

## UK EDINBURGH REFORMS: WHAT NEXT FOR UK FINANCIAL SERVICES?

The Edinburgh Reforms will bring about the biggest change in UK financial services regulation since the Financial Services and Markets Act in 2000. So when will we start to see this change, what will it mean for regulated firms and market participants, and how does this fit with the broader programme for repeal of legacy EU legislation?

### What are the Edinburgh Reforms?

The Edinburgh Reforms are a package of proposed changes to the UK's financial services regulatory regime announced by the Chancellor in Edinburgh in December 2022, setting out the most detailed proposals to date for the future of UK regulation. The Financial Services and Markets Act 2023 ("FSMA 2023") and the Retained EU Law (Revocation and Repeal) Act 2023 ("REUL Act") have created the infrastructure the Government needs to implement the Edinburgh Reforms. Together they form the backbone of the Government's plans for repeal and replacement of legacy EU financial services legislation, as well as other proposals to reform the UK system of financial regulation.

The key measures covered in the Edinburgh Reforms are:

- Action to maintain the UK's position as a competitive marketplace promoting effective use of capital, including:
  - Publishing secondary legislation to implement certain aspects of the Wholesale Markets Review, such as reforming the ancillary activities test for commodity derivatives trading (this is the key test which determines whether predominantly non-financial commodity trading firms need to seek authorisation under the UK financial services regulatory framework);
  - Launching an independent investment research review (to examine the link between the levels of investment research and the attractiveness of the UK as a destination for companies to access capital) and a new industry led accelerated settlement taskforce (to explore the potential for faster settlement of financial trades in the UK, such as moving to a 'T+1' standard settlement period);

This is an update of an article originally published on 5 June 2023 as part of our publication "Securitisation markets and regulation: choosing different paths?", accessible [here](#). Please note that we have updated this article only in this specific circumstance due to the passing of the FSMA 2023 and the REUL Act.

### Key Issues

- The Edinburgh Reforms are not just about reforming retained EU law, but also about developing UK financial services regulation in key areas, including sustainable finance and digital assets.
- While significant progress is expected to be made on HM Treasury's priority areas in the course of 2023, completing the entire process of repeal and reform of retained EU law is expected to take several years and firms will need to be prepared for a rolling implementation process over that period.
- The reforms will also result in UK regulation starting to evolve in a different direction from EU regulation.

- Committing to a UK consolidated tape by 2024, to bring together market data from multiple platforms into one continuous feed in order to improve market efficiency, lower costs and make UK markets more attractive and competitive;
- Reforming the ring-fencing regime, which currently requires the largest UK banks to separate core retail banking services from their investment and international banking activities;
- Overhauling the UK's prospectus regime (as to which see the article entitled "The Proposed UK Prospectus Reforms: a change in approach?" published on 5 June 2023) and delivering the outcomes of the Secondary Capital Raising Review;
- Reforming the UK securitisation regime (as to which see our December 2022 briefing entitled "UK Edinburgh Reforms: The New Securitisation Framework?") ;
- Repealing the Packaged Retail and Insurance-based Investment Products ("PRIIPs") Regulation, which introduced a complex retail disclosure regime for packaged products, and developing a new retail disclosure regime;
- Repealing EU legislation on the European Long-Term Investment Fund ("ELTIF"), as well as making targeted changes to the tax regime for certain funds;
- Launching a call for evidence on reforming the Short Selling Regulation;
- Reviewing the Senior Managers & Certification Regime, which requires pre-approval of individuals holding senior positions at UK regulated firms and sets personal accountability standards for employees at these firms.
- Steps to cement the UK's position as the premier financial centre for sustainable finance, including:
  - Publishing an updated Green Finance Strategy, setting out a framework for the UK to become the world's first Net Zero Aligned Financial Centre;
  - Consulting on bringing ESG ratings providers into the regulatory perimeter.
- Building on the FSM Bill to support innovation and leadership in emerging areas of finance and establish a safe regulatory environment for stablecoins and cryptoassets activities, including:
  - Consulting on a UK retail central bank digital currency;
  - Implementing a Financial Market Infrastructure Sandbox, to allow financial market infrastructures to test and adopt new technologies and practices (such as distributed ledger technology) by temporarily disapplying or modifying UK regulatory requirements.

- Delivering for consumers and businesses, including:
  - Consulting on Consumer Credit Act reform to facilitate innovation in the credit sector, increase accessibility of credit products and bolster existing consumer protections;
  - Removing certain performance fees from the pensions regulatory charge cap;
  - Working with the FCA on the boundary between regulated financial advice and financial guidance to ensure that the UK regulatory regime does not act as a barrier to firms delivering services to consumers.

Alongside the Chancellor's 2023 Mansion House speech, the Government published a range of new policy papers and consultations relating to many of the Edinburgh Reforms.

### How and When Will the Reforms be Implemented?

While some of these reforms could have been achieved using existing regulatory powers (e.g. where the reforms could have been achieved through amendments to FCA or PRA rules), the process of repealing and reforming retained EU law required the introduction of new powers for HM Treasury and for the UK regulators. These new powers were recently introduced by FSMA 2023, which will repeal retained EU law on financial services and gives HM Treasury powers to amend, restate and replace that law, while also ensuring that where retained EU law will be replaced by regulator rules, the regulators have appropriate powers to make those rules.

FSMA 2023 also introduces a new designated activities regime, which is expected to be used to regulate various activities that are currently regulated under retained EU law and could also be used to regulate new activities. The new regime will prohibit anyone from carrying on 'designated activities' (unless exempted) or carrying on those activities otherwise than in accordance with designated activity regulations or FCA rules adopted in accordance with those regulations. Designated activity regulations may impose requirements on both authorised and unauthorised persons, including persons outside the UK. HM Treasury has already indicated that it will use the designated activities regime in its reforms of the prospectus and securitisation regulations and it is expected to use it to regulate areas such as short selling and the margining of OTC derivatives.

FSMA 2023 sits alongside the REUL Act, which provides for the repeal of retained EU law that does not relate to financial services. HM Treasury has identified 43 "core" files of retained EU law on financial services to be repealed and reformed under the FSMA 2023. HM Treasury intends to prioritise the repeal and reform of these files by dividing them into tranches. The first two tranches of this programme are:

Tranche 1	Tranche 2
<p>Work already underway in relation to:</p> <ul style="list-style-type: none"> <li>• the Wholesale Markets Review (which makes substantial amendments to the MiFID framework as implemented in the UK);</li> <li>• the repeal of the Prospectus Regulation and its replacement with an entirely new regime for admissions to trading and public offers;</li> <li>• the Securitisation Regulation review; and</li> <li>• the Solvency II review.</li> </ul>	<ul style="list-style-type: none"> <li>• Remaining implementation of the Wholesale Markets Review;</li> <li>• Further work on Solvency II;</li> <li>• PRIIPs Regulation;</li> <li>• Short Selling Regulation;</li> <li>• Taxonomy Regulation (which relates to ESG financial regulation);</li> <li>• Money Market Funds Regulation;</li> <li>• Payment Services Directive and E-money Directive;</li> <li>• Insurance Mediation and Distribution Directives;</li> <li>• Capital Requirements Regulation and Directive;</li> <li>• ELTIF Regulation; and</li> <li>• The consumer information rules in the Payment Accounts Regulations 2015.</li> </ul>

While FSMA 2023 gives HM Treasury and the FCA and PRA the powers needed to repeal and reform retained EU law, as well as to implement new regulatory regimes, it does not contain a "sunset" provision or date by which the reform process must be completed. In contrast, the REUL Act originally envisaged the revocation of all retained EU law falling within the scope of that Act by 31 December 2023 unless ministers actively decided to save it or to extend the revocation date. Following strong criticism of this approach, the Government tabled an amendment to replace the sunset clause with a list of specific retained EU laws that will be revoked at the end of 2023. Under FSMA 2023, there is no fixed date for the revocation of retained EU law on financial services. These will be reviewed by HM Treasury and actively either repealed or replaced.

HM Treasury expects to make "significant progress" on Tranches 1 and 2 by the end of 2023, but even once Tranches 1 and 2 have been progressed there will still be a large amount of work to undertake before the entire process of repealing retained EU law is complete, and HM Treasury has indicated that this will take a number of years.

As a result, firms will need to have in place a process for monitoring these developments, responding to consultations and calls for evidence and preparing for implementation over the coming years.

### Growing Divergence from the EU?

As the reforms progress, we will also start to see the UK financial services regulatory regime evolving along a different path from the EU regime. This will clearly be the case in areas where the UK is developing new regulation, rather than reforming legacy retained EU legislation (e.g. in areas such as cryptoassets regulation), but we are also already seeing differences in the way in which the EU is amending core financial services

legislation such as MiFID and EMIR, against the amendments that the UK is proposing. While, at least initially, these differences are likely to be around points of detail rather than fundamental differences, for firms with business in both the EU and UK, this is going to require a more in-depth review of what those differences mean in practice, to ensure that they remain compliant with both EU and UK regulatory obligations.

Firms may intend to comply with both regimes by adopting a 'stricter of compliance approach. However, this will only be feasible where the EU and UK rules do not conflict. We have already seen some instances post-Brexit where conflicting EU and UK rules had the potential to materially restrict cross-border trading; the EU and UK's respective mandatory trading obligations for shares and OTC derivatives would have had this effect had it not been for the FCA taking action under its temporary transitional powers. As both the EU and UK regulatory regimes develop, it will be imperative to ensure that new areas of conflict do not develop.

For more information, please see:

- UK Financial Services and Markets Act 2023: Building a 'smarter regulatory framework' <https://www.cliffordchance.com/briefings/2023/07/uk-financial-services-and-markets-act-2023--building-a-smarter-.html> (July 2023);
- HM Treasury Chancellor Jeremy Hunt's Mansion House speech <https://www.gov.uk/government/speeches/chancellor-jeremy-hunts-mansion-house-speech> (10 July 2023);
- Building a Smarter Financial Services Regulatory Framework for the UK: HM Treasury's Plan for Delivery [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1168648/Building\\_a\\_Smarter\\_Financial\\_Services\\_Regulatory\\_Framework\\_for\\_the\\_UK\\_Plan\\_for\\_delivery.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168648/Building_a_Smarter_Financial_Services_Regulatory_Framework_for_the_UK_Plan_for_delivery.pdf) (July 2023);
- Chancellor of the Exchequer, Ministerial statement <https://questions-statements.parliament.uk/written-statements/detail/2022-12-09/HCWS425> (9 December 2022);
- Financial Services: The Edinburgh Reforms <https://www.gov.uk/government/collections/financialservices-the-edinburgh-reforms> (9 December 2022);
- HM Treasury policy statement, Building a smarter financial services framework for the UK [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1122734/Building\\_a\\_smarter\\_financial\\_services\\_framework\\_for\\_the\\_UK.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122734/Building_a_smarter_financial_services_framework_for_the_UK.pdf) (9 December 2022);
- Clifford Chance briefing, UK Edinburgh Reforms: The New Securitisation Framework? <https://www.cliffordchance.com/briefings/2022/12/uk-edinburghreforms-the-new-securitisationframework.html> (13 December 2022)
- Clifford Chance briefing, UK Edinburgh Reforms: Impact on financial services <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2022/12/uk-edinburgh-reforms-impact-onfinancial-services.pdf> (December 2022);
- Topic Guide on UK Financial Services and Markets Bill on the Clifford Chance Financial Markets Toolkit: <https://financialmarketstoolkit.cliffordchance.com/en/topic-guides/uk-financial-services-andmarkets-bill.html>



## CONTACTS



**Caroline Dawson**  
Partner

**T** +44 20 7006 4355  
**E** caroline.dawson  
@cliffordchance.com



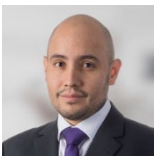
**Paul Lenihan**  
Senior Associate

**T** +44 20 7006 4622  
**E** paul.lenihan  
@cliffordchance.com



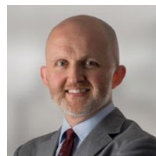
**Stephanie Peacock**  
Senior Associate

**T** +44 20 7006 2829  
**E** stephanie.peacock  
@cliffordchance.com



**Diego Ballon Ossio**  
Partner

**T** +44 20 7006 3425  
**E** diego.ballonossio  
@cliffordchance.com



**Simon Crown**  
Partner

**T** +44 20 7006 2944  
**E** simon.crown  
@cliffordchance.com



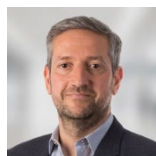
**Paul Ellison**  
Partner

**T** +44 20 7006 3207  
**E** paul.ellison  
@cliffordchance.com



**Caroline Meinertz**  
Partner

**T** +44 20 7006 4253  
**E** caroline.meinertz  
@cliffordchance.com



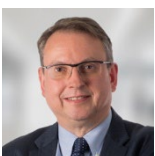
**Ashley Prebble**  
Partner

**T** +44 20 7006 3058  
**E** ashley.prebble  
@cliffordchance.com



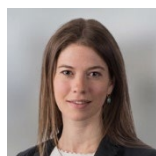
**Monica Sah**  
Partner

**T** +44 20 7006 1041  
**E** monica.sah  
@cliffordchance.com



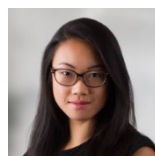
**Chris Bates**  
Special Counsel

**T** +44 20 7006 1041  
**E** christopher.bates  
@cliffordchance.com



**Laura Douglas**  
Senior Associate

**T** +44 20 7006 1113  
**E** laura.douglas  
@cliffordchance.com



**Nancy Li**  
Senior Associate

**T** +44 20 7006 6047  
**E** nancy.li  
@cliffordchance.com

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

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