



connecting the future

The Financial Services and Markets Act 2000
(Regulated Activities and Miscellaneous Provisions)
(Cryptoassets) Order 2025 - Draft SI
HM Treasury

Response from
The Payments Association
May 2025

Introduction

The Payments Association welcomes the opportunity to contribute to HMT “The Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025 - Draft SI”.

The community’s response contained in this paper reflects views expressed by our members and industry experts recommended by them who have been interviewed and who are referenced below. As The Payment Association’s membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to fully represent the views of all members.

We are grateful to the contributors to this response, which has been drafted by Riccardo Tordera, our Director of Policy & Government Relations, assisted by Natalie Lewis, Partner at Travers Smith and Lead of our Working Group on Digital Currencies, with input from other members. We would also like to express our thanks to HMT for their continuing openness in these discussions. We hope it advances our collective efforts to ensure that the UK’s payments industry continues to be progressive, world-leading, and secure, and effective at serving the needs of everyone who pays and gets paid.

Tony Craddock
Director General
The Payments Association

Our members' views on the draft SI:

Overview

Digital assets offer the UK economy a huge opportunity for innovation and growth, transforming financial markets, boosting financial inclusion, and maintaining the UK's position as a leader in financial services and technology.

Stablecoins in particular have the potential to launch the next transformation of money and payments, especially as the economy migrates to web 3.0. As a result, while we welcome the publication of the 2025 Order, we remain disappointed and concerned at the lack of urgency and direction when it comes to defining the regulatory framework for stablecoin-based payments. Other jurisdictions – most notably the US, the EU and Hong Kong, but also emerging hubs such as the UAE – have adopted or are adopting much more proactive approaches and the UK is at risk of falling behind, with adverse consequences for investment, innovation, and growth.

Whilst we are overall happy of the current approach to overseas issuers, we also believe the UK is currently missing out on the opportunity of actively support the growth of a domestic stablecoins sector. The usage of international stablecoins ultimately favours users' usage of dollar denominated stablecoins, and not creating an attractive framework for the creation of GBP-backed stablecoins will definitely cause unintended consequences on the role of the pound.

Payments, and specifically the use of stablecoins in payments, is therefore our primary concern when reviewing the 2025 Order. We have identified a number of areas where the drafting may not achieve the objective sought by Government.

We have structured this submission around eleven priority areas where we believe clarification or amendment is needed:

1. **Clarification of Territorial Scope and “Establishment in the UK”**
2. **Definition and Scope of “UK Consumer” and Institutional Client Distinctions**
3. **Alignment with the Financial Promotions Regime for Stablecoin Issuing**
4. **Recognition of Legitimate Approach/Reverse Solicitation and Overseas Persons Exemption**
5. **Protection for Merchants and Payment Service Providers Using Stablecoins**
6. **Refinement of the Definition of “Issuance” to Avoid Multiple Issuer Capture**
7. **Clarity Between Stablecoins and E-Money, and with Tokenised Deposits**
8. **Exclusion of Borrowing from the Scope of Safeguarding Activities**
9. **Statutory Immunity for Cryptoasset Trading Platforms (CATPs)**
10. **Inclusion of Physical Asset-Backed Cryptoassets in the Regulatory Framework**
11. **Clarification of the Boundary Between FCA and BoE for Systemic Stablecoins**

1. Clarification of Territorial Scope and “Establishment in the UK”

We strongly support the intention not to regulate the issuance of qualifying stablecoins conducted entirely outside the UK. However, the current draft SI wording — requiring that issuers be “established in the UK” (new Article 9M(2)) — is vague and inconsistent with the policy note's phrasing (“from an establishment in the UK”).

This subtle distinction may lead to confusion and inappropriate regulatory capture. For instance, a foreign firm with incidental UK presence but no UK-based issuance activity may still fall into scope under current drafting.

Recommendation:

- Either define “established in the UK” explicitly in the draft SI; or
- Adopt language aligned with “issuance from an establishment in the UK” to better reflect policy intent; or
- E expand the overseas persons exemption in Article 72 of the RAO to cover these circumstances.

2. Definition and Scope of “UK Consumer” and Institutional Client Distinctions

The amendments to section 418 of FSMA use a definition of “consumer” as the regulatory hook for when the activities other than issuing a qualifying stablecoin will require authorisation. This excludes all B2B use cases. However, the Policy Note contrasts consumers with “institutional customers”. There are, of course, many SMEs that cannot naturally be described as “institutional customers”, and the payments and e-money regimes extend many instances of consumer protection to “micro-enterprises” (which on the current drafting will not trigger authorisation as they are not consumers).

Recommendation:

- Clarify whether the drafting captures the intended policy.

