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UK FINANCIAL SERVICES AND MARKETS ACT 2023: BUILDING A 'SMARTER REGULATORY FRAMEWORK'

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The UK Financial Services and Markets Act 2023 aims to build a 'smarter regulatory framework' replacing existing retained EU law on financial services and markets and making other changes to update the UK regulatory regime.

The Act will revoke retained EU law on financial services and markets and give HM Treasury broad powers to make regulations restating and revising that law and designating additional activities for regulation in the UK. It will also make changes to the UK regulators' objectives and the mechanisms for their accountability.

In addition, the Act will implement the outcomes of other reviews, including the reviews of the regulation of wholesale markets, financial market infrastructure, digital settlement assets, critical third-party service providers, financial promotions and access to cash and of the regimes for central counterparties and insurers in financial difficulties. It also will give HM Treasury new powers to implement mutual recognition arrangements with other countries and modify the rules for approving changes in control of authorised persons. The government has now published its more detailed plans for delivering the new framework using the powers under the Act, developing the proposals set out when the Chancellor of the Exchequer announced his 'Edinburgh reforms' in December 2022.

What is the 'smarter regulatory framework'

The UK ceased to be treated as an EU Member State for the purposes of EU law on 31 December 2020. The European Union (Withdrawal) Act 2018 (EUWA) ensured the continuity of EU law in the UK after that date by 'onshoring' then existing EU law as part of UK law, subject to amendments to ensure that it continued to work effectively in the UK.

However, this process resulted in a complex patchwork of 'retained EU law', comprising onshored EU regulations, technical standards and decisions and domestic legislation and rules implementing EU law, all as amended by 'exit instruments' under the EUWA - much of which cannot now be changed without the authority of a new Act of Parliament. This constrains how the UK regulators can pursue their statutory objectives through their rules and restricts the ability of the government and regulators to adapt the UK regulatory regime in response to changing circumstances.

Key issues

- Implements the outcomes of the future regulatory framework review
- Revokes, replaces and revises EU-derived legislation on financial services
- Creates a new designated activities regime
- Changes the regulators' objectives and accountability mechanisms
- Allows HM Treasury to implement international mutual recognition arrangements
- Implements outcomes of the wholesale markets review
- Gives the Bank of England and FCA new powers over financial market infrastructure
- Creates a regime for the oversight of critical third party service providers
- Gives new powers to regulators in relation to 'digital settlement assets'
- Provides new powers over the cash access and wholesale cash industry
- Replaces the cash ratio deposit scheme with a new Bank of England levy
- Updates the regime for insurers in financial difficulties
- Allows PSR to require customer reimbursement for authorised push payment scams
- Requires firms to have specific permission to approve financial promotions
- Extends the powers to impose conditions on changes in control of authorised firms

In June 2019, the then Chancellor of the Exchequer launched a review of the future of the UK regulatory framework. This was followed by a series of consultations and the interim step of the Financial Services Act 2021 to address some immediate issues.

The Act aims to build a 'smarter regulatory framework' reflecting the proposals set out in the latest consultations and building on the existing approach to UK regulation under the Financial Services and Markets Act 2000 (FSMA), which gives the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) broad powers to make rules within a framework set by Parliament and the government.

How will the Act revoke, replace and revise retained EU law?

The Act will revoke all 'EU-derived legislation' relating to financial services and markets specified in Schedule 1 to the Act, including 32 specified EU regulations, 213 specified statutory instruments and all provisions made under 24 specified EU directives, as well as some provisions of FSMA. However, it will not generally repeal retained EU law embedded in UK primary legislation.

'EU-derived legislation' means: any EU regulation or decision 'onshored' under the EUWA; any secondary legislation implementing any EU directive or EU Treaty obligation; and any secondary legislation made under the EUWA or under the proposed transitional power to modify legislation being revoked by the Act (but does not include rules made by the regulators).

Any rights, powers, liabilities, obligations, remedies and procedures recognised or available in domestic law by virtue of the EUWA derived from the legislation covered by Schedule 1 will cease to be recognised or available in domestic law.

