



HM Treasury

# Building a smarter financial services framework for the UK

## **Policy statement**

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December 2022



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# Ministerial Foreword

The financial services industry is vital to the UK's prosperity.

As Economic Secretary, my role is to ensure our sector remains vibrant, competitive, and internationally respected. This includes ensuring that our approach to financial services regulation in the UK is agile and delivers for industry and consumers alike.

The Future Regulatory Framework (FRF) Review was established by the government to determine how the financial services regulatory framework should adapt to the UK's new position outside of the European Union (EU), and to ensure the framework is fit for the future. Following two consultations with stakeholders, who demonstrated overwhelming support, the government confirmed it would build on the UK's domestic model of regulation and establish a comprehensive FSMA model of regulation for the UK.

The outcomes of the FRF Review are now being delivered through the Financial Services and Markets Bill, a key piece of legislation that allows us to seize the opportunities of EU Exit and secure the UK's position as a global financial hub. In particular, the Bill repeals retained EU law, enabling the government to replace it with legislation designed specifically for UK markets.

The Chancellor has committed to move rapidly to review retained EU law over the next year to identify reforms which have the greatest potential to unlock growth in key areas, including in financial services. This statement is the next step in that commitment.

I am pleased to announce that the government is now setting out its plan to take forward the implementation of a comprehensive FSMA model of regulation, building a smarter financial services framework for the UK. Moving towards this model is a key priority for the government, so that consumers, industry, and the UK economy can benefit from these reforms as soon as possible.

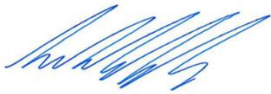
The pace of change must be manageable for industry and those affected by financial services regulation whilst also establishing a good forward momentum. Therefore, we will take forward our ambitious and carefully planned approach in phases, prioritising areas of legislation where there is the greatest opportunity for beneficial policy reform.

Work is already underway to review, repeal, reform and replace areas of retained EU law such as the Wholesale Markets Review, reforming the Prospectus Regime and the Securitisation Regulation, and the Chancellor announced the final policy approach on Solvency II in the

Autumn statement. We will begin work on a number of other important areas of legislation too, such as the Payment Services and E-Money Directives and a review of the Packaged Retail and Insurance-Based Investment Products (PRIIPs) Regulation.

This is an incredible opportunity to reform financial services regulation for the UK and this document sets out our ambitious approach to delivering this.

I keenly look forward to further engagement on these important issues as we tailor financial services regulation to the UK.

A handwritten signature in blue ink, appearing to read 'Andrew Griffith', written in a cursive style.

Andrew Griffith MP  
Economic Secretary to the Treasury



# Executive Summary

The Future Regulatory Framework (FRF) Review was established to determine how the financial services regulatory framework should adapt to the UK's new position outside of the European Union (EU), and how to ensure the framework is fit for the future. This document sets out the government's implementation plan to deliver a comprehensive FSMA model of regulation through the powers established in the Financial Services and Markets (FSM) Bill.

The UK's domestic model for regulation was introduced by the Financial Services and Markets Act (FSMA) 2000 and later adapted to address the regulatory failings that contributed to the 2007-08 global financial crisis. Under this model of regulation, the operationally independent and expert financial services regulators, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), generally set the direct regulatory requirements which apply to firms in their rulebooks operating within a framework established by government and Parliament. This is a fundamental feature of the FSMA model. In the following years since FSMA was introduced, EU financial services regulation expanded into new areas. This constrained the regulators' ability to determine the most appropriate regulatory requirements for UK markets. It required them to apply EU regulations and operate within the EU framework and, as such, adversely affected the operation of the FSMA model.

When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018. This is known as "retained EU law" (REUL). This approach to REUL has left the UK with detailed regulatory requirements in primary and secondary legislation which, under a FSMA approach, should primarily be in the regulators' rules. The effect of having these regulatory requirements in legislation is that it is difficult and time-consuming to update, and places substantial resource pressures on Parliament which is asked to consider a large volume of technical provisions.

## Enacting the repeal of REUL

Enacting the repeal of REUL in financial services is part of the government's wider intentions to amend, repeal and replace REUL more easily. 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 will mean that REUL will no longer take precedence over UK law. This aspect of the Bill applies across the whole statute book, including to financial services.

The Retained EU Law (Revocation and Reform) 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 a comprehensive FSMA model, as detailed in Chapter 3.

## The government's approach to creating a comprehensive FSMA model

The FSM Bill, which is currently before Parliament, will repeal financial services REUL in order to establish a comprehensive FSMA model of regulation. As described in the government's second consultation on the FRF Review, this means that the financial services regulators will generally take responsibility for setting the direct regulatory requirements which are currently set out in retained EU law, acting within a framework set by government and Parliament. This model will also be extended to the Bank of England in its role as regulator of central counterparties (CCPs) and central securities depositories (CSDs).

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. In addition to repealing REUL, a subsequent programme of secondary legislation is needed to give effect to many of the necessary changes, and the government will take the time to get this right. As such, this is a resource-intensive exercise for the government and the regulators, and will involve significant policy, regulatory and legal resource as well as Parliamentary time over several years. Importantly, industry will also need time to adapt to the new framework and rules.

The FSM Bill introduces a range of new tools to enable the transition to the comprehensive FSMA model. This includes a new Designated Activities Regime (DAR) which will be a new part of FSMA designed to provide a framework for regulating activities related to financial markets in a proportionate way that reflects the degree of risk these activities pose. There are also a range of tools to enable government to restate REUL with or without amendments, to specify matters of public policy to which the regulators must have regard, and to require the regulators make rules in certain areas.

