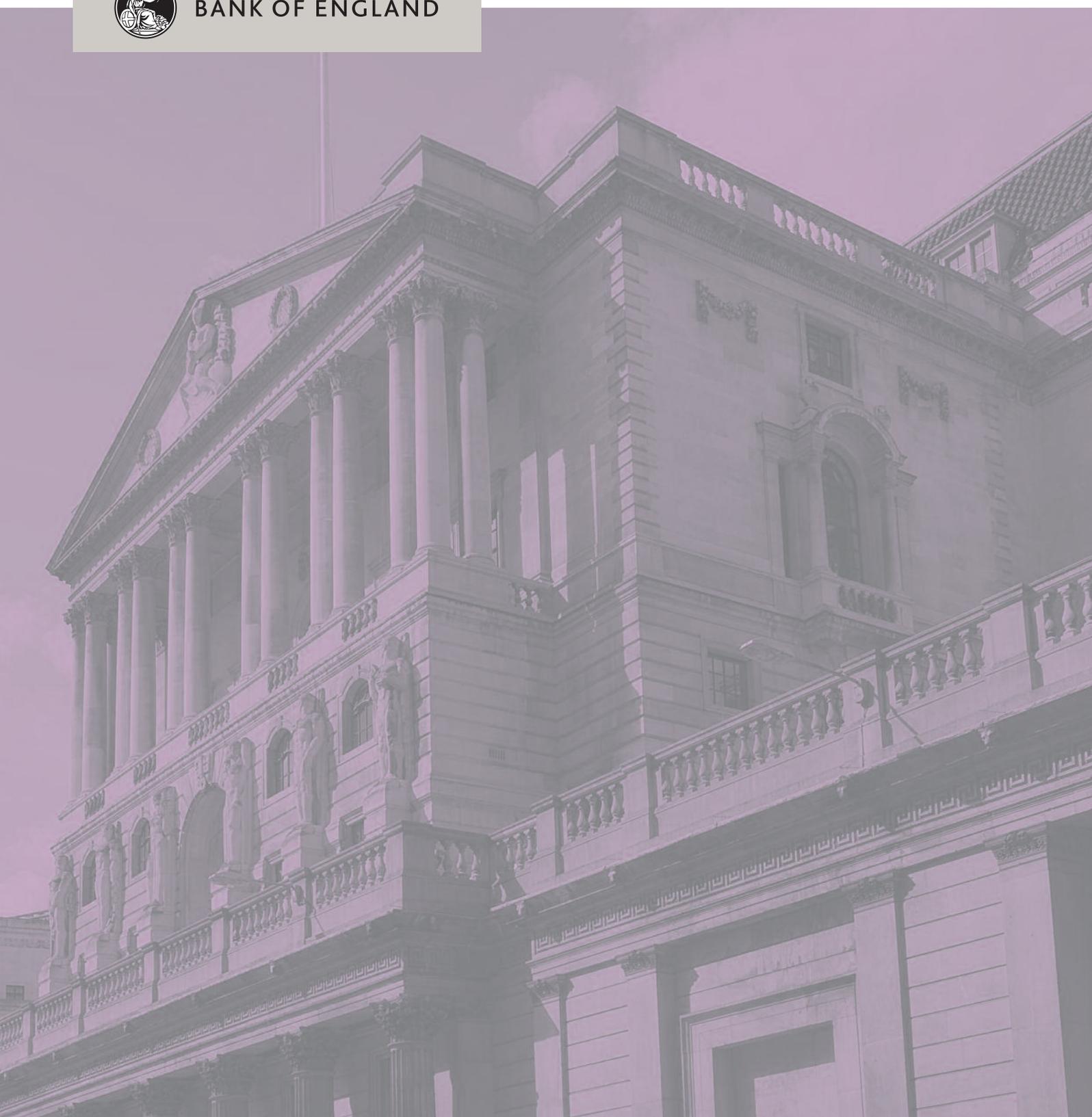


Consultation Paper
Fees for non-UK CCP applications for recognition 2018/19
October 2018



BANK OF ENGLAND





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The Bank of England (the Bank) invites comments on this consultation paper. Comments should reach the Bank by 2 January 2019.

Comments may be sent by email to FMIFeedback@bankofengland.co.uk.

