

Committee(s): Policy and Resources Committee Communications and Corporate Affairs Sub Committee	Dated:
Subject: Financial Services and Markets Act 2023	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	5 6 7 8
Report of: Remembrancer	For Discussion
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Summary

The changes introduced by the Financial Services and Markets Act 2023 (FSMA) include

- Establishing a framework for EU law to be replaced with rules made by the UK financial services regulators
- A secondary competitiveness objective intended to ensure regulators take an approach that strengthens UK competitiveness
- Requiring regulators to publicly report on how they are applying the competitiveness objective
- Creating statutory panels to review the work of the regulators

Briefings were provided for each stage of the parliamentary progress in each House and to the Treasury Committee. The Policy Chairman was provided with notes on the contents and progress of the Bill. Working with IG, close and productive links were created with trade associations as a way of harnessing sectoral views and coordinating responses.

Recommendation

- To note this Report.

Current Position

1. The Act received warm support from industry and gained broad approval across political parties. As a result, parliamentary progress was swift and Royal Assent was given at the end of June 2023, about 1 year after the Bill's introduction.
2. The Act is a companion to the reforms described in Edinburgh and at Mansion House in 2022 and 2023, and provides the legislative authority for many of the changes expressed in those speeches, including on the

remit of the PRA and FCA, international competitiveness and the repeal of EU legislation.

3. The Act introduces a framework which will authorise the creation of financial services laws specifically designed for the UK and paves the way for regulation to be managed by domestic regulators. This will mean that areas of financial services regulation currently in retained EU law will be moved into a UK framework. The Act also empowers the Treasury to restate in UK legislation those aspects of retained EU law, modified as necessary, that continue to be needed. During parliamentary debates, there were several indications that any revocation of existing rules would be consulted upon prior to being finalised.
4. For some proposed changes, such as in relation to prospectuses, securitisation, and payment services, the Government has issued what it calls "illustrative" statutory instruments. While these instruments are intended as discussion documents, no consultation or rule guidance has been produced. It is, therefore, not yet possible to fully predict how the Government will engage with industry in relation to rule changes.

Legislative Changes

5. In a move that attracted much industry support and media attention, the Act places a secondary objective on the FCA and PRA to promote the international competitiveness of the UK economy. The new objective will require the regulators, when discharging their general functions, to – as far as reasonably practicable – act in a manner which facilitates the international competitiveness of the UK economy and its growth in the medium to long term.
6. In addition, the Act introduces a new secondary objective on the Bank of England. The Bank's Financial Stability Objective will remain its primary statutory objective, but a new secondary objective to facilitate innovation in financial market infrastructure services - with the aim of improving the quality, efficiency and economy of clearing and settlement services - will be introduced.
7. Regulators will be required to report to the Treasury on how they are performing relative to this objective. A considerable amount of industry advocacy is directed towards ensuring regulators respond positively to the secondary objective and that their performance is measured. The Act does not change the FCA's existing primary objectives (protecting consumers, enhancing market integrity, and promoting competition).

8. Explained by ministers as a way to ensure regulators respond to the policy shift towards competitiveness, the Treasury will have a power to direct the FCA, the PRA and the Bank to carry out a review of specified rules in certain circumstances. The circumstances include where the rules have been in force for at least 12 months, the Treasury considers that it is in the public interest that the rules are reviewed and it does not appear to the Treasury that the relevant regulator is carrying out or proposing such a review. Following the review, the regulator must produce a report.
9. The FCA and PRA's existing sustainable growth principle – the desirability of sustainable growth in the economy of the United Kingdom in the medium to long term – will be replaced with a new, more detailed principle. The new principle is the need to contribute towards achieving compliance with the UK's net zero emissions target in the exercise of its functions.
10. During parliamentary debates, MPs and peers spent considerable time discussing parliamentary oversight of the new regulatory architecture. Broadly stated, backbench politicians on all sides strongly favoured greater parliamentary participation in oversight, for example through committees, whereas the Government resisted the creation of new forms of scrutiny. Only at the very end of the parliamentary process did the Government make a concession – that committees of the House of Commons or the House of Lords or a Joint Committee of both Houses will receive notice of regulators' consultations and have a power to scrutinise regulators. This means politicians will receive notification of proposals for new or changed rules, or proposals under one of its statutory duties or about the exercise of any of its general functions.
11. Late amendments by the Government provide a power to the Treasury to require statutory panels to produce annual reports. Indications are that the Treasury intends to use this power in the first instance to direct the publication of annual reports by the Cost Benefit Panels and the FCA Consumer Panel.
12. Changes made by the Act are intended to ensure victims of push payment scams are reimbursed. This move is part of the Government's efforts to improve confidence in digitised financial services. The Act requires the regulator (the PSR) to prepare and publish a requirement for payment service providers to reimburse victims in cases of payment orders made as a result of fraud or dishonesty which are executed over the Faster Payments Service.

Future Developments

13. The regulatory changes that will arise from the changes to the UK's regulatory approach will require close liaison and coordination between the Treasury and the regulators. There is no formalised arrangement for deciding the review and consultation approach, but there is strong sectoral consensus that a robust system will be required to ensure there are no gaps – either in terms of coverage or timing. It is highly likely that this review and consultation process will result in an increase in the volume and frequency of highly significant consultations, on which industry will have to focus.
14. One option being suggested by trade associations to regulators is that the FCA's Regulatory Initiatives Grid could be adapted (from its current form of listing regulatory initiatives) to offer industry a forecast of which former EU rules are due to be reviewed. The process of revoking and replacing EU rules is likely to last beyond 2025.
15. Examples of areas that will see change in the short term include
 - The Share Trading Obligation has been changed so that firms will be free to trade shares on any UK trading venue or overseas, with any counterparty, or on an over the counter basis. This change came into effect on 29 August 2023.
 - The FCA has new powers to suspend or modify the Derivatives Trading Obligation, which requires financial counterparties to conclude transactions in standardised and liquid over the counter derivatives on regulated trading venues, for the purpose of preventing or mitigating disruption to financial markets. This change came into effect on 29 August 2023.
16. The Act introduces new regulatory regimes. In a move broadly called the 'Smarter Regulatory Framework' that seeks to replace provisions of retained EU law, the Designated Activities Regime (DAR) will regulate certain financial services activities outside the existing regulated activities authorisation regime. Initially, most designated activities are expected to be those which are currently regulated through retained EU law (for example, short selling, some derivatives activities, and offering securities to the public). Under DAR, the Treasury has a power to designate activities relating to UK financial markets or exchanges and financial instruments, products or investments issued or sold to or by persons in the UK. The designated activity may be prohibited or subject to specific rules and requirements.

17. Building on a Treasury consultation last summer, the Treasury will be empowered to designate parties providing services to authorised financial services firms, payment systems or financial market infrastructures (for example clearing, central counterparties, depositories) as “critical”. If designated, the services provided by such third parties will be subject to direct oversight by the Bank of England, the PRA and/or the FCA. This new approach is designed to provide assurance in an area where a large number of financial services entities are dependent on a small number of third party service providers, and the associated risks to the financial system in the event of the failure of such third party. The powers came into effect as from 29 August 2023. A follow-up consultation is mooted for late 2023.
18. In the Chancellor’s 2023 Mansion House speech, more details of plans were disclosed, outlined in the Act, to introduce a sandbox for providers of financial market infrastructure. The sandbox will test and adopt new technologies and practices within a modified legal and regulatory environment. The Government’s intention is to promote innovation and competition, and to attract new and incumbent firms to offer new services or implement new technologies.
19. The Act introduces the concept of “digital settlement assets” (DSA), which is defined very broadly and includes crypto assets. The primary focus of parliamentary debates on this subject was on stablecoins (a cryptocurrency backed by a tangible asset). Under the Act, the Treasury will have a power to recognise payment systems and those firms that support such systems that use DSAs and bring them within Bank supervision. The intended effect of the changes is to expand the potential to use such technologies and bring them within the regulatory framework.
20. The Act’s introduction of a new third-country ‘equivalence’ regime for ‘simple, transparent and standardised’ securitisation represents a significant innovation for the UK’s securitisation regulatory regime, despite the EU having ruled out providing reciprocal equivalence. Although the exact detail of the UK’s regime is still to be published, the regulators’ approach to securitisation is expected to utilise the flexibility and adaptability which the Act provides.
21. Other aspects of the Act will be brought into force in the future, an exercise which is likely to require a large number of commencement regulations. At the date of writing this report, one regulation has been made which deals with miscellaneous matters including Money Market Funds Regulations and the power to modify retained EU law. The regulations set out which regulations will be revoked in August 2023 – set out in the annex to this report.

22. Alongside the Act, the FCA took a new regulatory step and introduced, on 31 July 2023, a Consumer Duty, which sets higher standards for the protection of financial services customers. The Duty means customers should get:

- the support whenever needed, for example helpful and accessible customer support
- communications in understandable (for the individual) format and language, for example timely and clear information which shouldn't be buried in long terms and conditions
- products and services that suit the individual and offer fair value, for example firms will be required to consider if a person is in a vulnerable situation because of poor health or financial troubles.

23. The Duty puts obligations on financial services firms to:

- be open and honest
- avoid harm
- support individuals to pursue financial goals
- offer products and services that provide fair value.

These rules apply to all new and existing products and services that are currently on sale. For older products that are no longer on sale, the rules will apply from 31 July 2024.

Conclusion

24. Despite concerns in some quarters that the Act would relax financial services regulations that were tightened as a result of the 2008-9 Global Financial Crisis, the measures were welcomed by the sector and the main political parties.

25. The Office will engage with any new parliamentary committees created as a consequence of the Act.

26. Officers will continue to participate in discussions with industry and ensure politicians and officials are briefed on sectoral views. This work will include working with IG and stakeholders on implementation of the secondary objective.

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Annex

Regulations that will be repealed, without replacement, on 29 August 2023

- Financial Markets and Insolvency (Settlement Finality) (Revocation) Regulations 2001 ([S.I. 2001/1349](#))
- Financial Services (EEA Passport Rights) Regulations 2001 ([S.I. 2001/1376](#))
- Public Offers of Securities (Exemptions) Regulations 2001 ([S.I. 2001/2955](#))
- Electronic Commerce Directive (Financial Services and Markets) (Amendment) Regulations 2002 ([S.I. 2002/2015](#))
- Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 ([S.I. 2003/1473](#))
- Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 ([S.I. 2003/2066](#))
- Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 ([S.I. 2004/3379](#))
- Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 ([S.I. 2005/381](#))
- Prospectus Regulations 2005 ([S.I. 2005/1433](#))
- Financial Services (EEA State) Regulations 2007 ([S.I. 2007/108](#))
- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 ([S.I. 2007/126](#))
- Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment No. 2) Regulations 2007 ([S.I. 2007/2160](#))
- Financial Services and Markets Act 2000 (Motor Insurance) Regulations 2007 ([S.I. 2007/2403](#))
- Reinsurance Directive Regulations 2007 ([S.I. 2007/3253](#))
- Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 ([S.I. 2007/3254](#))
- Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 ([S.I. 2007/3255](#))
- Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008 ([S.I. 2008/1140](#))
- Building Societies (Accounts and Related Provisions) (Amendment) Regulations 2008 ([S.I. 2008/1143](#))
- Friendly Societies (Accounts and Related Provisions) (Amendment) Regulations 2008 ([S.I. 2008/1144](#))
- Financial Services and Markets Act 2000 (Market Abuse) Regulations 2008 ([S.I. 2008/1439](#))

- The Financial Services and Markets Act 2000 (Amendment of section 323) Regulations 2008 ([S.I. 2008/1469](#))
- Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 ([S.I. 2008/1519](#))
- Regulated Covered Bonds (Amendment) Regulations 2008 ([S.I. 2008/1714](#))
- Definition of Financial Instrument Order 2008 ([S.I. 2008/3053](#))
- Payment Services Regulations 2009 ([S.I. 2009/209](#))
- Financial Services and Markets Act 2000 (Controllers) Regulations 2009 ([S.I. 2009/534](#))
- Financial Services and Markets Act 2000 (Amendment) Regulations 2009 ([S.I. 2009/2461](#))
- Payment Services (Amendment) Regulations 2009 ([S.I. 2009/2475](#))
- Financial Services and Markets Act 2000 (Market Abuse) Regulations 2009 ([S.I. 2009/3128](#))
- Consumer Credit (EU Directive) Regulations 2010 ([S.I. 2010/1010](#))
- Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 ([S.I. 2010/1193](#))
- Consumer Credit (Amendment) Regulations 2010 ([S.I. 2010/1969](#))
- Prospectus Regulations 2011 ([S.I. 2011/1668](#))
- Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011 ([S.I. 2011/2928](#))
- Financial Services (Omnibus 1 Directive) Regulations 2012 ([S.I. 2012/916](#))
- Prospectus Regulations 2012 ([S.I. 2012/1538](#))
- Payment Services Regulations 2012 ([S.I. 2012/1791](#))
- Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 ([S.I. 2012/1906](#))
- Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I. 2012/2015)
- Prospectus Regulations 2013 ([S.I. 2013/1125](#))
- Financial Conglomerates and Other Financial Groups (Amendment) Regulations 2013 ([S.I. 2013/1162](#))
- Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 ([S.I. 2013/1388](#))
- Companies and Partnerships (Accounts and Audit) Regulations 2013 ([S.I. 2013/2005](#))
- Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2014 ([S.I. 2014/905](#))
- Financial Services and Markets Act 2000 (Market Abuse) Regulations 2014 ([S.I. 2014/3081](#))
- Payments to Governments and Miscellaneous Provisions Regulations 2014 ([S.I. 2014/3293](#))

- Bank Recovery and Resolution Order 2014 ([S.I. 2014/3329](#))
- Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2015 ([S.I. 2015/348](#))
- Payment Services (Amendment) Regulations 2015 ([S.I. 2015/422](#))
- Transparency Regulations 2015 ([S.I. 2015/1755](#))
- Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 ([S.I. 2015/1863](#))
- Undertakings for Collective Investment in Transferable Securities Regulations 2016 ([S.I. 2016/225](#))
- Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016 ([S.I. 2016/1095](#))
- Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016 ([S.I. 2016/1194](#))
- Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No. 2) Regulations 2017 ([S.I. 2017/1255](#))
- Alternative Investment Fund Managers (Amendment) Regulations 2018 ([S.I. 2018/134](#))
- Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 ([S.I. 2018/546](#))
- Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 ([S.I. 2018/786](#))
- Friendly Societies (Amendment) (EU Exit) Regulations 2018 ([S.I. 2018/1039](#))
- Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 ([S.I. 2018/1187](#))
- Banks and Building Societies (Priorities on Insolvency) Order 2018 ([S.I. 2018/1244](#))
- Bank of England (Amendment) (EU Exit) Regulations 2018 ([S.I. 2018/1297](#))
- Short Selling (Amendment) (EU Exit) Regulations 2018 ([S.I. 2018/1321](#))
- Capital Requirements (Amendment) (EU Exit) Regulations 2018 ([S.I. 2018/1401](#))
- Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 ([S.I. 2018/1403](#))
- Interchange Fee (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/284](#))
- Market Abuse (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/310](#))
- Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 ([S.I. 2019/328](#))
- Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/336](#))
- Money Market Funds (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/394](#))

- Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/403)
- Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 ([S.I. 2019/405](#))
- Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/576](#))
- Securitisation (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/660](#))
- Payment Accounts (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/661)
- Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/662](#))
- Insurance Distribution (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/663](#))
- Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/681](#))
- Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 ([S.I. 2019/755](#))
- Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019 ([S.I. 2019/1010](#))
- Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2019 ([S.I. 2019/1031](#))
- Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 ([S.I. 2019/1212](#))
- Capital Requirements (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/1232](#))
- Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019 ([S.I. 2019/1233](#))
- Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019 ([S.I. 2019/1390](#))
- Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 ([S.I. 2019/1416](#))
- Financial Services (Consequential Amendments) Regulations 2020 ([S.I. 2020/56](#))
- Financial Services and Markets Act 2000 (Central Counterparties, Investment Exchanges, Prospectus and Benchmarks) (Amendment) Regulations 2020 ([S.I. 2020/117](#))
- Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 ([S.I. 2020/628](#))
- Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 ([S.I. 2020/646](#))
- Payment Services and Electronic Money (Amendment) Regulations 2020 ([S.I. 2020/1275](#))

- Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 ([S.I. 2020/1350](#))
- Solvency 2 (Credit Risk Adjustment) Regulations 2021 ([S.I. 2021/463](#))
- Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021 ([S.I. 2021/558](#))
- Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 ([S.I. 2021/782](#))
- Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021 ([S.I. 2021/1074](#))
- Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2021 ([S.I. 2021/1252](#))
- Solvency 2 (Group Supervision) (Amendment) Regulations 2021 ([S.I. 2021/1408](#))