



HM Treasury

Building a Smarter Financial Services Regulatory Framework for the UK:

HM Treasury's Plan for Delivery

July 2023

Building a Smarter Financial
Services Regulatory
Framework for the UK:
HM Treasury's Plan for Delivery



© Crown copyright 2023

This publication is licensed under the terms of the Open Government License v3.0 except where otherwise stated. To view this license, visit nationalarchives.gov.uk/doc/open-government-license/version/3.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN: 978-1-916693-27-2 PU: 3345

Contents

Chapter 1 - Introduction	7
Chapter 2 - Forward look to significant progress by the end of the year	9
Chapter 3 - Balance of responsibilities between HM Treasury and the regulators	15
Chapter 4 - Targeted policy change	20
Chapter 5 - Legislative approach	22
Chapter 6 - Stakeholder input into technical approach and government policy-making	26
Chapter 7 - Next steps	29

Chapter 1 - Introduction

1.1 The Financial Services and Markets Act 2023 (FSMA 2023) repeals retained EU law (REUL) relating to financial services in order to deliver a Smarter Regulatory Framework (SRF) which is tailored to the UK. REUL will be replaced with rules set by our independent and expert regulators, operating within a framework established by government and Parliament.

1.2 As part of the Edinburgh Reforms, the government published the policy statement *Building a Smarter Financial Services Framework for the UK*.¹ That document set out the government's policy approach. This follow-up paper describes how the government will deliver this approach in practice.

Relevant Background

1.3 The UK regulatory framework for financial services is complex and difficult to navigate. This is primarily because the UK currently operates with both the UK and EU models of regulation.

1.4 The UK's domestic model of regulation is governed by the Financial Services and Markets Act 2000 (FSMA 2000) as amended by FSMA 2023 and other relevant legislation. This FSMA model gives significant responsibilities to the UK's independent financial services regulators, who generally set the detailed requirements which apply to firms directly through their rulebooks, operating within a framework established by government and Parliament.

1.5 In the years since the FSMA model was introduced, EU financial services regulation expanded into many areas. In accordance with the EU model of financial services regulation, this has left the UK with many detailed regulatory requirements in various types of legislation which, under a FSMA approach, should primarily be in the regulators' rules. When the UK left the EU, this body of EU law was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018, including the elements which apply to the financial services sector. This was only intended to be a temporary solution.

1.6 The significant volume of REUL and its complex interactions with domestic law mean that the current regulatory landscape is complicated with regulatory requirements spread across multiple sources of law, including various forms of REUL, UK primary and secondary legislation, regulator rules and retained EU technical standards.

1.7 Respondents to the government's Future Regulatory Framework (FRF) Review consultations strongly supported the government's proposal to replace REUL in line with the FSMA model of regulation,

¹ <https://www.gov.uk/government/publications/building-a-smarter-financial-services-framework-for-the-uk>

alongside making enhancements to our domestic framework to increase the accountability and scrutiny of the regulators.

1.8 FSMA 2023 repeals REUL related to financial services and enables the government and regulators to replace it in line with the FSMA model. Each piece of REUL related to financial services is now within a “transitional period,” lasting until the repeal of each piece is individually commenced by HM Treasury in a phased and sequenced manner. By the end of this transitional period, the UK will have created a new Smarter Regulatory Framework based on the FSMA model, but with enhancements to reflect the increased responsibilities of the regulators and ensure appropriate scrutiny and accountability.

1.9 This document sets out the government approach to deliver the repeal of REUL in order to bring this transitional period to an end. It sets out the progress announced by the Chancellor as part of his 2023 Mansion House speech and explains the government’s plan to deliver significant progress by the end of the year.

1.10 This document also sets out further details about the programme itself, so that stakeholders are able to understand the key decisions the government has taken.

Chapter 2 - Forward look to significant progress by the end of the year

2.1 The Chancellor's Mansion House address 2023 marks the beginning of the government's repeal of REUL in financial services following the passage of FSMA 2023. As described by the table below, HM Treasury is commencing the repeal of REUL in a phased manner to ensure industry is able to plan ahead.

2.2 The table below shows the government's progress on the programme so far, including that announced by the Chancellor in his 2023 Mansion House speech, as well as a forward-look on tranches 1 and 2, as previously announced in December 2022. The table also includes the benefits anticipated for each area of legislation and when it is estimated that the legislation and any consultation responses will be available.

2.3 Going forward, it is the government's intention to use the Regulatory Initiatives Grid, which is an established and familiar platform, to provide stakeholders with an overview of the pipeline for regulatory updates on the SRF programme. It is expected that, as the programme progresses, further areas of REUL, once publicly announced, will be appropriately sequenced into the Grid.

2.4 In the table, the making of a Statutory Instrument (SI) in Parliament marks the point at which the government has completed the legislative process for that piece of legislation. Separately, it is the responsibility of the financial regulators to make any rules to replace the repealed legislation as they consider appropriate, in accordance with their remits and statutory objectives.

Table 2.A Forward look

Note, the laying date of SIs is indicative and is subject to parliamentary timings.

File	Description and Benefits	Delivered for the Edinburgh Reforms (Dec 2022)	Delivered for Mansion House (Jul 2023)	Delivered before the end of 2023	Delivered in 2024 onwards
Prospectus Regulation	In response to Lord Hill's UK Listing Review, the government has published legislation detailing how it will replace the Prospectus Regulation with an entirely new framework for offers of securities to the public and admissions of securities to trading on UK markets. The new framework will be established under the Designated Activities Regime (DAR). The new framework will be simpler, more agile, and more effective as well as facilitating wider participation in the ownership of public companies and improving the quality of information investors receive.	Published a draft SI	Published a second draft of the SI	Lay SI	
Solvency II Directive	The government is repealing and replacing Solvency II with a UK-tailored regime. This represents a key opportunity to tailor our prudential regulation of (re)insurers to better suit the UK insurance market. The new regime, Solvency UK: <ul style="list-style-type: none"> provides incentives for insurers to increase investment in long-term productive assets including infrastructure; and benefits consumers by supporting insurers' ability to provide a broader range of more affordable products. Reforms could unlock over £100 billion of private investment for productive assets such as UK infrastructure.	Announced reforms to Solvency II in a November 2022 consultation response	Published a draft SI in June 2023	Lay SI	
Securitisation Regulation	The government will replace the existing Securitisation Regulation with a new framework to regulate securitisations in the UK. This will legislate for reforms identified in a 2021	Published a draft SI	Published a second draft of the SI	Lay SI	Further technical changes, as appropriate

File	Description and Benefits	Delivered for the Edinburgh Reforms (Dec 2022)	Delivered for Mansion House (Jul 2023)	Delivered before the end of 2023	Delivered in 2024 onwards
	government review to be taken forward. Firms will also benefit from a more agile regulatory framework that is more appropriate for market functioning.				
Markets in Financial Instruments Directive – Data Reporting Services Regulations	The government has committed to make the necessary legislative changes to facilitate the emergence of a UK consolidated tape by 2024. A consolidated tape will provide a continuous, live, electronic feed of market data that will make it easier for market participants to access the data they need to make informed investment decisions. This SI will make the legislative changes necessary to encourage the emergence of a consolidated tape in the UK.		Published a draft SI	Lay SI	
Insurance Mediation Directive and Insurance Distribution Directive (IMD/IDD)	The government is repealing IMD and IDD over the course of this year, enabling the Financial Conduct Authority (FCA) to determine the most appropriate way to regulate this policy area. The government will repeal relevant legislation in stages – repealing UK implementing aspects at Mansion House ahead of a full repeal later this year. Most of the relevant provisions have already been incorporated in the FCA's rulebook.		Repeal UK implementing legislation	Lay second SI and technical changes	
European Long-Term Investment Funds Regulation (ELTIF)	The government is repealing ELTIF as the fund structure it regulates is obsolete. The UK's own Long Term Asset Fund has been designed with industry to help unlock investment into assets that expand the productive capacity of the UK economy (e.g. infrastructure, net zero transition), and enable investors to access the opportunities such assets afford.		Repeal EU regulation and related UK regulation	Lay consequential SI	

File	Description and Benefits	Delivered for the Edinburgh Reforms (Dec 2022)	Delivered for Mansion House (Jul 2023)	Delivered before the end of 2023	Delivered in 2024 onwards
Consumer Information Requirements in Payment Account Regulations	The government is removing unnecessary retained EU law requirements related to fee information placed on current account providers, creating the flexibility to tailor requirements to the UK market. This follows a consultation on the issue announced at the Edinburgh Reforms.	Launched a consultation	Repeal relevant UK implementing legislation and published consultation response	Lay consequential SI	
Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs)	The government has published a consultation response outlining its plans to repeal the existing PRIIPs regulation and replace it with a new, UK-tailored framework.	Launched a consultation	Published a consultation response	Publish a draft SI	Lay SI
Short Selling Regulation (SSR)	The government is publishing a Call for Evidence response confirming that the SSR be repealed and replaced with a UK-tailored regime. This will ensure that the UK's regulatory framework for short selling allows short selling to play its crucial role in effective market functioning, with appropriate safeguards and without placing a disproportionate burden on industry. It is also publishing a follow-up consultation on parts of the regime that relate to sovereign debt.	Launched a call for evidence	Published a call for evidence response and follow up consultation	Publish a draft SI	Lay SI
Money Market Funds Regulation	The government plans to repeal and replace the Money Market Funds Regulation. Among other areas, these repeals will enable the UK to implement the Financial Stability Board's proposed reforms to Money Market Funds to improve their resilience.			Publish a draft SI	Lay SI
Capital Requirements Directive and Regulation (CRD/CRR)	<i>Basel 3.1 Implementation:</i> implementing Basel 3.1 in the UK will enhance the resilience of banks throughout the economic cycle. It does this through			Work ongoing to complete Basel 3.1 legislation	Lay SI

File	Description and Benefits	Delivered for the Edinburgh Reforms (Dec 2022)	Delivered for Mansion House (Jul 2023)	Delivered before the end of 2023	Delivered in 2024 onwards	
	improving the accuracy of how firms measure the risks to which they are exposed. In turn, this helps mitigate the severity of financial crises and maintain UK financial stability. The government has consulted on the legislative changes necessary to implement Basel 3.1					
	<i>Minimum Requirements for Own Funds and Eligible Liabilities (MREL) reform:</i> deleting Article 92(b) of UK CRR will enable the Bank of England to use existing flexibility in the resolution framework to set internal MREL for UK subsidiaries of non-UK Global-Systemically Important Banks, in line with the international standard set out by the Financial Stability Board (FSB). This change will take effect from 1 January 2024.		Repeal Article 92(b) of CRR			
	'Strong and simple' framework for banks: the Prudential Regulation Authority's (PRA) Strong and Simple framework will consider how best to simplify the prudential framework for small firms, including small banks and building societies, while maintaining safety and soundness. To facilitate this, the government is working to complete the SRF process for the CRD/CRR capital buffer requirements.				Work ongoing to prepare for 'strong and simple'	Lay SI
	<i>Completing the SRF process for CRR:</i> the government is working to complete the SRF process for the remainder of REUL for CRD and CRR.					Lay SI
Payments Services and E-Money Regulations (PSRs and EMRs)	The government is taking forward work to repeal retained EU payments law and deliver a Smarter Regulatory Framework. In the first instance this will ensure that the FCA has sufficient rulemaking powers, and the PSR sufficient powers of direction for		Make rule making powers SI	First round of targeted reforms	Continue work on the remainder and lay SI	

File	Description and Benefits	Delivered for the Edinburgh Reforms (Dec 2022)	Delivered for Mansion House (Jul 2023)	Delivered before the end of 2023	Delivered in 2024 onwards
	payment services and e-money to make replacements as REUL is repealed. Following this the government will then continue work to build a new regulatory framework that will, where necessary, replace the PSRs and EMRs.				
Taxonomy Regulation	As previously announced, the government is revoking the statutory deadlines to make technical Taxonomy criteria in line with the EU's taxonomy framework at Mansion House. The government is considering our approach to the remaining retained taxonomy legislation as we deliver the UK Green Taxonomy.		Repeal statutory deadlines	Publish a consultation	To be determined following consultation
Consequential SI	The government will lay an SI to make relevant consequential amendments arising out of certain elements of the SRF programme.			Lay SI	

2.5 Alongside the work captured in the table above, HM Treasury is also repealing almost 100 unnecessary pieces of REUL which implemented various EU obligations across a wide range of financial services policy areas. This begins the delivery of a more streamlined and accessible legislative framework for financial services.

2.6 By removing this REUL now, the government can more easily focus its energies on priority policy reform. Because these SIs implemented EU law by making amendments to other pieces of legislation, the effect of these amendments will be preserved by FSMA 2023 and so there will be no need for industry to adapt to the repeal.