Alternatively, please send comments in writing to:

Bartholomew Oram
Financial Market Infrastructure Directorate
Bank of England
20 Moorgate
London EC2R 6DA

Information provided in response to this consultation, including personal information may be published or disclosed in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998, the Environmental Information Regulations 2004 and the General Data Protection Regulation 2018) or otherwise as required by law or in discharge of our statutory functions.

If you would like the information that you provide to be treated as confidential, please mark this clearly in your response. Under the FOIA, there is a Statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain why you regard the information you 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 assurance that confidentiality can be maintained in all circumstances.

In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded unless an explicit request for confidentiality is made in the body of the response.

Copies of this consultation paper are available to download from the Bank's website at www.bankofengland.co.uk.

Purpose

The purpose of this Consultation Paper (CP) is to seek views on the Bank's proposal to levy fees on non-UK central counterparties (CCPs) that apply to the Bank to be recognised under domestic law after the UK's withdrawal from the European Union (EU).⁽¹⁾

This CP sets out the proposed fee for applications for UK recognition, notes the powers that the Bank intends to use to levy fees and highlights key aspects regarding the implementation of the approach. This CP is intended to provide clarity on the Bank's expected fee regime for applications for UK recognition made before and after the UK's withdrawal from the EU. The Bank welcomes feedback on all aspects of the proposal.

The CP is mainly of interest to non-UK CCPs who may wish to apply for recognition for the purposes of the European Market Infrastructure Regulation (EMIR)⁽²⁾ as that regulation will form part of UK domestic law after the UK's withdrawal from the EU.

This consultation closes on 2 January 2019. The Bank invites feedback on the proposals set out in this CP. Please address any comments or enquiries to FMIfeedback@bankofengland.co.uk.

The Bank will consider the feedback received, with a view to any arrangements commencing in 2019 Q1 if the Bank decides to levy fees on non-UK CCPs applying to the Bank for recognition.

Background

On 24 July 2018, HM Treasury laid *The Central Counterparties (Amendments, Etc., and Transitional Provision) (EU Exit) Regulations 2018* (the SI) before Parliament pursuant to the European Union (Withdrawal) Act 2018.

The SI, if adopted by Parliament, will provide the Bank with powers, before and after the UK's withdrawal from the EU, to receive, assess and make decisions in relation to recognition applications from non-UK CCPs. The SI provides that any decisions determined by the Bank before exit day will only take effect from the date of the UK's withdrawal from the EU. The process for the recognition of non-UK CCPs will be based on the current process set out in EMIR.

The SI also gives the Bank the power to require non-UK CCPs to pay fees in connection with the discharge of any of its functions before exit day.⁽³⁾

Subject to parliamentary review, these powers are expected to come into effect by 2018 Q4.⁽⁴⁾

In a letter sent to non-UK CCPs on the 28 March 2018,⁽⁵⁾ regarding the process for the recognition of non-UK CCPs, the Bank welcomed the agreement between the UK and EU27 that there should be an implementation period until the end of 2020 as part of the UK's Withdrawal Agreement with the EU. The Bank anticipates that the fee raising power in the SI will be available during the implementation period between 29 March 2019 and 31 December 2020. As noted in the March 2018 letters, non-UK CCPs may plan on the assumption that recognition by the Bank will only be needed by the end of the implementation period.

Non-UK CCPs are encouraged to continue engaging with the Bank on the recognition process but to consider how to best make use of the additional time provided for by the implementation period in their planning. In the event that the Withdrawal Agreement is not ratified, the temporary recognition regime that was announced by the UK Government on 24 July 2018 provides confidence that a back-stop will be available. Further information on the temporary recognition regime is available in the Bank's statement on 24 July 2018.⁽⁶⁾ The Bank will not be charging fees for entry into the temporary recognition regime.

Detail on the proposed application fees

Fee-levying powers

As set out in the SI, ESMA's functions relating to the recognition of third-country CCPs under EMIR will be transferred to the Bank.⁽⁷⁾

The SI enables the Bank to require non-UK CCPs to pay fees in connection with the discharge of any of its functions before exit day.⁽⁸⁾ The relevant Part of the SI comes into effect on the day after the day on which the SI is made.

