CLIFFORD

CHANCE

FROM EQUIVALENCE TO RECOGNITION: THE NEW UK APPROACH TO NON-UK REGULATORY REGIMES (UPDATE)

AUGUST 2025

CONTENTS

FROM EQUIVALENCE TO RECOGNITION: THE NEW UK APPROACH TO NON-UK REGULATORY REGIMES (UPDATE)

HM Treasury has confirmed its new approach to designating countries and territories outside the UK for more favourable treatment under domestic regulatory regimes. The new approach allows HM Treasury to designate overseas jurisdictions where this is compatible with high-level regulatory objectives, such as the objective of facilitating UK competitiveness, without requiring the Treasury to determine whether the law and practice in the overseas jurisdiction is equivalent to that in the UK.

Legislating for equivalence in the UK after Brexit

The inherited body of EU financial services legislation 'onshored' into UK law under the European Union (Withdrawal) Act 2018 (EUWA) included more than 40 'third country equivalence regimes'. These regimes had allowed the European Commission to make decisions determining that the laws and supervisory practices in third countries are equivalent to EU laws and practices, resulting in treatment for entities from those third countries or EU entities dealing with them that is more favourable than that accorded in relation to other third counties.

An October 2019 memorandum of understanding between HM Treasury, the Bank of England, the PRA and the FCA stated that HM Treasury would be responsible for determining the equivalence of and the application of exemptions to any country or territory outside the UK where such a function is provided for in legislation. This approach was reiterated in HM Treasury's October 2020 Guidance Document for the UK's Equivalence Framework for Financial Services.

Accordingly, the 'exit instruments' made under the EUWA transferred the powers of the Commission to adopt equivalence decisions under onshored EU legislation to HM Treasury and onshored most existing Commission equivalence decisions in relation to other non-EEA states. In addition, HM Treasury used powers under the EUWA to make several new equivalence decisions in relation to EEA states and to create temporary regimes to cover cases where EEA firms and products no longer benefited from passport or similar access to the UK.

There were some exceptions to this approach. HM Treasury revoked the existing Commission equivalence decisions in relation to non-UK CCPs and created a temporary transitional regime for EU and other non-UK CCPs that had previously been authorised or recognised in the EU. HM Treasury also did not make an equivalence decision in relation to EEA trading venues for the purposes of the onshored regime governing the derivatives trading obligation (instead, the FCA used temporary transitional powers to give limited relief allowing UK firms to trade on EEA venues).

The Financial Services and Markets Act 2023 (FSMA 2023) provides for the revocation of onshored EU-derived financial services legislation and its replacement by new secondary legislation or rules made by the UK regulators based on the model established by the Financial Services and Markets Act 2000 (FSMA 2000). Under this model, the UK regulators make detailed rules for financial services within a policy framework set by primary and secondary legislation.

However, the previous government had indicated that, when implementing this new framework, secondary legislation would maintain the approach to equivalence set out in its 2020 guidance document and that onshored equivalence decisions would, if necessary, be repealed and replaced.

FSMA 2023 also established a 'deference accountability mechanism' which requires the UK regulators to consider the effect of proposed rules and general supervisory policies and practices on UK equivalence arrangements, when notified by HM Treasury, and to consult with HM Treasury if those changes might result in UK law and practice ceasing to be equivalent to the law or practice of an overseas country or territory which is the subject of a notified equivalence decision (section 409A FSMA 2000). For example, if new firm-facing rules made by the regulators mean that overseas jurisdictions may no longer be regarded as equivalent, HM Treasury might wish to review, and ultimately revoke, a relevant existing equivalence decision. The previous government had also indicated that it would review existing onshored equivalence decisions to ensure that they are in scope of the deference accountability mechanism but would ensure that this process would not reopen or change the practical effects of existing equivalence decisions.

New UK equivalence-based regimes

The legislation creating the first new post-Brexit UK regimes for countries and territories outside the UK broadly followed the EU 'equivalence-based' model:

- **Overseas funds regime.** Amendments to Chapter V of Part 17 FSMA 2000 made by the Financial Services Act 2021 created a new overseas funds regime, under which funds authorised under the laws of a country or territory outside the UK can apply to the FCA for recognition if HM Treasury has made regulations approving the country or territory for these purposes and certain other conditions are met.

