Baker McKenzie.

Client Alert

May 2026

United Kingdom: FCA and Treasury Consultations on Cryptoassets Perimeter

In brief

On 15 April 2026, the Financial Conduct Authority (FCA) published draft perimeter guidance clarifying how it expects firms to interpret the UK's new cryptoassets regulatory perimeter under the Financial Services and Markets Act 2000 (Cryptoassets) Regulations 2026 (Cryptoassets Regulations). This is the clearest indication to date of where the FCA considers activities to fall within scope. With the consultation closing on 3 June 2026, firms should review their existing business models and future plans to assess whether authorisation is likely to be required, and which permissions or exclusions may apply. The FCA expects to finalise the guidance around the opening of the authorisation gateway in September 2026, ahead of the regime taking effect on 25 October 2027.

Separately, on 21 April 2026 the Treasury proposed amendments to the Cryptoassets Regulations aimed at avoiding unintended impacts, particularly for stablecoin payments firms. Feedback on those proposals closes on 22 May 2026.

For more on the Cryptoassets Regulations, see our previous alert.

Contents

- The FCA's draft perimeter guidance
  - Qualifying cryptoassets
  - Issuing qualifying stablecoins
  - Safeguarding qualifying cryptoassets and relevant specified investment cryptoassets (SICs)
  - Operating a QCATP
  - Dealing and arranging deals in qualifying cryptoassets
  - Arranging qualifying cryptoasset staking
  - Exclusions
  - The "by way of business" test
  - Territorial nexus
- The Treasury's proposed amendments
  - Payments with UK qualifying stablecoin
  - Proprietary trading/market making
  - Central securities depositories (CSDs)
  - Financial promotions perimeter
  - Early switch-on of stablecoin backing asset provisions
- Next steps
- Contact Us

The FCA's draft perimeter guidance

The FCA has set out its draft perimeter guidance in Appendix 1 to the consultation. In addition to consequential amendments to the Perimeter Guidance Manual (PERG) (including on territorial nexus and the "by way of business" test, as discussed below), the FCA's central proposal is a new PERG 19 chapter explaining how the new regulated cryptoasset activities and key exclusions are intended to operate in practice. While the draft is extensive, we highlight the main points below. Firms that may be in scope should review the draft guidance now and start planning for the authorisation process.

The draft perimeter guidance covers:

- **Qualifying cryptoassets:** FCA approach to assessing fungibility, transferability (on-chain/off-chain) and whether a token functions as more than a record of value/rights (including observations on liquid staking and wrapped tokens).
- **Issuing qualifying stablecoins:** Guidance on the scope of the issuing activity, including when a UK-established person is in scope and how white-labelling/technical roles may be treated.
- **Safeguarding:** Interpretation of the definition of safeguarding, specifically what it means to exercise "control … through any means" of a cryptoasset, treatment of arrangements where assets may not be beneficially owned by the customer, and the interaction between safeguarding and arranging for safeguarding.
- **Operating a qualifying cryptoasset trading platform (QCATP):** Indicators of when a platform is operating a qualifying cryptoasset trading platform, including scenarios where multiple FCA permissions may be needed reflecting different regulated activities (e.g., platform plus wallet/safeguarding; matched principal models).

- **Dealing and arranging:** How the FCA expects the new dealing/arranging activities to mirror existing regulated activities for traditional investments, and how cryptoasset lending/borrowing may trigger dealing/arranging (and potentially safeguarding) even though it is not a standalone activity.
- **Arranging staking:** When an intermediation role in proof-of-stake validation is likely in scope of regulation (e.g., end-to-end lifecycle, pooling, reward distribution), contrasted with out-of-scope technical services; treatment of liquid staking structures.
- **Exclusions:** Availability and limits of tailored exclusions (in particular goods/services and incidental-to-profession/business) and where legacy exclusions do not carry across.
- **"By way of business":** The narrower "engaging in one or more" test and the FCA's focus on business models that provide or operate the activity, rather than occasional own-account participation.
- **Territorial nexus:** Activity-by-activity views on when conduct is carried on "in the UK", including safeguarding location, deemed UK activities and the treatment of overseas firms dealing with UK consumers or via UK QCATPs.

Qualifying cryptoassets

As set out in new article 88F of the Regulated Activities Order (RAO), a qualifying cryptoasset is a type of cryptoasset that is **fungible** and **transferable cryptographically**, and it must function as **more than solely a record** of value or rights.