2.7 HM Treasury is also commencing the repeal of statutory restrictions which prevent the UK's financial services regulators from making rules that modify the effect of REUL. This is an unnecessary restriction which privileges the status of REUL compared to domestic legislation. This will make it easier for the regulators to make rules which are tailored to the UK during this transitional period where some REUL remains on the UK statute book.

Chapter 3 - Balance of responsibilities between HM Treasury and the regulators

3.1 Delivering a Smarter Regulatory Framework means replacing REUL with a mixture of legislation introduced by the government and approved by Parliament and regulator rules, in line with the balance of responsibilities in the FSMA model. Under this model, the regulators generally set the rules that apply to firms within a framework set by government and Parliament.

3.2 Therefore, industry should generally expect firm-facing provisions to be set through regulator rulebooks. This will make it easier for financial services firms to understand what requirements apply to them. This process has already begun, for example where the regulators took on responsibility for making and amending binding technical standards during the 'onshoring' process. These instruments contain many of the most technical and detailed provisions inherited from the EU.

3.3 Government legislation will focus on setting the framework within which the regulators will exercise their responsibilities.

3.4 Much of this framework has already been created through Acts of Parliament, principally FSMA 2000, as amended by subsequent legislation, including FSMA 2023. These Acts establish the financial services regulators in statute, their governance processes, and their corporate structures. They provide the framework which governs across the sector.

3.5 This is particularly the case for authorised persons carrying out 'regulated activities', which are specified by HM Treasury through the Regulated Activities Order (RAO) 2001. For these activities, which are typically those carried out by banks, insurers and investment firms, FSMA 2000 already provides a framework within which the regulators can set firm-facing rules replacing those in REUL.

3.6 Where FSMA 2000 already provides the necessary and appropriate framework, the government will seek to maintain it. Where it does not, the government will create any necessary supplemental framework in legislation, using the powers provided in FSMA 2023 for this purpose.

3.7 In some instances, this will involve the use of the new Designated Activities Regime (DAR), which was established by FSMA 2023. The DAR was designed to enable the regulation of activities where it is not proportionate to require those carrying out the activities to become authorised persons.

3.8 Whether activities are regulated through the RAO or being added to the DAR, the government expects to create a consistent regulatory framework across legislation that will follow a single set of principles. Generally speaking, these principles will align with the approach already in FSMA 2000, with the primary and secondary legislation governing financial services fulfilling five essential functions:

- **Setting the regulatory perimeter** – legislation must define which activities are within the perimeter of regulation and prohibit the carrying out of those activities except under specified conditions. Regulated activities are specified in the RAO, including many which implemented EU obligations, and it is generally prohibited for anyone other than an authorised person or an exempt person to carry out such activities. The DAR will function in a similar way, but without the obligation to become an authorised person. Where these frameworks are not appropriate, for example for firms who are exempt from the requirement to become authorised persons, HM Treasury expects to maintain the regulatory framework through other pieces of secondary legislation created through powers in FSMA 2023.
- **Enabling the regulators to make rules** – legislation must define which powers the regulators have to regulate activities and persons within the regulatory perimeter. FSMA 2000 already provides the regulators with broad rule-making powers over authorised persons, and generally the government would expect the regulators to use this power where possible to make new rules when REUL is repealed. Where the regulators do not have sufficient rule-making powers, HM Treasury will create new powers, either through the DAR or through other secondary legislation using powers provided by FSMA 2023, to enable the regulators to replace detailed rules in REUL which will be repealed.
- **Determining wider public policy matters relevant to the regulators' actions** – legislation must define the aims the regulators should seek to achieve in making their rules, and what factors they must consider when they do so. FSMA 2000 does this by setting the objectives and principles which guide the regulators as they make rules and conduct other activities. These provisions are set out directly in FSMA 2000 and were updated through FSMA 2023, in particular to give the FCA and the PRA a new secondary objective to facilitate the international competitiveness and growth of the UK economy. FSMA 2023 also introduced a new power for the government to require the regulators to have regard to particular matters when making rules, which will determine any additional elements which should be considered in particular policy areas.
- **Providing appropriate supervision, investigatory, and enforcement powers to the regulators** – legislation must provide a framework to ensure that once rules are made, they can be

adequately supervised, investigated, and if necessary, enforced. It must also establish the arrangements and safeguards that sit alongside these – for example, routes of appeal. Without such provisions, there would be no effective means to ensure that rules created in the UK are followed. FSMA 2000 provides the regulators with an appropriate set of powers which are suited to the regulation of authorised persons such as banks and insurers. Activities designated under the DAR will also require supervision, investigation, and enforcement powers; these will be created in secondary legislation and will be closely modelled on those which firms are already familiar with. Where further additional or bespoke provisions are required, HM Treasury will create them in secondary legislation, using the powers provided by FSMA 2023 for this purpose.

