



HM Treasury

Amendment to Section 48D of the Banking Act 2009: Consultation

September 2021

Amendment to Section 48D of the Banking Act 2009: Consultation



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

Contents

Chapter 1	Introduction	2
Chapter 2	Amendment to Section 48D of the Banking Act 2009	8

Chapter 1

Introduction

- 1.1 The Government launched a consultation on 4 February 2021 entitled 'Implementation of the Investment Firms Prudential Regime and Basel 3 Standards'. The consultation document outlined how the Government proposes to exercise powers under what is now the Financial Services Act 2021 (FS Act) to ensure the effective implementation of the Investment Firms Prudential Regime (IFPR) and the outstanding Basel 3 standards. The consultation closed on 1 April 2021.
- 1.2 As part of this consultation, the Government consulted on the applicability of the UK resolution regime in Part 1 of the Banking Act 2009 to FCA investment firms. Currently investment firms subject to a EUR 730,000 initial capital requirement (730k investment firms) are subject to the UK resolution regime. Some of these firms are considered systemic and so are designated by the PRA, while the rest are only regulated by the FCA. The changes to legislation that will be made as a result of the IFPR, including changes to initial capital requirements, presented an opportunity to consider the scope of the UK resolution regime in relation to FCA investment firms.
- 1.3 As laid out in the consultation response, published in April 2021, the Government, having consulted with the Bank of England (the Bank), the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), and taking into account consultation responses, has decided to remove FCA regulated 730k investment firms from the scope of the UK resolution regime. FCA investment firms will remain subject to relevant legislation and the FCA's existing rules and processes in place to facilitate the orderly wind-down of FCA investment firms. In addition, the Investment Bank Special Administration Regime (IBSAR) will be available to use to manage the failure of some investment firms. PRA designated investment firms will continue to remain within the scope of the UK resolution regime.
- 1.4 The removal of FCA 730k investment firms from the resolution regime will require a number of consequential amendments to both primary and secondary legislation. One of these amendments raises the question of whether short-term liabilities owed to FCA investment firms should continue to be excluded from the Bank of England's bail-in power under Section 48B of the Banking Act 2009. Sections 48B and 48D of the Banking Act 2009 relate to the liabilities owed to firms within the scope of the UK resolution regime. Currently S48B(8)(d) of the Banking Act 2009 means the Bank of England's bail-in power cannot be used to bail-in liabilities with an original maturity of less than 7 days owed by the bank to a credit institution or 730k investment firm.

- 1.5 The Government is proposing to amend the definition of ‘investment firm’ in Section 48D to capture PRA-designated investment firms and FCA-regulated investment firms with permission to underwrite or deal on own account (i.e. those that will be subject to the new £750,000 initial capital requirement under the FCA’s new rules). This would mean that short-term liabilities owed to these firms will continue to be exempt from bail-in. The proposed amendment would be made using the ‘Power to amend the definition of “excluded liabilities”’ under S48F(1) of the Banking Act 2009. HM Treasury is required to consult before using this power.

Responding to the consultation

- 1.6 Responses are requested by 5 October 2021. The Government cannot guarantee that responses received after this date will be considered.
- 1.7 This document is available electronically at www.gov.uk/treasury. You may make copies of this document without seeking permission. Printed copies of the document can be ordered on request from the address below.
- 1.8 Responses can be sent by email to PrudentialConsultation@hmtreasury.gov.uk
- 1.9 Alternatively, they can be posted to:
- Banking Assets and Resolution Strategy Team
HM Treasury, 1 Horse Guards Road
London
SW1A 2HQ
- 1.10 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make clear who the organisation represents and, where applicable, how the views of members were assembled.

Processing of personal data and confidentiality

- 1.11 This notice sets out how we will use your personal data, and your rights under the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

- 1.12 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

- 1.13 Information may include the name, address, email address, job title, and employer of the correspondent, as well as their opinions. It is possible that respondents will volunteer additional identifying information about themselves or third parties.

Purpose

- 1.14 The personal information is processed for the purposes of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Legal basis of processing

- 1.15 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Who we share your responses with (Recipients)

- 1.16 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).
- 1.17 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
- 1.18 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.
- 1.19 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.
- 1.20 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>. We anticipate we will share the responses with the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA) and the Bank of England.
- 1.21 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

- 1.22 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

- 1.23 Personal information in responses that is not published will be retained for three calendar years after the consultation has interest.

Special data categories

- 1.24 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

- 1.25 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: The processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

- 1.26 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Your rights

- 1.27 You have the right to:
- request information about how your personal data are processed, and to request a copy of that personal data.
 - request that any inaccuracies in your personal data are rectified without delay.
 - request that your personal data are erased if there is no longer a justification for them to be processed.
 - in certain circumstances (for example, where accuracy is contested) request that the processing of your personal data is restricted.
 - object to the processing of your personal data where it is processed for direct marketing purposes
 - you have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a data subject access request (DSAR)

- 1.28 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit

G11 Orange

1 Horse Guards Road

London

SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

1.29 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk

1.30 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane Wilmslow

Cheshire

SK9 5AF

0303 123 1113

casework@ico.org.uk

Contact details

1.31 The data controller for your personal data is HM Treasury. The contact details for the data controller are:

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

020 7270 5000

public.enquiries@hmtreasury.gov.uk

1.32 The contact details for the data controller's Data Protection Officer (DPO) are:

DPO

1 Horse Guards Road

London

SW1A 2HQ

privacy@hmtreasury.gov.uk

Chapter 2

Amendment to Section 48D of the Banking Act 2009

- 2.1 Sections 48B and 48D of the Banking Act 2009 contain material that relates to the “bail-in” stabilisation option. S48B(8) contains a list of “excluded liabilities” which cannot be bailed-in, one of which concerns ‘liabilities with an original maturity of less than 7 days owed by the bank to a credit institution or investment firm’.
- 2.2 The definition of ‘investment firm’ for these purposes is set out in Section 48D, and currently captures investment firms which are subject to the 730k EUR initial capital requirement in the rules made by the PRA and FCA to implement Article 28(2) of the Capital Requirements Directive (CRD IV). As a consequence of IFPR changes that remove the 730k initial capital requirement, as well as the removal of FCA investment firms from the UK resolution regime, there is a need for a consequential amendment to Section 48D to ensure the legislation is clear on the scope of liabilities that are excluded from bail-in.
- 2.3 We are proposing to amend the definition of ‘investment firm’ in Section 48D to capture PRA-designated investment firms and FCA-regulated investment firms with permission to underwrite or deal on own account (i.e. those that will be subject to a £750,000 initial capital requirement under the FCA’s new rules). This would mean that short-term liabilities owed to these firms will be exempt from bail-in.
- 2.4 The Government considers that this consequential amendment best preserves the existing effect of the safeguards for short-term liabilities, thereby reducing the risk of systemic contagion.
- 2.5 Because of the removal of certain exemptions and derogations that applied to the 730k initial capital requirement under CRD IV, approximately 200 more FCA investment firms are expected to benefit from the exclusion for short-term liabilities than benefit presently. The Government considers that this is appropriate. If all FCA investment firms were removed from the exemption, the bail-in of a firm subject to the resolution regime could have significant implications for its FCA counterparties if their short-term exposures were written down .

Box 2.A: Amendment to Section 48D of the Banking Act 2009

1. Do you have any comments on the scope of Sections 48B and D of the Banking Act 2009?

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk