EXPLANATORY MEMORANDUM TO

THE CENTRAL COUNTERPARTIES (EQUIVALENCE) REGULATIONS 2026

2026 No. 779

1. Introduction

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

2. Declaration

2.1 Rachel Blake, Economic Secretary to the Treasury and City Minister at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Duggan, Deputy Director for Securities and Markets at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Katherine Pride and Madushvi Sooriyakumar, HM Treasury (email: Katherine.Pride@hmtreasury.gov.uk; Madushvi.Sooriyakumar@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The UK's regulatory framework for central counterparties (CCPs) is set out in the European Market Infrastructure Regulation,[1] as retained in UK law through the European Union (Withdrawal) Act 2018 and amended by regulations made under section 8 of that Act. This legislation, forming part of assimilated European Union ('EU') law, is referred to in this explanatory memorandum as 'UK EMIR'.

4.2 'Equivalence' refers to legislative provisions inherited from the EU that, for different areas of financial services, allow HM Treasury to determine that the regulatory and supervisory approach taken by an overseas jurisdiction achieves similar outcomes to the UK. The equivalence framework for financial services currently exists as a collection of individual provisions across several regulations and relate to different areas of financial services activity.

4.3 At the end of the Transition Period on 31 December 2020, around 270 EU equivalence decisions were assimilated into UK law. Equivalence decisions for CCPs were not among those decisions, and HM Treasury elected instead to conduct its own assessments with a view to granting equivalence. Article 25(6) of UK EMIR provides that HM Treasury may make regulations for this purpose, and provides for it to specify that:

- the legal and supervisory arrangements of an overseas country ensure that CCPs authorised in that overseas country comply on an ongoing basis with legally

[1] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (Text with EEA relevance) https://www.legislation.gov.uk/eur/2012/648/contents

binding requirements which are equivalent to the requirements laid down in Title IV of UK EMIR;

- those CCPs are subject to effective supervision and enforcement in that overseas country on an ongoing basis; and
- the legal framework of that overseas country provides for an effective equivalent system for the recognition of CCPs authorised under legal regimes of other countries.

4.4 Article 25(1) of UK EMIR provides that overseas CCPs may only provide clearing services to clearing members or trading venues established in the United Kingdom if the CCP is recognised by the Bank of England ('the Bank'). A pre-condition of recognition is that HM Treasury has made an equivalence determination in regulations made under Article 25(6).

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 UK EMIR sets out regulatory and supervisory requirements for CCPs, as well as for trade repositories and for derivatives traded on a bilateral basis.

5.2 CCPs are used by firms to reduce certain risks that arise when trading on financial markets, such as derivatives and equities markets. Derivatives are contracts between two or more parties, the value of which is based on an underlying asset. CCPs sit between the buyers and sellers of financial instruments, providing assurance that contractual obligations will be fulfilled. The process of transacting through a CCP is known as 'clearing'. CCPs have played a vital role in making markets safer following the 2008 financial crisis, and they help substantially in managing potential systemic risk arising from global financial transactions.

5.3 Access to overseas CCPs' services allow UK firms to more easily and directly engage in overseas derivatives markets, including products and clearing services, that may not be easily accessible via UK CCPs.

5.4 Put forward by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, the Principles for Financial Market Infrastructures ('PFMIs')[2] are a set of guidelines for appropriate regulation of financial market infrastructures, including for CCPs. UK EMIR has implemented the PFMIs, which serve as a benchmark for determining whether the regulatory and supervisory framework of an overseas jurisdiction is equivalent to the UK's framework.

5.5 The regulatory and supervisory frameworks for CCPs differ across the jurisdictions covered by this instrument, reflecting each jurisdiction's domestic legislative arrangements. The following paragraphs describe the relevant framework in each

[2] Principles for Financial Market Infrastructures (bis.org) https://www.bis.org/cpmi/publ/d101a.pdf

jurisdiction, including the competent authorities, the applicable legal instruments, and the scope of this equivalence determination where relevant.

