

CRYPTO REGULATION

Authored by: Syed Rahman (Partner) - Rahman Ravelli

New UK legislation is set to target the promotion of crypto-related investment opportunities. Syed Rahman, cryptocurrency expert at financial crime specialists Rahman Ravelli, considers the proposals.

Proposed new UK legislation regarding cryptoasset promotions has the potential to break new ground. It is not exaggerating to say that the implications could be major for the UK and its crypto sector.

The new draft legislation is the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023. This legislation (which I will refer to as the Order) looks set to bring both clarity and change, especially regarding the implications for non-compliance.

The Order is an expansion of the current Section 21 of the Financial Services and Markets Act (FSMA), which deals with financial promotions. It will provide for the regulation of cryptoasset financial promotions - a move intended to both improve consumers' understanding of the risks associated with cryptoasset investments and ensure that cryptoasset promotions are held to the same standards as the wider financial services market. This will be done by amending another Financial

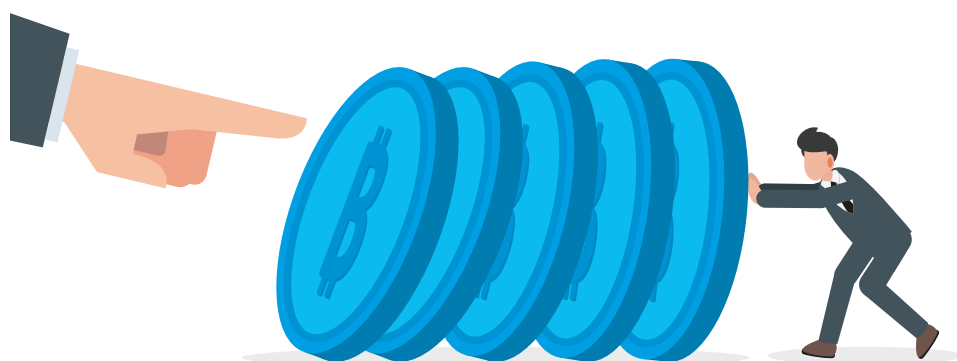
Services and Markets Act order (from 2005) to create what is termed a new controlled investment (defined as a "qualifying cryptoasset") and modify some of the regulatory exemptions already in place relating to cryptoassets.

Regime

Some cryptoassets, such as security tokens, are already subject to the financial promotions regulatory regime. The Order, however, will bring most cryptoassets - including exchange tokens such as Bitcoin - into the regime's scope. Although non-fungible tokens (NFTs) will not be, as these are usually used as digital collectibles rather than financial investments.

The Financial Conduct Authority (FCA) will become the regulator and supervisor of the cryptoassets covered by the Order, and would be capable of taking action against those that fail to comply with their obligations.

There will be a four-month period between when the Order is made and when it comes into force, to give those affected by it time to understand and fully comply with it.





Section 21 of FSMA states that that a person, in the course of business, must not communicate an invitation or inducement to engage in investment activity, or claims management activity, unless they are an authorised person (under Part 4A of FSMA), or the content of the communication is approved by an authorised person, or there is an exemption that applies.

The amendments to Section 21 contained in the Order are aimed at removing the risks posed by misleading cryptoasset advertising – risks highlighted five years ago in a report by the Cryptoasset Taskforce, which involved the FCA, Treasury and Bank of England. The FCA's findings since then indicate that while UK ownership of cryptoassets has risen, there has been a reduction in the understanding of the associated risks. The volatility of crypto values and the numerous high-profile cryptoasset firm failures – FTX being the most notable recent example – make any lack of understanding particularly dangerous.

Positive effect

Against this backdrop, it is encouraging to see efforts being made at the legislative level to have a sustained and positive effect on the crypto sector – an effect that will benefit the consumer. This comes at a time when the UK is setting out its stall in a bid to become a leader in financial innovation. It makes perfect sense, therefore, to try and shape the cryptoassets landscape for the better.

We cannot say for certain what the consequences will be. But what is being proposed seems logical and the reception it has been given by those in the crypto sector has been generally positive. There has been a need for clarity regarding crypto for some time.

It will take some time for the sector to lose its reputation for being the financial world's equivalent of the wild west. But the consultation that preceded the Order helped create the momentum for a change for the better – and that change now looks set to happen.

It is a change that will protect investors, attract more investment, individuals and institutions into the sector and may - as the government hopes – position the UK as a global crypto hub. There is an

argument that the UK remains a couple of steps behind the European Union (EU) when it comes to crypto regulation. And while there is no doubt that the EU has taken bigger, quicker strides in this direction, this is no reason to write off the UK's efforts.

The EU's Markets in Crypto-Assets (MiCA) Regulation is set to blaze a trail by establishing a harmonised set of rules for crypto-assets and related activities. It is also part of a much wider approach to digital finance that the EU is introducing. But being the first does not necessarily mean being the best. There will be opportunities to learn from what the EU achieves (and doesn't achieve) in its role as frontrunner.

For now, UK regulators simply need to ensure their measures are introduced and enforced as effectively as possible.