The legislation covered by Schedule 1 will continue to apply for a transitional period until HM Treasury brings the revocation into force in relation to that legislation. However, the Act will:

- make some immediate changes to that legislation in relation to the transitional period (see below);
- give HM Treasury powers to make regulations further modifying that legislation (other than technical standards) as it applies in relation to the transitional period (to address new circumstances or policy priorities arising before the legislation can be revoked, replaced and revised);
- give HM Treasury powers to restate that legislation (other than technical standards) so that it continues to apply, with or without further modifications, after the end of the transitional period (in the form of amendments to primary or secondary legislation or as new stand-alone regulations);
- give HM Treasury continuing powers, after the end of the transitional period, to make regulations modifying any restated legislation, including where that legislation has been restated as part of primary legislation;
- give HM Treasury powers to modify any legislation to replace references to specified EU directives with other appropriate provisions.

What EU-derived legislation would be revoked?	
Specified 'Level 1' EU regulations	**Provisions made under specified 'Level 1' EU directives**
Markets	
• Credit rating agencies (1060/2009, 513/2011 and 462/2013) • Short selling and credit default swaps (236/2012) • European market infrastructure (648/2012) • Market abuse (596/2014) • Markets in financial instruments (600/2014 and 2016/1033) • Central securities depositories (909/2014) • Securities financing transactions (2015/2365) • Benchmarks (2016/1011) • Prospectuses (2017/1129) • Securitisation (2017/2402) • Sustainability-related disclosures (2019/2088) • Sustainable investment framework (2020/852)	• Settlement finality (98/26) • Listing (2001/24) • Financial collateral (2002/47) • Transparency obligations for issuers (2004/109) • Criminal sanctions for market abuse (2014/57) • Markets in financial instruments (2014/65)
Bank and investment firm prudential	
• Capital requirements for credit institutions and investment firms (575/2013, 2017/2401, 2019/630 and 2019/876	• Credit institutions winding up (2001/24) • Financial conglomerates (2002/87 and 2011/89) • Capital requirements for credit institutions and investment firms (2013/36) • Deposit guarantee schemes (2014/49) • Recovery and resolution of credit institutions and investment firms (2014/59) • Prudential supervision of investment firms (2019/2034)
Insurance	
	• Motor vehicle insurance (2009/103) • Solvency II (2009/138) • Insurance distribution (2016/97) • Institutions for occupational pension provision (2016/2341)
Payments	
• Cross-border payments (924/2009) • Credit transfers and direct debits in euro (260/2012 and 248/2014) • Interchange fees for card-based payments (2015/751)	• Electronic money (2009/110) • Payment accounts and comparability of fees (2014/92) • Payment services (2015/2366)

Funds	
• European venture capital funds (345/2013) • European social entrepreneurship funds (346/2013) • Long-term investment funds (2015/760) • Money market funds (2017/1131)	• UCITS (2009/65) • Alternative investment fund managers (2011/61)
Retail	
• Packaged retail and insurance-based investment products (1286/2014)	• Distance marketing of consumer financial services (2002/65) • Consumer credit (2008/48) • Mortgage credit (2014/17)
Other	
• Money market statistics (2019/113) • Supervisory fees (2019/2155) • European supervisory authorities (2019/2175) • Reporting of supervisory information (2020/605)	
Other revocations	
• 213 specified statutory instruments (including instruments implementing the specified EU legislation and other EU legislation and exit instruments adopted under the EUWA) and all provisions made under those instruments; • All binding technical standards which apply in the UK; • Specified provisions in FSMA (including those relating to the making of technical standards and the PRA's CRR rules) but not any other primary legislation; • Any other EU-derived legislation so far as relating to financial services and markets (unless excluded by regulations made by HM Treasury).	

Under the Act, EU-derived legislation will continue to be treated as 'retained EU law' under the EUWA until it is revoked. Thus, it will continue to be interpreted in accordance with retained EU-case law and general principles of EU law (at least to the extent unmodified) and will continue to have its residual supremacy over Acts of Parliament made before 1 January 2021. However, this will change at end 2023 as a result of the Retained EU Law (Revocation and Reform) Act 2023 (see below). In any event, under the new Financial Services and Markets Act, any restatement of that legislation applying after the end of its transitional period will not be 'retained EU law' (or, from 2023, 'assimilated law' under the 'REUL Act'). Thus, restated law may be interpreted differently from the predecessor EU-derived legislation even if expressed in the same terms.

