CLIFFORD

CHANCE

UK CRYPTOASSET REGULATION:
WHAT IS THE IMPACT OF THE PROPOSED REGIME?
MAY 2025

CONTENTS

UK CRYPTOASSET REGULATION:
WHAT IS THE IMPACT OF THE PROPOSED REGIME?

On 29 April 2025, HM Treasury (HMT) published a draft statutory instrument which will create a new UK regulatory regime for cryptoassets, including stablecoins. An accompanying policy note has also been published. Technical comments can be submitted by 23 May 2025, with the legislation due to be finalised by the end of the year.

In this briefing, we consider what cryptoassets and activities will be caught by the new regime. We highlight some issues that may need clarification and outline what firms might do now to prepare.

HMT originally consulted on its developing cryptoassets policy in 2022 and confirmed its approach in 2023. Some further clarifications followed from the new UK Government in November 2024. The long-awaited draft **Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025** (Draft Order) will primarily extend the UK regulatory perimeter by amending the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) to include a range of cryptoasset activities and makes a series of consequential amendments to the wider regulatory framework.

What does the Draft Order do?

Fundamentally, the Draft Order does three things: (i) it includes certain cryptoassets (and stablecoins) in the list of "specified investments" in the UK, (ii) it designates certain activities in respect of such investments as "regulated activities" so that carrying them on in the UK by way of business triggers a licensing requirement; and (iii) it makes some consequential changes to legislation, bringing in a revised territorial scope, new exclusions to regulated activities and new exemptions to avoid other frameworks inadvertently overlapping.

Does this mean that cryptoassets are effectively treated as 'securities' in the UK?

No, the current list of specified investments in the UK includes abroad range of investments such as deposits, consumer loans, electronic money, emission allowances and insurance contracts, as well as things that qualify as securities such as shares or bonds. The effect of adding qualifying cryptoassets into the list of specified investments simply means that qualifying cryptoassets are investments in respect of which certain regulated activities are licensable.

The specific rules that apply as a result are not pre-determined and will be drafted by the UK Financial Conduct Authority (FCA) in due course.

What activities are in scope of the Draft Order?

The Draft Order will introduce new cryptoasset-specific activities, as well as apply existing activities to cryptoassets. The new cryptoasset activities introduced under the Draft Order are:

- issuing a qualifying stablecoin in the UK;
- operating a qualifying cryptoasset trading platform;
- safeguarding of qualifying cryptoassets and relevant specified investment cryptoassets;
- dealing in qualifying cryptoassets as principal;
- dealing in qualifying cryptoassets as agent;
- arranging deals in qualifying cryptoassets; and
- qualifying cryptoasset staking.

While some of these activities have parallels with activities in relation to existing specified investments, the requirements are not necessarily aligned with the equivalent existing activities for such specified investments and so require careful analysis.

What cryptoassets are in scope of the New Regime?

The Draft Order builds on the existing definition of 'cryptoasset' in the Financial Services and Markets Act 2000 (FSMA) which means: "any cryptographically secured digital representation of value or contractual rights that: (a) can be transferred, stored or traded electronically, and (b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology)".

The new terminology is important in delineating the scope of the new regulated activities, particularly the new definitions of "qualifying cryptoasset" and "qualifying stablecoin".

- **"qualifying cryptoasset"** – a FSMA-defined "cryptoasset" which is *fungible and transferable* but specifically excluding specified investment cryptoassets, electronic money, fiat currency, central bank digital currency and utility or closed loop tokens that cannot be transferred or sold and allow the holder to acquire goods or services from the issuer or within a limited network of service providers which have direct commercial agreements with the issuer. This definition is specifically stated to include "qualifying stablecoins" (unless within an exclusion) but would not include tokenised versions of other specified investments, for example.

  This definition is similar to, but amends (and replaces) the definition of "qualifying cryptoassets" in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529), Schedule 1, para 26F.

  The terms "fungible" and "transferable" used here both require further consideration.

  Although used in wider financial services regulation, English law has no general definition of "fungible", and it would be worth HMT clarifying the meaning here. For example, in this context should "fungible assets" be limited to assets which are legally or operationally indistinguishable, or should they include assets considered to be functionally equivalent (even if not actually identical)? Whether a cryptoasset is

genuinely fungible, or is simply treated by the parties as such, will generally vary, depending on the terms and mechanism for the creation of the relevant cryptoassets.

In contrast, the Draft Order gives some explanation of the term "transferable", stating that the circumstances where a cryptoasset is "treated" as transferable "include" where a cryptoasset confers transferable rights, or a communication is made in relation to the cryptoasset which describes it as being transferable or as conferring such rights. While this is not an exhaustive definition of "transferable" it does leave open questions, in particular it is unclear what is intended to be covered with the specification of transferrable rights. Arguably these are circumstances where the asset is not transferred but merely the resulting rights. However, neither the Draft Order or the Policy Note clarify this point. More generally, the requirements around communications also leave unanswered questions. For example, where an asset relies on the communication to qualify as transferable, who does this have to be issued by? Is it enough that any person issues the communication? What if the issuer specifically says that a cryptoasset is not transferable but a market for secondary transfers develops and communications from sellers or others say the contrary?

- **"qualifying stablecoin"** – a qualifying cryptoasset that (a) references a fiat currency; and (b) seeks or purports to maintain a stable value in relation to that referenced fiat currency by the issuer holding, or arranging for the holding of: (i) fiat currency; or fiat currency and other assets, irrespective of whether the holding of a fiat currency other than the one referred to in (a) or other asset contributes to the maintenance of that stable value. The Draft Order amends the RAO with the effect that qualifying stablecoins will not be considered deposits. The Draft Order also amends the Electronic Money Regulations 2011 (EMRs) to provide that "stored monetary value" for the purposes of the definition of e-money (Reg 2, EMRs) will not include qualifying stablecoins, money or assets held as a qualifying stablecoin's backing assets or the stabilisation mechanism for a qualifying stablecoin. As drafted, the interplay of the definitions of cryptoasset (which includes e-money) and qualifying cryptoasset (which includes qualifying stablecoin, but excludes e-money) and the amendment in respect of "stored monetary value" is likely to cause practical difficulty in distinguishing between qualifying stablecoins and e-money.

Additionally, the Draft Order creates two subcategories of specified investments:

- **"specified investment cryptoasset"** – a type of cryptoasset that meets both the definition of "cryptoasset" and the FSMA definition of "specified investment", for example a token on a blockchain representing an interest or right to an equity. It could be argued that a truly technology-neutral approach would apply the relevant existing regime to tokenised versions of existing specified investments. HMT has not clarified in its Policy Note why this new definition has been introduced, although it may be for the purposes of allowing the FCA to make rules specific to this type of cryptoasset.

- **"relevant specified investment cryptoasset"** - means a specified investment cryptoasset that is a security or a contractually based investment. The proposed definition is unclear as currently drafted, as it may not allow a legal analysis to confirm that traditional dematerialised securities are not caught by the definition of relevant specified investment cryptoassets.

What stablecoin-related activities will be regulated under the Draft Order?

The Draft Order will introduce a new regulated activity of "issuing qualifying stablecoin in the United Kingdom". A person ('A') established in the UK will be conducting the activity where they:

- offer (or arrange for another to offer) a qualifying stablecoin created by or on behalf of A for sale or subscription (including where A accepts an invitation from another person ('B') for B's purchase of a qualifying stablecoin);
- undertake, or arrange for another to undertake, to redeem a qualifying stablecoin created by or on behalf of A (including where A assumes an undertaking by or on behalf of another, for example under a contract, to redeem a qualifying stablecoin created by, or on behalf of another); or
- carry on, or arrange for another to carry on, activities designed to maintain the value of the qualifying stablecoin created by or on behalf of A.

For the purposes of the definition, 'creating' a qualifying stablecoin includes the design of that stablecoin. Where the person that created the qualifying stablecoin is a group member of A, then that qualifying stablecoin is treated as having been created by or on behalf of A. Maintaining a stable value is achieved by the issuer holding, or arranging for the holding, of either fiat currency or fiat currency and other assets. A stablecoin that references other assets but does not reference a fiat currency will not fall within the definition of "a qualifying stablecoin".

Are there any exclusions to the regulated activity of issuing qualifying stablecoins?

Yes, the Draft Order confirms that the regulated activity scope does not include the creation (including the design) or the minting of a qualifying stablecoin, provided that it first exists as an identifiable asset on the blockchain and is in a transferable form.

How will the Draft Order apply to stablecoins issued outside the UK?