A cryptoasset will generally be fungible where each unit of that cryptoasset is interchangeable with any other unit of the same cryptoasset, such that one unit can be substituted for another to satisfy an obligation without regard to any unique attributes of the particular unit. Fungibility is a question of fact rather than how a cryptoasset is labelled or marketed.

Transferability therefore refers to the capability of the cryptoasset (or rights it confers) to be transferred from one person or address to another, whether on-chain or off-chain and whether for consideration or gratuitously, irrespective of any temporary contractual (e.g., lock-up) provisions. The FCA considers that transferability can also be satisfied where the relevant legal relationship permits a change of the rights-holder if reflected off-chain, even if the specific cryptoasset in question cannot be transferred on-chain (for example, a transfer through burning and subsequently minting or issuing a token).

A cryptoasset will be excluded by article 88F(2)(c) RAO where, notwithstanding that it may be cryptographically secured and electronically transferable or storable, it is solely a record of value or contractual rights (including rights in another cryptoasset) and does not function in practice as an asset in its own right. The FCA considers that a functional approach to assessment is helpful. Relevant considerations that would suggest it is not solely a record may include whether it is used and traded as the object of exchange in markets, whether market participants rely on it as the authoritative basis for taking commercial risk, and whether transferring control of the cryptoasset is, in practice, the mechanism by which value or contractual rights are transferred (as opposed to the cryptoasset being merely evidential of rights that are transferred or constituted by other means). Factors that might suggest a cryptoasset is solely a record might include that the cryptoasset has no observable price or pricing mechanism, or that there is no expectation amongst holders of that cryptoasset that it can be used to generate value.

The FCA takes the view that liquid staking tokens and some wrapped tokens, which are issued in exchange for a qualifying cryptoasset that is staked or otherwise held by another with a corresponding ability to exchange that cryptoasset for the staked cryptoasset in the future, are therefore likely to be regulated (on the basis that they are unlikely to constitute mere records such that they are excluded from the definition of a qualifying cryptoasset). This is because, while they could be described at a high level as cryptoassets that record or represent rights in another cryptoasset, they tend to be widely traded and often function as a liquid investment in their own right (unlike encrypted spreadsheets and databases).

Issuing qualifying stablecoins

Under new article 9M RAO, issuing qualifying stablecoin in the UK means a person (A), established in the UK, is carrying on or arranging for another to: offer a stablecoin, undertake to redeem a stablecoin and maintain the value of the stablecoin. The activity requires a firm to carry on all limbs of the activity in the UK to be within the perimeter; this includes where the stablecoin has been created by or on behalf of A, or a member of A's group. However, a person who only carries out one element of the activity but arranges for a third-party to carry out the remaining elements could be within the scope of article 9M (although this third-party may not require authorisation).

The FCA notes that a person acting in a white-labelling arrangement whose role is limited to technical provision would not normally fall within scope of article 9M, but ultimately this would be fact-dependent.

© 2026 Baker & McKenzie

Safeguarding qualifying cryptoassets and relevant specified investment cryptoassets (SICs)

Under new article 9N RAO, a firm will only be safeguarding qualifying cryptoassets or relevant SICs if the firm has "control of the cryptoasset through any means" to bring about the transfer of the benefit of the cryptoasset to another person. The required degree of control will not be satisfied if the firm can only prevent a transfer of the benefit of the cryptoasset to another person.

The FCA notes that, unlike the existing regulated activity of safeguarding and administering investments, it is not necessary for the property to beneficially belong to another. The FCA's view is that where a firm acting on behalf of another has sufficient control and the customer has a right against the firm for the return of the cryptoasset (even in cases where that customer does not own the asset), the arrangement can still be within scope of the safeguarding activity.

In relation to self-custody, the FCA's view is that in cases where the firm promises (such as under a contract) not to exercise control but does actually have the requisite control (for example, because it can override a client's authority through its own systems, including by devising a way to do that), the control element of the activity is likely to be met, because of the broad scope signified by the words "through any means".

Additionally, the FCA considers it is possible for a firm to require permission to both safeguard cryptoassets and to arrange for the safeguarding of cryptoassets. This may be the case, for example, where a firm that takes responsibility for safeguarding the cryptoassets but during such safeguarding arranges for a third-party to carry out the day-to-day safeguarding.

Operating a QCATP

The FCA provides extensive guidance on what it means to operate a QCATP and provides numerous examples of the types of models that may be subject to authorisation requirements. However, the guidance is clear that operators may in some cases need multiple permissions. For example, if a trading platform also provides crypto wallets or other safeguarding solutions, the firm will need to consider if it requires both a trading platform permission and a safeguarding permission. Additionally, platforms which engage in matched principal trading for the purposes of executing client orders in qualifying cryptoassets may also require permission to deal as principal. However, a firm will not require permission to arrange deals if the only arranging undertaken with users of the platform all forms a part of the activity of operating a QCATP.

Dealing and arranging deals in qualifying cryptoassets

The FCA's guidance indicates that the dealing and arranging activities are intended to mirror the existing dealing and arranging activities within the RAO and, therefore, should operate in a similar manner to such activities.

The FCA explains that while cryptoasset lending and borrowing is not a standalone regulated cryptoasset activity, in many instances it will fall within the dealing and/or arranging perimeter. This is because the disposal of a qualifying cryptoasset from person A to person B and/or the disposal of a qualifying cryptoasset from person B to person A would constitute a deal on the basis that "dealing" includes buying, selling, subscribing for or underwriting a qualifying cryptoasset, and "buying"/"selling" are defined in article 3 RAO as including acquisition/disposal for valuable consideration. The reacquisition of the same or equivalent qualifying cryptoasset would also constitute a deal, as would the provision of yield or interest payments in qualifying cryptoassets.

The safeguarding activity may also be engaged, for example where a person safeguards the qualifying cryptoassets lent to them or the collateral held (where the collateral is made up of qualifying cryptoassets or relevant SICs).

Arranging qualifying cryptoasset staking

The FCA notes that this is only a regulated activity if the arrangement relates to the use of qualifying cryptoassets in blockchain validation. The FCA's view is that a person "arranges" where they perform an intermediation role enabling qualifying cryptoassets to be staked, but, due to available exclusions, this must go beyond the mere introduction to an authorised person or enabling parties to communicate. Activities which may fall within the perimeter include managing the end-to-end staking lifecycle, pooling customer assets to meet validator thresholds, and distributing staking rewards.

Purely technical services are generally out of scope, for example, operating a validator node or offering solo staking tools without further involvement is unlikely, on its own, to amount to arranging qualifying cryptoasset staking. However, this will not be the case if the technical functionality goes beyond mere technical services (for example, through added value such as a dashboard, reward compounding, etc.). Further, if other services such as safeguarding of staked cryptoassets are offered along with the technical functionality, other FCA permissions may be required.

Liquid staking is not within scope of the arranging staking activity, and is more likely to constitute the regulated activity of "dealing", particularly where liquid staking tokens are issued. This is because, in the FCA's view, these tokens tend to be widely traded and often function as a liquid investment in their own right, and are therefore unlikely to be excluded from the definition of a qualifying

© 2026 Baker & McKenzie

cryptoasset as mere records (a functional analysis would ultimately be required). Where a person providing liquid staking tokens also arranges qualifying cryptoasset staking as part of their service, this would exceed the scope of dealing or arranging activities and likely require an arranging staking permission.

Exclusions

The FCA notes that not all of the current exclusions within the RAO that apply to traditional investment activities will apply to the regulated cryptoasset activities and that, in several cases, the availability of tailored exclusions should be considered. There are a range of tailored exclusions within the new regime, but two of the traditional exclusions apply to most regulated cryptoasset activities: (i) activities for the sale of goods or supply and services; and (ii) activities incidental to the carrying on of a regulated profession or business.

In respect of the goods and services exclusion, the FCA's view is that this focuses on cases where the primary business of the firm is to sell goods or supply services, but certain regulated activities may have to be carried on for the purposes of that business. In respect of the incidental exclusion, the FCA notes that existing guidance in PROF 2.1.14G in relation to section 327(4) of the Financial Services and Markets Act 2000 (FSMA) (for exempt professional firms) is also relevant when considering whether a person can rely on this exclusion.

The "by way of business" test

FSMA sets out that no person may carry on a regulated activity in the UK by way of business unless they are authorised or an exemption applies. For the new regulated cryptoasset activities, the Cryptoassets Regulations apply a narrower concept of what "by way of business" means, such that a person will only be regarded as carrying on a regulated activity by way of business if they carry on the business of "engaging in one or more" such activities. The FCA considers that this is a deliberately narrower test than the business test that would otherwise apply under FSMA, reflecting the nature of cryptoasset markets and the identity and status of most of its participants, many of whom may be retail investors. In the FCA's view, the use of the term "engage" focuses the perimeter on persons whose business model involves providing, performing, operating or otherwise being engaged in the relevant activity as a part of their business model, rather than, for example, participating on their own account as an occasional or private activity, using those services or being a customer of such business.

