

C L I F F O R D

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**UK EDINBURGH REFORMS:
KEY TAKEAWAYS FOR ASSET MANAGERS**

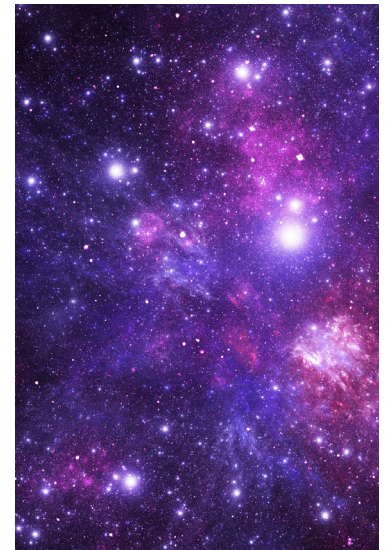
Speed-read

On Friday 9 December 2022, the UK's Chancellor of the Exchequer **announced** a series of reforms to drive growth and competitiveness in the UK financial services sector. Referred to as the 'Edinburgh Reforms' and being informally dubbed 'Big Bang 2.0', the package includes proposed reforms that will affect the buy-side, the sell-side, intermediaries and the UK regulators themselves.

Of the over 30 proposed regulatory reforms contained in the package, those of most relevance to asset managers include:

- an overhaul of the UK prospectus regime with the intention of simplifying and improving the capital raising process on UK markets;
- an overhaul of the UK securitisation regime to support and develop securitisation markets in the UK;
- the repeal of the UK's Long Term Investment Fund Regulation (the UK's onshored version of the ELTIF Regulation), reflecting the fact that no UK ELTIFs have been established and that the UK has created the Long Term Asset Fund (LTAF) regime, a bespoke UK regime for investment in long-term assets;
- a call for evidence on the UK's short selling regime, posing questions related to potential targeted improvements and asking whether there is a case for fundamental reform of the regime;
- the repeal of the UK's Packaged Retail and Insurance-based Investments Products (PRIIPs) Regulation, to be replaced by a less prescriptive regime for retail disclosures set by the FCA;
- a review of the Senior Managers and Certification Regime to seek views on its effectiveness, proportionality and potential improvements;
- amendments to certain Markets in Financial Instruments Directive- (MIFID) derived investor reporting rules;
- an independent review into investment research and its contribution to UK capital markets competitiveness, as part of the government's wider commitment to enhancing the UK's ability to attract companies to list and grow;
- a consultation on requiring local government pension schemes to ensure that they consider investments in illiquid assets such as venture and growth capital;
- tax changes, including amendments to the tax rules for Real Estate Investment Trusts (REITs) and a technical consultation on the VAT treatment of fund management;
- an update of the UK's green finance strategy, to be published in early 2023; and
- the creation of a new class of wholesale market venue to bridge the gap between the public and private markets.

A common theme of the reforms is to use the opportunity afforded by the UK's exit from the EU to review, clarify and modernise requirements derived from EU legislation, with the overall intention of creating a modern, agile, attractive financial services regulatory framework in the UK. Due to the sheer volume of EU-derived financial services legislation in the UK, this process of reviews and reforms to UK financial services legislation can be expected to last for a number of years.



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In detail

What has triggered the Edinburgh Reforms?

The Edinburgh Reforms are a substantial package of proposed regulatory reforms affecting the UK's financial services sector. Their origins can be traced back to the UK's departure from the EU.

When the UK left the EU, it 'onshored' EU financial services regulation with the result that EU-derived requirements continue to apply in the UK today. Onshoring was intended to be a temporary measure and not a long-term approach to UK financial services regulation. Instead, the UK intends to engage in a systematic process of: reviewing onshored EU legislation; repealing it; amending its requirements where suitable (for example, to better reflect the UK market); and incorporating the newly revised requirements into the UK regulatory system. The overall aim of this process is to produce a UK financial services regulatory system that is flexible, tailored to the UK markets and competitive.

The Edinburgh Reforms reflect and take forward this agenda. The package contains an HM Treasury policy statement, entitled 'Building a smarter financial services framework for the UK', which summarises the process that the UK will follow when reviewing, repealing and reincorporating into the UK requirements derived from retained EU law. The package also begins the review process in certain areas of retained EU law, such as the PRIIPs Regulation, by containing consultations and calls for evidence on potential reforms. Finally, the package includes other initiatives, not directly related to the repeal of retained EU law but with the goal of creating a modern, agile financial services framework, such as a proposal to create a new class of wholesale market venue to bridge the current gap between public and private markets.

