EXPLANATORY MEMORANDUM TO

THE OTC DERIVATIVES RISK MITIGATION AND CENTRAL COUNTERPARTIES (EQUIVALENCE) (SWITZERLAND) REGULATIONS 2025

2025 No. 898

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Emma Reynolds, Economic Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Rohan Lee, Deputy Director for International Policy and Partnerships at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kieran Davis at HM Treasury: (email: kieran.davis@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 OTC Derivatives Risk Mitigation and Central Counterparties (Equivalence) (Switzerland) Regulations 2025 set out HM Treasury's determinations that Switzerland's regulatory and supervisory regimes for risk mitigation for Over the Counter Derivative ('OTCD') contracts and for central counterparties ('CCPs') are equivalent to the United Kingdom's.

4.2 The OTCD equivalence determination enables UK firms transacting with Swiss counterparties to meet UK risk mitigation standards for OTCD contracts by relying on Swiss risk mitigation standards.

4.3 The CCP equivalence determination enables Swiss CCPs to provide clearing services to UK clearing members and trading venues without needing to comply with UK authorisation and prudential measures, subject to recognition of individual Swiss CCPs by the Bank of England ('the Bank').

4.4 This instrument implements commitments in the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in Financial Services ('the Agreement'). The Agreement was

signed in December 2023 and is commonly referred to as the Berne Financial Services Agreement.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.6 The territorial application of this SI (that is, where the SI produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Parliament scrutinised the Agreement in accordance with Section 20 of the Constitutional Reform and Governance Act 2010, which all international treaties entered into by the UK are subject to. The Lords International Agreements Committee conducted an inquiry as part of their scrutiny of the Agreement and provided a positive endorsement, approving the Agreement for ratification, in April 2024.[1] The Government provided a response to the Committee's report in January 2025, setting out the intention to complete implementation as soon as possible.[2] Further details on the Agreement can be found in the Explanatory Memorandum on the Agreement.[3]

5.2 Now that the Agreement has been approved by Parliament, the UK must make legislative changes to ensure it meets its obligations under the Agreement. This is because any treaty ratified by the Government does not alter the laws of the UK. Therefore, specific legislation is required to incorporate the commitments into domestic law.

5.3 The Agreement makes commitments on removing duplication of rules for certain aspects of financial market infrastructure. Specifically, under the Agreement the UK has committed to remove duplication of rules for certain OTCD contracts involving both UK and Swiss firms and the Agreement also includes commitments for jurisdiction-level mutual recognition of the UK and Swiss regimes for CCPs.

5.4 This instrument sets out HM Treasury's determinations that Switzerland's regulatory and supervisory regimes for risk mitigation for OTCD contracts and for CCPs are equivalent to the UK's. This implements the UK's commitments in the Agreement on financial market infrastructure.

5.5 The Financial Services and Markets Act 2023 repealed assimilated law relating to financial services, subject to commencement. This was so it could be brought in line with the UK's domestic model of regulation, where the UK's independent and expert

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[1] 9th Report - Scrutiny of international agreements: UK-Switzerland Agreement on the Mutual Recognition of Financial Services: https://committees.parliament.uk/work/8202/ukswiss-financial-services-agreement/publications/

[2] Government Response to Lord's International Agreement Committee report: https://committees.parliament.uk/publications/46369/documents/234039/default/

[3] Explanatory memorandum: UK/Switzerland: Agreement on Mutual Recognition in Financial Services: https://www.gov.uk/government/publications/ukswitzerland-agreement-on-mutual-recognition-in-financial-services-cs-switzerland-no12024

regulators set rules for firms, operating within a framework established by government and Parliament.

5.6 The Government therefore has an ongoing programme of work to replace the existing equivalence regimes inherited from the EU with legislation which is tailored to the UK's needs, and which fully reflect the Government's outcomes-focused approach to the unilateral regulatory recognition of overseas jurisdictions. These are called 'Overseas Recognition Regimes'. As this work to create Overseas Recognition Regimes is ongoing, the Government expects that it will, in certain cases, continue to take decisions under these inherited powers, in the interests of providing certainty to market participants. This instrument is one such case, as the UK is seeking to deliver on all its obligations under the BFSA simultaneously, on 1 January 2026.

What was the previous policy, how is this different?