The SI also amends the definition of a third-country central counterparty in section 285 of the Financial Services and Markets Act 2000 (FSMA) to refer to 'a person established in a

(1) This EU regulation will form part of UK domestic law on and after exit day by virtue of section 3 of the European Union (Withdrawal) Act 2018.

(2) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on Over the Counter derivatives, central counterparties and trade repositories. This EU regulation will form part of UK domestic law on and after exit day by virtue of section 3 of the European Union (Withdrawal) Act 2018.

(3) For further information, please see *The Central Counterparties (Amendment, Etc., and Transitional Provision) (EU Exit) Regulations 2018* and accompanying Explanatory Memorandum, which are available at the following link: www.legislation.gov.uk/id/ukdsi/2018/9780111171882.

(4) For further information on HM Treasury's approach to bringing EU financial services legislation into domestic law under the European Union (Withdrawal) Act, please see the following link: <https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>.

(5) The March 2018 letter is available at the following link: www.bankofengland.co.uk/-/media/boe/files/letter/2018/ccps-preparation-for-the-uk-withdrawal-from-the-eu-update-march-2018.pdf.

(6) The Bank's statement on temporary recognition is available at the following link: www.bankofengland.co.uk/news/2018/july/temporary-permissions-and-recognition-regimes.

(7) In the European Union, 'Third Country' refers to a country other than those which are part of the Union. Under UK domestic law, Third Country will refer to a country other than the United Kingdom.

(8) See Regulation 26 in Part 6 of the SI.

country other than the United Kingdom who has been recognised by the Bank as a central counterparty pursuant to Article 25 of the EMIR Regulation'. The SI provides that this provision comes into effect on exit day. The effect of this is that the Bank will be able to use its fee raising power in paragraph 36 of Schedule 17A of FSMA in relation to third-country central counterparties that apply for recognition from the Bank to take effect after exit day.

The information and proposals in this CP are based on the functions and powers set out in the SI. Should there be any relevant changes to the functions and powers given to the Bank, or any relevant changes to the agreed implementation period, then the Bank will review and consider any impact on the proposals set out in this CP and re-consult if necessary.

Fees for recognition applications for non-UK CCPs

The Bank proposes to levy an application fee for non-UK CCP recognition applications. This is consistent with the approach taken by the Bank to UK CCPs.

The Bank proposes to levy an application fee of £35,000 for each application. This is intended to be a fair, reasonable and proportionate fee based on a calculation of the Bank's expected work effort and associated costs that we anticipate will be incurred in handling all aspects of non-UK CCP recognition applications. This includes a review of information submitted to the Bank by applicant non-UK CCPs, the establishment of co-operation arrangements with relevant competent authorities and any technical advice provided to HM Treasury by the Bank. The Bank proposes to apply a consistent fee for all applicant non-UK CCPs, regardless of whether there is more than one applicant from a given jurisdiction. The Bank believes that such an approach is the fairest way to recover the costs associated with recognition of non-UK CCPs.

The application fee will be payable once the non-UK CCP has been formally recognised by the Bank. An application fee will not be chargeable for notification of intent to apply for recognition.

Engaging with the Bank informally to assist the Bank with its pre-application process, which the Bank encouraged non-UK CCPs to do in letters sent in December 2017,⁽⁹⁾ does not incur a fee. Where a non-UK CCP has already provided the Bank with information for the purpose of pre-application discussions, a fee would only be incurred if the non-UK CCP chooses to make a formal application, or it gives explicit consent for this information to be taken by the Bank to be part of a formal application, and would be payable once it has been formally recognised.

Process for levying fees

The Bank's fee year is 12 months from 1 March to the end of February. Any changes to the fee rates for domestic and non-UK FMIs are intended to take effect from 1 March in each year. The application fee level will be kept under review to determine whether it is set at an appropriate level.

Other matters

Having had regard to the public sector equality duty under the Equality Act 2010, the Bank does not consider this proposal to have any implications for equality matters.

Feedback to this consultation

This consultation closes on 2 January 2019. Please send comments to FMIfeedback@bankofengland.co.uk by this date.

The Bank will consider the feedback received with a view to any arrangements commencing in 2019 Q1 if the Bank decides to levy fees on non-UK CCPs applying to the Bank for recognition.

(9) The December 2017 letter is available at the following link: www.bankofengland.co.uk/-/media/boe/files/letter/2017/letter-to-ccps.pdf.