The process of implementing the comprehensive FSMA model provides an opportunity to look again at aspects of the EU's legislative framework for financial services. The government will pursue a balanced approach, and will not be pursuing change for its own sake. In all instances, REUL will be repealed either without replacement or with replacement legislation which is consistent with the FSMA model. This process provides an opportunity to deliver policy change so that regulation better meets the needs of UK markets. HM Treasury will lead on delivering that reform when the reform applies to the statutory framework, and the relevant regulator will generally deliver the detailed regulatory provisions that apply to firms.

## Prioritisation and approach

The government will repeal REUL to establish a comprehensive FSMA model of regulation in a way that is thoughtfully planned and sequenced to minimise unnecessary disruption while taking the opportunity to maximise the potential for the greatest economic impact. This significant implementation programme will require careful coordination across government the regulators and industry, and the government will ensure there are opportunities for stakeholders to input views. The following principles will underpin government's approach to prioritisation:

- the need to update rules to reflect the specific features of the UK market and our position outside the EU;
- that the sequencing should be logical and support the design of an accessible and streamlined framework;
- and that the pace of change must be manageable for government, regulators, and industry.

The government intends to move swiftly through the implementation programme, while respecting the principles outlined above. It will deliver the programme by splitting REUL into "tranches". Work is already underway on the first tranche of REUL in relation to delivering the outcomes arising from the Wholesale Markets Review, Lord Hill's Listing Review, the Securitisation Review, and the Review into the Solvency II Directive. The second tranche is focused on those areas with the biggest potential benefits to deliver improvements to UK economic growth. The government expects to make significant progress on Tranches 1 and 2 by the end of 2023.

The government has also published three illustrative statutory instruments (SIs) alongside this policy statement in order to give stakeholders a more detailed understanding of the approach the government is taking. There are two illustrative SIs in relation to the reform of the Prospectus Regulation and the Securitisation Regulation. There is also an SI that would give the FCA wider rulemaking powers in relation to payments regulation to ensure that the FCA has the necessary powers to make rules to replace REUL. Each SI is accompanied by a policy note.

Parliament has a vital role in establishing a comprehensive FSMA model and must scrutinise the FSM Bill itself, and the statutory instruments made by the Treasury under the FSM Bill. These illustrative SIs, and the accompanying notes, have been prepared in part to help Parliament in their scrutiny of how the government intends to exercise the powers in the FSM Bill to establish a comprehensive FSMA model, building a smarter financial services framework for the UK.

# Chapter 1

## Introduction

### Background

1.1 The FRF Review was established to determine how the financial services regulatory framework should adapt to the UK's new position outside of the EU, and how to ensure the framework is fit for the future. In particular, the FRF Review provided an important opportunity to ensure that the UK maintains a coherent, agile, and internationally-respected approach to financial services regulation that supports a thriving financial services sector which contributes to UK's international competitiveness and economic growth, while providing robust safeguards for consumers, market integrity and financial stability.

1.2 In October 2020, the government consulted on the overall approach to adapting the UK's regulatory framework, and in November 2021 launched a further consultation on specific proposals for reform. In July 2022, the government responded to the consultation and introduced the FSM Bill to Parliament, which implements many of the specific proposals for reform set out in the November 2021 consultation. The FSM Bill repeals financial services REUL, as set on in Schedule 1 to the FSM Bill, and introduces a range of new tools to enable the transition to the comprehensive FSMA model. This document proposes an implementation plan for using these tools to deliver a comprehensive FSMA model of regulation.

1.3 Within the policy statement:

- Chapter 2 summarises the structure of the UK's legislative framework for financial services
- Chapter 3 outlines the tools in the FSM Bill which will enable the transition to the comprehensive FSMA model
- Chapter 4 outlines the government's plans for delivering the implementation programme.
- Chapter 5 outlines the government's proposed approach to splitting files into tranches and the overall pace of the implementation programme.
- Chapter 6 provides example statutory instruments (SIs) which illustrate the government's approach to repealing REUL.

# Chapter 2

## The UK's legislative framework

This chapter contains background on the legislative framework for financial services. This includes the outcomes and objectives of the FRF Review, the role of the regulators and the government's approach to creating a comprehensive FSMA model.

### UK financial services regulation

2.1 The current model of UK financial services regulation was introduced by FSMA where the expert independent regulators<sup>1</sup>, in particular the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), generally set the direct regulatory requirements which apply to firms, within a framework set by Parliament and government.

2.2 The Bank of England<sup>2</sup> ('the Bank') and the Payment Systems Regulator (PSR) also have specific regulatory responsibilities for financial market infrastructure and payment systems.

### Leaving the EU and the concept of REUL

2.3 During the UK's membership of the EU, and particularly following the 2007-08 global financial crisis, a significant amount of new financial services regulation was developed and legislated for at an EU level through EU Regulations, Directives, and other Technical Standards<sup>3</sup> and guidance. When the UK left the EU, the body of EU law that applied in the UK at the point of exit – including both directly applicable EU legislation and domestic legislation and rules that gave effect to the UK's EU law obligations – was preserved in UK law by the European Union (Withdrawal) Act 2018. This is known collectively as 'retained EU law' (REUL). The preserved versions of formerly directly applicable EU legislation are known as 'retained direct EU legislation'.

2.4 The REUL relating to financial services that currently sits on the statute book, especially retained direct EU legislation, sets out a significant number of regulatory requirements which firms need to

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<sup>1</sup> The use of the term 'regulators' throughout this document refers to the Financial Conduct Authority and the Prudential Regulatory Authority, unless explicitly stated.

<sup>2</sup> The Bank of England is responsible for supervising certain financial market infrastructures in the UK.

<sup>3</sup> Technical Standards are a form of EU tertiary legislation for which responsibility has already been transferred to the regulators.

follow. Under the FSMA model such detailed regulatory requirements should generally be in the regulators' rules rather than in legislation.

## The government's approach to creating a comprehensive FSMA model

**2.5** Respondents to the FRF Review consultations agreed that the FSMA model is the best model of regulation for the UK. The FSM Bill implements the outcomes of the FRF Review to build on the FSMA model and introduce a comprehensive FSMA model of regulation which will give the regulators significant new rulemaking responsibilities. The Bill also includes changes to the regulators' statutory objectives and introduces enhanced mechanisms for accountability, scrutiny, and oversight of the regulators by Parliament and HM Treasury. The Bill also strengthens the regulators' engagement with stakeholders, which are proportionate to and appropriate for the regulators' expanded responsibilities.

**2.6** The FSM Bill also creates the DAR, as a new part of FSMA, which will ensure that the UK's financial markets continue to be subject to regulation, through a proportionate approach which reflects the kind of risk that these activities pose, and the types of firms and persons who carry them out, once REUL is repealed.

**2.7** This FSMA model splits responsibilities across Parliament, HM Treasury, and the regulators as follows:

- Parliament, through primary legislation, sets the overall approach and institutional architecture for financial services regulation, including the regulators' objectives.
- Parliament, through primary legislation, has empowered HM Treasury to set the 'regulatory perimeter' through secondary legislation, specifying in the Regulated Activities Order (RAO) which financial activities should be regulated and the circumstances in which regulation should apply.
- The expert and operationally independent regulators have statutory responsibility for setting the regulatory provisions that apply to firms which carry on regulated activities, using the powers given to them by FSMA, and following the processes established by FSMA

**2.8** Under this model, the regulators' approach to rulemaking can be adapted and updated by the regulators in the future, for example in response to new global standards, or to take account of market innovation and new business models.

**2.9** The financial services regulators will have a key role to play in moving towards a comprehensive FSMA model and replacement of REUL. The general delegation of responsibility to the regulators for the detailed regulatory requirements that apply to firms has been a core feature of the UK's regulatory approach for many years.

**2.10** The government and Parliament set objectives for the FCA and the PRA, the principal financial services regulators, in primary legislation. The regulators must act in a way that advances their objectives when carrying out their general functions. These are set out below.

- The FCA's strategic objective is to ensure that the relevant markets function well. Its operational objectives are to secure an appropriate degree of protection for consumers, protect and enhance the integrity of the UK financial system, and to promote effective competition in the interests of consumers.
- The PRA's general objective is promoting the safety and soundness of PRA-authorized persons; it also has an insurance-specific objective of contributing to the securing of an appropriate degree of protection for those who are, or may become, policyholders. The PRA also has a secondary objective to facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities.

**2.11** The FRF Review considered whether the regulators' existing objectives in FSMA were appropriate given this expanded responsibility for the regulators and whether they reflected the UK's position outside the EU. The government considered that the regulators' current objectives set broadly the right strategic considerations. However, as the regulators will take on responsibility for setting and amending the regulatory requirements on firms as the repeal of REUL is commenced and rulemaking responsibility is passed to them as set out in the FSM Bill, the government considered that it is right that the regulators' objectives also reflected the need to support the long-term growth and international competitiveness of the UK economy, including the financial services sector.

**2.12** The FSM Bill therefore introduces a secondary objective for the FCA and the PRA to facilitate the international competitiveness of the UK economy and its growth in the medium to long-term, subject to aligning with international standards. This means that the PRA and the FCA, when discharging their general functions in a way which advances their existing objectives, must act in a way which advances this objective. The FSM Bill introduces a secondary objective and new general rulemaking powers for the Bank over central counterparties (CCPs) and central securities depositories (CSDs).

**2.13** This will not require or authorise the FCA or the PRA to take any action inconsistent with their general, strategic, insurance and operational objectives set out above. This will include advancing the new objective when making rules to replace many of the requirements which are currently set out in REUL.

**2.14** While this document primarily focuses on the government's role in implementing the outcomes of the FRF Review, the regulators will play a crucial implementation role by replacing repealed REUL, where

needed, with regulator rules. The implementation programme will, therefore, require careful coordination between HM Treasury and the regulators. It will be important for HM Treasury and the regulators to set out clearly their plans for replacing REUL in relation to each area of regulation so that businesses can plan ahead and adjust to regulatory change in an orderly way. The PRA has published a policy discussion paper and the FCA will establish a webpage on their approach to this programme. Stakeholders are encouraged to read these alongside this document which can be found on their respective websites.



# Chapter 3

## **New tools to support the repeal of REUL and transition to the FSMA model**

This chapter sets out the legislative tools within the FSM Bill that will support the repeal and replacement of REUL, describes how the FSM Bill will interact with the wider Retained EU Law (Revocation and Reform) Bill, and sets out the government's view about the "end state".