- In Australia, the Reserve Bank of Australia ('RBA') and the Australian Securities and Investments Commission ('ASIC') have co-regulatory responsibilities under the Corporations Act 2001 and the Corporations Regulations 2001, which together form the legal framework in relation to CCPs. ASIC and RBA share joint responsibility for assessing how a licensed Australian Clearing and Settlement facility observes the requirements of the PFMIs though ASIC holds sole responsibility for certain PFMIs that have not been incorporated into the Financial Stability Standards ('FSSs'). The FSS are legally binding and largely based on the PFMIs. Both regulators regulate the same population of CCPs under this framework, and thus have been assessed as one regime. The scope of this determination relates to CCPs that are established in Australia and regulated by ASIC and the RBA as approved domestic licensed clearing and settlement facilities.
- In Japan, the Financial Instruments and Exchange Act 2006 (FIEA) sets the regulatory framework for CCPs clearing securities and financial derivatives, which are authorised and supervised by the Japanese Financial Services Agency (JFSA). The Commodity Derivatives Act 2009 (CDA) sets the framework for CCPs clearing commodities, which are authorised and supervised by the Ministry of Agriculture, Forestry and Fisheries – Ministry of Economy, Trade and Industry ('MAFF-METI'). The Bank of Japan also has an oversight role over all CCPs authorised and supervised by the JFSA.
- In the U.S., the Securities and Exchange Commission (SEC) is an independent federal agency of the government. Among its other regulatory responsibilities, the SEC is responsible for registering and supervising Clearing Agencies. Under the Securities Exchange Act, the definition of Clearing Agency includes entities that act as a CCP for securities or for futures, options and swaps referencing securities or a narrow index of securities. However, the SEC is not the only U.S. regulator of CCPs. Certain derivatives, and the CCPs in which transactions in those derivatives are cleared, are overseen by the Commodity Futures Trading Commission (CFTC). The UK has already taken an equivalence decision in respect of the CFTC regime, which came into force in December 2023. It is possible for U.S. CCPs to be subject to regulation by both the SEC and CFTC. From the point this instrument is in force, the Bank will therefore be able to recognise such dual-regulated CCPs in respect of their full suite of clearing services, subject to those CCPs meeting other recognition pre-requisites.
- In Hong Kong, the Securities and Futures Ordinance ('SFO') is the primary legislation establishing the regulatory framework for CCPs that are licensed and regulated as a Recognised Clearing House (RCH) by the Securities and Futures Commission ('SFC'). The SFC is the competent authority responsible for regulating the securities and futures markets. The Hong Kong Monetary Authority ('HKMA') is responsible for financial stability and prudential regulation more broadly but has not designated any CCP as a 'designated system' under its regime, and it is not possible for a CCP to be supervised by both the HKMA and the SFC. The scope of this determination relates only to CCPs authorised as RCHs under the SFO.
- In India, two separate regulatory regimes are relevant to this equivalence determination. Firstly, the Securities and Exchange Board of India ('SEBI') regulates and supervises CCPs, which are classified as 'recognised clearing

corporations' ('CCs'), under the 1956 Securities Contracts (Regulation) Act ('SCRA') and the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations 2018 ('SECC Regulations'), alongside the 1992 Securities and Exchange Board of India Act and other circulars issued by SEBI. Secondly, The International Financial Services Centres Authority ('IFSCA') is a unified regulator for financial institutions operating within India's International Financial Services Centre ('IFSC'), and regulates and supervises CCs in the IFSC under the 2021 IFSCA (Market Infrastructure Institutions) Regulations ('MII Regulations'). CCPs regulated by IFSCA are also referred to as recognised clearing corporations under that framework. As SEBI and IFSCA regulate distinct populations of CCPs under separate legal frameworks, they have been assessed as two separate regimes.

- In the UAE, the regulatory framework for CCPs operates across two distinct regimes. The Capital Markets Authority ('CMA'), formerly known as the Securities and Commodities Authority ('SCA'), is the primary federal authority responsible for the authorisation, supervision, and enforcement of CCPs operating within the UAE's onshore regulatory framework, covering both securities and commodities markets. The CMA's framework is established under the Board of Directors' Decision No. (11) of 2015 on the Regulation of Clearing Operations in Commodities Markets and the Chairman of the SCA Board of Directors Decision No. 22 R.M of 2016 concerning the Regulation of Central Counterparty (CCP) Business. Separately, the Dubai Financial Services Authority ('DFSA') is the independent regulator of financial services conducted in or from the Dubai International Financial Centre ('DIFC'), a purpose-built free zone for financial services in Dubai. CCPs operating in or from the DIFC must obtain a licence from the DFSA and are classified as Authorised Market Institutions ('AMIs'). The main regulatory provisions applicable to AMIs are set out in the Regulatory Law 2004, the Markets Law 2012, the General Module ('GEN'), the Authorised Market Institutions Module ('AMI') and the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module ('AML') of the DFSA Rulebook. As the CMA and DFSA regulate distinct populations of CCPs under separate legal frameworks, they have been assessed as two separate regimes.
- In South Africa, the regulatory framework for CCPs is established under a coordinated supervisory framework with responsibilities allocated across three authorities. The Financial Sector Conduct Authority ('FSCA') acts as the primary licensing authority and market conduct regulator for CCPs under the Financial Markets Act 2012 ('FMA'). The Prudential Authority ('PA'), located within the South African Reserve Bank ('SARB'), is responsible for prudential supervision, including oversight of capital adequacy, liquidity risk, and financial resilience. The SARB has a broader financial stability mandate, including monitoring systemic risks arising from CCPs. The coordinating framework across these three authorities is established under the Financial Sector Regulation Act 2017 ('FSR Act'). The principal legal instruments underpinning the regime are the FMA and the Financial Markets Act Regulations 2018, supplemented by FSCA conduct standards, joint standards issued by the FSCA and PA, and CCP rules approved under the FMA. CCPs are classified as clearing houses under the FMA. As all licensed CCPs in South Africa are authorised as clearing houses under the FMA and subject to the coordinated oversight of the FSCA, PA, and SARB under a single unified national regime, they have been assessed as one regime.

5.6 To determine equivalence in respect of the regulatory framework of the above jurisdictions, HM Treasury has undertaken an assessment of their regimes, and

considered whether each achieves equivalent outcomes against the criteria set out in Article 25(6) of UK EMIR. The UK operates its equivalence framework on an 'outcomes basis'. In order to grant an equivalence determination, HM Treasury must be satisfied that the regime under assessment meets equivalent outcomes to those of the UK's regulatory regime.

5.7 As a guideline for its assessment, HM Treasury has used the PFMIs. As part of its assessment, HM Treasury received technical advice from the Bank regarding the equivalence of each jurisdiction's regulatory and supervisory framework. The Bank's assessment supports a decision that all the above listed jurisdictions have regulatory frameworks consistent with the standards in the PFMIs.

5.8 HM Treasury have determined that, on an outcomes basis, the regulatory and supervisory frameworks of the above jurisdictions, in relation to specified CCPs authorised by their respective regulatory bodies specified above, is equivalent to that of the UK and meets the criteria set out in Article 25(6) of UK EMIR.

What was the previous policy, how is this different?

5.9 In order to enable CCPs that had already been recognised by the EU to continue operating in the UK while equivalence and recognition decisions were made, HM Treasury established a temporary recognition regime ('TRR') in regulations 11 to 26 of The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184) ('the TRR Regulations'). Under the TRR, CCPs are able to continue to provide clearing services to UK clearing members and trading venues, if they were able to provide those activities in the EU before the end of the Transition Period ('TP') and if they met certain conditions to enter, and remain in, the regime. The TRR is currently due to expire on 31 December 2027.

5.10 The TRR Regulations also provide for a winding down period (the 'run-off'), for cases where CCPs exit the TRR, in order to enable CCPs to wind down their business with UK firms in an orderly manner. The duration of the run-off period for individual CCPs is up to a maximum of three years and six months. Existing run-off arrangements will expire from October 2026.

5.11 There are CCPs in Australia, Japan, Hong Kong and the US (where SEC Authorised) that are currently in the TRR. CCPs currently in run-off include those domiciled in India, the UAE and South Africa.

5.12 The equivalence determinations made in this instrument do not alter the scope or type of services that a specified CCP from one of the specified jurisdictions is able to provide to UK clearing members and trading venues. CCPs authorised by the relevant regulators are already accessing the UK from the TRR regime or operating under the run-off regime.

5.13 As outlined in paragraph 4.4 above, this decision is a pre-requisite for the Bank to consider whether to recognise a CCP from one of the listed jurisdictions. When a CCP is recognised by the Bank, it is able to provide services within the scope of its recognition to UK clearing members and trading venues under a non-time limited regime.

5.14 This instrument applies in relation to CCPs established in Australia, Japan, the US (where CCPs are under SEC authorisation), Hong Kong, India, the UAE or South Africa, and authorised by the relevant regulator in that jurisdiction, when they provide services to clearing members and trading venues in the UK.

6. Legislative and Legal Context

How has the law changed?

6.1 This regulation is an equivalence determination with respect to the regulatory framework in relation to authorisation and supervision of CCPs in Australia, Japan, the US (where CCPs are under SEC authorisation), Hong Kong, India, the UAE or South Africa, by the relevant regulator in that jurisdiction. It grants non-time limited equivalence, which is a pre-requisite for recognition to be considered by the Bank of England and non-time limited access to the UK.

Why was this approach taken to change the law?

6.2 At the end of the TP on 31 December 2020, around 270 EU equivalence decisions were assimilated into UK law. Equivalence decisions for CCPs, made by the EU under Article 25(6) of EMIR, were not among those decisions as they were revoked by regulation 9 of TRR Regulations. HM Treasury elected instead for the UK to conduct its own assessment of CCP regulatory regimes, and then to make its own decision on whether to grant equivalence. Article 25(6) of EMIR requires equivalence determinations to be made in the form of regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 HM Treasury has not undertaken a public consultation on this instrument.

7.2 HM Treasury has engaged with and received advice from the Bank in relation to the equivalence determinations contained in this instrument.

8. Applicable Guidance

8.1 No additional guidance will accompany this SI.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been prepared for this instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact of this instrument will result in an Equivalent Annual Net Direct Cost to businesses of less than £10 million a year. Due to this limited impact, a de minimis impact assessment has been carried out. A copy of this assessment is published alongside this Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 As set out in the Memorandum of Understanding between HM Treasury, the Bank, the Prudential Regulation Authority and the Financial Conduct Authority (The

Financial Services Regulators), HM Treasury may review the equivalence determination periodically or at any time, or in response to changes to the applicable framework. This does not prejudice HM Treasury's ability to revoke the equivalence determination at any time.

10.2 The Financial Services Regulators may also recommend to HM Treasury that a review of one or more of these equivalence determinations is undertaken in response to material changes in the applicable framework. Furthermore, any such regulator may request a review of an equivalence determination if they have concerns arising from their statutory objectives.

10.3 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to HM Treasury and City Minister at HM Treasury (Rachel Blake) has made the following statement:

'It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £10 million and the instrument does not apply to activities that are undertaken by small businesses.'

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023.