

UK FINANCIAL SERVICES

THE NEXT CHAPTER

The Edinburgh reforms

The Chancellor of the Exchequer has today announced a set of reforms intended to drive growth and competitiveness in the UK financial services sector, with a view to *“taking forward the government’s ambition for the UK to be the world’s most innovative and competitive global financial centre”*. The full list of proposed measures, referred to as the Edinburgh reforms, is extensive, comprising *“over 30 regulatory reforms to unlock investment and turbocharge growth in towns and cities across the UK”*.

The announcement provides more detail around the government’s plans to repeal, and replace, EU retained law (REUL) relating to financial services. Outside this agenda, there are steps to secure the UK as a leader for responsible and sustainable investment, including the future consultation on bringing Environmental, Social and Governance (ESG) ratings providers into the regulatory perimeter. There are also measures to ensure that the regulatory framework supports innovation in emerging areas of finance, to facilitate the adoption of cutting-edge technologies.

The package refers to government plans to consult in mid-2023 on a series of [near-term reforms to the ring-fencing regime for banks](#). In line with the recommendations of the Independent Panel on Ring-fencing and Proprietary Trading, published in March 2022, those changes would seek to improve the functionality of the ring-fencing regime. A public call for evidence will be published in the first quarter of 2023 to review the practicalities of aligning the ring-fencing and resolution regimes. The ring-fencing reforms do not appear to be of the highest priority and it is not clear whether it will be possible for the government to make them before the next election.

There are also plans to consult on reforms to the Consumer Credit Act, to examine the boundary between regulated financial advice and financial guidance, and remove performance fees from the pensions regulatory charge cap.

Initial implementation programme for repeal and replacement of retained EU law

A core list of 43 files in scope of the programme is split into “tranches”.

Tranche 1

Work is already underway on the first tranche of retained EU law to deliver the outcomes arising from the Wholesale Markets Review, Lord Hill’s Listing Review, the Securitisation Review, and the Review into the Solvency II Directive.

Tranche 2

The second tranche is focused on those areas with *“the biggest potential benefits to deliver improvements to UK economic growth”*.

It will include the remaining implementation of the outcomes of the Wholesale Markets Review; Solvency II; the Packaged Retail and Insurance-Based Investment Products (PRIIPS) Regulation; the Short Selling Regulation; the Taxonomy Regulation; the Money Market Funds Regulation; the Payment Services Directive and the E-Money Directive; the Insurance Mediation and Distribution Directives; the Capital Requirements Regulation and Directive; the Long-Term Investment Funds Regulation and consumer information rules in the Payment Accounts Regulations 2015.

The remaining files will be reviewed and assessed.

Pace of change

In practice, files such as MiFID are likely to span more than one tranche given their size and breadth. The government expects to “make significant progress” on Tranches 1 and 2 by the end of 2023.

A new financial services regulatory framework

Among the collection of documents is a [Policy Statement “Building a smarter financial services framework for the UK”](#) which reveals the government’s approach to

repealing and replacing retained EU law on financial services using powers in the Financial Services and Markets Bill (FSM Bill). The FSM Bill successfully completed its remaining stages in the Commons on 7 December 2022 and is expected to receive Royal Assent by Spring 2023. In particular, it will repeal REUL, enabling the government to replace it with legislation designed specifically for UK markets.

The Retained EU Law (Revocation and Reform) Bill, which is currently before Parliament, will strip REUL of any special legal status and any EU interpretive features at the end of 2023. This aspect of the Bill applies across the whole statute book, including to financial services. That Bill also automatically repeals remaining REUL at the end of 2023. This automatic repeal does not apply to financial services REUL, which will be repealed by the FSM Bill and contains a bespoke set of powers for financial services to establish what is termed a “comprehensive FSMA model”.

In addition to repealing REUL, a subsequent programme of secondary legislation will be required to give effect to many of the necessary changes. This will be a resource-intensive exercise for both the government and the regulators, involving significant policy, regulatory and legal resource as well as Parliamentary time over several years. The Policy Statement notes: *“Establishing a comprehensive FSMA model is a significant task, involving more than simply repealing EU law. It requires fundamental changes to the legislative framework that we have inherited from the EU so that the detailed regulatory requirements in EU law can be safely repealed and new rules put in place by the financial services regulators.”*

The FSMA model refers, in essence, to a system of UK financial services regulation where the PRA and the FCA, as expert, independent regulators, establish the direct regulatory requirements which apply to firms, within a framework set by Parliament and government. As such, detailed regulatory requirements will generally be housed in the regulators’ rules rather than in legislation. The Policy Statement provides some colour on the government’s ability to set specific “have regards” that

the regulators must consider when making their rules in specific areas of regulation. This is described as *“an important policy tool intended to ensure that, when proposing new rules, the regulators consider broader public priorities and explain, where relevant, how they have taken account of those priorities.”* It will be used sparingly, only where there is a *“significant broader public policy priority which is important enough to be considered explicitly as part of the regulators’ policy making process, and where scrutiny of rule proposals would benefit from a regulator’s explanation on how the policy priority has been taken into account.”*

The government has published three illustrative statutory instruments alongside the policy statement prepared in part to help Parliament in their scrutiny of how the government intends to exercise the powers in the FSM Bill to establish the FSMA model. Two of these relate to the reform of the Prospectus Regulation and the Securitisation Regulation; the third would give the FCA wider rulemaking powers in relation to payments regulation, ensuring that it has the necessary powers to make rules to replace REUL.

What this means in practice

Overall, the changes proposed as the Edinburgh reforms appear to be incremental rather than ground-breaking. Different firms will be affected in different ways, though all firms will need to be alert to identify and implement relevant changes. We think the more significant impact will be the change of mood and confirmation that the regulators will remain under substantial pressure to perform and give effect to the government’s agenda.

The combination of the further regulatory reform that these proposals require and the ongoing accretion of powers to the PRA and the FCA following Brexit means that, for most regulated firms, there is unlikely to be a reduction in the overall regulatory burden, or regulatory risk.

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