### Repeal of REUL

**3.1** As set out above, the FSM Bill will repeal REUL in financial services. The Bill provides for the repeal of each piece of REUL for financial services to take effect only once the government makes a SI bringing into force ('commencing') the repeal. The commencement of the repeals will need to be closely coordinated between HM Treasury and the regulators, especially in those cases where replacement provisions are put in place through regulator rules, to ensure continuity.

**3.2** There is a separate process for non-financial services REUL, covered by the Retained EU Law (Revocation and Reform) Bill, which the government introduced into Parliament in September, and which will repeal REUL at the end of 2023. As REUL in financial services is covered by the repeal provisions in the FSM Bill, it is excluded from those elements of the wider Retained EU Law (Revocation and Reform) Bill.

**3.3** The FSM Bill contains a number of new legislative powers, which work together as a set of tools to put in place a comprehensive model of regulation based on FSMA. This will also enable government to put in place any necessary frameworks within which the regulators will operate. These are described in more detail below.

### Have regards

**3.4** Following the repeal of REUL, generally the detailed requirements that apply directly to UK firms will be set by the operationally independent financial services regulators. The FSM Bill therefore provides the government with an ability to set specific "have

regards” that the regulators must consider when making their rules in specific areas of regulation.

**3.5** The ability to set ‘have regards’ is 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. This approach will support more effective public scrutiny of rule proposals and provide a useful basis for the government and Parliament to hold the regulators to account.

**3.6** In general, the regulators’ statutory objectives and cross-cutting regulatory principles will be sufficient to set the overall policy framework within which the regulators make rules. The government will introduce an activity-specific ‘have regard’ 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.

**3.7** As an example, and to illustrate this approach, the government is proposing a new ‘have regard’ as part of its reform of the Prospectus regime. One criticism of the existing prospectus regime is that there are a number of detailed requirements that, while originally designed to protect retail investors, create disproportionate burdens on issuers when they extend offers to retail investors. As a direct (but unintended) consequence, issuers therefore often offer their securities to smaller groups of professional investors, and so exclude the full range of investors from equity offerings. There is therefore a risk that poorly designed requirements reduce investor choice and shrink capital pools available to issuers.

**3.8** The new ‘have regard’ proposed for the replacement regime is therefore intended to highlight the importance of facilitating offers of securities to the public being made to a wide range of investors. The FCA, when making rules in relation to the admission of securities to trading on Regulated Markets and primary Multilateral Trading Facilities (MTFs), would be required to have regard to “the desirability of facilitating offers of transferable securities in the United Kingdom being made to a wide range of investors.” The FCA would be obliged to explain how having regard to this specified matter has affected any rules it proposed to make under the SI related to admissions to trading and admissions to primary MTFs. This will help to promote transparency around how the FCA intends to deal with any policy trade-offs in this regard, and so help facilitate a more informed public debate around the FCA’s proposals. This example ‘have regard’ can be found in the illustrative SI on the prospectus regime, which is published alongside this document.

**3.9** A regulator will only be required to consider a ‘have regard’ when it is proposing relevant new rules or amendments to relevant existing rules: introducing a new ‘have regard’ would not require a regulator to go back and review their rules. ‘Have regards’ will apply to rules only and not to the broader supervisory responsibilities of the regulators.

While the government will be able to update 'have regards' in response to important market and policy developments, 'have regards' are intended to help set the long-term policy framework for key areas of regulation and should be relatively stable over time.

## Obligations

**3.10** The FSM Bill also includes a power to require a regulator to make rules. This provides a further tool for government where it judges it appropriate to ensure that the regulators address certain key regulatory challenges when making rules. Again, the government intends to use such obligations in exceptional circumstances as the FSMA model and the regulators' objectives will ensure that, in the vast majority of cases, the regulators cover all relevant issues appropriately in their rulebooks.

**3.11** But, on occasion, a specific obligation may be necessary to ensure a particular issue is addressed by regulator rules. For example, Parliament legislated through the Financial Services (Banking Reform) Act 2013 to require the FCA to cap the cost of payday lenders' loans – a requirement that could, in future, be imposed via the obligations power. Such obligations will not influence what those rules should be. In making rules to comply with any obligations, the regulators must continue to act in a way that furthers their objectives and must comply with these obligations insofar as that is compatible with their objectives, and their existing rule-making powers.

## Rule review power

**3.12** The Bill introduces a duty on the regulators to keep their rules under review. The Bill also introduces a power for HM Treasury to require the regulator to review rules when this is in the public interest. At present, there is no formal mechanism for HM Treasury to require the regulators to conduct reviews of their existing rules. This will offer a new avenue for challenge of the regulators' rulemaking, while still maintaining the operational independence of the regulators.

**3.13** In general, HM Treasury expects that it may be in the public interest to exercise the power to direct the regulator to review its rules where:

- significant developments in the relevant markets give rise to the possibility that the current rules may no longer be appropriate; or
- substantial evidence gives rise to the possibility that the rules are not achieving their purpose.

**3.14** Respondents to the November 2021 FRF Review consultation generally welcomed the power for HM Treasury to direct the regulator to review rules where it is in the public interest. Some respondents also felt that there should be further measures on accountability, though there was no consensus on exactly what these measures should be. The regulators have committed to ensuring there is a clear and appropriate channel for industry and other stakeholders to raise concerns with rules through their rule review frameworks.

## Restatement

**3.15** There are a number of important parts of REUL which set the broader framework within which rules are made and enforced. For example, certain EU definitions of activities may determine whether an activity is subject to regulation or not, and EU-derived legislation also grants certain enforcement powers for the regulators to take action in the event of breaches of their rules. Some of these provisions may need to be retained in legislation in some way, with or without modification.