Over the Counter Derivatives

5.7 Derivatives are contracts between two or more parties, the value of which is based on an underlying asset. Without an equivalence determination in place, UK counterparties to OTCD transactions involving counterparties in another jurisdiction are subject to the risk mitigation requirements of both jurisdictions.

5.8 There are several different types of derivative contract defined in the UK European Market Infrastructure Regulation ('UK EMIR'), dependent on how and on what venues derivative contracts are traded. There are two main distinctions between types of derivative contracts:

- Whether a derivative contract has been 'cleared' or not. This refers to whether the contract has been executed via a CCP, or bilaterally between all the parties to a transaction. The former is a cleared derivative, the latter is referred to as an uncleared derivative.
- Derivative contracts can also exist in two separate classes – Over the Counter Derivatives ('OTCDs') or Exchange Traded Derivatives ('ETDs'). The class of a derivative instrument is determined by where the contract is executed, per Article 2(7) of EMIR, read with Article 2a of EMIR. If a derivative is traded on a UK regulated market or a market in another jurisdiction determined to be equivalent to a UK market by HM Treasury, it is referred to as an ETD. Any other derivative contract is an OTCD.

5.9 The OTCD equivalence determination in this instrument enables UK counterparties, when undertaking OTCD transactions with counterparties based in Switzerland, to comply with UK standards by relying on Swiss risk mitigation standards for OTCD contracts, removing duplicative regulatory requirements.

Central Counterparties

5.10 CCPs are used by firms to reduce certain risks that arise when trading on financial markets, such as derivatives and equities markets. 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".

5.11 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 financial transactions. For this reason, the UK requires certain classes of derivative contracts to be cleared. Enabling UK firms to access clearing services from overseas

CCPs allows UK firms to more easily and directly engage in overseas derivatives markets, including accessing products and clearing services that may not be easily accessible from UK CCPs.

5.12 At the end of the Transition Period on 31 December 2020, 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, which allows CCPs that were entitled to operate in the UK at the end of the Transition Period to continue doing so. Accordingly, individual Swiss CCPs that were providing services into the UK before the end of the Transition Period are currently doing so under the TRR.

5.13 The CCP equivalence determination in this instrument does not alter the scope or type of services that a Swiss CCP is able to provide to UK clearing members and trading venues. Swiss CCP's are already accessing the UK via the TRR. This jurisdiction-level equivalence determination of Switzerland is a necessary first step before the Bank can consider recognising individual Swiss CCPs. The Bank of England is only able to recognise a CCP where the legal and supervisory arrangements of the overseas market in which they operate have been determined, by the Treasury in regulations, as equivalent to those of the UK. A recognition decision from the Bank would enable a Swiss CCP to provide services in the UK on a non-time limited basis.

6. Legislative and Legal Context

How has the law changed?

6.1 The UK's commitments under the Agreement are implemented through the Financial Services and Markets Act 2023 (Mutual Recognition Agreement) (Switzerland) Regulations 2025 ('the BFSA Implementation SI') and this instrument which implements specific commitments made in relation to Financial Market Infrastructures.

6.2 This instrument makes equivalence determinations with respect to Switzerland's regulatory and supervisory regime in relation to OTCD contracts and CCPs. This amends domestic law in order to give legal effect to the commitments made in the Agreement regarding Financial Market Infrastructures as set out in Annex 3A of the Agreement, relating to CCPs, and Annex 3B, relating to OTCDs.

6.3 '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.

6.4 The UK's regulatory framework for OTCD transactions and CCPs is set out in UK EMIR - the European Market Infrastructure Regulation,[4] as assimilated in UK law through the European Union (Withdrawal) Act 2018 and amended by regulations made under section 8 of that Act.

[4] 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

6.5 Article 13(2) of UK EMIR provides that HM Treasury may by regulations determine that the legal, regulatory and supervisory arrangements of another jurisdiction:

- Are equivalent to the requirements laid down under Articles 4, 9, 10 and 11 of UK EMIR;
- Ensure protection of professional secrecy that is equivalent to that set out in UK EMIR; and
- Are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement.

6.6 Article 25(6) of UK EMIR provides that HM Treasury may by regulations specify that:

- the legal and supervisory arrangements of another jurisdiction ensure that authorised CCPs comply on an ongoing basis with legally 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 jurisdiction on an ongoing basis; and
- the legal framework of that jurisdiction provides for an effective equivalent system for the recognition of CCPs authorised under legal regimes of other countries.

