq), as shadow Economic Secretary to the Treasury, who set out the Opposition's support for reforms designed to minimise the financial stability risks that central clearing parties, or CCPs, pose to individuals and businesses in the UK, which will be achieved through the introduction of a new CCP resolution regime, as the Minister has set out.

I am glad to confirm that we in the Opposition support the three statutory instruments that we are considering today, which relate to the delivery of legislative reforms that we supported in the Financial Services and Markets Act 2023. We support the regulations put forward today in their attempt to make sure that contractual arrangements crucial to a CCP's operation are adequately protected when the Bank of England exercises resolution powers, as well as making sure that necessary company law modifications and amendments are made.

The Opposition also support the regulations put forward to expand the supervisory powers of the FCA over payment firms and electronic money institutions following the UK's departure from the EU. Although our support is clear, I have a few questions for the Minister about how the FCA's significantly expanded remit will be delivered in practice.

When the Minister responds, I would be grateful if he could set out what the Government are doing to make sure that the FCA's greater powers are accompanied by greater accountability. Could he also explain what steps the Government are taking to make sure that additional FCA requirements on payment firms and EMIs are proportionate and that they do not hamper innovation in the UK's world-leading payments sector?

Thank you, Mr Paisley.

Sarah Owen (Luton North) (Lab): On a point of order, Mr Paisley. I just want some clarification, if I may, as to why there is a suspended Member of the Conservative party sitting on the Government side of this Committee today and whether that is, in fact, in order?

The Chair: I understand that any Member can join the Committee at any time and sit anywhere they wish. The only rules and the only seat reserved is the Treasury Bench. Thank you for raising the point. Minister, do you wish to respond to the points that have been raised?

2.40 pm

Bim Afolami: I thank all hon. Members for their consideration of the regulations. To address the points made by the hon. Member for Ealing North, in relation to accountability and proportionality, which are a summary of his points, it is important for the Committee to recognise that, in conceptual terms, the regulations do two principal things. First, it is a tidying up exercise to bring together an intention passed as part of the Financial Services and Markets Act 2023 under schedule 11 and to deliver on that. That has the support. Secondly, it is to do that as a last, backstop measure, because we hope the powers will never need to be used. It is done as a means of making absolutely sure, in the event that it was critically necessary, that the Bank of England has the relevant powers. That is its purpose.

In relation to the broader points around accountability, I look forward to working with the hon. Member in my time in post to broadly strengthen Parliament's accountability over all regulators, as he set out. As for proportionality, it is worth saying that there is a requirement, when the powers are in place, for the Bank of England to consult and work with the Treasury in the rare event that they would be used.

Question put and agreed to.

DRAFT FINANCIAL SERVICES AND MARKETS ACT 2023 (RESOLUTION OF CENTRAL COUNTERPARTIES: PARTIAL PROPERTY TRANSFERS AND SAFEGUARDING OF PROTECTED ARRANGEMENTS) REGULATIONS 2023

Resolved,

That the Committee has considered the draft Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements) Regulations 2023.—(*Bim Afolami.*)

DRAFT PAYMENT AND ELECTRONIC MONEY INSTITUTION INSOLVENCY (AMENDMENT) REGULATIONS 2023

Resolved,

That the Committee has considered the draft Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023.—(*Bim Afolami.*)

2.43 pm

Committee rose.