- **Setting procedural requirements which govern how the regulators act** – legislation must define the procedures that must be followed by the regulators in carrying out their duties so that they operate in an accountable, consistent, and transparent manner. This means that the regulators not only have functions to perform, but stakeholders are able to understand how they will be performed, what factors will be considered, and if there are any timescales for performance. For example, FSMA 2000, as amended by FSMA 2023, requires the regulators to conduct consultations on draft rules accompanied by a cost benefit analysis.

3.9 As set out above, many of the provisions which determine the financial services regulatory framework are already set out in primary legislation, or through existing secondary instruments like the RAO. Where necessary, HM Treasury will supplement this framework with additional secondary legislation in order to replace REUL, using the powers provided by FSMA 2023 for this purpose.

3.10 Some examples of the sorts of provisions that HM Treasury is likely to create as part of this work are:

- **Perimeter-setting definitions** – defining which activities fall within regulation is a key aspect of setting the regulatory perimeter and will largely occur either through the RAO itself or be set out using the DAR. Where necessary HM Treasury will use other secondary legislation to achieve a similar effect. This will involve defining the activities which are subject to a particular type of regulation, alongside determining any exclusions or exemptions from those activities.
- **Prohibitions** – Requiring that some activities cannot be carried out except in specified circumstances is a key part of financial services regulation in the UK. FSMA 2000 creates the 'general prohibition' which fulfils this function for regulated activities, and equivalent prohibitions will sometimes be put in place for activities in the DAR.

- **Registration, notification or approval regimes** – sometimes it will be appropriate to require firms to meet a set of conditions and seek the approval of a regulator, or notify a regulator, in order to carry out an activity. Firms conducting regulated activities are, subject to some exceptions, already required to become authorised persons, but HM Treasury expects to maintain distinct approval or authorisation regimes for some areas, adapting those which are set out in REUL.
- **Rule-making powers** – as set out above, the government expects that the regulators will often already have the power to replace the detailed provisions in REUL with rules tailored to the UK. However, where this is not the case, HM Treasury expects to create suitable rule-making powers through secondary legislation. Rule-making powers are a key part of the functioning of the FSMA model; however, the government recognises that regulator rule-making powers over non-authorised persons should be appropriately scoped.
- **“Have Regards”** – FSMA 2023 gives HM Treasury the power to set specific “have regards” that the regulators must consider when making rules in particular areas of regulation. This should ensure that, when proposing new rules, the regulators consider broader public priorities and explain, where relevant, how they have taken account of those priorities.
- **Supervision and investigatory powers** – Such powers allow the regulators to supervise firms and monitor whether rules are being followed, a crucial part of ensuring they are enforced. It will not always be appropriate for the FCA to have the same set of powers over non-authorised persons as they do over authorised persons. HM Treasury will therefore focus on ensuring that any new powers created are proportionate to the risk posed by non-compliance.
- **Disciplinary Measures** – such provisions create measures the regulators can take should firms not comply with rules. They may include powers to hand out fines, suspend permissions, publicly censure firms, etc. These are one of the principal tools available to a regulator to ensure their rules are enforced. Generally, the government would expect the regulators to rely on the standard set of enforcement powers in FSMA 2000, such as the power to issue fines and public censures.

3.11 In some exceptional cases, there may be a case to maintain additional elements in legislation where there is a significant public policy objective which cannot be achieved through the regulators acting in accordance with their objectives alone. In these rare cases, there may be some further details of the regime set out in legislation to work alongside any rules that the regulators may make, such as the

approach taken in the *Draft Insurance and Reinsurance Undertakings (Prudential Requirements) Regulations*, published on 22 June 2023.²

² <https://www.gov.uk/government/publications/draft-insurance-and-reinsurance-undertakings-prudential-requirements-regulations>

Chapter 4 - Targeted policy change

4.1 Delivering a Smarter Regulatory Framework represents a significant structural reform of how the financial services sector is regulated. Even where the rules inherited from the EU remain suitable for the UK, the institutions responsible for them, the frameworks under which they are made, and the manner in which they are reviewed and updated must change.