  HM Treasury can make regulations approving a country or territory in relation to specified kinds of fund where it is satisfied that the 'equivalent protection test' is met, i.e., that the protection afforded to participants or potential participants in the fund by the law and practice of the country or territory is at least equivalent to that afforded to participants or potential participants in comparable authorised funds by UK law and practice (but only if also satisfied that there will be adequate arrangements for co-operation between the FCA and the relevant overseas regulator).

  HM Treasury has already made regulations under this regime approving each EEA state for these purposes in relation to UCITS funds, other than money market funds (MMFs).

- **Overseas STS securitisation regime.** Part 4 of the Securitisation Regulations 2024 allows an originator, sponsor or securitisation special purpose entity to use the designation 'STS' or 'simple, transparent and standardised' (or similar terms) in relation to 'overseas STS securitisations', i.e., securitisations of a description in relation to which a country or territory outside the UK is designated by regulations made by HM Treasury.

  HM Treasury can make those regulations where it is satisfied that the law and practice which applies in the country or territory, in relation to securitisations of the descriptions specified, has 'equivalent effect (taken as a whole)' to UK law and practice, having regard to the effect of that law and practice with respect to criteria as to simplicity, transparency and comparability, the supervision and enforcement framework and whether the FCA, and where relevant the PRA, have established effective cooperation arrangements with the competent authorities of the country or territory. The 2024 Regulations also allow 'qualifying EU securitisations' notified to the European Securities Markets Authority before 30 June 2026 to continue to use the STS designation in the UK.

From equivalence to recognition: the new approach

HM Treasury has now confirmed that it is adopting a new, standardised approach to the designation of overseas jurisdiction which it will apply when replacing existing onshored equivalence-based regimes or creating new regimes which afford more favourable treatment in relation to designated overseas jurisdictions.

HM Treasury has indicated that each piece of legislation creating a new 'overseas recognition regime' will set out:

- The **scope of the regime:** that is, the type of financial services firm or activity covered by the regime;
- The **effect of the regime:** that is, the result of designating an overseas jurisdiction (e.g., allowing overseas firms to provide services directly into the UK, aligning requirements for UK authorised firms whether they are engaging with UK or overseas markets or counterparties, or removing duplicative requirements);
- The **specified policy outcomes:** the legislation will require HM Treasury to determine whether designation of the overseas jurisdiction is compatible with specified high-level policy outcomes (which are expected to be aligned with the objectives of the UK regulatory regime); and
- The **specified 'matters to consider':** the legislation will also set out a (non-exhaustive) list of specified matters that HM Treasury may consider when determining whether designation of an overseas jurisdiction is compatible with the specified policy outcomes, which may include features of the law and practice in the overseas jurisdiction, but without requiring HM Treasury to determine whether that law and practice is equivalent to UK law and practice.

The government has introduced new regulations to support the new approach. The Financial Services (Overseas Recognition Regime Designations) Regulations 2025, laid before Parliament for approval, will:

- make clear that the power to designate overseas jurisdictions under a specified list of overseas recognition regimes and any equivalence-based regimes includes power to revoke or vary the designation and to impose conditions or limitations on the designation (absent a contrary legislative intent);
- give HM Treasury the power to require the FCA, the PRA and the Bank of England to provide information or advice to assist HM Treasury to make, amend or revoke such a designation; and
- require HM Treasury and the regulators to coordinate their functions with respect to such designations.

HM Treasury has also entered into a memorandum of understanding with the regulators setting out:

- the process under which HM Treasury will designate overseas jurisdictions, after requesting advice from the relevant regulator, except in exceptional circumstances (although regulators may also provide advice on their own initiative);
- the process for coordinating the provision of advice by regulators (including agreement on the scope of advice) and the expectation that any advice will summarise relevant significant differences between the regulatory framework in the UK and in the overseas jurisdiction and indicate whether those differences present material risks to the regulator's objectives;
- that HM Treasury will be primarily responsible for contacting and liaising with overseas authorities with respect to designations;
- that the regulators will be responsible for determining whether to publish a summary of their advice and any other relevant materials (but that advice will not generally be published before designation);
- a similar process for the review of designations, which will be guided by the specified policy outcomes and that these reviews may be ad hoc, periodic or in response to changes in the overseas framework (and a regulator may propose a review on its own initiative); and
- that HM Treasury and the relevant regulators will maintain an appropriate level of engagement with designated overseas jurisdictions to monitor changes to the regulatory framework and other relevant aspects.