Which elements of the Edinburgh Reforms are relevant to asset managers?

The following table summarises the key reforms of relevance to firms carrying on asset management business.

| Reform | Nature of reform | Timing |
|--|--|---|
| Explanation of process for repealing retained EU law | <p>HM Treasury has published a policy statement entitled '<u>Building a smarter financial services framework for the UK</u>'.</p> <p>The document sets out the process that the government intends to follow to revoke retained EU law (referred to as REUL) and move towards a system of financial services regulation that is set out in UK legislation and the UK regulators' rulebooks. The government's proposed approach is based on splitting REUL into tranches, based on prioritisation. The first tranche will include the MiFID framework, the Prospectus Regulation, the Securitisation Regulation and the Solvency II Directive.</p> | <p>The government states that it expects to make significant progress on tranches 1 and 2 by the end of 2023.</p> |

| Reform | Nature of reform | Timing |
|---|---|--|
| Overhaul of the UK prospectus regime | <p>The government has published an illustrative statutory instrument indicating reforms that it intends to make to the UK prospectus regime.</p> <p>The reforms reflect recommendations from Lord Hill's 2021 UK Listing Review, which aim to widen participation in the ownership of public companies, simplify the capital raising process on the UK markets and make the UK a more attractive destination for IPOs.</p> | <p>No specific timing for producing a draft statutory instrument is confirmed; the prospectus regime is a 'tranche 1' regime and therefore progress can be expected in 2023.</p> |
| Overhaul of the UK securitisation regime | <p>The government has published an illustrative statutory instrument indicating reforms that it intends to make to the UK securitisation regime.</p> <p>The reforms would align with the outcomes of the UK's 2021 Securitisation Review. For further detail on the securitisation proposal, please see our separate briefing.</p> | <p>No specific timing for producing a draft statutory instrument is confirmed; the securitisation regime is a 'tranche 1' regime and therefore progress can be expected in 2023.</p> |
| Repealing the LTIF Regulation | <p>The government has announced that it intends to repeal the LTIF Regulation (the UK's onshored version of the European Long Term Investment Funds Regulation).</p> <p>The UK will continue to have a tailored regulatory regime for funds that invest in assets requiring long term capital, via the UK's Long Term Asset Fund (LTAF) regime. The LTAF regime was created in 2021 as a tailored, UK regime that is entirely separate regime to the LTIF regime. The Chancellor's announcement states that firms have begun to seek authorisation for LTAFs.</p> <p>For further information on the UK's LTAF regime, please refer to our earlier briefing.</p> | <p>No specific dates have been announced for this reform, but it is to be expected that the LTIF Regulation will be repealed as part of the revocation of retained EU legislation under the Financial Services and Markets Bill.</p> |
| Reviewing the short selling regime | <p>HM Treasury has published a Call for Evidence on the Short Selling Regulation. The purpose of the Call for Evidence is to ensure that the UK's short selling regime is appropriately tailored to the UK's markets, companies and investors.</p> <p>The Call for Evidence asks for views on whether the core framework of the current short selling regime should remain unchanged or whether there is a case for fundamental reform. It also requests views on technical aspects of the short selling regime, including public disclosure requirements, the market maker exemptions and short selling bans.</p> | <p>The Call for Evidence was published on 9 December 2022 and will close on 4 March 2023.</p> |

| Reform | Nature of reform | Timing |
|---|--|---|
| Repealing the PRIIPs Regulation and creating an alternative retail disclosure framework | <p>HM Treasury has published a consultation on PRIIPs and UK Retail Disclosure. The consultation sets out the government's intention to repeal the PRIIPs Regulation and seeks views on a new framework to replace it. The consultation proposes that future disclosure requirements would sit in the FCA Handbook as opposed to in legislation and that the FCA would be given overall responsibility for the retail disclosure regime.</p> <p>On 13 December, the FCA published its own discussion paper (DP22/6) on how to design and deliver this retail disclosure regime.</p> | <p>HM Treasury's consultation was published on 9 December and closes on 3 March 2023.</p> <p>The FCA's discussion paper was published on 13 December and closes on 7 March 2023.</p> |
| Reviewing the Senior Managers and Certification Regime | <p>The Chancellor has announced that the government and regulators will commence a review of the Senior Managers and Certification Regime in Q1 2023. This will include a call for evidence to consider the legislative framework of the regime, while the FCA and PRA will consider the regulatory framework for the regime.</p> | <p>The review will commence Q1 2023.</p> |
| Amending the MiFID-derived investor reporting rules | <p>On 9 December, the government laid before Parliament The Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022. These Regulations will amend the onshored MiFID Organisational Requirements Regulation (Commission Delegated Regulation (EU) 2017/565) to: (i) provide that investment firms must provide information to their clients/potential clients in electronic format; and (ii) remove the obligation for investment firms providing portfolio management services to a retail client to inform the client when the overall value of the portfolio depreciates.</p> | <p>The requirement to provide information in an electronic format will enter into force in June 2023. The removal of the obligation to inform retail clients when the overall value of the portfolio depreciates will enter into force in January 2023.</p> |
| Launching an Investment Research Review | <p>The Chancellor has announced that the government will launch an independent review of investment research and its contribution to UK capital markets competitiveness. The announcement states that the review is part of the government's wider commitment to enhance the UK's ability to attract companies to list and grow.</p> | <p>No firm date for the review has been announced.</p> |
| Requiring Local Government Pension Schemes to ensure they are considering investments in illiquid assets | <p>The Chancellor has announced that the government will consult on requiring Local Government Pension Schemes in England and Wales to ensure they are considering investment opportunities in illiquid assets.</p> | <p>No firm date has been provided for this consultation.</p> |

