HM Treasury

Amendment to Section 48D of the Banking Act 2009:

consultation response

February 2022

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Chapter 1
Introduction

1.1 The Government launched a consultation on 6 September 2021 entitled 'Amendment to Section 48D of the Banking Act 2009'. The consultation document outlined how the Government proposes to amend the definition of 'investment firm' in Section 48D to capture Prudential Regulation Authority (PRA)-designated investment firms and Financial Conduct Authority (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). The consultation closed on 5 October 2021.

1.2 The consultation was launched following the earlier Government consultation entitled 'Implementation of the Investment Firms Prudential Regime and Basel 3 Standards'. The consultation document outlined how the Government proposed 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 ran from 4 February to 1 April 2021.

1.3 As part of the consultation on the Implementation of the IFPR and Basel 3 Standards, the Government consulted on the applicability of the UK resolution regime to FCA-regulated investment firms. Currently investment firms subject to a EUR 730,000 initial capital requirement (known as 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 will, from 1 January 2022, be 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-regulated investment firms.

1.4 As laid out in the consultation response, published in June 2021, the Government, having consulted with the Bank of England (the Bank), the PRA and the FCA, and taking into account consultation responses, has decided to remove FCA-regulated investment firms from the scope of the UK resolution regime. FCA-regulated 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-regulated 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.

1.5 The removal of FCA-regulated investment firms from the resolution regime will require a number of consequential amendments to both primary and secondary legislation. The consultation on 'Amendment to Section 48D of the Banking Act 2009' raised the question of whether short-term liabilities owed to FCA-regulated 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.

1.6 The Government consulted on amending 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.

Chapter 2

Summary of responses

2.1 The Government received 2 written responses to the consultation. The consultation asked 1 question, the responses to which are summarised below.

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

2.2 Both responses supported the proposed approach 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. They also noted that they agreed that this amendment was necessary as a consequence of removing FCA investment firms from the UK resolution regime.

Chapter 3

Government response

3.1 The Government, having consulted with the Bank, the PRA and the FCA, and taking into account consultation responses, will amend the definition.

3.2 In reaching this decision 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.

Chapter 4

Next steps

4.1 The changes to the scope of the resolution regime will require changes to the legislation underpinning the UK resolution regime. The Government has laid the legislation, which can be found here.

4.2 The amendment to Section 48D of the Banking Act 2009 will be delivered via secondary legislation in due course.

Annex A

List of respondents

A.1 BNY Melon

A.2 PIMFA

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