HM Treasury will be able to use the powers conferred by the Act to modify legislation for a wide range of policy purposes, including to protect financial stability, promote competition, facilitate the UK economy's international competitiveness and growth and protect consumers and insurance policyholders. It will also be able to use those powers to restate legislation in a clearer and more accessible way. Regulations can also confer additional powers on HM Treasury or on a regulator and can authorise a regulator to make rules and charge fees.

Regulators will then be able to use their rule-making powers to replace revoked legislation with new rules following their normal rule-making process. However, HM Treasury can make regulations disapplying a regulator's obligations under FSMA to consult and carry out a cost-benefit analysis where the regulator is adopting rules that revoke - without replacing - rules providing for 'retained EU obligations', that restate revoked legislation without material changes or that make changes that are material but that reduce a regulatory burden.

The Act does not include a 'sunset' provision by which the legislation specified in Schedule 1 would be automatically repealed and the government envisages that the process of revoking, replacing and revising that legislation will take a number of years. This is a much bigger task than onshoring under the EUWA, where the government's role was limited to modifying retained EU law to ensure that it worked effectively after Brexit.

The government will need to decide whether, after the end of the transitional period, EU-derived legislation is to be retained, in whole or in part and with or without modifications, whether it should be retained in the form of stand-alone regulations or via amendments to primary legislation (eg, as part of FSMA itself) or other subordinate legislation and the extent to which the replacement or modification of all or part of the revoked legislation should be delegated to regulators under existing or new powers or via the new designated activities regime (discussed below). The regulators will also need to decide on how to use their powers through their own rulemaking process to replace revoked legislation or to make new rules in areas that were previously constrained by EU-derived legislation.

In the meantime, the government may use its powers to make regulations applying in the transitional period to make additional immediate changes to EU-derived legislation, eg, the changes being made to the EU-derived legislation on electronic money and payments giving the FCA and PSR new rule-making powers.

The process should result in a clearer, more accessible and more adaptable ruleset than exists today. More of the regulatory regime will be structured as PRA or FCA rules allowing the UK regulators greater discretion to amend or waive rules to implement policy changes or to address the individual circumstances of regulated firms.

HM Treasury will have ongoing rule-making power across a wider range of policy areas than under FSMA (where its principal policy-making powers are limited to setting the perimeter of the authorisation requirements and the financial promotion regime). It will have ongoing powers to modify all revoked EU-derived legislation to the extent restated via HM Treasury regulations as well as the new rule-making powers under the designated activities regime and other provisions of the Act discussed below. This should limit (although it will not eliminate) the need to rely on new primary legislation to implement future policy initiatives.

What is the plan for delivering the new framework?

HM Treasury has now published its more detailed plans for delivering the 'smarter regulatory framework' using the powers under the Act, developing the proposals set out when the Chancellor of the Exchequer announced his 'Edinburgh reforms' in December 2022.

As announced in December 2022, HM Treasury has identified 43 "core" files of retained EU law on financial services to be repealed and reformed under the Act. HM Treasury is prioritising the repeal and reform of these files by dividing them into tranches. It expects to make significant progress on the first two tranches by end 2023 and its latest announcements indicate what this means for each file covered by those tranches.

In addition, HM Treasury has also brought into force the provisions of the Act repealing almost 100 unnecessary pieces of retained EU law. It is also bringing into force repeals of statutory restrictions which prevent the UK regulators from making rules that modify the effect of retained EU law.

Moving beyond the first two tranches of files, HM Treasury will seek to prioritise the files that would benefit from policy reform. However, to reduce the burden on the industry, some files will be considered for a "lift and shift" approach where policy change is not appropriate and it is desirable to maintain the status quo for the time being. For these files, the government will make the necessary changes to bring the provisions into line with the FSMA model but will not explore options for policy change during this process. The regulators will then be responsible for considering future rule changes in the same way as for any other existing rule in their rulebooks.