| Reform | Nature of reform | Timing |
|---|--|--|
| Amending tax rules for REITs | The government has announced that it will amend the tax rules for REITs. From April 2023, the requirement for a REIT to own at least three properties will be removed where they hold a single commercial property worth at least £20 million. The rule that applies to properties disposed of within three years of significant development activity will also be amended. | The amendments will apply from April 2023. |
| Technical consultation on VAT treatment of fund management | The government has published a consultation on the VAT treatment of fund management services. HM Treasury states that the purpose of this exercise is to improve the legislative basis of the current VAT treatment of fund management, not to result in a significant policy change to that VAT treatment. | The consultation was published on 9 December 2022 and closes on 3 February 2023. |
| Updated Green Finance Strategy | The government has announced that it will publish an updated Green Finance Strategy in early 2023. This follows a consultation , published in May 2022, on updating the Green Finance Strategy. The government's first Green Finance Strategy was published in July 2019. | The updated Green Finance Strategy will be published in early 2023. |
| Creation of new class of wholesale market venue | The Chancellor has announced that the government will work with regulators and market participants to bring forward a new class of wholesale market venue, which would operate on an intermittent trading basis (i.e. orders would not be matched on a continuous basis throughout the day). This is intended to act as a bridge between public and private markets, boosting the UK as a destination for investment. | No date specified. |
| Response to the consultation on expanding the Investment Manager Exemption | The government has published a document summarising the responses received to its consultation on Expanding the Investment Transactions List for the Investment Management Exemption and other fund tax regimes. The Investment Management Exemption (IME) uses qualifying tests to provide certainty that non-UK resident investors can appoint UK-based investment managers to conduct certain investment transactions on their behalf, without bringing them into the scope of UK taxation. The government's response document confirms that the government will expand the list of transactions that may qualify for the IME to include cryptoassets. | HMRC intends to introduce the necessary regulations by the end of 2022, to have effect in relation to transactions entered into during the 2022 – 2023 tax year for non-corporate entities, and accounting periods current on 31 December 2022 for corporate entities. |

Are the Edinburgh Reforms relevant to only UK firms?

No. Many of the reforms relate to regimes that may also affect non-UK firms. For example, changes to the PRIIPs and retail disclosure regimes may affect non-UK firms seeking to market non-UK funds to UK investors. As a result, non-UK firms should also consider whether the reforms could require any changes to, and present any opportunities for, their operations.

Do firms need to take any action as a result of the Edinburgh Reforms?

Yes. The Edinburgh Reforms can, broadly, be grouped into two categories: (i) announcements of future initiatives, such as the future Green Finance Strategy, for which firms will need to monitor; and (ii) consultations and calls for evidence, which firms will need to review and to which firms should consider whether to respond, directly or via appropriate channels. In addition, asset managers should take note of the changes to the MiFID investor reporting requirements, noted in the table above, which will begin to apply in January and June 2023.

Conclusions

The Edinburgh Reforms are a significant step forward in the process of creating a post-Brexit financial services regulatory regime in the UK. The overall process of reviewing and revising the UK regulatory regime will take a number of years, with the result that firms will need to continue to prepare for ongoing regulatory change in the UK. However, it also represents an opportunity for firms to directly influence the UK regulatory regime. The UK government's aim is to improve and simplify the regulatory regime and its open consultations will allow firms to respond directly on how the UK may achieve this.

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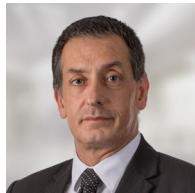
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