

New post-Brexit powers and objectives proposed for regulators

AT A GLANCE

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Contacts

Conor MacManus
Director

T: +44 (0) 7718 979428
E: conor.macmanus@pwc.com

Olu Oluwole
Manager

T: +44 (0) 7483 390001
E: olu.oluwole@pwc.com



What's new?

- HM Treasury (HMT) published its [proposals for reforming the UK's financial services regulatory framework](#) on 9 November 2021.
- The proposals include: adopting a comprehensive FSMA regulatory model that would delegate rulemaking powers to the FCA and the PRA (the regulators); broadening their statutory objectives to include a focus on international competitiveness; and strengthening HMT's relationship with, and Parliament's scrutiny of, the regulators.
- The proposals set out more detail regarding many of the themes discussed in HMT's [initial consultation](#) published in October 2020, including whether to introduce additional secondary objectives for the regulators.

What does this mean?

Comprehensive FSMA regulatory model

- To provide continuity post-Brexit HMT onshored EU level 1 regulation into Parliamentary legislation. This model has a number of drawbacks, including the length of time it takes to amend legislation. Because of this HMT is proposing that rulemaking powers for many of the direct regulatory requirements which are currently in legislation, will sit with the FCA and/or PRA (the regulators). Onshored EU regulation currently in legislation will transitioned to regulatory rules over time.
- HMT is also proposing to create a new **Designated Activities Regime (DAR)** aimed at regulating certain activities outside of the FSMA authorisation process. Under this model firms undertaking these activities would be required to meet the rules specific to this activity without having to comply with broader regulatory requirements.

- Recognising the systemic importance of CCPs and CSDs, HMT is proposing to give the BoE rulemaking powers over these FMI's, to bring their regulatory treatment in line with the majority of other financial institutions.

Broadened FCA and PRA regulatory objectives

- Despite stated opposition from the regulators, HMT is proposing to give the regulators new secondary objectives focused on the **long-term growth** and **international competitiveness** of the UK economy. The regulators' primary objectives would still take precedent over this objective.
- The regulators' actions would have to facilitate, subject to reasonable alignment with international standards, the long-term growth and international competitiveness of the UK economy, including the financial services sector. They would have to report on their performance against these new secondary objectives annually.

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- The proposals also include plans to amend the existing regulatory principle in FSMA for sustainable growth to ensure the envisioned sustainable growth is consistent with the Government's commitment to achieve a net zero economy by 2050.

Strengthening HMT's relationship with the financial regulators

- The proposals set out a new statutory requirement mandating the Prudential Regulatory Committee and the FCA to respond to HMT recommendations/remit letters on an annual basis.
- HMT also proposes to introduce a new power allowing it to require the regulators to review their rules where the Government deems it in the public interest. In addition, the regulators would be subject to new accountability mechanisms requiring them to assess the impact of their rules and supervision on the UK's deference agreements and Free Trade Agreements.

Parliamentary scrutiny

- Under the proposals the regulators would be required to inform the relevant Parliamentary committee upon publishing a consultation on any matter. They would be required to, among other things, highlight how the consultation advances their objectives.

Engagement in the policymaking process and Cost Benefit Analysis

- HMT proposes to place the FCA's Listing Authority Advisory Panel and the PRA's Practitioner Panel's

insurance sub-committee - which are currently voluntary panels - on a statutory footing. In addition, the regulators' annual reports would need to include information on their engagement with panels over the reporting period.

- HMT is also proposing the creation of a new statutory panel designed to review, and make recommendations on, the regulators' CBAs in order to strengthen the CBA processes.

What does this mean for firms?

- HMT's proposals would provide the regulators with considerable additional powers. Firms' engagement with the regulators, including on policy making, will therefore become even more important.
- Since the global financial crisis the UK's regulatory regime has been amongst the strongest in the world. The international competitiveness objective (should it be implemented) may temper the regulators' desire to go further than international peers in future.
- Embedding climate change in the regulatory principles is likely to strengthen even further the regulators' focus on ESG and climate risks.
- CCPs, CSDs and those firms undertaking designated activities are likely to see more formal regulatory initiatives from the regulators.

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T: +44 (0) 7718 979428
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Manager

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E: olu.oluwole@pwc.com

Next steps

Firms should respond to the consultation by 9 February 2022. Enacting many of the proposals in the consultation will require legislative change.

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