**3.16** The FSM Bill will therefore enable the government to 'restate' REUL which the Bill repeals. When restating REUL, the government will be empowered to modify it through secondary legislation, in order to pursue the purposes, set out in clause 3(2) of the FSM Bill. These are:

- Protecting and enhancing the stability and integrity of the UK financial system;
- Promoting the safety and soundness of financial services firms;
- Promoting the effective functioning of financial markets;
- Promoting effective competition in the interests of consumers;
- Facilitating the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term;
- Protecting consumers and insurance policy holders, or those who may become policy holders;
- Providing for effective rule-making, enforcement, investigation, and supervision;
- Providing for the effective arrangements in relation to resolution;
- Protecting public funds;
- Implementing international standards and practices;
- Providing for efficient and effective regulatory, enforcement, investigatory and supervisory arrangements;
- Removing provisions that are yet to be commenced or changing the timing of their commencement.

**3.17** In general, the government does not intend to restate regulatory requirements into legislation where these could otherwise take the form of regulator rules (either under existing rulemaking powers, or under new powers, in the FSM Bill, that are or could be conferred on the regulators in future), consistent with the FSMA model. As set out in the 'targeted policy change' section, the government expects that generally the regulators will replace firm-facing requirements in their rules. There may be exceptions to this approach, where it is desirable for public

policy or other reasons to retain certain such provisions in legislation, although the government expects such instances to be rare.

**3.18** A key feature of the restatement power is that it will allow the government to ensure that the regulators have the appropriate powers to make any replacement rules when REUL is repealed. In many instances, FSMA already provides the necessary powers, or will do so through the DAR (see the next section below), which is introduced by clause 8 of the FSM Bill. Where FSMA does not provide appropriate powers, the restatement power (including the power to make modifications) will allow the government to address such gaps.

## A new Designated Activities Regime

**3.19** The FSM Bill creates the Designated Activities Regime, known as the DAR. This new part of FSMA will ensure that the UK's markets continue to be subject to proportionate regulation which reflects the kind of risk that these activities pose, and the types of firms and persons who carry them out, once REUL is repealed. It has been designed to allow activities related to financial markets to be regulated within a framework which is compatible with a comprehensive FSMA model. FSMA already enables the government, through secondary legislation, to specify financial services activities that will be subject to regulation in the RAO. This is a key way in which the government determines the regulatory perimeter (i.e., which things should and should not be regulated).

**3.20** The regulators have broad powers to make and enforce rules relating to the activities of authorised persons. The activities that the government has determined should be regulated in this way include many of the kinds of activities which are carried out exclusively by banks, insurers, and investment firms, and generally involve providing financial services to the public, such as accepting deposits or offering investment services.

**3.21** REUL also regulates a number of activities which are conducted by a wide range of persons interacting with financial markets. Ensuring that a wide variety of firms can undertake these types of activities is key to ensuring that wider economic actors can benefit from the UK's financial markets, and not just financial services firms. The DAR will ensure that these kinds of activities can continue to be regulated in a proportionate way.

**3.22** The FSM Bill provides HM Treasury a power to designate activities, in order to bring them into regulation.

**3.23** Where an activity has been designated, anyone conducting that activity will be required to follow the rules for that activity, unless they are exempt. This will enable the FCA to make rules relating to that activity within the wider FSMA framework. The PRA may choose to make their own, separate rules for PRA-authorised persons under their existing rulemaking powers, reflecting the different statutory responsibilities of the FCA and PRA.

## The end state

**3.24** The government expects to use the DAR to provide for the replacement of several elements of REUL, but it is also designed to be forward-looking, and allow other activities to be brought into the scope of regulation, in a proportionate and tailored way. Further information on this can be found in Chapter 4 of this policy statement which refers to Statutory Instruments to demonstrate how the government will use the DAR to provide for the replacement of the Prospectus Regulation and elements of the Securitisation Regulation.

**3.25** 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 retained EU legislation, UK primary and secondary legislation, regulator rules and retained EU technical standards.

**3.26** In terms of structure, provisions which set the legal framework for regulation of financial services – the scope of regulated activities, the regulators’ objectives, obligations and powers, and the legal basis for UK regulatory cooperation and with overseas regimes – will be in legislation. Regulated activities will be defined under FSMA, with the detailed definitions set out in the Regulated Activities Order, as they are now. Designated activities will be set out in new Designated Activities Regulations. Sitting under the legislative framework will be rules made by the financial services regulators.

**3.27** Generally, it will be the regulators’ rulebooks which will contain the regulatory requirements which apply directly to firms and individuals engaging in regulated activities. In addition, to reflect the fact that the new legislation will be UK, rather than EU, in origin, the government expects that that legislation will, where appropriate, make greater use of UK terminology and correspondingly less use of the EU terminology currently found in REUL. The government is, though, also mindful of the need to strike the right balance between this and the importance of providing continuity and clarity for industry.

**3.28** The government understands that the PRA (whose rulebook contains provisions made by the PRA that apply to PRA-authorized firms) and the FCA (whose handbook contains the legal instruments for which all regulated firms must comply) remain committed to a clear, coherent, and more accessible regulatory framework. The PRA is conducting a review of their rulebook which includes developing new platforms, while the FCA is considering the overall usability of its handbook in relation to this programme. Stakeholders should refer to the respective websites for further information.