6.7 Article 25(1) of UK EMIR also provides that individual CCPs in another jurisdiction may only provide clearing services to clearing members or trading venues established in the UK if the CCP is recognised by the Bank. Individual Swiss CCPs will remain subject to the Bank's CCP recognition process.

EMIR 13 (OTCDs)

6.8 In the Agreement, the UK committed to granting Switzerland equivalence in respect of risk mitigation requirements, set out in Article 11 of UK EMIR, as they apply to non-intragroup OTCD transactions that are not cleared through a CCP.

6.9 Risk mitigation is a term that encompasses several different categories of requirement that firms must meet in order to ensure their participation in contracts poses as low a risk of default as possible. Risk mitigation requirements in Article 11 of UK EMIR range from requirements on the different types of financial collateral that firms must post for different transactions ('margin'), to processes for identifying and resolving disputes between firms. Prior to making the commitments in the Agreement, HM Treasury undertook an assessment of the Swiss regulatory and supervisory regime for OTCDs, and considered whether it achieves equivalent outcomes against the criteria set out in Article 13(2) of UK EMIR.

6.10 In Switzerland, the Swiss Financial Market Supervisory Authority ('FINMA') is responsible for the supervision of financial market infrastructures, including CCPs. The assessment was based on analysis of the Swiss Financial Market Infrastructure Act ('FMIA') and of the supervisory approach of FINMA. In addition, the UK submitted questionnaires to the Swiss authorities to obtain clarification on specific technical elements.

6.11 As part of its assessment, HM Treasury received advice from the Financial Conduct Authority ('FCA') and the Prudential Regulation Authority ('PRA'), providing their view on the equivalence of Switzerland's regulatory and supervisory regime.

6.12 HM Treasury determined that, on an outcomes basis, Switzerland's regulatory and supervisory regime for OTCD transactions not cleared by a central counterparty, is equivalent to that of the UK and meets the criteria set out in Article 13(2) of UK EMIR, subject to the following differences between the UK and Swiss regimes being addressed:

- The Swiss regime does not maintain formal standards for initial margin models. Initial margin is collateral that firms post at the beginning of a transaction, to cover the financial risk for the other parties in the transaction that would result from that firm defaulting before the transaction is settled. Initial margin models are mathematical frameworks that firms use to calculate the cost of their initial margin. HM Treasury considers formal rules on margin models to be an important mitigant for financial stability risk. As a result, as set out in regulation 3(1)(c) of this instrument, the UK will continue to require UK firms to use initial margin models to the standards set out in the Margin Regulatory Technical Standards (Commission Delegated Regulation (EU) 2016/2251).
- There is a divergence between the UK and Switzerland in the application of variation margin to specific types of derivative contract. Variation margin is distinct from initial margin, and is collateral exchanged daily over the lifetime of a contract to ensure the fair market value of the contract is accurately reflected. In the UK, when credit institutions (large banks) are a counterparty to a physically settled foreign exchange swap or forward, UK rules require that variation margin is posted for such contracts. Swiss rules do not require this. As set out in regulation 3(1)(d) of this instrument, UK counterparties participating in physically settled foreign exchange swaps or forwards with Swiss counterparties must continue to post variation margin, where at least one of the counterparties is either a UK institution or a Swiss firm that would be considered an institution (per the definition in Article 4(1)(3) of the UK Capital Requirements Regulation) if established in the UK.

6.13 This instrument also requires that, in order to take advantage of the benefits of the equivalence determination, the relevant counterparties must be subject to the risk mitigation requirements of Switzerland. A counterparty that, for whatever reason, is complying with neither UK nor Swiss risk mitigation requirements, cannot take advantage of the equivalence determination enabled by this instrument.

6.14 The UK and Swiss definitions of financial and non-financial counterparties are similar, but not identical. UK firms which are financial counterparties must comply with Swiss risk mitigation requirements applying to financial counterparties, and UK firms which are non-financial counterparties must comply with Swiss risk mitigation requirements applying to non-financial counterparties. The definitions of financial and non-financial counterparty are set out in Articles 2(8) and (9) of EMIR respectively.

EMIR 25 (CCPs)

6.15 In the Agreement the UK committed to granting equivalence to Switzerland for CCPs. In order to make the commitments in the Agreement, HM Treasury undertook an assessment of the Swiss regulatory and supervisory regime for CCPs, and considered whether it achieves equivalent outcomes against the criteria set out in Article 25(6) of UK EMIR. As part of this assessment HM Treasury received advice from the Bank

providing its view on the equivalence of Switzerland's regulatory and supervisory framework.

6.16 UK EMIR has implemented the international Principles for Financial Market Infrastructures ('PFMIs')[5] put forward by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions. The PFMIs are a set of guidelines for appropriate regulation of FMIs, including CCPs, and serve as a benchmark for determining whether the regulatory and supervisory regime of another jurisdiction is equivalent to the UK's.

6.17 In Switzerland, the Financial Market Supervision Act ('FINMASA') serves as an umbrella law governing the regulation and supervision of financial markets. In addition to setting organisational parameters for FINMA, the FINMASA defines principles for the regulation of financial markets and a set of coordinated supervisory instruments and sanctions.

6.18 Besides the requirements set out in FINMASA, there are three main legally binding regulations that apply to Swiss CCPs: the FMIA, the Financial Market Infrastructure Ordinance ('FMIO') and the National Bank Ordinance ('NBO'). A CCP that the Swiss National Bank ('SNB') has designated as systemically important is required to comply with all provisions of the FMIA, FMIO and NBO, together the 'Swiss CCP regime'. Currently, there is only one CCP operating in Switzerland (SIX x-clear), and it has been designated as systemically important by the SNB, who are therefore the responsible regulator.

6.19 HM Treasury determined that, on an outcomes basis, Switzerland's regulatory and supervisory regime for CCPs, is equivalent to that of the UK and meets the criteria set out in Article 25(6) of UK EMIR.

Why was this approach taken to change the law?

6.20 The UK and Switzerland agreed that the commitments made under Annexes 3A and 3B of the Agreement would be delivered through equivalence under Articles 13 and 25 of EMIR, the UK's existing mechanism for granting recognition of regulatory standards for OTCD transactions, and CCPs, respectively. Article 13(2) and Article 25(6) of EMIR require 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. However, during negotiation of the Agreement between 2020 and 2023 HM Treasury maintained ongoing dialogue with key business and interest groups, and legal practitioners representing the wholesale financial services sectors covered by the Agreement.

7.2 HM Treasury engaged with and received advice from the Bank, Prudential Regulation Authority and Financial Conduct Authority prior to signing the Agreement and in relation to the equivalence determinations contained in this instrument.

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

8. Applicable Guidance

8.1 No additional guidance will accompany this instrument.

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 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 UK businesses, charities or voluntary bodies (including small or micro businesses) This is because this instrument allows, for OTCD transactions, UK firms the potential to lower their administrative burdens when participating in OTCD contracts with Swiss counterparties. For CCPs, this instrument only affects overseas CCPs.

9.3 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 The approach to monitoring this legislation is that it will be reviewed through continued engagement with the financial services sector. This engagement will ensure the legislation is working as intended with regards to providing legal clarity on the market access, and transparency on the role of the PRA, FCA and the Bank of England.

10.2 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 the Treasury and City Minister at HM Treasury (Emma Reynolds) has made the following statement:

"It is not proportionate to include a review clause in this SI because the estimated annual net direct cost to business is less than £10 million and the Agreement already establishes a Joint Committee to monitor the application of the Agreement and consequentially the effect of the legislation"

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is being laid alongside the ***draft*** Financial Services and Markets Act 2023 (Mutual Recognition Agreement) (Switzerland) Regulations 2025 which give legal effect to the rest of the commitments in the Agreement. These instruments have been laid separately as they are using separate powers. It is necessary for these instruments to come into force at the same time, as the Agreement can only be ratified

and enter into force once all domestic procedures, including laying the necessary implementing legislation, have been completed.

11.2 This instrument fulfils commitments made in the Agreement, specifically those in Annexes 3A and 3B, which was approved by Parliament in April 2024.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury (Emma Reynolds) has made the following statement regarding Human Rights:

"In my view the provisions of the OTC Derivatives Risk Mitigation and Central Counterparties (Equivalence) (Switzerland) Regulations 2025 are compatible with the Convention rights"

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.