4.2 At its simplest, this will mean removing REUL from the statute book, and replacing it with a mixture of legislation and regulator rules, determined in accordance with the balance of responsibilities in the FSMA model.

4.3 This structural reform will deliver a framework that is more agile, streamlined, and accessible. It will turn what is essentially a static and burdensome framework inherited from the EU into an agile, workable and coherent regime, ensuring that the UK's independent expert regulators are able to keep detailed rules up to date, and removing significant legal complexity for firms.

4.4 As demonstrated by the draft SIs published to date, this work also enables the UK to create rules and legislation which are tailored to the UK. This involves looking again at aspects of the EU's regulation of financial services. Policy change can be delivered either through HM Treasury legislation or regulator rules; often it will require a combination of both.

4.5 The government will continue to review the financial services REUL repealed by FSMA 2023 in order to identify the areas where policy reform should be prioritised. Beyond the high-priority REUL identified in tranches 1 and 2, there are significant pieces of REUL remaining for future tranches where the government or the regulators may identify beneficial policy changes, or where policy reviews will be appropriate, such as the remaining parts of the Markets in Financial Instruments Directive (MiFID), along with other large EU files such as the European Market Infrastructure Regulation.

4.6 However, it is important to remain proportionate when tailoring rules to the UK. Even reform which ultimately delivers improvements can place a burden on industry through the requirement to adapt to the changes and can create uncertainty for firms about the extent to which their operational practices will need to adapt in the future.

4.7 This is why some files will be considered for a “lift and shift” approach where policy change is not appropriate. Files considered for a lift-and-shift approach will be those where both the government and the relevant regulator, in line with their statutory objectives, consider that it would be appropriate to initially maintain the status quo, subject

to further consideration by the relevant regulator when they develop replacement rules.

4.8 This will provide clarity to industry around which elements of financial services regulation they can consider most likely to remain unchanged after the process of structural reform in order to prioritise areas where policy change can bring the biggest positive impact.

4.9 Under a lift and shift approach, the government will undertake the necessary structural reform to bring the relevant provisions into line with the FSMA model but will not explore options for policy change during this process.

4.10 Once the regulators have taken responsibility for these areas of regulation, they will be responsible for considering future rule changes in an agile manner as they would any other existing rule in their rulebooks. This process more easily delivers the long-term benefits of the FSMA model while minimising uncertainty for industry.

4.11 The government and the regulators will work closely together to identify which parts of REUL will be subject to this lift and shift approach, taking into account the views and needs of stakeholders. The government will announce which pieces of REUL will be initially considered for this lift and shift process when setting out future tranches.

Chapter 5 – Legislative approach

5.1 Financial services REUL is complex and piecemeal. The government has identified 43 “core files” in scope of the SRF programme. These EU file often relate to more than one activity or type of firm, and separate EU files often set overlapping or similar requirements. This creates a complex environment for firms.

5.2 Repealing REUL is a key part of creating a more accessible and streamlined framework, which will reduce legal complexity and make it easier for smaller firms to understand the legislative framework in which they operate.

5.3 When acting to replace REUL the government will actively consider how this can contribute to creating a more streamlined and accessible legal framework overall. The government will endeavour to ensure that any replacement legislation is logically constructed in line with a clear approach which is outlined below.

An accessible and streamlined regulatory framework

5.4 With some limited exceptions, most parts of FSMA 2000 apply very broadly across all manner of activities related to financial services and markets. In contrast, EU files are often focused on specific sub-sectors or activities.

5.5 The legislation brought forward by the government as part of this programme will not retain the concept of EU files but will instead build on the UK’s domestic model of regulation.

5.6 This means that regulated activities will continue to be governed under FSMA 2000 as amended by FSMA 2023, even where the detailed definitions of those activities were inherited from the EU. Designated activities will be set out in new Designated Activities Regulations which will fulfil a similar purpose to the RAO. Sitting under the legislative framework created by the government will be rules made by the financial services regulators.