# Chapter 4

## Programme outline and approach

This chapter outlines, in high level terms, the government's plans for delivery of the implementation programme. This includes the principles that underpin how individual pieces of REUL should be prioritised and sequenced, the scope of the programme and how government intends to engage with stakeholders.

4.1 The government is committed to having high regulatory standards across UK financial services. The government recognises that the programme is a significant undertaking for the that which will require careful coordination between the government, financial regulators, and industry stakeholders. The government has been preparing to make sure the programme is thoughtfully planned and sequenced to minimise unnecessary disruption while taking the opportunity to maximise the potential for the greatest economic impact.

### Scope

4.2 The Treasury has identified 43 "core" files (areas of REUL) in scope of this programme. The Markets in Financial Instruments Directive and Regulation (MiFiD) framework and Solvency II are two such areas (the full list can be found at Annex 1).

4.3 There are a very large number of named legislative instruments that sit within these files that are set out in Schedule 1 to the FSM Bill. In addition, there are also some broader areas of EU regulation which require specific implementation in the financial services sector.

### Approach to prioritisation

4.4 It is vital the government is clear about the decisions made on how this programme is implemented, including which files are being prioritised and why. This is because of the scale of the programme and to take into account the impact the programme will have on stakeholders, including industry.

4.5 The government acknowledges that industry stakeholders will need to be able to plan ahead and will require some advance notice to be able to adjust to the changes. The following set of principles will guide the government's decisions about how to prioritise its implementation programme:



- **The need to update rules to reflect the specific features of the UK market and our position outside the EU**

Now that the UK is no longer a member of the EU, it is no longer bound by EU law. Rules that were the product of negotiation between 28 member states were not always well calibrated to the UK market. The government will seek to identify and prioritise those areas where policy changes can deliver concrete benefits to the UK. Reforms will be consistent with the UK's commitment to high regulatory standards including international standards. This also means that government will acknowledge the role firms operating in international markets, including the EU, play in the competitiveness of the UK economy.

- **As far as possible the sequencing should be logical and support the design of an accessible and streamlined framework**

The implementation of the FRF Review should deliver requirements that are expressed and structured in ways that make regulation of the financial services sector easier to understand and navigate.

- **The pace and cost of regulatory change must be manageable and considered**

Repealing and replacing REUL is a resource-intensive exercise for the government, HM Treasury, and the regulators, involving significant policy, regulatory and legal resource as well as Parliamentary time. Industry face similar challenges and will also need time to adapt to the new framework and rules. Resource constraints on all sides are likely to be a significant factor in determining both the overall pace of change and the sequencing of files. The government will seek to ensure that the implementation programme is carefully sequenced to avoid unnecessary disruption. The government is also mindful of the costs associated with regulatory change and importance of continuity and stability for the sector. It does not therefore intend to pursue change for its own sake.

## Targeted policy change

4.6 The process of implementing the comprehensive FSMA model provides an opportunity to look again at aspects of the EU's legislative framework for financial services. Responses to the FRF Review consultations emphasised the need for an approach that ensured continuity for the sector, and it is clear that many aspects of the REUL framework are both necessary and unproblematic and will therefore remain largely unchanged in the process of transitioning to the comprehensive FSMA model. Nevertheless, as demonstrated by several policy reviews including Lord Hill's Listings Review and the Wholesale Markets Review, there are significant opportunities to reform REUL.



4.7 Regulatory requirements currently set out in REUL will therefore be dealt with in one of three ways:

- **Removal**

Where REUL requirements are no longer needed, the legislation will be repealed without replacement.

- **Replacement with provisions consistent with the FSMA model**

Where the substance of regulatory requirements remains appropriate with no demonstrable need for policy change, those requirements will either be restated in legislation, or they will be repealed so that the regulators can replace them with regulator rules (and therefore be able to update them in due course if appropriate). Consistent with the FSMA model, provisions which are necessary to set the statutory framework for regulation will be restated in legislation. The relevant regulator will generally be responsible for preparing replacement rules for requirements which apply directly to firms and markets (which will be the case for the bulk of REUL requirements).

- **Replacing with provisions consistent with the FSMA model while also delivering targeted policy change – in some cases, the substance of REUL requirements will benefit from policy change**

Pursuing policy change so that regulation better meets the needs of UK markets will either be delivered by HM Treasury or the relevant regulator. Where this requires reform to the statutory framework for any particular area of legislation, HM Treasury will lead on delivering that reform. Where policy change relates to specific firm-facing requirements, the relevant regulator will generally deliver the necessary reform. In some cases, beneficial policy change will involve reforms to both the statutory framework and the requirements that apply directly to firms and markets – the reform process underway for the UK prospectus regime is a good example of this.

4.8 This balanced approach means that the government will not be pursuing change for its own sake. Indeed, the government expects that much of REUL will remain appropriate in substance and will be subject to a process of repeal from the statute book and replacement by regulator rules. Stability and continuity of the regulatory environment is important for businesses to plan ahead and to grow – targeted policy change, delivered in an orderly way which avoids disruption for industry, will only be pursued where there are clear benefits to the sector and to the wider economy.

4.9 In order to identify where policy change is needed and to determine where regulatory provisions need to remain in legislation or should be replaced by regulator rules, HM Treasury, working with the regulators, will review REUL according to the sequence of EU files set

out in this implementation plan and develop its legislative approach for each file.

4.10 This will be a gradual process and, in all cases, ensuring that regulation is rationalised so that it is coherent and easy to navigate is an important longer-term objective of the FRF Review.