HM Treasury's guidance document on the new approach indicates that it regards engagement with UK industry as an important part of the designation process, and that it will discuss the impact of designations with UK stakeholders. The guidance document also indicates that, while HM Treasury has the power to withdraw designation at any time, withdrawal is regarded as a last resort, where designation is no longer compatible with the specified policy outcomes or the UK's wider legal obligations, and HM Treasury will work with the regulators, where possible, to mitigate any adverse effects of withdrawal on financial stability and market disruption, including by creating appropriate adaptation periods.

HM Treasury may continue to take decisions under onshored equivalence regimes pending their replacement with new overseas recognition regimes using its powers under FSMA 2023. However, HM Treasury does not have powers under FSMA 2023 to replace some onshored equivalence regimes (dealing with accounting and audit issues) which are the responsibility of the Department for Business and Trade.

The new legislative approach in practice

The table below summarises the regulatory objectives and 'matters to consider' specified for the purposes of the following overseas recognition regimes which have already adopted or propose to adopt the new approach to designation of overseas jurisdictions.

- The **overseas insurance regime,** which requires the PRA to treat reinsurance contracts with reinsurers from designated overseas jurisdictions in the same way as domestic contracts; to permit insurance groups including an insurer in a designated jurisdiction to take account of the law in that jurisdiction when calculating group capital requirements; and to rely on the prudential supervision of an insurance group in the designated jurisdiction (replacing the onshored third country equivalence regime under the Solvency II legislation);
- The **overseas trading venue short selling regime,** which allows the FCA's designated activity rules governing short selling to exempt transactions performed due to market-making activities by entities that are members of trading venues in designated overseas jurisdictions (replacing the onshored third country equivalence regime under the Short Selling Regulation);
- The proposed **overseas central counterparties regime,** which would allow the Bank of England to recognise non-UK central counterparties (CCPs) from designated overseas jurisdictions to provide certain clearing services in the UK (replacing the onshored third country equivalence regime under the European Market Infrastructure Regulation); and
- The proposed overseas money market funds regime, which would allow approved overseas MMFs from designated overseas jurisdictions to be established, marketed, promoted or managed, and to be described as MMFs, in the UK.

Impact of the new approach

The new approach does not change the practical outcome for firms. Designation using the new approach is likely to have the same outcome for firms as designation under an equivalence-based approach.

However, the new approach gives HM Treasury more flexibility when recognising overseas jurisdictions than an equivalence-based approach. HM Treasury is not required to carry out an examination of the equivalence of the law and practice in the overseas jurisdiction, although the memorandum of understanding envisages that the regulators will provide advice on significant differences between the UK and overseas regimes. The new approach also allows HM Treasury to take into account wider considerations, such as, where this is specified, the objective of facilitating UK competitiveness and growth in a similar way to that required by the new secondary objectives of the UK regulators.

HM Treasury describes the new approach as continuing its 'outcomes-focused' approach to recognition of overseas jurisdiction. However, the new approach focuses on the compatibility of recognition with the high-level UK policy outcomes specified in the enabling legislation rather than on whether the regulatory outcomes of the overseas regime are equivalent to those of the UK regime (although that is likely to be a factor which HM Treasury would consider when making its determination).

HM Treasury says that the new approach is intended to promote decisions being made more quickly than under the existing regime, whilst continuing to enable rigorous assessment of other jurisdictions' standards. HM Treasury's decisions to designate (or not designate), or to maintain, amend or remove a designation of, an overseas jurisdiction under the new approach are also likely to be less susceptible to challenge via judicial review.

In addition, HM Treasury has also indicated that one of its objectives is to ensure that overseas recognition regimes are flexible enough to allow other jurisdictions to adapt and change over time without putting designations at risk and creating uncertainty for market participants.

On the other hand, the deference accountability mechanism established by FSMA 2023 may not apply to designation of overseas jurisdictions under the new approach, because the designations are not determinations that "the law and practice of another country or territory is … equivalent to the law and practice of the United Kingdom". Therefore, that mechanism may not constrain the UK regulators when making rules or developing their supervisory policies and practices even where changes to their rules, policies or practices might result in HM Treasury withdrawing a designation of an overseas jurisdiction because its law and practice is no longer sufficiently aligned with that in the UK.

The new approach may still be consistent with the UK's 'most-favoured nation' obligations under the General Agreement on Trade in Services (GATS) and free trade agreements (FTAs). These generally require the UK to accord services and service suppliers from World Trade Organisation (WTO) members and FTA partner countries no less favourable treatment than the treatment accorded to other countries, but allow the UK to 'recognise' prudential measures of another country in determining how the UK's financial services regime is applied - without any explicit constraints on the criteria that should be applied when granting recognition. However, if the UK does recognise another country's prudential measures it will generally be required to afford other countries that are WTO members or FTA partners an adequate opportunity to show that they have regulation, oversight, implementation of that regulation, and, if appropriate, procedures concerning the sharing of information equivalent to that in the recognised country.

For more information, see HM Treasury webpages, Policy Paper - Overseas Recognition Regimes Guidance Document and Policy Paper - Memorandum of Understanding: Overseas Recognition Regimes (15 July 2025, here and here), and the draft Financial Services (Overseas Recognition Regime Designations) Regulations 2025 (here).

New recognition regimes

Specified regulatory objectives	Matters to consider
Overseas insurance regime	
• The protection of policyholders; • The safety and soundness of (re)insurance undertakings; and • One or both of (i) promoting effective competition, or (ii) facilitating the international competitiveness of the UK economy and its growth in the medium to long term.	The law and practice in the overseas jurisdiction with respect to: • the authorisation of insurance undertakings; • the supervision of, and enforcement of prudential requirements applying to, insurance undertakings (including at group level); • insurance undertakings' holding of financial resources for their safety and soundness (including at group level) and for the protection of policyholders; • the assessment, and disclosure, of insurance undertakings' financial position, including at group level; • the sound and prudent management, including at group level, of insurance undertakings; • the handling and sharing of confidential information by supervisory authorities.
Overseas trading venue short selling regime	
• Protecting the integrity of the UK financial system; and • Facilitating the international competitiveness of the UK economy and its growth in the medium to long term.	The law and practice in the overseas jurisdiction with respect to: • the authorisation, supervision and enforcement in relation to markets; • the rules regarding admission of securities to trading; • market transparency and integrity; • the prevention of market abuse in the form of insider dealing and market manipulation.
Overseas central counterparties regime (proposed)	
• Protecting the stability of the UK financial system; and • Promoting the effective use of financial markets by authorised persons who are clearing members of CCPs or clients of clearing members.	• The law and practice of the overseas jurisdiction in relation to CCPs; • The extent to which the regulatory standards of the overseas jurisdiction for CCPs meet international standards; and • The supervisory and enforcement practices of the overseas jurisdiction in relation to CCPs.
Overseas money market funds regime (proposed)	
• Protecting the financial integrity or stability of UK financial markets; and • Promoting effective market competition for consumers and facilitating the competitiveness of the UK economy and its growth in the medium to long term.	The law and practice in the overseas jurisdiction with respect to: • the types of MMFs that are permitted; • the eligible assets of MMFs; • the authorisation requirements for MMFs; • requirements as to who can act as manager or operator of MMFs; • requirements on diversification and concentration; internal credit quality assessments; liquidity; stress testing; valuation and NAV calculation; external support; supervision and enforcement; and reporting. Any requirements under FSMA 2000 for comparable authorised schemes.

See:
- Part 4 Insurance and Reinsurance Undertakings (Prudential Requirements) Regulations 2023 added by regulation 4 of the Insurance and Reinsurance Undertakings (Overseas Insurance Regime, Transitional Provisions, etc.) Regulations 2024. The 2023 regulations treat the overseas jurisdictions which benefited from existing equivalence decisions under onshored Solvency II as designated jurisdictions for the purposes of the new regime.
- Part 3 Short Selling Regulations 2025. The Regulations treat each EEA state as a designated jurisdiction for the purposes of the new regime, replacing the previous equivalence decision for those states.
- New section 300EB FSMA 2000 to be added by regulation of draft Central Counterparties (Amendment) Regulations 2025 published by HM Treasury for technical comment on 15 July 2025 with accompanying policy note.
- Part 2 draft Money Market Funds Regulations 2024 published by HM Treasury for technical comment on 6 December 2023 with accompanying policy note.

CONTACTS

Caroline Dawson
Partner
London
T: +44 207006 4355
E: caroline.dawson@cliffordchance.com

Chris Bates
Special Counsel
London
T: +44 207006 1041
E: chris.bates@cliffordchance.com

Simon Crown
Partner
London
T: +44 207006 2944
E: simon.crown@cliffordchance.com

Stephanie Peacock
Director
London
T: +44 207006 4387
E: stephanie.peacock@cliffordchance.com

Paul Lenihan
Senior Associate
London
T: +44 207006 4622
E: paul.lenihan@cliffordchance.com

CLIFFORD

CHANCE

www.cliffordchance.com

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

JOB0000104603