While the FCA stresses that it views this test as narrower than the general "by way of business" test applying to traditional investment activities, it is unclear whether this formulation will result in a narrower application in practice. For example, relevant considerations in assessing whether a person is carrying on regulated cryptoasset activities are likely to include the same kinds of factors that are relevant to the general "by way of business" assessment. The FCA notes that, for cryptoasset activities, these factors should be applied to the question of whether the person's business involves engaging in the relevant activity as part of its business model, rather than mere participation in the activity as an end-user. However, it is also often the case that persons participating in traditional investment activities as a mere end-user are unlikely to satisfy the "by way of business" test – leaving open the question of how much more narrow the application of this test will be in the cryptoasset context.

Territorial nexus

The FCA offers some activity-by-activity guidance on the territorial nexus. For example, in respect of the activity of cryptoasset safeguarding, the place of supply is assumed to be the location of the safeguarding operations. The FCA also provides guidance on when certain overseas activities are "deemed" to take place in the UK under section 418 FSMA.

However, where the firm is involved in the sale or subscription of a qualifying cryptoasset to or by a consumer, offshore firms are caught by the new regime (unless a firm which is authorised to deal in qualifying cryptoassets as principal or operate a QCATP acts as intermediary between the offshore firm and consumer). For example, where an overseas firm trades with a counterparty on a UK regulated QCATP, the QCATP will be operating as intermediary and the offshore firm will not fall within the territorial nexus. On the other hand, if the intermediary does not hold the relevant trading permissions (e.g., its permission is limited to arranging or dealing as agent), the offshore firm may require authorisation. The FCA also notes there may be cases where the trade involves multiple overseas firms – it may be that all such firms satisfy the territorial nexus.

The Treasury's proposed amendments

The Treasury's draft statutory instrument (SI) proposes targeted changes to the Cryptoassets Regulations to avoid unintended perimeter outcomes and improve alignment with policy intent. Key amendments include:

© 2026 Baker & McKenzie

- **Payments with UK qualifying stablecoin:** Carve-out for dealing/arranging where activity is limited to UK qualifying stablecoin payment flows; lending/borrowing remains in scope. Safeguarding permissions and registration under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) may still be required.
- **Proprietary trading/market making:** Exclusion from dealing as principal where trading is not carried on to provide a service to a client, aimed at addressing competitiveness concerns for UK liquidity providers.
- **Central securities depositories (CSDs):** Extend the existing CSD-related exemption to nominee arrangements for safeguarding relevant SICs, to avoid unintended authorisation impacts.
- **Financial promotions perimeter:** Align the financial promotions regime with the amended crypto perimeter: generally exclude UK qualifying stablecoin-only transactions (except lending/borrowing) and add issuance of a qualifying stablecoin as a specified activity.
- **Early switch-on of stablecoin backing-asset provisions:** Bring into force (30 days after the amending SI) the carve-out treating stablecoin backing assets as neither a collective investment scheme (CIS) nor an alternative investment fund (AIF), ahead of full regime commencement.

Payments with UK qualifying stablecoin

There is currently a risk that firms seeking to provide stablecoin payment services are likely to fall within the perimeter for dealing or arranging under the crypto regime. To address this, the draft SI (at new article 9Z10A RAO) carves out from the new dealing and arranging activities (a) the transfer of a “relevant qualifying stablecoin” to another person, and (b) the exchange of a relevant qualifying stablecoin for another asset, including money. A “relevant qualifying stablecoin” is a qualifying stablecoin that is issued by a person with FCA permission to issue qualifying stablecoin – which the Treasury calls a “UK qualifying stablecoin”.

However, this carve-out will not remove lending and borrowing activities involving UK qualifying stablecoin from the regulatory perimeter – the carve out does not apply to disposals subject to rights to reacquire, nor to an exchange of a UK qualifying stablecoin for a different type of non-UK qualifying stablecoin cryptoasset.

Firms undertaking UK qualifying stablecoin payments are reminded that they may need to secure permissions for cryptoasset safeguarding (under article 9N RAO) where they safeguard, or arrange for another to safeguard, cryptoassets (including UK qualifying stablecoin) on behalf of another. The Treasury intends to consult soon (as part of its wider payments reform consultation) on requiring that safeguarding undertaken in the course of providing payments services should sit within the payments regime rather than the crypto regime.

The draft SI also clarifies that the temporary settlement exclusion applies only where the activity is ancillary to dealing or arranging, and therefore does not apply to holding UK qualifying stablecoin in the course of providing payments services. This avoids the possibility that firms undertaking UK qualifying stablecoin payments services might be taken out of scope from the safeguarding activity, which is a result the Treasury wishes to avoid.

As a reminder, firms which undertake services in UK qualifying stablecoin only but do not hold FSMA permissions (for example, payment or e-money institutions which are not authorised under the FSMA regime) may still be required to register with the FCA under the MLRs to ensure appropriate compliance with anti-money laundering obligations.

Proprietary trading/market making

Under the original drafting of the Cryptoassets Regulations, there is currently a potentially uncompetitive dynamic in relation to firms where they are trading on their own account and not providing a service to a client. For example, an overseas firm can provide liquidity to a UK-authorised cryptoasset trading platform without needing authorisation for dealing as principal, whereas a UK-based firm would need to secure those permissions. The Treasury proposes to mitigate this by clarifying that firms providing market making services in the UK do not need authorisation for market making. Specifically, a new “proprietary trading” exclusion to dealing as principal (at new article 9UA RAO) will exclude activity which is not carried on for the purpose of providing a service (a) to another person (“the client”), and (b) related to the carrying on of a regulated activity on behalf of that client.

Central securities depositories (CSDs)

The existing exemption for CSDs for cryptoasset safeguarding does not currently apply to CSDs’ nominee companies. The draft SI proposes to correct this discrepancy for SIC safeguarding (though not for broader qualifying cryptoasset safeguarding). This is intended to help avoid barriers to UK innovation with tokenised securities.

Baker McKenzie.

Financial promotions perimeter

The Treasury intends to make changes to the perimeter for the financial promotions regime so that it remains aligned with the crypto regime's regulated activities, specifically in relation to the carve-out for payments with UK qualifying stablecoin (as explained above). This means that transactions involving UK qualifying stablecoin (and no other cryptoassets) will not be subject to the financial promotions regime, with the exception of lending and borrowing arrangements. The draft SI also adds "issuing a qualifying stablecoin" as a new controlled activity in the Financial Promotions Order.

Early switch-on of stablecoin backing asset provisions

The Treasury intends to switch on early the provisions in the crypto regime that carve out stablecoin backing assets from being either a CIS or AIF. They will come into force 30 days after the day on which the finalised SI amending the Cryptoassets Regulations comes into force. This will help avoid barriers to stablecoin adoption for different use cases and associated services ahead of the crypto regime provisions coming into full force in late 2027.

Next steps

Firms have a very short timeframe in which to respond to the Treasury's draft statutory instrument (by 22 May 2026), and only modestly longer to engage with the FCA's consultation (by 3 June 2026). The FCA expects to publish final perimeter guidance in the autumn and has indicated that its final rules for the cryptoasset regime will be published this summer. HM Treasury has also confirmed that proposals relating to the regulation of stablecoin-related payments will form part of its forthcoming consultation on payment services reforms, expected in Q2 2026. That consultation is expected to propose that safeguarding undertaken in the context of providing payment services should sit within the payments regime rather than the cryptoasset regime. Payments and stablecoin firms should therefore monitor the Treasury's consultation closely.

Against this backdrop, the period before the opening of the cryptoasset application window remains exceptionally compressed. Crypto firms operating in the UK, or providing services to UK consumers, should use the consultation period to evaluate their regulatory position, including whether to submit responses on issues affecting their business model. Firms should also assess whether their activities are likely to fall within the new perimeter and, if so, begin preparing for authorisation. With the application window opening on 30 September 2026, early engagement will be critical.

© 2026 Baker & McKenzie

Contact Us

Mark Simpson
Partner
mark.simpson@bakermckenzie.com

Caitlin McErlane
Partner
caitlin.mcerlane@bakermckenzie.com

Sarah Williams
Partner
sarah.williams@bakermckenzie.com

Melody Hoay
Senior Associate
melody.hoay@bakermckenzie.com

Ben Thatcher
Associate
ben.thatcher@bakermckenzie.com

Kimberly Everitt
Senior Knowledge Lawyer
kimberly.everitt@bakermckenzie.com

© 2026 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.