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A Future Financial Services Regulatory Regime for Cryptoassets in the UK.

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New draft legislation in the UK on regulation of cryptoasset activities is a curate's egg, redolent of a cautious and sceptical regulatory community wrestling with a lack of true political engagement.

On 29 April 2025, HM Treasury published a draft statutory instrument – the Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025 (the "SI") - together with related commentary on both the draft SI and its intended policy outcomes. Although the document explicitly states that it is a "draft" and "should not be treated as final", it provides an overview of the regulator's intention behind the SI –to bring a wide range of cryptoasset activities within the scope of mainstream financial services regulation.

In many ways, the draft SI represents a fundamental transformation of the UK's approach to the digital asset market, establishing new categories of regulated activity, introducing definitions of key terms and updating the regulatory framework principally comprised of the Financial Services and Markets Act 2000 ("FSMA"), Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the "RAO"), and The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLR"). This new legislation, when enacted, will undoubtedly affect cryptoasset market participants in the UK and abroad and create certain challenges for businesses and consumers engaged in cryptoasset businesses involving the UK.

New categories of specified investments

The draft SI introduced "*cryptoassets*" as a new category of specified investments and defined it as "any cryptographically secured digital representation of value or contractual rights that:

- can be transferred, stored or traded electronically, and
- that uses technology supporting the recording or storage of data (which may include distributed ledger technology)."

The following subcategories of "*cryptoassets*" were also introduced in the draft SI and defined:

- "*qualifying cryptoassets*" – a subcategory of "*cryptoassets*" which are fungible and transferable, and which includes "*qualifying stablecoin*" – a stablecoin that references one or more fiat currencies, and seeks to hold those fiat currencies and other assets as backing assets to maintain a stable value; and
- "*specified investment cryptoasset*" is specifically excluded from the definition of "qualifying cryptoassets" and is defined as "something that meets both the FSMA definition of a "cryptoasset" and the FSMA definition of a specified investment (for instance an equity or a bond). An example of this would be a token on a blockchain that represents an interest in or right to an equity".

New specified activities for cryptoassets

The draft SI also introduced new specified activities for cryptoassets:

- stablecoin issuance;
- safeguarding;
- operating a qualifying cryptoasset trading platform;
- dealing in qualifying cryptoassets as principal;
- dealing in qualifying cryptoassets as an agent;
- arranging deals in qualifying cryptoassets; and
- qualifying cryptoasset staking.

Stablecoin regulation

HM Treasury observed that Government considers stablecoins to have the potential to play a significant role in both wholesale and retail payments and stands ready to respond to this as part of wider payments reforms as use-cases and user adoption develop over time. However, this is hardly a proactive approach, in an environment in which most payment service providers believe digitization is on the cusp of huge expansion.

Back in October 2023, HM Treasury published detailed proposals for the creation of a financial services regulatory regime for cryptoassets, including stablecoins. For stablecoins, the proposals were to create a new regulated activity of issuing fiat-backed stablecoins in the UK, and to amend the Payments Services Regulations 2017 (the "**PSRs**") to bring payments using these stablecoins within the regulatory perimeter. Beyond this, stablecoins, including those issued in the UK, would be regulated in the same way as other cryptoassets. For instance, in relation to custody/safeguarding services. Sheldon Mills, Executive Director (Consumers and Competition) at the FCA is reported as saying: *"Stablecoins have the potential to make payments faster and cheaper for all, and that's why we want to offer firms the ability to utilise this innovation safely and securely."*

In November 2024, the Government confirmed that it would proceed with implementing these proposals largely unchanged and that it intended (parliamentary time permitting) to pass the associated legislation this year. While the draft SI does bring stablecoin issuance into the regulatory perimeter, bizarrely and in contrast to the FCA's encouraging language, it does not bring UK-issued stablecoins into regulated payments. This means that stablecoins, while still available for payments use, will remain unregulated for payment purposes in the UK. In practical terms, this excludes their use by the vast majority of commercial users.

This is disappointing and smacks of an arbitrary and poorly thought-out approach.

Caution around regulation of wider Decentralised Finance (DeFi)

In the meantime, and in relation to wider DeFi, the draft SI does not include any wider provisions by way of regulatory framework. HM Treasury explained that where specified activities are being undertaken on a truly decentralised basis (i.e. where there is no person that could be seen to be undertaking the activity by way of business), then the requirements to seek authorisation will not be applicable. The charitable view is that this is a pragmatic acceptance that truly decentralized networks are virtually impossible to regulate, and the bold approach is not to attempt to

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do so. We are not sure this is actually the motivation for the Treasury's failure to regulate. The more likely explanation is the same inertia and caution that has already left the UK a long way behind the leading jurisdictions in this sector.

We take this view because the explanatory notes to the SI hint strongly at the possibility for its regulation in the future. There may be a time for legislative boldness, but evidently this is not it, if you are sitting in the Treasury.

Scope of future regulation

The draft SI sets the geographic scope of the regulatory perimeter, in line with the Government's intention to ensure that cryptoasset firms serving UK retail customers should be authorised in the UK. The proposed amendments to FSMA clearly establish a rule according to which crypto businesses (whether based in the UK or overseas) carrying on a regulated cryptoasset activity must be FCA regulated if they are involved directly or indirectly in the sale, or subscription of, a qualifying cryptoasset to, or by, a consumer in the UK. An exception to this rule would be a firm dealing with a UK consumer through an intermediary, which is authorised by the FCA to operate a qualifying cryptoasset trading platform or deal in qualifying cryptoassets as principal.

Another exception would be overseas crypto businesses dealing exclusively with UK institutional clients, as long as these institutions are not intermediaries to UK retail consumers.

The draft SI and policy note apply only to new regulated activities created under the RAO, and their associated consequential amendments to other instruments such as existing anti-money laundering and financial promotions requirements for cryptoasset firms. The planned market abuse and admissions and disclosures provisions will be published in due course.

To this extent the UK approach is apparently intended to echo the approach in the EU's Markets in Crypto-Assets Regulation (the "MiCA"). In particular, similarly to MiCA, the draft SI intends and defines separate categories of cryptoassets, in particular stablecoins, introduces a list of regulated activities and outlines requirements for consumer protection in the market.

Just like MiCA back in the day, the draft SI provides for a two-year transitional period, during which companies working in the UK must register with the FCA. Those who are unable to obtain this authorisation in time face the cut.

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