HM Treasury has also provided greater detail on what the new framework will look like. Firm-facing provisions will generally be set out in the regulator's rulebooks. Government legislation will focus on setting the framework within which the regulators will exercise their responsibilities by defining the perimeter of regulation, setting prohibitions on some activities, creating registration, notification or approval regimes where these are required beyond the authorisation regime in FSMA, granting rule-making powers to the regulators where these do not yet exist, specifying the 'have regards' which regulators must take into account when using their powers, and providing regulators with supervisory, investigatory and disciplinary powers. In some cases, this will involve the use of the designated activities regime created by the Act (see below) but in other cases HM Treasury will use its powers under the Act to create new regimes.

The aim is to deliver this framework by making a small number of statutory instruments (which will be updated over time) using the powers under the Act: designated activities regulations covering all activities designated under the new regime; regulations setting 'have regards' for the regulators; regulations giving the regulators new powers to modify and disapply their rules; and miscellaneous provisions regulations dealing with matters that do not fit into the other regulations. Draft statutory instruments already published will be restructured before they are finalised to fit with this approach. HM Treasury also expects to repeal all binding technical standards and to update legislation that currently refers to EU directives.

What is the impact of the REUL Act?

The Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent on the same day as the Financial Services and Markets Act 2023. The 'REUL Act' sunsets nearly 600 individual pieces of retained EU law with effect from end 2023 and gives the government new powers to restate, revoke and replace retained EU law, including the retained EU law covered by the new Financial Services and Markets Act.

However, it seems likely that the government will use the powers under the new Financial Services and Markets Act to restate, revoke or replace legislation covered by that Act as those powers are not subject to the same constraints as those that apply to the powers under the REUL Act. Nevertheless, the powers under the REUL Act may be used to restate, revoke or replace some legislation relevant to financial services or markets, including where legislation only partly relates to financial services or markets and provisions of primary legislation inserted by subordinate legislation which fall outside the scope of the new Financial Services and Markets Act.

The REUL Act also changes the status of retained EU law as part of domestic law with effect from the end of 2023, 'assimilating' it to domestic law (and renaming it 'assimilated law'). It ends the residual supremacy of EU law, requires remaining retained direct EU legislation generally to be read subject to domestic enactments (unless regulations say otherwise), abolishes general principles of EU law as part of UK law and ends the rights, powers, etc. derived from EU obligations that were retained as part of UK law. Possibly even before end 2023, the REUL Act will also give the UK's higher courts greater freedom to depart from retained case law relating to EU law when interpreting retained EU law or assimilated law, allow the lower courts and government law officers to refer questions on the that case law to higher courts, enable government law officers to intervene in court proceedings on questions of that case law, and permit the courts to make orders dealing with incompatibility between domestic enactments and direct EU legislation that still forms part of UK law.

These changes to the status of retained EU law will also apply to legislation covered by the new Financial Services and Markets Act and might create some uncertainty as to the interpretation and application of that legislation and other remaining retained EU law relevant to financial services or markets, although the practical impact of these changes on that law may generally be quite limited. However, there may some exceptional cases where the changes to the status of retained EU law might affect firms or transactions, such as in relation to transactions relying on the retained case law holding that the 1.5% charge to UK stamp duty reserve tax on the issue of certain securities into overseas clearance services or depositories is incompatible with the EU Capital Duty Directive.

What is the new designated activities regime?

The Act will create a new regime prohibiting anyone from carrying on 'designated activities' (unless exempted) or carrying on those activities otherwise than in accordance with designated activity regulations or FCA rules adopted in accordance with those regulations. HM Treasury will be able to make regulations designating activities for this purpose, providing for exemptions, specifying restrictions that apply to those activities and authorising FCA to make rules or give directions applying to persons carrying on those activities.

Activities may only be designated if they relate to UK financial markets or exchanges or financial instruments, financial products or financial investments (including cryptoassets) that are to be issued or sold to, or by, persons in the UK. The requirements under the regime may apply both to authorised persons under FSMA and others, including persons outside the UK.