Notably, the new regulated activity of issuing qualifying stablecoins specifically applies to the issuance of stablecoins within the UK. The Draft Order does not restrict stablecoins issued from outside the UK from being traded, or dealt in, within the UK. However, foreign stablecoin issuers or others trying to sell in the UK might be regarded as dealing in stablecoins as principal (or agent) or arranging transactions in stablecoins in the UK if they seek to sell to UK persons (and so would require UK authorisation for that reason).

How does the Draft Order regulate cryptoasset trading platforms?

The Draft Order introduces the regulated activity of "operating a qualifying cryptoasset trading platform". Closely following the existing "multilateral trading platform" definition under the RAO, a "qualifying cryptoasset trading platform" (CATP) is a system which facilitates the buying and selling of qualifying cryptoassets by bringing together (or facilitating the bringing together of) multiple third parties in a manner that results in a contract for the exchange of qualifying cryptoassets. The scope of the regulated activity extends to exchange of qualifying cryptoassets for either other qualifying cryptoassets or money (including e-money) and accordingly clearly differentiates between the trading of qualifying cryptoassets and of traditional securities, including tokenised forms of traditional securities (which fall within the definition of "specified investment cryptoasset"). The regulated activity does not extend to clearing of trades by a CATP.

What safeguarding provisions does the Draft Order introduce?

The new regulated activity of "safeguarding" of qualifying cryptoassets and relevant specified investment cryptoassets has been adapted from the existing RAO definition of "safeguarding and administration of investments" (Article 40 of the RAO) to cover only "safeguarding", but not administration, in contrast to the position for a securities custodian. The regulated activity consists of:

- Safeguarding of qualifying cryptoassets or relevant specified investment cryptoassets on behalf of another; or
- Arranging for one or more persons to carry on that activity.

The activity is broad: "safeguarding" encompasses any situation where a firm has control of a relevant cryptoasset in a manner that allows it to transfer the benefit of the cryptoasset to another person (including itself). The concept of "on behalf of another" includes scenarios where the person to whom the firm provides the service holds both legal and beneficial title to the relevant cryptoasset, holds only the beneficial title, or has a right against the firm for the return of the cryptoasset. As currently drafted, this expansive definition could potentially bring agency services, lending activities, custodial staking, and some decentralised finance or DeFi activities into the new framework.

More importantly, the order may have significant consequences for the custody of relevant specified investment cryptoassets, on the basis that collateral arrangements with relevant specified investment cryptoassets may be brought into scope. For example, arguably repos and other securities financing transactions in respect of relevant specified investment cryptoassets may therefore require an additional licence.

The Draft Order sets out some relatively narrow exclusions to the activity. For example, qualifying cryptoassets held on behalf of another entity "temporarily to facilitate the settlement of transactions" are exempt from safeguarding requirements. As acknowledged by HMT, this exemption is necessary to provide UK customers with access to global markets. Additionally, a sub-custodian of a UK authorised cryptoasset custodian will be able to hold relevant cryptoassets without such sub-custodian being regarded as performing the regulated activity of safeguarding cryptoassets, provided

that the sub-custodian is in the same group as the UK authorised custodian, and the UK authorised custodian accepts to the person for whom the cryptoassets are safeguarded a responsibility no less onerous than if the UK authorised custodian were safeguarding the cryptoassets itself.

How will the Draft Order regulate dealers?

The Draft Order inserts new Articles 9U to 9Z of the RAO to introduce regulated activities and exclusions relating to dealing in qualifying cryptoassets (but not specified investment cryptoassets) as principal or agent and arranging transactions in qualifying cryptoassets (but not specified investment cryptoassets).

These new regulated activities have been adapted from existing regulated activities and drafted so as to be wide enough to include cryptoasset lending and borrowing services. The scope of the regulated activities does not include the new regulated activities of issuing qualifying stablecoin in the UK, operating a cryptoasset trading platform, or cryptoasset staking.

- Dealing in qualifying cryptoassets as principal encompasses buying, selling, subscribing for or underwriting qualifying cryptoassets as principal.
- Dealing in qualifying cryptoassets as agent encompasses buying, selling, or subscribing for or underwriting qualifying cryptoassets as agent.
- Arranging deals in qualifying cryptoassets comprises (i) making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite qualifying cryptoassets, and (ii) making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting qualifying cryptoassets falling within (i), whether as principal or agent.

A range of exclusions apply to these activities, including:

- Creation including the design of a qualifying stablecoin, or the minting of a qualifying stablecoin such that it first exists as an identifiable asset on a blockchain and in a transferable form, are excluded from the scope of all three activities.
- A person ('P') will not be carrying out the activity of dealing as principal unless P holds himself out as willing, as principal, to buy, sell, subscribe for or underwrite qualifying cryptoassets at prices generally and continuously determined by P, or as engaging in the business of buying qualifying cryptoassets of the kind to which the transaction relates with a view to selling them, or as engaging in the business of underwriting qualifying cryptoassets of the kind to which the transaction relates. This exclusion also applies unless P regularly solicits members of the public with the purpose of inducing them, as principals or agents, to enter into transactions constituting the activity of dealing as principal, and the transaction is entered into as a result of P having solicited members of the public in that manner.

- The activity of dealing as principal excludes any transaction a person ('A') enters as principal with another person ('P') if P is also acting as principal within the scope of the regulated activity of dealing, and (a) A and P are members of the same group; or (b) A and P are, or propose to become, participators in a joint enterprise, and the transaction is entered into for the purposes of or in connection with that enterprise. A similar exclusion applies to exclude transactions for which a person is engaged in arranging.
- A person will not be dealing as principal or agent where: (i) the qualifying cryptoasset is bought, sold, or subscribed for no consideration; (ii) there is a distribution of a qualifying cryptoasset that was automatically created as a reward for the maintenance of the distributed ledger or the validation of transactions; (iii) the qualifying cryptoasset is issued by and sold to or subscribed for by an employee or partner of the person carrying on the activity; or (iv) there is a non-public sale or transfer by a person ('A') of a qualifying cryptoasset created and minted by, or on behalf of, A and having as its sole purpose the raising of capital by A.
- The activity of arranging deals in qualifying cryptoassets excludes arrangements where they are solely arrangements under which persons will be introduced to a person authorised to carry on one of the regulated activities newly introduced by the Draft Order.

How will the Draft Order regulate staking?

The activity of "qualifying cryptoasset staking" is defined as the use of a qualifying cryptoasset in blockchain validation, and "blockchain validation" means the validation of transactions on (a) a blockchain; or (b) a network that uses distributed ledger technology ("DLT") or other similar technology, and includes proof of stake DLT consensus mechanisms.

The activity includes making arrangements for qualifying cryptoasset staking.

There are only two exclusions for this activity, introducing and enabling parties to communicate. On its face no other exclusions apply. As such, arguably all proof of stake network operators may be caught on the basis that "arranging" has typically been regarded as being a very broad definition.

What is the territorial scope of the Draft Order?

Given that many cryptoasset services are offered online and cross-border without the need for physical presence, a notable feature of the Draft Order is that it will apply not only to UK-based firms engaged in in-scope cryptoasset activities but also to overseas firms that actively solicit UK clients or market cryptoasset services within the UK. The policy intent is that any cryptoasset firm that deals directly (without an intermediary) or indirectly (through an intermediary) with UK consumers will be required to obtain UK authorisation, wherever the firm is based.

Various exemptions will operate to enable some firms to avoid the new regulatory burdens. The Policy Note says that the intention is for Overseas firms that serve only UK institutional customers to not require UK authorisation, provided those clients are not intermediaries to UK consumers. Additionally, if a firm deals with a UK consumer

through an intermediary such as an authorised cryptoasset trading platform or authorised dealer, authorisation will not be required. However, given that there is no clear exclusion in the Draft Order, this policy aim may not have been fully achieved.

With respect to in-scope safeguarding and staking activities, authorisation will be required if the firm carries on the activities in the UK or on behalf of a UK consumer. However, if a firm carries out safeguarding activities at the direction of a person that is authorised to perform the safeguarding activity, then the policy intention is that a firm should be able to conduct the activity from overseas without UK authorisation. This concession does not extend to staking.

As noted above, if a firm issues qualifying stablecoins, it will require authorisation if the issuance occurs from a UK establishment. Foreign stablecoin issuers or others trying to sell in the UK may (depending on their arrangements) be regarded as dealing in stablecoins as principal (or agent) or arranging transactions in stablecoins in the UK if they seek to sell to UK persons which could also trigger an authorisation requirement.

Some amendments may be made to the Draft Order following technical responses, but firms should consider reviewing their existing or planned arrangements to establish whether and to what extent cross-border marketing or service provision may bring them within UK regulatory scope.

What does the Draft Order mean for financial promotions?

