



# Navigating Financial Regulation Post-Brexit: A Comprehensive Overview

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**Abstract:**

*This research paper provides a comprehensive examination of the post-Brexit financial regulatory landscape in the United Kingdom. With Brexit marking a significant departure from EU regulatory frameworks, the paper explores the transition period's conclusion and the subsequent "onshoring" of EU laws into UK legislation. Key regulatory bodies such as the Bank of England, Prudential Regulation Authority, and Financial Conduct Authority are analyzed in terms of their roles, objectives, and approaches to financial regulation post-Brexit. The paper also delves into policy aims, statutory objectives, and the UK's stance on regulatory alignment with international standards. Additionally, it discusses emerging concerns and challenges, including the regulation of crypto-assets and stablecoins, fostering innovation through regulatory sandboxes, and exploring the potential for a national digital currency. Through a thorough examination of regulatory reforms and their implications, this research paper contributes to a deeper understanding of the evolving financial regulatory landscape in the UK post-Brexit.*

## Introduction

Up until the Brexit, the regulatory framework in the United Kingdom included not just laws and regulations from the United Kingdom that applied the requirements of EU Directives, but also a significant quantity of directly relevant legislation from the EU. December 31, 2020, known as the "IP Completion Date" or "IPCD," marked the conclusion of the transition period for Brexit, after which EU law was no longer applicable to the United Kingdom<sup>1</sup>. As a direct consequence of the European Union (Withdrawal) Act 2018 (as amended), the process known as "onshoring" in the United Kingdom has commenced. This is the process by which EU and EU-derived laws and regulation are absorbed into local law (EUWA).

<sup>1</sup> Treasury HM. UK regulatory approach to cryptoassets and stablecoins: consultation and call for evidence (2021).

All references on this page to EU legislation are to EU law in its onshore form, as it has been created by the UK. This is true unless anything else is mentioned. Nearly every EU legislation that had been onshore as of IPCD was "frozen," meaning that it did not account for revisions or extra requirements imposed by the EU after the laws were first approved. By keeping the substantive regulations in place before IPCD was implemented and getting rid of single market privileges like "passports" for banking and financial services as part of CRD and MiFID, the UK government has shown it understands the importance of accurately reflecting the country's status as a non-EU member state. Certain transitional measures, such as interim licensing under the temporary authorization system, have been put in place to assist the shift from single market rights to the new framework. Right now, legislators in Britain are debating a host of proposals that, if they are successful in being enacted, will shift Britain farther away from the regulations of the European Union.

### Regulation's Crucial Role

When it comes to preventing a bank from participating in dangerous activities or taking on too much, the management of the bank plays a significant role. The increased risk of this occurring is due to the rules imposed on the financial industry. The Top Managers Regime is a set of checks and balances that are available to senior bank executives. The law mandates that financial institutions maintain an emergency fund as a means of risk management against the potential losses that might result from making poor investment decisions. Reserves are a kind of capital that are maintained in the event that unforeseen circumstances arise<sup>2</sup>. Limiting withdrawals may reduce the number of unanticipated cash outflows. The government provides a deposit guarantee plan to safeguard savings up to the current level of £85,000 in a single institution against loss in the event of a bank collapse. The quantity of cash and other liquid assets that banks and other financial institutions are expected to hold on hand must meet a certain minimum requirement. It is now less likely that a large number of customers would simultaneously withdraw their money from a bank.

In addition, in order to comply with the legislation, major banks in the United Kingdom are "ring-fencing" some services until 2022. By adhering to these guidelines, you will be able to contribute to the continuation of individuals in our community being able to get the funds they need. Bank proprietors and chief executive officers are well aware of the dangers, but they have made it clear that they will not be deterred from pursuing profit maximization at any cost. In the sake of maximizing profits, management has taken decisions that the bank's customers and investors would consider dubious. One horrifying example of this is the financial catastrophe that occurred in 2008<sup>3</sup>. If prosperous financial institutions are under the impression that the present state of the economy will continue indefinitely, they may be tempted to take risks that are not merited. Back in 2007, the CEO of one of the world's major banks said that it would be difficult to

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<sup>2</sup> Khalid M, Kunhibava S. Regulating FinTech Through Sandboxes: Entering the UK and Malaysian Regulatory Sandbox. In Innovative Strategies for Implementing FinTech in Banking 2021 (pp. 83-99). IGI Global.

<sup>3</sup> Nawaz T. Intellectual capital profiles and financial performance of Islamic banks in the UK. International Journal of Learning and Intellectual Capital. 2019;16(1):87-97.

abruptly cut off liquidity in the market. While the music was playing, we couldn't help but move about the room. We had been dancing continuously up to this point in time.

The economy of the whole world came crashing down after a short period of relative prosperity. It's possible that certain financial institutions may strive to increase their earnings by peddling items to their clientele that aren't necessarily in their clients' best interests. Illicit gains of billions of pounds were made by various banks, for instance, as a consequence of the unlicensed selling of payment protection insurance (PPI) to clients. If the financial sector is tightly regulated and closely monitored, then financial companies may be able to gain insight from their past errors. It would seem that the banking industry, in particular, pays little to no attention to how the decisions it makes may affect other financial institutions or the economy as a whole.

As a direct result of a financial crisis, a number of individuals may lose their jobs or see a reduction in their incomes, which adds to the already enormous effect that increasing prices have on their day-to-day lives. The effects of both will have a synergistic effect on one another. The only time this factor has to be taken into consideration is when banks are acting in accordance with their regular operating procedures. Because of these laws and constraints, there is a lower probability that banks would experience a financial catastrophe. To restate this statement, fewer bankruptcies are anticipated to occur in the future as a direct consequence of this. Even if banks are far safer today than they were ten years ago, it is naive to suppose that even the most carefully overseen institutions are immune to failure. Even the most heavily supervised banks have the potential to collapse.

#### Principal Competent Regulatory Bodies

The Bank of England (BoE) may be able to salvage a failing British bank by employing the resolution authorities that it has. Both the Prudential Regulation Authority's (PRA) and the Financial Conduct Authority's (FCA) requirements for responsible financial management are mutually supportive of one another. The Prudential Regulation Authority and the Financial Conduct Authority took over as the major regulators in the United Kingdom in 2013, surpassing the Financial Services Authority in that role (FSA). The Financial Policy Committee (FPC) of the Bank of England is in charge of ensuring that the financial industry in the United Kingdom is subject to appropriate levels of macroprudential supervision.

Banks that have been given authority to issue electronic money and perform payment services by FSMA are able to do so thanks to the Payment Service Rules and Electronic Money Rules that were implemented in 2017. Under the Food Safety Modernization Act (FSMA), the PRA and the FCA both have wide jurisdiction to regulate topics relating to authorisation, prudential monitoring, and company

behavior (including supervision, enforcement, rulemaking, and regulatory policy). In addition, the FSMA defines the goals that each regulatory agency that has authority over the implementation of food laws should strive to achieve.<sup>4</sup>

In the United Kingdom, the Prudential Regulation Authority (PRA) is in charge of regulating financial institutions and ensuring that they are both safe and sound in order to fulfill their responsibilities. The enhancement of service providers' ability to compete in their respective markets is the second objective. The Financial Conduct Authority (FCA) monitors firms and assists in the regulation of those businesses to ensure the integrity of the country's financial markets, the safety of its customers, and the ability of businesses to grow in an environment of intense competition. The regulations established by the PRA and the FCA, in addition to the Capital Requirements Regulation (575/2013), must be adhered to in an exacting manner by all financial institutions in the UK (UK CRR).

Banks (and other authorized people) are required to comply with multiple pieces of legislation, including the Financial Services Modernization Act (FSMA), the FCA Principles for Businesses, and the PRA Fundamental Rules (PRA Rules) (FCA Principles). Publications that are not based on rules are used by regulators in the banking industry to set expectations. Some examples of these types of publications include subject reviews, policy statements, exclusions with permission, open letters to bank CEOs, and speeches. In the event that a financial institution is found to be in violation of an FCA principle or a PRA regulation, the relevant authorities have the authority to take disciplinary action against the organization.

The Royal Bank of England is also referred to by its acronym, HM Treasury (Treasury). It is essential to keep in mind that the Treasury Department is also involved in the regulation of the banking sector. Despite the fact that the Treasury now plays a larger role in monetary policy and financial stability than the Bank of England (BoE), the BoE has always had the reputation of being the most important institution in these areas. In the event that there is a disruption in the banking sector, it is the responsibility of the UK Treasury to ensure its continued operation. Additionally, the UK Treasury is responsible for reporting to parliament on the state of the financial system and any major difficulties.

The Payment Systems Regulator is in charge of monitoring all retail payment networks in the United Kingdom. The Consumer Financial Protection Bureau of the Federal Government (FOS). The FOS is responsible for investigating and resolving any issues that arise from complaints made by retail banking customers regarding their banks or other service providers. The Financial Ombudsman Service is its own separate government agency, but it is required by law to work in conjunction with the Financial Conduct Authority (FCA).

The purpose of the Financial Sector Reimbursement Program is to compensate insured depositors and other qualifying claimants for financial losses experienced as a result of the failure of financial institutions or other applicable circumstances. This compensation is intended to help claimants get back on their feet after suffering losses (FSCS). The Financial Services Compensation Scheme (FSCS) is

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<sup>4</sup> Moran M. The state and the financial services revolution: a comparative analysis. In *The State in Western Europe Retreat or Redefinition?* 2019 Aug 15 (pp. 158-177). Routledge.

answerable to both the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), but it is not monitored by any regulatory agency (EBA). Because of IPCD, the EBA is no longer involved in the regulation of financial markets in the United Kingdom. Non-legislative pre-IPCD files from the European Banking Authority and other European Supervisory Authorities have been relocated to the United Kingdom, nevertheless.

### Policy Aims and Statutory Objectives Regarding Financial Services

The Prudential Regulation Authority has been entrusted with examining how the restrictions would influence the capacity of banks in the United Kingdom to issue long-term loans to companies and people. After the new regulations have been adopted, both the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) will be required to publish a statement outlining the intended effect of the regulations. In this statement, they will describe how they have considered the extra themes that were covered in the paragraphs that came before this one.

It is the responsibility of the Financial Conduct Authority to decide whether or not guidelines should be made that detail the duty of care that authorized staff are required to have in order to treat customers with decency and respect. If guidelines are made, it is expected that authorized staff will treat customers with decency and respect. The consultation has to take place as quickly as practicable, ideally no later than January 1, 2022, and the findings of the analysis of the replies need to be made available to the general public as soon as possible after the consultation has taken place. The Financial Conduct Authority (FCA) plans to conduct a public consultation on the subject of the duty of care throughout the course of the next calendar year. The Financial Conduct Authority has the authority to make any recommendations about these issues that it considers to be appropriate so long as they are presented no later than August 1, 2022.

Regulators will be given more discretion to draft particular rules in order to facilitate the implementation of the overarching strategy for financial services that HM Treasury will continue to develop. This is being done in order to streamline the process. Because of this, the strategy will be easier to put into action without any hiccups. Because of this, the strategy will be able to be carried out effectively when it is put into action. In his book "Restoring UK Law—Freeing the UK's Global Financial Market," which was published in 2014, Shearman & Sterling partner Barney Reynolds argues the case for granting British regulators extra authority. Reynolds's book was titled "Restoring UK Law—Freeing the UK's Global Financial Market." Since they are the ones accountable for accurately establishing industry standards, regulators of the financial sector need to have a disproportionate amount of say in the laws that govern their business. The suggestions that have been made for the removal of superfluous bureaucratic red tape ought to be accepted by regulators wherever it is practicable to do so, and results-oriented regulation has to be given preference over other types of regulation. The following is a summary of the sections of the FS Act that are viewed as being the most significant and that will have an impact on the day-to-day operations of financial institutions. These provisions will have an effect on the day-to-day operations of financial institutions.

## The Approach of the United Kingdom

The objective of the Financial Conduct Authority is to develop regulation that helps to the growth of the economy in both the United Kingdom and the rest of the world. According to Mr. Schooling Latter, "where regulation has imposed costs without offering significant benefits to justify that investment, we will strive to employ our new ability to reverse course," and this ability will be used "wherever regulation has imposed costs without offering significant benefits to justify that investment." [Citation needed] This effort is not an attempt to "change only for the sake of change" nor is it an attempt to "lower standards in order to achieve a competitive edge." It has already been shown that the British government is prepared to flout EU law, and this was done via Her Majesty's Treasury.

For instance, the United Kingdom has chosen not to implement the recently enacted standards that have been set by the European Union by adopting the settlement discipline system that is outlined in the European Union Central Securities Depositories Regulation and expanding it to include non-financial companies. This decision was made because the European Union has recently set new standards, and the United Kingdom has decided not to implement these new standards. The Financial Conduct Authority (FCA) has revealed information about the legislative overhauls it intends to adopt in order to eliminate the provision of redundant monitoring.

It is important to take into consideration the possibility of future equivalence rulings between the United Kingdom and the European Union in light of the objective of the United Kingdom to reduce excessive regulation in the financial services sector. Because of this, organizations who do business in both the United Kingdom and the European Union will no longer be subject to the obligation of complying with two distinct sets of legislation. As soon as it was triggered by Brexit, the House of Lords European Union Committee started looking into the implications that Brexit would have on the British service trade<sup>5</sup>.

An identical judgment that was reached by the EU may be overturned at any time with as little as a thirty-day notification requirement being necessary. The analysis raises issues regarding the trade-off that would be made between equivalence and the loss of regulatory authority that would precede any judgement made by the EU. These questions are raised in light of the fact that the study itself raises these problems. The longer the United Kingdom waits to make decisions that are similar to those that will be necessary as a consequence of Brexit, the less effective the measures will be. Businesses will be attempting to respond to the new environment that will exist as a result of Brexit.

The incapacity of the European Union (EU) to give comfort on the topic of equivalence may be the outcome of concerns over the ostensibly relaxed regulatory requirements in the United Kingdom. On the other hand, there are not going to be any changes made to the rules in the United Kingdom. When it comes to sustaining tough worldwide regulations, the United Kingdom is commonly viewed as

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<sup>5</sup> Rupeika-Apoga R, Wendt S. FinTech Development and Regulatory Scrutiny: A Contradiction? The Case of Latvia. *Risks*. 2022 Aug 23;10(9):167.

acting in its own self-interest, and this impression is shared by everyone. This is because everyone believes that the United Kingdom is operating in its own self-interest. The United Kingdom is now in a position where it is able to vigorously defend these principles.

### Convention

The FCA's power will expand in a number of ways, including the ones listed below. The Financial Conduct Authority has the power to undertake the following things: The use of a benchmark by a monitored entity is forbidden once it has been "designated," with the exception of legacy use for a length of time specified by the FCA; and (iii) the FCA may compel the benchmark administrator to continue using the benchmark notwithstanding the administrator's objections. I I declare invalid any use of any standard; and (ii) Companies that are required to comply with UK legislation may now, until the end of 2025, adopt standards from a third nation under the FS Act.

The Financial Conduct Authority (FCA) has distributed the final version of its strategy for locating deceptive benchmarks and arguing in favor of essential norm modifications. It is planning to conduct a survey in the second quarter of 2021 in order to collect opinions on its strategy for I limiting the use of designated benchmarks and (ii) continuing to permit the use of designated benchmarks in older applications. The Financial Conduct Authority (FCA) has imposed a time limit on the use of LIBOR rates. The vast majority of habitats are scheduled to be removed from existence for good or rendered unusable on or before the 31st of December, 2021. On or after June 30, 2023, there will be an adjustment made to the value of the dollar.

### Prudential regulation of financial institutions

The Investment Businesses Prudential Regime is a system of regulation developed by the Financial Conduct Authority to oversee British investment firms (U.K. IFPR)<sup>6</sup>. The PRA will remain monitor systemically significant investment firms, but the UK IFPR, modeled after the EU regime, will strengthen the UK's prudential framework for investment firms. The UK's Independent Financial Preferences Commission (IFPR) will study the FCA's practices.

The Financial Conduct Authority (FCA) will oversee capital requirements, liquidity standards, concentration risk constraints, reporting requirements, public disclosure requirements, governance frameworks, and compensation plans, among other things. The FS Act will oblige the UK to adopt Basel III rules included in the EU Capital Requirements Regulation that have yet to be implemented in the nation. Neither the European Union nor the United Kingdom have adopted Basel 3.1, which specifies a number of significant changes aimed at restoring trust in the computation of risk-weighted assets and boosting the comparability of banks' capital ratios.

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<sup>6</sup> Ferran E. The break-up of the Financial Services Authority in the UK. In *Institutional Structure of Financial Regulation* 2014 Jun 20 (pp. 127-154). Routledge.

## Overseas Funds Regime

EU currency needs a temporary marketing license by the end of 2025 to be in conformity with the FS Act. ("undertakings for collective investment in transferable securities," or "UCITS" for short) Foreign collective investment plans may now advertise to British investors under the new Overseas Funds Regime established by the FS Act, provided they have been awarded "equivalence" by HM Treasury. In order to be accepted, foreign fund returns must be roughly equivalent to the UK system. Foreign funds that have been determined to be similar and which want to advertise to retail investors in the UK must apply for recognition with the Financial Conduct Authority (FCA).

## Regulatory Framework for Markets in Financial Instruments

With the EU Markets in Financial Instruments Regulation (EU MiFIR) set to take effect on December 31, 2020, the UK has "onshored" certain access requirements to meet the needs of businesses in other countries<sup>7</sup>. The Financial Conduct Authority (FCA) permits foreign firms to serve professional clients and acceptable counterparties in the United Kingdom without establishing a physical presence there (FCA).

To accommodate impending changes to the third-country system, the United Kingdom modified its MiFIR with the FS Act (from June 2021). It is critical to consider what these changes may imply for the UK context, as they may be cause for concern. Record retention period required by the Financial Conduct Authority (FCA) for orders and transactions in financial instruments undertaken by non-UK firms operating out of the UK. The FCA may also require foreign companies to file reports under the FS Act.

This remark does not represent EU policy. According to EU MiFIR, the European Securities and Markets Authority (ESMA) mandates annual reports from non-EU entities doing business in the EU. The scope, volume, and revenue generated from operations inside the European Union, as well as the company's risk management systems and investor protection measures, must all be included in this report. Information may be found in the related technical standards. The Financial Conduct Authority (FCA) in the United Kingdom could take a more proportionate approach for smaller organizations while easing the burden on multinational corporations registered in the UK by limiting its requests to information that is not already available through home-host regulator cooperation agreements. If you want to fit in when you're visiting Britain, you can start by picking up some of the language and habits of the people.

The Financial Conduct Jurisdiction will have the authority to restrict, prohibit, or revoke a foreign firm's registration, and HM Treasury will have the authority to impose additional restrictions on such businesses through laws enacted under the Financial Services

<sup>7</sup> Ferran E. The UK as a third country actor in EU financial services regulation. *Journal of Financial Regulation*. 2017 Mar 1;3(1):40-65.



Act. To ensure that local and international norms are consistent, the FCA must keep track of how other countries regulate<sup>8</sup>. To exploit the reverse solicitation exemption under the FS Act, a foreign corporation must first locate a qualified counterparty or professional client in the UK. This modification will bring EU and UK reverse solicitation laws in line with one another.

### Insider Trading, Money Laundering, and Market Manipulation

The FS Act changes the time range within which senior management must submit notification before entering into a transaction<sup>9</sup>. The issuer has two business days from the moment it becomes aware of a transaction involving one of its financial instruments to announce the occurrence to the public. Institutions that deal with money transfers or electronic transactions are now subject to the ACSA and POCA rules that were enacted in 2002 and 2003, respectively (PIs). By passing legislation like the Anti-Corruption and Security Act and the Proceeds of Crime Act, it is now feasible to seize the financial resources of terrorist groups.

### Revocation of Permissions Issued by Regulatory Bodies

When a business ceases to engage in a regulated activity, the Financial Conduct Authority (FCA) now has the ability, according to the FS Act, to more promptly revoke or change a company's authorisation. In addition, if the FCA determines that it would be in the public interest to do so, the corporation may be granted its request to have its license reinstated. These modifications will not have any effect on companies who do business in both the United States and the European Union (which are subject to regulation by both the FCA and PRA).

### The Review of the Future Regulatory Framework for Financial Services

In July of 2019, the Review's "request for evidence" was released to the public, marking the beginning of the project's first stage. To this end, we enquired as to the extent to which the British government works with regulatory bodies. The Bank of England (BoE), Prudential Regulation Authority (PRA), Financial Conduct Authority (FCA), Payment Systems Regulator (PSR), and Competition and Markets Authority (CMA) formed the Financial Services Regulatory Initiatives Forum in March 2020 after the publication of the government's Phase I response<sup>10</sup>. The Grid for Regulatory Initiatives in Financial Services is another product of these efforts (the Grid).

<sup>8</sup> Buller J, Lindstrom N. Hedging its bets: The UK and the politics of European financial services regulation. *New Political Economy*. 2013 Jun 1;18(3):391-409.

<sup>9</sup> Bruilt C. The rationale for a single national financial services regulator. *Financial Services Authority Occasional Paper*. 1999 May(2).

<sup>10</sup> Dewing IP, Russell PO. Regulation of UK Corporate Governance: lessons from accounting, audit and financial services. *Corporate Governance: An International Review*. 2004 Jan;12(1):107-15.

Multiple alternatives to the present paradigm have been offered in Britain. Lawmakers do what they do best—make laws—while financial regulators do what they do best—set the rules that everyone who participates in the market must obey. In order to enhance the present FSMA structure, one approach is to pass policy framework legislation for the most major regulated activities, detailing the reasons for regulating and the mechanisms through which regulators should be evaluated.

#### Other Concerns

As part of its evaluation of UK law on crypto-assets and stablecoins, the government began a consultation in January 2021 to seek the views of industry actors. The primary goal is to incorporate stablecoins within the existing UK regulatory system. The administration will go through the feedback and provide further details on how the planned plan will be legally implemented when the consultation period ends. In the event that the policy approach wins out, the FCA, the BoE, and the PSR will all remain in dialogue over corporate rules and regulations.

The proposed modifications to the PRIIPs Regulation in the UK would, for instance, do away with the existing requirement that Key Information Documents contain a concise summary of performance scenarios together with information on performance and the assumptions used to construct them. Additionally, retail UCITS are not need to be registered until the year 2026. To further safeguard individual investors, the British government is examining the present level of openness.

#### Conclusion

For stable token arrangements, the PSR would act as a payment system regulator. The Bank of England would step in and regulate the arrangement as they have with previous large-scale payment systems. It's important to note that a company providing stable tokens should be based in the UK. Although geography is not now a factor in the regulatory process, doing so might potentially undermine the United Kingdom's goal of maintaining open and flexible markets.

Sooner or later, policymakers will consider loosening restrictions on utilizing crypto-assets in future transactions. There are no plans to bring speculative coins that are currently uncontrolled under prudential or conduct regulation at this time. If they are approved into the financial promotion system, however, further anti-money laundering processes will be required. Stablecoins, as well as any other crypto-assets that are not currently classified as a security or an electronic money token, were recommended to be brought within the purview of U.K. financial promotion guidelines last year. In order to prevent money laundering, the Financial Conduct Authority (FCA) has been keeping tabs on crypto-asset businesses since 2020.

The government is now debating the merits of crypto asset investment, the need for government regulation of distributed ledger technology in the financial services industry, and the desirability of government intervention in financial markets. The regulatory bodies in the United Kingdom have collaborated to create a "sandbox" where enterprises may try out cutting-edge innovations without fear of

repercussions. The Bank of England and HM Treasury of the United Kingdom have launched an official Taskforce to look at the potential for a national digital currency in the country.

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