Initially the new regime may be used to replace EU-derived legislation being revoked under the Act eg, the retained EU law on prospectuses, short selling or the margining of OTC derivatives (instead of restating that legislation as part of FSMA or as new stand-alone regulations under the powers discussed above). However, it may also be used in other cases in future to regulate persons that are not authorised under FSMA.

What are the changes to the regulators' objectives and accountability mechanisms?

The Act will change the regulators' objectives to include, as secondary objectives:

- for both the FCA and the PRA, to facilitate, subject to aligning with relevant international standards, the international competitiveness of the UK economy (including in particular the financial services sector) and its medium to long term growth;
- for the PRA, to facilitate effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities (the FCA is already subject to a similar objective for authorised persons generally); and
- for the Bank of England, to facilitate innovation in the clearing and settlement services provided by central counterparties (CCPs) and central securities depositories (CSDs) with a view to improving the quality, efficiency and economy of the services they provide.

In addition, the Act will:

- ***reporting on regulatory objectives:*** require the regulators to report for two consecutive years to HM Treasury on how they have complied with their duty to advance the new competitiveness and growth objectives;
- ***regulatory principles:*** update the principles to which the regulators must have regard:
  - to include specific reference to the UK's commitment to achieve net zero by 2050 and to the Government's environment targets under the Environment Act 2021;
  - to require the Bank of England to have regard to similar regulatory principles as the FCA and the PRA;
- ***recommendation letters:*** require the regulators to respond to HM Treasury's annual letters recommending how they should take into account matters of government economic policy;
- ***rule-making process:*** allow HM Treasury to:
  - direct the regulators to make rules in particular areas;
  - specify additional matters to which the regulators must have regard when making rules in particular areas;

- ***Sustainability disclosure requirements:*** require the FCA and the PRA:
  - to comply with a request by HM Treasury to provide a report in order to inform a policy statement by the Treasury on disclosure requirements relating to sustainability; and
  - to have regard to that policy statement when making rules or issuing guidance about those requirements;
- ***regulatory rule reviews:*** make specific provisions on rule reviews by:
  - requiring the regulators to keep their rules under review and to publish statements of policy on how they conduct these reviews (which must include information on how statutory panels and others can make representations and how these will be considered);
  - allowing HM Treasury to direct the regulators to conduct a rule review or to appoint an independent reviewer (but it does not include 'call in powers' allowing HM Treasury directly to intervene in the regulators' rulemaking process);
- ***stakeholder panels:*** update the arrangements on stakeholder panels by:
  - placing the FCA's Listing Authority Advisory Panel and the insurance sub-committee of the PRA Practitioner Panel on a statutory footing;
  - requiring the regulators regularly to communicate on how they have engaged with their stakeholder panels, to publish statements of policy on their appointment of members of those panels and to publish in their annual reports a summary of how they have complied with their statements of policy on panel appointments;
  - giving HM Treasury power to make regulations to require the statutory panels to produce annual reports;
- ***cost-benefit analysis (CBA):*** require the regulators to publish statements on their approach to CBA and to require the FCA and the PRA (with the Bank) to establish panels (including industry representatives) to support the development of their CBA;
- ***Parliamentary oversight:*** require the regulators to notify the relevant Parliamentary select committee when publishing a consultation, to respond in writing to formal responses to relevant consultations from Parliamentary committee and to include details about any representations made by Parliamentary committees in consultations on new rules (but the government does not otherwise propose changes to the current system of Parliamentary oversight and scrutiny);
- ***powers to grant permissions:*** allow HM Treasury to make regulations allowing FCA or PRA to give permissions disapplying or modifying their rules in individual cases (in addition to their existing general powers to modify and waive their rules, so as to permit the restatement of existing arrangements under retained EU law allowing the regulators to grant permissions in particular cases); and
- ***co-operation on wider implications:*** require the FCA, the Financial Ombudsman Service and the Financial Services Compensation Scheme to cooperate on issues with wider implications, to ensure that existing cooperation arrangements endure over time.

How does the Act address the UK's international obligations?

The Act will allow HM Treasury to make regulations implementing the UK's international agreements providing for the mutual recognition of the equivalence of the law and practices of the UK and other countries (such as the arrangements under discussion with Switzerland). Regulations can modify legislation and confer powers on HM Treasury and the regulators to give effect to the agreement.

In addition, the Act will require the regulators, when making rules or general policies, to:

- consider decisions by HM Treasury on the equivalence of other country's laws or practices to UK law and practice and to consult HM Treasury if their actions might be inconsistent with such a decision and;
- notify HM Treasury if they are consulting on rules or policies that may be incompatible with the UK's commitments under free trade agreements or World Trade Organisation rules.

The Act does not make any changes to the UK overseas persons regime.

What are the immediate changes to EU-derived legislation?

Implementing outcomes of the Wholesale Markets Review by:

- removing the share trading obligation (STO);
- replacing the pre-trade transparency waiver regime and removing the double-volume cap;
- changing the definition of systematic internaliser;
- removing restrictions on midpoint crossing for trades;
- aligning the derivatives trading obligation (DTO) with the EMIR clearing obligation;
- exempting post-trade risk reduction services from the DTO;
- giving the FCA a permanent power to modify or suspend the DTO;
- simplifying the transparency regime for fixed income and derivatives;
- simplifying the position limits regime.

Creating a framework under which HM Treasury can designate other countries' frameworks as equivalent to the UK regime for simple, transparent and standardised securitisations for the purposes of investment by UK institutions.

Aligning the e-money and payments regulations with the provisions of the Act on critical third parties.

What are the changes for financial market infrastructure (FMI)?

The Act will change the way FMIs are regulated in the UK by:

- ***FMI Board:*** placing the Bank of England's decision-making FMI Board on a statutory basis as a new FMI Committee;
- ***rule-making powers:*** giving general rule-making powers to:
  - the Bank of England, in relation to CCPs and CSDs; and
  - the FCA, in relation to recognised investment exchanges (RIEs) and data reporting services providers (DRSPs), which will give the FCA (in the latter case) tools to facilitate the development of a consolidated tape;
- ***senior managers and certification regime (SM&CR):*** introducing an SM&CR which can be applied to CCPs and CSDs and allowing HM Treasury to apply the regime to RIEs and credit rating agencies;
- ***non-UK CCPs and CSDs:*** allowing:
  - the Bank of England to determine that a non-UK CCP is systemically important and to apply its domestic rule-book, in whole or in part, to such CCPs;
  - HM Treasury to give the Bank further powers to apply domestic rules to non-systemic non-UK CCPs and CSDs in the future;
  - the Bank of England to extend the maximum run-off period for non-UK CCPs that exited the post-Brexit temporary recognition regime without obtaining recognition from one year to three years and six months;
- ***FMI sandboxes:*** allowing HM Treasury to set up FMI sandboxes to enable firms to test and adopt new technologies and practices (such as distributed ledger technology) under temporary modifications to legislation and
- ***CCP resolution:*** expanding the resolution regime that applies to CCPs to give the Bank of England additional powers, including powers to: require the removal of impediments to resolution; require the holding of additional resources as 'skin-in-the-game; restrict distributions on equity and variable remuneration; temporarily suspend termination rights; take control of a CCP; remove and replace directors; terminate contracts to achieve a matched book; haircut variation margin gains; bail-in unsecured liabilities and make cash calls on clearing members; and delay enforcement of a clearing member's obligations. It will also provide for a no-creditor worse off safeguard for creditors in relation to actions taken in resolution.

What are the other major changes?

The Act makes a wide range of other changes, including the following:

