

**C L I F F O R D
C H A N C E**



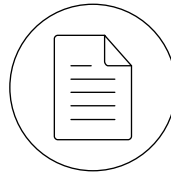
**UK FINANCIAL SERVICES AND MARKETS BILL:
THE FUTURE REGULATORY FRAMEWORK**

JULY 2022

UK FUTURE REGULATORY FRAMEWORK

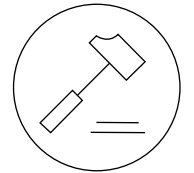
The Bill should increase the flexibility and reduce the complexity of the UK regulatory regime

The tables below are a high-level summary showing:



- the multiple different sources of law and regulation that currently make up the UK financial regulatory regime
- the different sources of law and regulation that will make up the UK financial regulatory regime after full implementation of the Financial Services and Markets Bill
- in each case, whether these can only be amended by or under a new Act of Parliament or can be amended by HMT or amended (or waived) by PRA or FCA.

Financial Services and Markets Bill

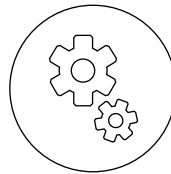


- The Bill will revoke retained 'EU-derived legislation' on financial services and markets but give HMT broad powers to adopt SIs:
 - restating that law (with or without revisions)
 - via amendments to Acts of Parliament or new 'standalone' SIs.
- FSMA will include a new designated activities regime (DAR) under which HMT can designate activities for regulation by PRA and FCA rules.
- 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.
- HMT will have an ongoing power to amend any law restated via its regulations.

UK FUTURE REGULATORY FRAMEWORK (CONTINUED)

The Bill will also:

- allow HMT to decide when to bring the revocation of EU-derived legislation into force
- make some immediate changes to EU-derived legislation (e.g., to implement the outcomes of the wholesale markets review)
- give HMT powers to modify EU-derived legislation before its revocation
- make changes to the regulators' objectives and the mechanisms for their accountability.



Other changes made by the Bill include:

- Mutual recognition arrangements with other countries
- Outcomes of wholesale market review
- Regulation of financial market infrastructure
- CCP resolution
- Critical third-party service providers
- Digital settlement assets
- Access to cash
- Insurers in financial difficulties
- Reimbursement for authorised push payment scams
- Financial promotions
- Change in control rules for authorised persons.



FROM THIS: SOURCES OF UK REGULATION TODAY

The current regime significantly restricts the discretion of the UK regulators

| Source | MiFID/MiFIR related example | Act of Parliament required to amend | HM Treasury power to amend | PRA/FCA power to amend | PRA/FCA power to waive |
|--|---|-------------------------------------|----------------------------|------------------------|------------------------|
| Acts of Parliament | FSMA | Yes | No | No | No |
| <i>Retained direct principal EU legislation</i> | MiFIR | Yes | No | No | No |
| <i>SIs made under the ECA 1972</i> | FSMA (Markets in Financial Instruments) Regulations 2017 | Yes | No | No | No |
| <i>SIs made under the EUWA 2018</i> | EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 | Yes | No | No | No |
| Other SIs made under Act of Parliament | FSMA (Regulated Activities) Order 2001 | No | Yes | No | No |
| <i>Retained direct minor EU legislation other than equivalence decisions and binding technical standards</i> | European Commission delegated acts adopted under MiFID and MiFIR | No | Yes | No | No |
| <i>Retained direct minor EU legislation – equivalence decisions</i> | European Commission equivalence decisions in respect of third countries under MiFID/MiFIR | No | Yes | No | No |
| <i>New HM Treasury decisions adopted under transferred powers to adopt equivalence decisions</i> | Markets in Financial Instruments (Switzerland Equivalence) Regulations 2021 | No | Yes | No | No |
| <i>Retained direct minor EU legislation – binding technical standards</i> | EU regulatory and implementing technical standards adopted under MiFID and MiFIR | No | No | Yes | No |
| PRA and FCA rules | FCA conduct of business sourcebook | No | No | Yes | Yes |
| <i>EU ‘Level 3’ guidance</i> | ESMA MiFID/MiFIR Q&As | No | No | Yes | N/A |
| PRA SS and FCA guidance | FCA perimeter guidance (PERG) | No | No | Yes | N/A |

Notes: The Bill will revoke sources in *italics* plus some provisions of FSMA and some other statutory instruments. See ‘What EU-derived legislation will be revoked?’ below.