5.7 The government has considered how this can be achieved in a way that is familiar to the sector, and which builds on the strength of the FSMA model. Secondary legislation in financial services is often cross-cutting, with many SIs having a particular role within a wider framework. For example, the role of the RAO is to specify the perimeter of regulated activities. The Financial Promotion Order 2005 performs a similar role in relation to financial promotions. And the Disclosure of Confidential Information Regulations 2001 set out the framework governing the disclosure of information whose confidentiality is protected by the general restriction on disclosure in FSMA 2000.

5.8 Generally, the government expects to replace REUL in line with this cross-cutting approach. That means introducing a small number of new SIs based using powers introduced by FSMA 2023:

- **Designated Activities Regulations** – FSMA 2023 introduces the DAR. This is a new part of FSMA designed to provide a framework for regulating activities in a proportionate way without the obligation to become an authorised person. The government expects to create a single SI regulating all designated activities. Gathering all designated activities in one place, as is done for regulated activities, will make it easier for persons carrying out those activities to determine if they are subject to UK regulation, and in relation to what activities. The FCA will also need powers to supervise, investigate, and enforce rules in relation to these activities. Through creating a single DAR SI, the government will endeavour to consolidate common supervisory, investigatory, and enforcement powers in a single place, to reduce the complexity for firms which perform more than one designated activity. As with the RAO, the DAR SI will be updated over time, as activities move in or out of scope.
- **“Have Regard” Regulations** – As explained above, it will sometimes be appropriate to specify additional matters of public policy which the regulators must ‘have regard’ to when they make rules in certain areas. The government is aware that these matters will be important for regulators and their stakeholders, particularly firms. In order to ensure that these matters are as transparent as possible, the government expects to create a single consolidated SI containing these provisions. This will ensure that stakeholders will be able to understand what additional elements the regulators have been asked to consider when they make rules, in addition to their objectives and regulatory principles in FSMA 2000, as amended by FSMA 2023.
- **Modification and Disapplication of Rules Regulations** – FSMA 2023 adds section 138BA to FSMA, which contains a new power for the government to enable a regulator to give permission to modify or disapply rules. This will make it easier for the regulators to adapt their rules to different business models and practices. The government will create an SI dealing with the use of this new modification and disapplication power. Initially, HM Treasury expects to use the new power to enable the disapplication or modification of all PRA rules made under the PRA’s rule-making powers, as the regulatory regimes for credit institutions, large investment firms and insurers include a range of significant rules which sometimes need to be modified in order to support and address the risks that may be generated by the various business models used by these large and complex firms. The government is still considering how to apply this power to the FCA. This SI will also set procedural safeguards where this flexibility is granted.

- **Miscellaneous Provisions Regulations** – Sometimes, it will be necessary to create legislation which will govern activities where there is no clear place in existing primary or secondary legislation where such provisions could sit in a clear and accessible way. In order to address this, the government expects to create a single SI containing any miscellaneous provisions which it is necessary to preserve from REUL – for example, those relating to Solvency II. These provisions will supplement or modify the wider provisions in FSMA 2000, where they apply. The government expects that this approach will provide clarity for industry and make it easier to find any such provisions. The government expects to only use this SI where there is no more appropriate option in existing legislation.

5.9 HM Treasury would also expect to maintain through secondary legislation the approach to equivalence in accordance with the government’s guidance document on the UK equivalence framework.³

Other legislation

5.10 Alongside the SIs described above, the government expects that it will sometimes be necessary to review domestic secondary legislation to ensure that it functions effectively once REUL has been repealed. This is because large amounts of EU law was adopted, or given proper effect, through these domestic SIs.

5.11 The government also expects to remove some types of legislation entirely. In particular, all Binding Technical Standards, where responsibility for the contents has already been passed to the regulators, will be repealed in a phased and ordered manner, generally along with the relevant REUL, enabling the regulators to replace any necessary provisions through their rules.

5.12 While the government is repealing REUL, it also expects to review and replace references to EU Directives with references to UK legislation, regulator rules, or to otherwise maintain their effect while removing the reference to the EU Directive.

Delivery of the legislative approach and interaction with published SIs

5.13 As set out above, the government has adopted a ‘file-by-file’ approach, reviewing each file individually. As part of this, the government has published draft SIs related to Solvency II, the Securitisation Regulation, the Prospectus Regulation, and part of MiFID relating to data reporting.