- ***Critical third parties:*** HM Treasury will be able to designate cloud and other third party service providers as 'critical' giving the Bank, PRA and FCA powers to directly oversee the services they provide to regulated firms and FMIs.
- ***Digital settlement assets:*** The Act will:
  - give HM Treasury powers to establish an FCA authorisation and supervision regime for 'digital settlement assets' (broadly, crypto-assets used for the settlement of payment obligations);
  - enable HM Treasury to recognise operators of systemic payment systems and systemic service providers using digital settlement assets for regulation and supervision by the Bank of England;
  - enable the PSR to regulate payment systems using digital settlement assets;
  - allow HM Treasury to extend the FMI special administration regime to firms recognised under this regime and;
  - allow HM Treasury to establish a mechanism to ensure that recognised firms are not subject to conflicting requirements under FCA or PRA rules.
- ***Cryptoassets:*** The Act will allow HM Treasury to extend the authorisation and financial promotion regime under FSMA to cover activities and promotions relating to cryptoassets.
- ***Access to cash:*** The Act will allow HM Treasury to designate firms to be subject to FCA oversight for the purpose of ensuring the continued provision of cash access services (including free cash access, both for withdrawals and deposits) across the UK. The Act will also give the Bank of England powers to oversee the wholesale cash industry, including powers to oversee and regulate the market activities of the industry and to prudentially regulate systemic entities in the market (should any emerge in the future).
- ***Cash ratio deposits:*** The Act will replace the cash ratio deposit scheme under which banks currently fund the Bank of England's monetary policy and financial stability functions, with a new levy scheme.
- ***Insurers in financial difficulties:*** The Act will:
  - make changes to the existing power of the court under FSMA to write down the unsecured liabilities of insolvent insurers, including clarifying its scope, creating a statutory moratorium during a write-down, providing for the appointment of a 'write-down manager' and providing for the rules of the Financial Services Compensation Scheme to require payments to policyholders whose claims are reduced by a write-down;
  - introduce a moratorium on suppliers and other contract counterparties to insurers exercising rights under contractual termination clauses during an administration, during a write-down process or while there is a pending winding-up petition;
  - introduce a temporary moratorium on life insurance policyholder surrender switching rights which will apply in the same circumstances as the moratorium on contractual termination rights.
  - However, the Act will not introduce a full resolution regime for insurers, which is the subject of an HM Treasury consultation launched in February 2023.

- ***Authorised push payment (APP) scams:*** The Act will make clear that PSR can use its regulatory powers (whether in relation to payment system operators, payment service providers, or in combination), to require mandatory reimbursement by payment service providers in cases of APP scams.
- **Financial promotions:** The Act will require authorised firms to obtain a specific permission from the FCA to approve the financial promotions of unauthorised firms.
- ***Change in control:*** The Act will broaden the range of circumstances in which the regulators can impose conditions on an approval for a change in control of an authorised firm.
- ***Politically exposed persons:*** The Act will impose a duty on HM Treasury to amend the money laundering regulations to ensure that politically exposed persons who are entrusted with a prominent public function by the UK (and their family members or known close associates) should be:
  - treated as representing a lower risk than persons so entrusted by a country other than the UK; and
  - have lesser enhanced due diligence measures applied to them.

  The Act will also require the FCA to review its 2017 guidance on banks' treatment of politically exposed persons, and to publish draft guidance alongside the review, if the FCA concludes that the guidance should be revised.
- ***Unauthorised co-ownership AIFs:*** The government is currently exploring whether to introduce regulations covering unauthorised contractual investment schemes in particular to facilitate greater investment in UK real estate by UK funds. The Act legislates for the power to introduce the new type of scheme, so that the framework is ready should the government decide to proceed with this fund structure in the future.
- ***Ombudsman Scheme:*** The Act will allow HM Treasury to empower the Financial Ombudsman Scheme to require additional classes of persons, including claims management companies, to pay fees in connection with a complaint.
- ***Financing of illegal deforestation:*** The Act will require HM Treasury to undertake a review to assess whether the financial regulatory framework is adequate for the purpose of eliminating the financing of illegal deforestation and to consider what changes to the regulatory framework may be appropriate.

When will the Act enter into force?

The Act itself and the first commencement regulations already made under it will have brought most of the provisions of the Act into force on or before 29 August 2023 (some provisions entered into force on 29 June 2023 and others on 11 July 2023). These include provisions repealing the Money Markets Funds Regulations 2018, nearly 100 of the other statutory instruments listed in Schedule 1 and some articles of the onshored Sustainable Finance Framework Regulation and provisions making some (but not all) of the 'transitional' amendments to legislation implementing the Wholesale Markets Review, the securitisation review and the new rules on critical third parties (the date for bringing into force the other 'transitional' amendments has not yet been appointed).