## Engagement with industry and other stakeholders

4.11 The government is clear that it wants the implementation programme to be evidence based and informed by the views of industry and all relevant stakeholders. HM Treasury has established an industry engagement group to deliver the programme. This dedicated forum spans a broad range of industry stakeholders, providing insight and advice to HM Treasury on issues across the programme. The membership of this group is set out in Annex 1.

4.12 The government expects there will be considerable interest in the implementation programme and will ensure there are opportunities for the full range of stakeholders to engage and to feed in views as the programme is delivered. This will be a combination of formal consultations (in some cases on draft Statutory Instruments), and informal engagement with key industry stakeholders where HM Treasury will be interested in the views of the sector on specific areas of the implementation programme and legislation.

4.13 Consultation will need to be proportionate to the nature of the area of regulation as well as the work involved to avoid unnecessary delays to the commencement of the new rules and, on occasion, long enough to allow sufficient opportunity for stakeholders to respond in a meaningful way. This means that the length of time for consultations, where they are necessary, may vary dependent upon the nature and impact of the change. The government expects to use existing communication channels such as on gov.uk and also through the Regulatory Initiatives Grid.

4.14 There will also be opportunities for all stakeholders to feed in views through the financial regulators' own rulemaking processes. It will be for the regulators to set out how they will engage with stakeholders as they develop rules which will replace REUL provisions that the FSM Bill will repeal.

# Chapter 5

## Implementation tranches

This chapter outlines the government's proposed approach to splitting files into tranches and the overall pace of the implementation programme.

5.1 The government intends to move swiftly through the implementation programme, while respecting the principles outlined in the previous chapter. The government will place an expectation of pace and priority to deliver this programme so that the benefits to stakeholders can be realised as quickly as possible while also recognising the impact on stakeholders, as outlined in earlier chapters. Work is already underway to review, repeal, reform and replace the first tranche of REUL files:

- The Wholesale Markets Review (WMR) which makes substantial amendments to various parts of the MiFID framework, many of which are implemented in the FSM Bill;
- Lord Hill's Listing Review, following which the government will commence the repeal of the Prospectus Regulation, and implement an entirely new regime for admissions to trading and public offers;
- the Securitisation Review, which identified several opportunities to improve areas in the Securitisation Regulation; and
- the review into the Solvency II Directive.

5.2 Having worked with regulators on testing the legislative powers on these areas as well as listening to the initial views of industry stakeholders, the government can set out its plan for further tranches for the implementation of the FRF Review.

### Proposed approach

5.3 The proposal is for a phased approach, ordering policy areas into tranches (which signal when work has begun) and applying the principles outlined in Chapter 3. Work has already begun with Tranche 1, as outlined above.

5.4 This approach should allow industry stakeholders more opportunity to feed in their views to the design as well as being able to plan their resources and adapt to the changes more systematically.

## Tranche 2

5.5 The government will take a ‘twin-track’ approach to the next phase (Tranche 2) of the programme. Under this approach the government will bring forward those areas with the biggest potential benefits to deliver improvements to UK economic growth.

5.6 Alongside these more significant files the government intends to begin work on some files where benefits can be delivered more quickly – such as through simplifying the statute book for firms by repealing areas of regulation which are no longer relevant to UK industry. This will help establish momentum and ensure the programme can progress sustainably and in a manageable way.

5.7 Other files, like MiFID, will naturally take time to fully transition into the FSMA model given their size and breadth and in practice are therefore likely to span more than one Tranche. Overall, there will be a combination of files with differing levels of complexity, which means that transitioning files will in some cases take time, with differing completion dates.

5.8 The following files or subsets of files will form Tranche 2:

- Remaining implementation of the outcomes of the Wholesale Markets Review, which identifies significant opportunities to reform the MiFID framework,
- Continue with Solvency II
- The Packaged Retail and Insurance-Based Investment Products (PRIIPS) Regulation.
- The Short Selling Regulation.
- The Taxonomy Regulation.
- The Money Market Funds Regulation.
- Payment Services Directive and the E-Money Directive.
- Insurance Mediation and Distribution Directives.
- The Capital Requirements Regulation and Directive.
- Long-Term Investment Funds Regulation
- The consumer information rules in the Payment Accounts Regulations 2015.

5.9 The government expects to make significant progress on Tranches 1 and 2 by the end of 2023.

## Further tranches

5.10 The government will review and assess the remaining files (see the full list at Annex 1) and will consider the benefits, only where

necessary, of bringing any forward into Tranche 2 as well as deciding the order in which they should be prioritised within Tranche 3. HM Treasury welcomes the views of stakeholders on this approach. Please refer to the section on engagement with industry and other stakeholders above.

## Transitional period

**5.11** The government recognises that there will be a period in between the current state of regulation and the end state. The length of this period will depend on the area of legislation being reviewed and its complexity, as set out in paragraph 4.7.

**5.12** During this time, the presumption is that the regulators will be responsible for firm-facing obligations. Where the government is not moving immediately to commence the repeal of a piece of REUL, the government will have the ability to amend that law in order to pursue the purposes set out in clause 3(2) of the FSM Bill until its repeal is commenced.

**5.13** Alongside the programme to repeal REUL, the government will amend various pieces of REUL. This will remove EU obligations entirely, extend vital transitional regimes, and make significant improvements to EU policies. The government will continue to keep REUL under review and make further reforms directly until the whole of REUL in financial services can be repealed.