5.14 These draft SIs do not yet conform to the structure described above. This is because the government has prioritised driving forward the work on particular areas of priority reform, in order to most

³ <https://www.gov.uk/government/publications/guidance-document-for-the-uks-equivalence-framework-for-financial-services>

effectively deliver the benefits of reform in these areas. The draft SIs will be restructured before they are finalised so that their final form aligns with the approach described above. The government will engage with stakeholders in order to understand how this approach can be delivered in a way that minimises disruption and produces the most streamlined and accessible framework.

Chapter 6 - Stakeholder input into technical approach and government policy-making

6.1 As described above, repealing REUL will require a process of structural change across the financial services statute book, alongside policy reviews which will result in a programme of targeted policy review change. The government understands the importance of ensuring stakeholders understand when and in what ways they will be able to engage with these processes.

6.2 The delivery programme will seek a wide range of views through a mixture of formal and informal engagement with a full range of stakeholders.

6.3 The government and the regulators will work closely together to identify which parts of REUL could be subject to the lift and shift approach, taking into account the views and needs of stakeholders.

6.4 Beyond this, the government will want to seek input on two different purposes: technical implementation, and policy development. Different input will be required depending on the purpose. But throughout, the government will ensure that a full range of relevant stakeholders are engaged as the programme is delivered, choosing its approach to engagement based on the complexity and proposed level of changes proposed.

Stakeholder input into technical approach

6.5 As set out above, HM Treasury will often need to create secondary legislation in order to replace REUL in line with the FSMA model. Sometimes this legislation will also implement targeted policy changes and sometimes it will deliver this structural reform only.

6.6 Where legislation is required in the form of an SI, the government generally expects to publish near-final draft versions of these replacement SIs before finalising them and laying the legislation.

6.7 Published draft SIs will be accompanied by a policy note describing the government's policy intent in the legislation, which will either be to maintain the status quo through the lift and shift approach, or to pursue policy targeted change. The government will invite technical comments, generally for a period of six weeks, though this may be shortened where appropriate. The government would also expect to seek out interested stakeholders to ensure that they are engaged with this process.

6.8 This process will provide a valuable opportunity for stakeholders to ensure that the drafting of the instrument matches the government's stated intent, and to highlight any unintended consequences.

6.9 Whilst the government anticipates publishing most SIs in this way, this checking process is likely to be unnecessary for more straightforward SIs.

6.10 Replacement rules will be subject to the regulators' normal consultation processes and requirements as set out under FSMA 2000, which will also provide stakeholders with another opportunity to make detailed comments on full effect of the UK regime.

Stakeholder input into policy-making

6.11 In addition, when considering policy reform, the government generally expects to engage with stakeholders on the nature of any policy change introduced through legislation.

6.12 The government will seek input in a proportionate manner, especially in areas that are particularly simple or where there are no particularly significant policy decisions to be made. The government followed this approach successfully when reviewing Long-Term Investment Funds Regulation, engaging with industry to confirm that no UK funds were regulated under the legislation and so ensuring that the regime could be safely repealed.

6.13 The government anticipates that more formal engagement will generally be needed where a policy area is particularly complicated, where there are multiple options, where significant changes to the scope of regulation are proposed, or where there could be a substantial impact on firms from the planned legislation.

6.14 Broadly speaking, this formal engagement will take one of two forms:

- The government may choose to conduct a Call for Evidence at an early stage in its policy development. The government has already followed this approach on payments legislation and the Short Selling Regulation. The government will consider the case for publishing Calls for Evidence on a case-by-case basis taking into account the principles above.
- Where the government has a more developed policy proposal, the government may choose to conduct a public consultation. The general aim of these consultations will be to share proposals for reform in the relevant policy area and invite stakeholder views. For example, the consultations on the Prospectus and PRIIPs regimes.

6.15 The regulators' replacement rules will generally be subject to statutory consultation requirements and processes in the usual way. This means that stakeholders will also be able to input into any policy change being implemented through regulator rules, as well as those being implemented by the government in legislation.

6.16 The government will work closely with the regulators on this process. Where the relevant regulator expects to publish a consultation paper on replacement rules, the government will generally seek to coordinate publications in a similar period where possible to ensure that stakeholders get a full picture of the replacement regime.

Chapter 7 - Next steps

7.1 In line with the approach outlined above, the government has published several draft SIs for technical comment. The government expects to lay or make them when Parliamentary time allows in the period following the commencement of the relevant powers in FSMA 2023, and in accordance with the processes described in this document. The government will deliver significant progress on tranches 1 and 2 of the programme by the end of the year.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk