

Is the UK hot or cold for Crypto? Upcoming changes to the regulation of crypto asset firms

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John McNamara



Back in April former Chancellor Rishi Sunak set out that he wanted Britain to be a “global hub” for crypto. Last month HM Treasury appears to have taken the next step towards that aim in publishing its response to the consultation on amending the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the MLRs”). Some of those amendments directly impact on crypto asset firms. The amendments seek alignment with the broader financial regulatory landscape – no doubt in an attempt to make Britain a global crypto hub.

The amendments for crypto firms fall into two categories, changes to transferring crypto assets and changes to the FCA's powers as the registration body for crypto asset firms.

Transfer of Crypto Assets

The Travel Rule will be implemented for crypto asset firms in a move towards regulatory alignment. The Travel Rule requires that countries ensure financial institutions send and record information on the originator and beneficiary of a wire transfer, and that information remains with wire transfer or related message throughout the payment chain. The amendment impacting on crypto firms will follow this process, with a de minimis threshold and an exemption for transfers which only involve UK based crypto asset firms.

The proposals are only that one piece of data will be part of the information sharing requirements, either the crypto originator's address, date of birth or passport number where the de minimis threshold is crossed. The consultation response confirms that it is not intended this information will be sent "on-chain" but through a separate private system, perhaps addressing several concerns from respondents about privacy issues regarding this proposal.

These changes will have a grace period of a year if approved by Parliament, coming into effect in September 2023, to allow for the technology and cost implications on implementation.

Following the consultation, the Government has modified its proposals for collecting originator/beneficiary information in relation to unhosted wallets. Firms will only be expected to collect this information for transactions identified as posing an "elevated risk of illicit finance." The minimum factors giving rise to an elevated risk will be set out in the MLRs in due course. Even when that information is collected, there will be no requirement for it to be verified.

Widening of FCA Powers

A welcome change for most in the market will be the proposal that information in relation to FCA refusals for registration will now be published at the FCA's discretion. This will assist in the transparency of the FCA approval process and will likely assist firms in assessing what controls they need in place to be successful in registering as well as encouraging best practice

from firms across the market.

Currently there are no provisions that require the FCA to approve the change of control of a registered crypto asset firm. That is set to change with the implementation of a change of control regime similar to that under FSMA. This will also be information that is capable of publication by the FCA, no doubt with the aim to promote consumer confidence in the market. Both of the above changes will come into force as soon as possible after Parliamentary approval, most likely in September 2022.

The gateway for information sharing at Regulation 52 of the MLRs will be widened. The FCA will benefit from further enhanced reciprocal information sharing and collecting powers with law enforcement agencies as well as extending that to government agencies including the Department of Business, Energy & Industrial Strategy as well as Companies House. The new provision will also allow for the FCA to share the confidential information it obtains in relation to its MLRs duties more widely.

Conclusion

For most in the market these changes will be welcome, even with the attached cost that will come with compliance solutions. Greater transparency of regulatory decisions, an improved ability to monitor transactions and greater alignment of crypto with other areas of financial regulation and legislation will likely lead to increased confidence in UK registered crypto firms. These amendments may mean the UK will be hot for crypto.

John McNamara is a barrister practising in the areas of business crime, financial regulation, and asset recovery. John has been seconded to the Enforcement and Market Oversight Division of the FCA for 9 months dealing with registration applications for crypto-asset firms. He is ranked in the Legal 500 2022 for Proceeds of Crime & Asset Forfeiture.