Since October 2023, it has been a criminal offence under the Financial Promotions Order (FPO) to communicate a financial promotion in relation to qualifying cryptoassets in the UK unless it has been made or approved by a firm authorised under FSMA or it qualifies for an exemption. Currently, cryptoasset businesses registered with the FCA under the Money Laundering Regulations 2017 (MLRs) benefit from an exemption that permits them to approve their own financial promotions relating to cryptoassets. The Draft Order amends the FPO to remove this exemption, although given the scope of the new authorisation requirements under the proposed new framework, such firms will in practice require FCA authorisation to continue to operate their cryptoasset businesses in any event.

The Draft Order makes further amendments to the FPO to ensure that the new regulated activities are all included within the financial promotions regime.

Are there any transitional arrangements under the Draft Order?

The Draft Order includes transitional arrangements to provide firms with sufficient time to apply for authorisation. The Draft Order requires the FCA to establish an application window period, no later than one year prior to the full implementation of the regime, during which firms can submit their application for authorisation or variation of permission (as the case may be).

A transitional period of two years from the full implementation date of the regime will apply for firms that submitted applications during the application window and whose applications have not yet been resolved by the FCA. A separate two-year transitional period will also apply for firms whose applications are denied or withdrawn, for the purpose of allowing firms to wind down their operation in an orderly manner.

A temporary authorisation regime will operate for firms that are already registered with the FCA under the MLRs. Such firms will be permitted to continue their operations while they apply for full authorisation under the new regime. As currently drafted, the Draft Order provides a minimum of 12 months for these firms to submit their applications, during which time they can continue their business activities.

How will the Draft Order address decentralised finance (DeFi)?

The Draft Order makes no provision for DeFi. DeFi activities will not fall within the scope of the Draft Order where the activities are undertaken on a truly decentralised basis with no sufficient controlling party. It will be for the FCA to assess if any party's control is sufficient to prevent the activities from being truly decentralised and to determine whether and for what activities any "sufficiently controlling party or parties" should be authorised.

What happens next?

Technical comments on the Draft Order are invited by 23 May 2025. HMT intends to publish the final statutory instrument "at the earliest opportunity" after that date. HMT also plans to publish statutory provisions relating to the new market abuse and admissions and disclosures regimes for cryptoassets in due course.

The Draft Order forms an important part of the evolving UK cryptoasset regulatory regime. However, the day-to-day rules that cryptoasset firms will need to comply with are the remit of the FCA. The FCA is working to develop these rules through a sequence of discussion papers and consultation papers as outlined in its **Crypto Roadmap,** including **DP25/1: Regulating cryptoasset activities** published in May 2025 which requests feedback on the proposed regulatory regime for cryptoasset trading platforms, cryptoasset intermediaries and cryptoasset lending and borrowing, staking and DeFi.

All firms involved in cryptoasset-related activities in the UK should consider submitting technical comments on the Draft Order by 23 May 2025, as well as engaging with the separate draft legislation to be published on the admissions and disclosures and markets abuse regime. Firms should also engage with FCA consultations to help set the parameters of their regulated status. Firms should also be engaged in reviewing their own regulatory permissions, structure, marketing and custody and trading models to establish how the new framework may apply to them, what available exclusions they may benefit from and what authorisations or variations of permission they may need to make.

CONTACTS

Diego Ballon Ossio
Partner
London
T: +44 207006 3425
E: diego.ballonossio@cliffordchance.com

Monica Sah
Partner
London
T: +44 207006 1103
E: monica.sah@cliffordchance.com

Sara Evans
Senior Associate
Knowledge Lawyer
London
T: +44 207006 2557
E: sara.evans@cliffordchance.com

Laura Nixon
Knowledge Director
London
T: +44 207006 8385
E: laura.nixon@cliffordchance.com

Madeleine Yates
Special Regulatory Advisor
London
T: +44 207006 1455
E: madeleine.yates@cliffordchance.com

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

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

Clemens-Emanuel Gutwenger
Senior Associate
London
T: +44 207006 1014
E: clemensemanuel.gutwenger@cliffordchance.com

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

Meera Ragha
Senior Associate
London
T: +44 207006 5421
E: meera.ragha@cliffordchance.com

We are grateful to trainee solicitor Dorothy Biyere for her work on this briefing.

CLIFFORD

CHANCE

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

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

© Clifford Chance 2025

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

JOB0000066782