THE FUTURE REGULATORY FRAMEWORK REVIEW FOR FINANCIAL SERVICES LOOKS TO POST-BREXIT FUTURE

Proposals seek to adapt and strengthen the existing Financial Services and Markets Act-based regulatory regime

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HM Treasury recently launched phase II of its future regulatory framework review. Phase I looked at the co-ordination between the UK authorities responsible for financial regulation and policy setting. Phase II considers how the UK's regulatory framework for financial services could be adapted for the UK's post-Brexit future.

The Treasury acknowledges that onshored legislation is a temporary solution and, after the end of the transition period, a large-scale consolidation exercise is needed, which will result in a rewrite of parts of the regulators' rulebooks.

The Treasury sets out that, at present, there is an unclear allocation of responsibilities across parliament, the Treasury and the financial services regulators, which has resulted in a fragmented regulatory regime made up of domestic and retained EU legislation, regulator rules and onshored EU technical standards.

Not only is this difficult for firms to navigate but this also becomes difficult to maintain for the future. The consultation proposes to adapt and strengthen the existing regulatory regime based on the Financial Services and Markets Act (FSMA); enhance the powers of the regulators, who are best placed to lead on developing regulatory requirements; and review and enhance, where appropriate, the accountability and scrutiny arrangements concerning the regulators.

Regulator expertise

A key challenge will be adapting the FSMA model to make the most of the regulators' expertise, while at the same time ensuring the regulators take full account of public policy objectives when designing those standards. The government's proposals aim to adapt the FSMA model in three key ways.

First, the new framework would provide for a clear division of responsibilities.

The government and parliament would set the regulatory framework through legislation and the regulators would, in most instances, be responsible for setting the rules that apply to financial services firms and markets. To implement this, most of the retained EU provisions would be transferred to regulator rulebooks, which would become the single source of regulatory requirements.

Second, it provides a policy framework legislation for key areas of regulated business. The paper gives the example that legislation would include an explanation of specific policy priorities that are relevant to insurance prudential regulation and include regulatory principles that are to be taken into consideration by the regulators when developing policy and regularity requirements for a particular activity.

By introducing these new activity-specific regulatory principles, the government and parliament would be able to direct the regulators to take account of specific public policy issues relevant to a particular regulated activity. The government thinks these activity-specific regulatory principles could be a way of enhancing regulatory focus on competitiveness without needing to change the regulators' overarching statutory objectives to include competition as a policy priority.

Transparency requirements

Finally, the proposals will update the existing FSMA transparency requirements. At present, the regulators are required to report on how they meet their statutory objectives and how they have regard to the general FSMA regulatory principles. The new model would require the regulators to explain how their proposals meet the requirements set out in the new policy framework legislation and specifically in relation to each regulatory regime.

Firms have been invited to comment on the new proposals by January 19, 2021. The government will then launch a second more detailed consultation in 2021, which will set out the final package of proposals for the future regulatory framework.

Firms should now consider whether they agree with the government's approach, and may in particular wish to respond to the government's plan not to introduce a new statutory objective to support the competitiveness of the UK financial sector.

Firms may also want to consider, based on their experience, whether they have seen alternative models of supervision in other jurisdictions that they think the government should consider when setting the new regime.

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