LATHAM & WATKINS

The Edinburgh Reforms – Two Years On

December 2024

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When the Edinburgh Reforms were announced on 9 December 2022, they were billed as an ambitious set of reforms. Two years on, we assess which of the measures have been completed, which remain outstanding, and whether they have delivered on the agenda set out. We also reflect on the recent Mansion House announcements, which have reset the future of regulatory reform.

Rather than comprising a cohesive set of targeted reforms, the Edinburgh Reforms are a broad update to rules across the financial services sector. Their announcement signalled the first opportunity for the UK government to set out its vision for the UK financial services sector post-Brexit, and were presented as a once-in-a-generation shake-up. The 31 measures included dealing with inherited EU legislation, revamping and revitalising UK capital markets, and progressing long-overdue reforms.

Pace of Progress

Strong initial progress was made on various key aspects of the reforms as HM Treasury launched numerous consultations and reviews. However, one year after the reforms were announced it seemed that the initial enthusiasm and momentum might have been lost, not least because the financial services industry itself did not seem to support many of the proposals. The Treasury Committee labelled the reforms "a damp squib", noting a lack of progress or economic impact. The Committee also strongly disagreed with HM Treasury's own assessment of progress, in which it declared that 21 of the 31 measures had been completed. The Treasury Committee considered that only nine reforms were complete, pointing out that many of the "reforms" were not actual reforms, stating that it would not consider measures such as launching a consultation or conducting a review as genuine reforms. Therefore, it would not consider these measures complete until a policy outcome has been decided and implemented.

In our table below, we take the Treasury Committee's approach to determining whether or not a reform is complete; that is, we consider that only the finalisation of concrete policy work ought to count as completed reform. For completeness, we also set out HM Treasury's original stated aims and progress against those. By our measure, only 13 of the 31 reforms are complete (when judged against HM Treasury's stated aims, 26 are complete). This not only shows relatively limited progress overall, but a distinct slowdown in progress over the past year.

This perception of slow progress was aggravated by the often poor transparency from HM Treasury as to when we can expect to see next steps and further publications. As the Treasury Committee put it: "the time taken between the Treasury announcing a policy objective and the implementation of changes to rules has been too long. Often Treasury consultations end, and the next stage of the process stalls at this point". This issue has been exacerbated by the general election in 2024, which interfered with the reform timetable. Next steps in relation to a number of measures were due to be published in Q2 2024. However, the unexpected timing of the election threw timetables off course and it is only now that HM Treasury and the regulators are providing updated timetables and publishing items once expected much earlier in the year.

A good example of a reform that has taken much longer than expected is the review of the SMCR. The Discussion Paper and Call for Evidence were published in spring 2023, but then very little was communicated about next steps. A consultation was expected in Q2 2024 but did not materialise prior to the election, and finally the regulators indicated that we can expect a consultation before the end of the year. The time from gathering input to formulating policy proposals is long, especially when considering that the Edinburgh Reforms are meant to be priority areas.

The same is true for the Packaged Retail and Insurance-based Investment Products (PRIIPs) regime, which was meant to be a key priority given the well-acknowledged issues with the scope of the framework and the fact that it requires potentially misleading information to be provided to retail consumers. However, draft legislation was published for comment in late 2023, and then no further progress was made until recently, when the legislation was finally made. The FCA will need to consult on its rules for the new regime which will contain the crucial detail, so finalisation still seems a way off. This delay means that HM Treasury has needed to legislate to remove investment trusts from the current regime to address one of the most pressing issues. Similarly, HM Treasury consulted on bringing ESG ratings providers into scope of regulation in early 2023, to address concerns about the lack of regulation in this area leading to potential greenwashing and investor detriment. However, the response to this consultation has only just been published and it is expected to take a further four years to fully implement the regime.

Pace of Progress (continued)

In April 2024, the then-City minister, Bim Afolami, defended the slow progress but also acknowledged that more work was required. He stated, "delivering regulatory reform in complex areas is a multi-stage process, and it is true to say that work is still needed to deliver all of the promise of the Edinburgh Reforms". This is true of a number of the reforms. For example, primary market reforms have been undertaken at pace but will take time to deliver (and calibrate effectively). The FCA needed to finalise changes to the Listing Rules before amending the prospectus regime, and so it is understandable that work on the latter has not yet reached its conclusion. Further, wholesale market reforms encompass numerous changes to the behemoth that is MiFID II. HM Treasury and the FCA have worked at pace to keep pushing these forward, one element at a time.