**5.14** Throughout this period, the government will ensure that the regulatory framework reflects the objectives for the UK to maintain a coherent, agile, and internationally respected approach to financial services regulation that supports a thriving, internationally competitive financial services sector which contributes to the UK's economic growth, while providing appropriate safeguards. Ultimately, this means that the government will repeal all REUL through a sequenced and prioritised process over a number of years.

# Chapter 6

## Example statutory instruments to illustrate use of FSM Bill powers

This chapter contains information on which SIs will be presented to Parliament.

6.1 This policy statement sets out the principles underpinning the government's approach to FRF Review implementation, including its plans for the initial phase of that implementation and its approach to stakeholder engagement. To give stakeholders a more detailed understanding of the approach the government is taking, and to facilitate scrutiny in Parliament of the FRF powers as set out in the FSM Bill, the government is publishing three example SIs to illustrate how these powers may be used in practice. The SIs are published alongside this statement and their publication is purely to illustrate the possible use of the FRF powers. None of the examples should therefore be seen as a final product or a draft for formal consultation.

6.2 These SIs set out the division of responsibilities between regulators and the government as well as, where appropriate, set certain 'have regards' which regulators must consider in specific areas, and obligations which require regulators to make rules in a specific area or to cover a specific issue. All these SIs will be subject to Parliamentary scrutiny and the example SIs in this chapter give an indication of how FRF SIs can be structured as well as illustrating how the various FRF powers may eventually be used.

6.3 The three example SIs cover:

- The reform of the **Prospectus Regulation** (the existing version of which will be repealed and replaced in time), where the government will use the FRF powers to entirely replace the existing EU-derived framework and instead establish a simpler, more agile, and more effective regime designed specifically for the UK. The new 'Public Offer and Admissions to Trading' regime relies on the DAR.
- The repeal and restatement of some elements of the **Securitisation Regulation** with a view to the replacement of most firm-facing requirements by rules made by the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA), demonstrating how regulatory responsibility could look in

regimes which involve more than one regulator under the enhanced FSMA model

- Giving the FCA rulemaking powers in relation to **Payments regulation**, which provides a demonstration of how the FRF powers might be used to ensure that the FCA has the necessary powers to make rules to replace REUL.

6.4 Please refer to each document for specific information on each of the above including accompanying explanatory policy notes on how these powers will be used.

# Annex

## 1. Core list of EU financial services files in scope of the implementation programme

Category	Acronym	Name
Market regulation	MiFiD/R	Markets in Financial Instruments Directive and Regulation
	PRIIIPS	Packaged Retail Investment and Insurance-based Products Regulation
	Prospectus	Prospectus Regulation
	LD	Listings Directive
	TD	Transparency Directive
	MAR	Market Abuse Regulation
	SSR	Short Selling Regulation
	Sec Reg	Securitisation Regulation
	SFTR	Securities Financing Transactions Regulation
	BMR	Benchmarks Regulation
Credit	CRAR	Credit Rating Agencies Regulation
	CCD	Consumer Credit Directive
Financial Market Infrastructure	MCD	Mortgage Credit Directive
	CSDR	Central Securities Depositories Regulation
Funds	EMIR	European Market Infrastructure Regulation
	SFD	Settlement Finality Directive
	AIFMD	Alternative Investment Funds Managers Directive
	ELTIF	European Long-Term Investment Funds Regulation
	EuVeCa	European Venture Capital Funds Regulation
	EuSEF	European Social Entrepreneurship Funds Regulation
Green	MMFR	Money Market Funds Regulation
	UCITS	Undertakings for the Collective Investment in Transferable Securities Directive
Insurance	SFDR and Taxonomy	Sustainable Finance Disclosure Regulation and Taxonomy Regulation
	IDD	Insurance Distribution Directive
	IMD	Insurance Mediation Directive
	IRR	Insurers (Reorganisation and Winding-up) Directive
	LACD	Life Assurance Consolidation Directive
	MID	Motor Insurance Directive
	Solvency	Solvency II Directive
RD	Reinsurance Directive	
Payments	CbPEu	Cross-border Payments in Euros Regulation
	EMD	E-Money Directive



	IFR	Interchange Fee Regulation
	PAD	Payments Accounts Directive
	PSD	Payment Services Directive
Prudential Banking	CRR/D (CRR)	Capital Requirements Directive and Regulation
	CID	Credit Institutions (Reorganisation and Winding Up) Directive
Resolution	BRRD	Bank Recovery and Resolution Directive
Shares	SRD	Shareholder Rights Directive
Misc.	DGSD	Deposit Guarantee Schemes Directive
	DMCFS	Distance Marketing of Consumer Financial Services Directive
	FCaD	Financial collateral arrangements Directive
	FCoD	Financial Conglomerates Directive

*Note; This sets out 43 “core” files in scope of the implementation programme. Where an underlying EU Directive has been repealed or replaced, and elements of its implementation remain in UK legislation, it has been included for completeness.*

*This list is focussed on financial services and so it does not capture broader EU files which have required specific implementation for financial services, although its’ implementation remains in scope of the programme. Please refer to Schedule 1 of the FSM Bill for a broader list.*

## 2. Membership of the programme’s industry engagement group

Organisation
City of London Corporation
The City UK
Association of British Insurers (ABI)
International Swaps and Derivatives Association (ISDA)
Lawyers from Clifford Chance, Linklaters and Slaughter and May
The Investment Association
Association for Financial Markets in Europe (AFME)
UK Finance
Scottish Financial Enterprise



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