3. Alignment with the Financial Promotions Regime for Stablecoin Issuing

The amendments to the Financial Promotions Order do not include the new regulated activity of “issuing a qualifying stablecoin.” This may have been regarded as unnecessary because of the scope of the other activities, and particularly that the issuing activity includes the concept of an “offer”, but it potentially creates an additional question over the territorial scope: exactly how financial promotions of overseas-issued stablecoins are regulated.

Recommendation:

- Clarify whether the drafting captures the intended policy.

4. Recognition of Legitimate Approach/Reverse Solicitation and Overseas Persons Exemption

The current framework does not clarify whether reverse solicitation (where a UK client approaches a non-UK firm) exempts firms from authorisation requirements.

Recommendation:

- Provide explicit guidance on the applicability of legitimate approach/reverse solicitation; or
- alternatively, adopt or extend the overseas persons exemption (Article 72 of the Regulated Activities Order) to cryptoasset activities to ensure proportionality and clarity.

5. Protection for Merchants and Payment Service Providers Using Stablecoins

The current drafting may inadvertently capture merchants accepting stablecoins for goods or services as “dealing as principal”, or acquirers enabling such payments as “dealing as agent”.

Recommendation:

- Introduce clear exclusions for accepting or facilitating payments in stablecoins where no speculative or trading activity is intended.
- Provide safe harbour for payment processors and merchant acquirers using stablecoins as a means of settlement.

6. Refinement of the Definition of “Issuance” to Avoid Multiple Issuer Capture

The inclusion of “arranging” within the definition of issuance (new Article 9M) risks capturing multiple parties along the stablecoin value chain (as it is feasible that more than party could be carrying out the different elements). This could lead to a situation where a stablecoin had more than one issuer.

Recommendation:

- Limit the regulated activity of issuance to the primary issuing entity.
- Remove or narrowly define “arranging to issue” to avoid excessive or overlapping regulation.

7. Clarity Between Stablecoins and E-Money, and on Tokenised Deposits

The circular definitions of “electronic money” (amendment to the Electronic Money Regulations) and “qualifying stablecoin” (new Article 88G) create legal ambiguity and could open the door to regulatory arbitrage.

Recommendation:

- Disentangle these definitions to provide clear, mutually exclusive categories;
- Ensure that tokenised deposits issued by overseas banks are clearly scoped, especially with respect to MLR registration.

8. Exclusion of Lending from Safeguarding Activities

The new Article 9O risks categorising collateral lending or rehypothecation of stablecoins as safeguarding, due to the inclusion of the “right of return” language.

Recommendation:

- Amend the safeguarding definition to exclude lending/borrowing arrangements, consistent with the policy intent to regulate such activity as “dealing”.

9. Statutory Immunity for Cryptoasset Trading Platforms (CATPs)

Cryptoasset trading platforms are expected to perform gatekeeping functions akin to recognised investment exchanges but lack the statutory immunity provided under FSMA s.291.

Recommendation:

- Article 4 of the draft SI should be amended to extend the section 291 FSMA immunity to CATPs to extend statutory immunity to CATPs when performing these regulatory functions, to protect them from litigation risk and prevent inadvertently disincentivising adoption in the UK.

10. Inclusion of Physical Asset-Backed Cryptoassets in the Regulatory Framework

The new Article 98 operates to extend the FCA's power to impose a statutory trust on assets other than money when used to back “qualifying stablecoins”, which is limited to those that reference a single fiat currency. However, it should also empower the FCA to recognise the use of bailment arrangements to safeguard backing assets that are physical goods, such as for qualifying cryptoassets backed by gold, which fall outside the definition of a “qualifying stablecoin”. These may increase in importance as safe-haven instruments.

Recommendation:

- Provide for the recognition of alternative legal arrangements such as bailment under FCA rules.
- Extend statutory protection mechanisms under section 137B of FSMA to backing assets for all qualifying cryptoassets, rather than qualifying stablecoins alone.

11. Clarification of the Boundary Between FCA and BoE for Systemic Stablecoins

The draft SI does not explain how systemic stablecoins will be treated differently or where Bank of England responsibilities will be triggered.

Recommendation:

- Clarify this regulatory boundary in the draft SI or via detailed guidance.
- Define whether qualifying stablecoins include those used in systemic payment arrangements.

About The Payments Association

The Payments Association is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector in order to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the

FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of monthly digital and face-to-face events including our annual conference PAY360 and PAY360 Awards dinner, CEO round tables and training activities.

We run seven stakeholder working Project groups: Inclusion, Regulator, Financial Crime, Cross-Border, Digital Currencies, ESG and Open Banking. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

We also conduct exclusive industry research which is made available to our members through our Insights knowledge base. These include monthly whitepapers, insightful interviews and tips from the industry's most successful CEOs. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See www.thepaymentsassociation.org for more information.

Contact malik.smith@thepaymentsassociation.org for assistance.