FINANCIAL SERVICES AND MARKETS BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Introduction

1. This supplementary memorandum concerns the amendment to the Financial Services and Markets Bill, which inserts new subsections (7), (8) and (9) into clause 37.

2. This memorandum has been prepared to assist the Delegated Powers and Regulatory Reform Committee in their consideration of the amendment.

3. In essence, the amendment provides that where used for the purpose of consolidating pre-existing provision, the exercise of delegated powers should not be subject to certain limitations and requirements already in clause 37, including criteria as to compatibility with regulator objectives, other "have regards", and duties to consult the financial services regulators. It also provides for a negative Parliamentary procedure to apply where an affirmative would otherwise be required.

Summary of proposal in the amendment

4. This amendment inserts new subsections (7), (8) and (9) into clause 37. Clause 37 inserts new sections 408A to 408E into the Financial Services and Markets Act 2000 (FSMA 2000), creating a new permanent framework under which the Treasury may establish overseas recognition regimes and designate recognised overseas jurisdictions.

5. The purpose of the amendment is to deal with the position of overseas recognition regimes which already exist in secondary legislation, or will shortly exist, in regulations made before the new overseas recognition framework comes into force.

6. At present, certain overseas recognition regimes are established in sector-specific regulations, such as in Part 4 of the Insurance and Reinsurance Undertakings (Prudential Requirements) Regulations 2023 (SI 2023/1347). As described at paragraph 252 of the Delegated Powers Memorandum, such regimes are essentially restated (with modifications) from assimilated law. The Financial Services (Overseas Recognition Regime Designations) Regulations 2025(SI 2025/1147) make further provision about the effect of such regimes.

7. Once the new sections 408A and 408B are in force, the Treasury's intention is for there to be a single framework under FSMA 2000 for establishing overseas

regimes and designations under them. It may therefore be desirable to consolidate already existing regimes, and designations made under them, under the new overseas recognition framework, rather than leave them operating under a separate framework created by the 2025 Regulations.

Justification for the power and procedure

Clause 37: Overseas recognition regimes
- Insertion of new subsections (7) and (8)

Power conferred on: the Treasury
Power exercised by: regulations made by statutory instrument
Parliamentary Procedure: made negative

8. Subsection (7) makes provision for the treatment of regulations made under new sections 408A or 408B of FSMA 2000 where the Treasury are satisfied that those regulations would, if made, have "substantially the same effect" as existing overseas recognition provision.

9. Where that condition is met, the ordinary requirements in new sections 408A to 408C are modified. In particular, the Treasury are not required to comply with the have-regards requirements in section 408A(2), the compatibility and outcome assessment requirements in section 408B, or the consultation requirements in section 408C(1) to (4).

10. Moreover, where the condition is met, section 429(2) of FSMA 2000 will not apply, so regulations under section 408A which would otherwise be subject to the affirmative procedure by virtue of that provision are instead subject to the negative procedure. (This provision about procedure is not relevant for regulations made under section 408B: those are subject to the negative procedure in any case.)

11. Subsection (8) puts beyond doubt how the "substantially the same effect" test applies where existing overseas recognition provision contains a power for the Treasury to make designations. Under the new framework, consolidated regulations will not themselves contain such a power, because future designations will be made under section 408B. Subsection (8) therefore provides that, when assessing whether the consolidation regulations have substantially the same effect as the existing provision, the Treasury is to treat the section 408B designation power as part of the consolidated regime and disregard differences between that power and the existing designation power.

12. Subsection (9) defines "existing overseas recognition provision" for these purposes. It means an instrument containing provision listed in the Schedule to the Financial Services (Overseas Recognition Regime Designations)

Regulations 2025, or a designation made under such an instrument. The definition refers to the Schedule as it has effect from time to time, which will enable overseas recognition regimes which are anticipated to be established in future to be consolidated: this would cover instruments containing provision added to that Schedule after the Bill is passed but before clause 37 comes into force.

13. The disapplication of requirements by subsections (7), read with subsections (8) and (9) is limited. It is available only where the Treasury are satisfied that the regulations to be made under section 408A or 408B would have substantially the same effect as existing overseas recognition provision. It therefore cannot be used to create a new overseas recognition regime, or to make substantive changes to an existing regime, without applying the ordinary requirements in sections 408A to 408C.

14. In other words, where the Treasury wish to make a new regime, make a new designation, or make changes going beyond a consolidation of existing provision, the ordinary statutory requirements will apply.

15. The disapplication of the section 408A and 408B requirements is justified because the relevant policy and regulatory assessment will already have been undertaken in relation to the existing overseas recognition provision. Requiring the Treasury to carry out the full statutory requirements as to assessment, including the requirements to consult regulators, would duplicate work already carried out and would be disproportionate where the legal effect of the new regulations is substantially the same as the existing provision.

16. The negative procedure is considered appropriate for regulations made under section 408A (where the affirmative procedure would otherwise apply) for the same reason.

17. The condition that subsection (7) only applies to provision which has "substantially the same effect" as regulations listed in the Schedule to the Financial Services (Overseas Recognition Regime Designations) Regulations 2025 means that the negative procedure is available only for consolidation exercises and not for the creation of new policy.

18. Any substantive new exercise of the power in sections 408A will remain subject to the affirmative procedure.