Some additional repeals will take effect on 1 January 2024, including the repeal of: some provisions of the onshored Capital Requirements Regulation (on total loss absorbing capital); the onshored EU Regulation on European Long-term Investment Funds and related provisions; some provisions of the Payment Accounts Regulations 2015 (on comparability of fees connected with payment accounts); the provisions of UK law restricting the regulators' ability to make rules on credit rating agencies; and some of the provisions of FSMA listed in Schedule 1 to the new Act. The government has the power to make regulations bringing the Act into force to make other repeals of legislation covered by Schedule 1 on days to be appointed.

The government also has yet to make regulations bringing into force (either at all or for all purposes): section 1(3) (ending of retained EU rights, powers, etc.); sections 9, 10 and 12 (some provisions relating to FMIs); section 20 (financial promotion); section 21 (sustainability disclosure requirements); section 27 (regulatory principles); section 33 (effect of rules etc on international trade obligations); sections 41, 42, 43 and 46 (some provisions on practitioner panels); sections 48, 49 and 50 (Bank of England regulatory powers); section 51 (Payment Systems Regulator); section 56 (recognised bodies: senior managers and certification); section 57 (CCPs in financial difficulties); section 64 (unauthorised co-ownership AIFs); and sections 70 and 71 (Bank of England levy).

What should firms do now?

The government has indicated that it will want to seek stakeholder input on both technical implementation and policy development and that it will choose its approach to stakeholder engagement based on the complexity and the proposed level of changes. For technical implementation, the government expects to publish near-final versions of the more complex proposed statutory instruments with an accompanying note describing the proposed policy and inviting technical comments, generally within a six-week period. For policy changes, the government will seek input in a proportionate way. Where the complexity and significance of the proposed change warrants, this may involve a call for evidence or public consultation. The regulators will consult on their rule changes in the normal way (subject to their new powers to dispense with consultation in some cases).

The government and the regulators will continue to use their twice-yearly Regulatory Initiatives Grid to provide an overview of the regulatory pipeline and firms will need to monitor the proposals to identify where changes could affect their business. Even where the intention is simply to 'lift and shift' existing rules, there could be changes which have an impact on firms. For example, the restated legislation may introduce new, more consistent terminology, link existing terms to differing rulebook definitions or simply change the way in which firms must refer to legislation in documentation. Also, as legislation is re-made, existing EU guidance and Q&A will cease to be relevant, and new regulations and rules will need to be assessed considering statements made in the consultation process or any new guidance from the UK regulators.

Firms operating in both the UK and the EU will need to monitor how any changes result in additional divergence between UK and EU rules.

It is likely that these changes will result in the need to amend internal and external policies and procedures, as well as client-facing documentation. As these changes will be implemented over a period of months and years (rather than as a single 'big bang'), firms will need to consider how to communicate their impact to clients and how to ensure that all relevant employees are up to date on the latest developments.

More information

UK legislation and policy

- Financial Services and Markets Act 2023
- Retained EU Law (Revocation and Reform) Act 2023
- European Union (Withdrawal) Act 2018
- HM Treasury, Building a Smarter Financial Services Regulatory Framework: Delivery Plan (July 2023)
- HM Treasury, Financial Services: The Edinburgh Reforms (December 2022)
- Regulatory initiatives grid (latest February 2023)

Clifford Chance briefings

- Financial Services and Markets Act 2023 – Key changes on the way to Royal Assent (June 2023)
- Retained EU Law (Revocation and Reform) Act 2023 – Key changes on the way to Royal Assent (June 2023)
- UK Edinburgh Reforms Six Months On (June 2023)
- UK Edinburgh Reforms – Impact on Financial Services (December 2023)
- Topic Guide on UK Financial Services and Markets Bill on the Clifford Chance Financial Markets Toolkit

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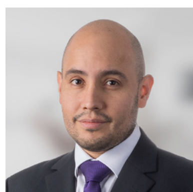

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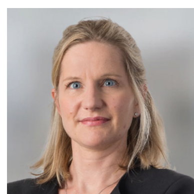

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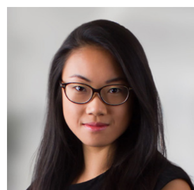

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C L I F F O R D

C H A N C E

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