TO THIS: FUTURE SOURCES OF UK REGULATION

The new regime should be simpler and more flexible but will take some years to put in place

| Source | Possible example | Act of Parliament required to amend | HM Treasury power to amend | PRA/FCA power to amend | PRA/FCA power to waive |
|--|---|-------------------------------------|----------------------------|------------------------|------------------------|
| Acts of Parliament | FSMA Part 5A – new designated activities regime | Yes | No | No | No |
| Acts of Parliament (parts amended by SIs to restate retained EU law) | FSMA Part 8 - restated market abuse regime | No | Yes | No | No |
| 'Standalone' SIs restating retained EU law under powers in Bill | New SI replacing Financial Collateral Arrangements (No 2) Regulations 2003 | No | Yes | No | No |
| SIs made under powers in other Acts of Parliament | SI designating derivatives trading as a designated activity under DAR (replacing and revising EMIR provisions) | No | Yes | No | No |
| PRA and FCA rules | PRA and FCA rules under DAR on clearing, reporting and margining of OTC derivatives trades (replacing and revising EMIR provisions) | No | No | Yes | Yes |
| PRA SS and FCA guidance | FCA guidance replacing ESMA Q&As on EMIR provisions | No | No | Yes | N/A |

WHAT EU-DERIVED LEGISLATION WILL BE REVOKED?

| | Specified 'Level 1' EU regulations | Provisions made under specified 'Level 1' EU directives |
|--|---|--|
| Markets | <ul style="list-style-type: none"> • 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) | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • Capital requirements for credit institutions and investment firms (575/2013, 2017/2401, 2019/630 and 2019/876) | <ul style="list-style-type: none"> • 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 | | <ul style="list-style-type: none"> • Motor vehicle insurance (2009/103) • Solvency II (2009/138) • Insurance distribution (2016/97) • Institutions for occupational pension provision (2016/2341) |
| Payments | <ul style="list-style-type: none"> • 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) | <ul style="list-style-type: none"> • Electronic money (2009/110) • Payment accounts and comparability of fees (2014/92) • Payment services (2015/2366) |

WHAT EU-DERIVED LEGISLATION WILL BE REVOKED?

(CONTINUED)

| | Specified 'Level 1' EU regulations | Provisions made under specified 'Level 1' EU directives |
|--------------------------|---|---|
| Funds | <ul style="list-style-type: none"> European venture capital funds (345/2013) European social entrepreneurship funds (346/2013) Long-term investment funds (2015/760) Money market funds (2017/1131) | <ul style="list-style-type: none"> UCITS (2009/65) Alternative investment fund managers (2011/61) |
| Retail | <ul style="list-style-type: none"> Packaged retail and insurance-based investment products (1286/2014) | <ul style="list-style-type: none"> Distance marketing of consumer financial services (2002/65) Consumer credit (2008/48) Mortgage credit (2014/17) |
| Other | <ul style="list-style-type: none"> Money market statistics (2019/113) Supervisory fees (2019/2155) European supervisory authorities (2019/2175) Reporting of supervisory information (2020/605) | |
| Other revocations | <ul style="list-style-type: none"> 189 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). | |

Notes

'EU-derived legislation' means any:

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

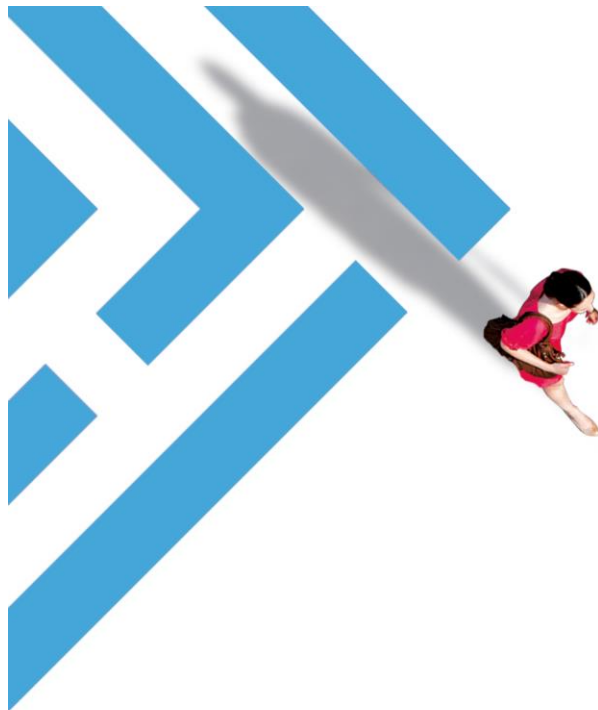
Any right, powers, liabilities, obligations, remedies and procedures recognised or available in domestic law by virtue of the EUWA derived from any revoked legislation will cease to be recognised or available in domestic law.

NOTES

- Until 31 December 2022, HM Treasury also has powers under section 8 EUWA 2018 to amend retained EU law (including Acts of Parliament, SIs made under the ECA 1972 and retained direct principal EU legislation) and SIs made under section 8 EUWA but only for ‘onshoring’ purposes and not to make policy changes.
- Where SIs made under section 8 EUWA amend SIs made under other Acts of Parliament, the amended provisions can be amended in the same way as the other provisions of the amended SI. However, some provisions of SIs made under section 8 EUWA are ‘stand-alone’ and survive the expiry of the powers under that section, e.g., the temporary permissions regime and financial services contracts regime made under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (which, after 31 December 2022, may only be amended pursuant to powers granted by a new Act of Parliament).
- In some cases, Acts of Parliament may confer powers on Ministers to amend their provisions by SI, e.g., section 117 FSMA gives HM Treasury to make regulations modifying Part VII (Control of business transfers).
- SIs made under the EUWA 2018 generally transferred the European Commission’s powers under EU financial services legislation to adopt:
 - binding technical standards to the PRA or FCA which can exercise those powers by adopting standards instruments; and
 - other delegated and implementing acts, including equivalence decisions, to HM Treasury which can exercise those powers by making regulations.
- HM Treasury also made some new equivalence decisions and exemptions by directions under the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (these powers expired at the end of the Brexit transition period).
- The process and conditions for PRA or FCA to make standards instruments amending or creating new binding technical standards differs from those for making rules under their general rule-making powers under FSMA (e.g., they require HM Treasury approval although this can only be refused in limited circumstances). See Chapter 2A (Technical standards) of Part IXA (Rules and guidance) FSMA.

NOTES

(CONTINUED)



- PRA and FCA have powers to modify or waive their rules by direction under sections 138A and 138B FSMA. These powers do not extend to binding technical standards even though the PRA or FCA have power to make and amend technical standards by standards instruments.
- Different rules of interpretation may apply to the provisions referred to in the table according to whether they constitute existing provisions of UK law or regulation not constituting retained EU law, retained EU law, retained EU law that has been modified under the EUWA 2018 or otherwise after the end of the transition period or new provisions of UK law or regulation adopted after the end of that period not modifying retained EU law. See section 6 EUWA 2018 which sets out how retained EU law is to be read and interpreted on and after the end of the Brexit transition period.
- References to retained EU legislation are to the relevant legislation as amended under the EUWA 2018.
- EU 'Level 3' guidance is generally only directly relevant if adopted before the end of the Brexit transition period.

GLOSSARY

| | |
|------------------------------------|---|
| Bill | Financial Services and Markets Bill |
| Binding technical standards | Regulatory and implementing technical standards adopted under EU financial services legislation |
| Brexit transition period | Transition period ended 31 December 2020 under the Withdrawal Agreement concluded between the UK and the EU under the EU Treaties |
| DAR | Designated activities regime under FSMA (to be created under the Bill) |
| ECA 1972 | European Communities Act 1972 |
| EMIR | EU European Market Infrastructure Regulation (as part of retained EU law) |
| ESMA | European Securities and Markets Authority |
| EUWA 2018 | European Union (Withdrawal) Act 2018 |
| FCA | Financial Conduct Authority |
| FSMA | Financial Services and Markets Act 2000 |
| HMT | HM Treasury |
| MiFID | EU Markets in Financial Instruments Directive (as part of retained EU law) |
| MiFIR | EU Markets in Financial Instruments Regulation (as part of retained EU law) |
| PRA | Prudential Regulation Authority |
| PRA SS | PRA supervisory statements |

GLOSSARY

(CONTINUED)

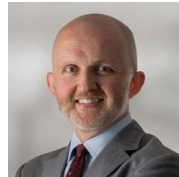
| | |
|--|--|
| Retained direct minor EU legislation | See section 7(6) EUWA 2018 (broadly, EU ‘Level 2’ regulations and decisions) |
| Retained direct principal EU legislation | See section 7(6) EUWA 2018 (broadly, EU ‘Level 1’ regulations) |
| Retained EU law | See section 6(7) EUWA 2018 |
| SI | Statutory instrument |

This document is not intended to be comprehensive or to provide legal advice. For more information, speak to your usual Clifford Chance contact or one of the lawyers named below.

CONTACTS



CAROLINE DAWSON
PARTNER
T +44 20 7006 4355
M +44 7949 443527
E caroline.dawson
@cliffordchance.com



SIMON CROWN
PARTNER
T +44 20 7006 2944
M +44 7900 167265
E simon.crown
@cliffordchance.com



PAUL ELLISON
PARTNER
T +44 207006 3207
M +44 7890030232
E Paul.Ellison
@cliffordchance.com



SIMON GLEESON
PARTNER
T +44 20 7006 4979
M +44 7962 371512
E simon.gleeson
@cliffordchance.com



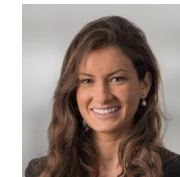
CAROLINE MEINERTZ
PARTNER
T +44 20 7006 4253
M +44 7717 693723
E caroline.meinertz
@cliffordchance.com



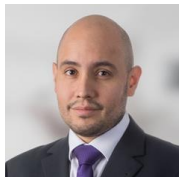
MONICA SAH
PARTNER
T +44 20 7006 1103
M +44 7747 627820
E monica.sah
@cliffordchance.com



CHRISTOPHER BATES
SPECIAL COUNSEL
T +44 20 7006 1041
M +44 7785 700236
E chris.bates
@cliffordchance.com



CHARLOTTE CHOPPING
SENIOR ASSOCIATE
T +44 207006 8327
M +44 7966144560
E charlotte.chopping
@cliffordchance.com



DIEGO BALLON OSSIO
SENIOR ASSOCIATE
T +44 20 7006 3425
M +44 7870 398479
E diego.ballonossio
@cliffordchance.com



LAURA DOUGLAS
SENIOR ASSOCIATE
T +44 20 7006 1113
M +44 7583 035088
E laura.douglas
@cliffordchance.com



PAUL LENIHAN
SENIOR ASSOCIATE
T +44 207006 4622
M +44 7432551129
E paul.lenihan
@cliffordchance.com



STEPHANIE PEACOCK
SENIOR ASSOCIATE
T +44 20 7006 4387
M +44 7908 223827
E stephanie.peacock
@cliffordchance.com

C L I F F O R D
C H A N C E

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2021

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

WWW.CLIFFORDCHANCE.COM