Also, in our table below we have taken the view that "Publishing the plan for repealing and reforming EU law using powers within the FSM Bill, building a smarter regulatory framework for the UK" ought really to be viewed as actually completing the repeal and restatement exercise. Therefore, understandably this will take a number of years to complete. This is one area in which progress has been fairly rapid, with HM Treasury and the regulators sensibly prioritising files by their impact and now starting work on the third tranche of EU files up for review. Areas completed or nearing completion include Solvency II, the Securitisation Regulation, and the Insurance Distribution Directive. Significant progress has been made on PRIIPs, the Short Selling Regulation, MiFID II, and the Capital Requirements Regulation.

Impact

When assessing the Edinburgh Reforms, it is not only important to look at which of the 31 measures have been ticked off the list, but also what impact they have had. The Financial Services and Markets Act 2023 gave the PRA and FCA new secondary objectives relating to international competitiveness and growth, and so their work on the Edinburgh Reforms should be seen through this lens. While the reforms were billed as ambitious, many of them have been quite minor in reality or have not lived up to their promise. In particular, many of the reforms that were quickly completed were small matters, and arguably not genuine reforms, such as issuing the regulators with new remit letters, providing for the repeal of the UK onshored version of the ELTIF Regulation, or publishing an updated Green Finance Strategy.

As many reforms are still in progress, it is difficult to judge their full impact. In the table below, we have indicated either the known impact (if a reform has been finalised), or the expected potential impact (if the reform is still in progress). This means that some reforms that are not yet complete could have a greater or lesser impact than expected once the measures are finalised. For example, the government has signalled an intention to undertake an “ambitious overhaul” of the UK consumer credit regime, but there has only been a high-level consultation so far. It is therefore difficult to judge whether this will live up to the promise.

In areas where there has been potential for significant reform, this has not always materialised. For example, the review of the UK onshored version of the Short Selling Regulation was expected to result in the removal of some parts of the regime seen as unnecessary, such as the FCA’s power to ban short selling, but HM Treasury was seemingly reluctant to truly revise the regime. However, many elements of the regime will become the responsibility of the FCA, so it is possible that the FCA will pursue more substantive reform when restating the relevant parts in its rules.

Equally, the review of the bank ring-fencing regime has resulted in some short-term changes, including increasing the retail deposit threshold at which the regime starts to apply, introducing a secondary threshold, and permitting ring-fenced banks to undertake some activities that previously have been prohibited. However, these changes are not likely to have a pronounced impact on the industry, and the UK remains a global outlier by maintaining a ring-fencing regime. Part of the ring-fencing workstream involves considering the long-term future of the regime, so there may be a greater impact from future work in this area.

The Investment Research Review has also presented a mixed picture, with the recommendations reaching far more broadly than expected and suggesting a range of interesting measures such as setting up a research platform. However, the FCA did not then amend its rules on unbundling as expected to permit full re-bundling, and none of the additional six recommendations have been taken forward as yet.

While some reforms have arguably not met their full potential, the FCA has taken an ambitious approach in others. One example is its endeavour, as part of its work to reform the prospectus regime, to promote UK capital-raising by proposing to reduce the circumstances in which a prospectus is required and simplify the content requirements. It is also proposing a regime for public offer platforms as a new mechanism for raising scale-up capital. Work on digitalisation of shareholdings and accelerated settlement also has the potential to modernise UK capital markets. In wholesale markets, there have been welcome changes to the MiFID framework such as removing the share trading obligation and double volume cap.

Similarly, it seems that potential changes to the SMCR could be more ambitious than expected.

Impact (continued)

On the retail side, progress on the Advice Guidance Boundary Review has not been rapid, but could potentially help to solve a significant issue in retail markets if the boundary between regulated advice and unregulated financial guidance is delineated more clearly so that it is simpler to assist consumers by providing the latter.

As mentioned above, work on the repeal and restatement of assimilated law has had an important impact, given that HM Treasury has sought to tackle key files first. The government and the regulators have used the opportunity to change aspects of inherited legislation that they consider do not work well in the UK, and also to think more openly about how to improve the UK regulatory framework. One example is using the review of the Capital Requirements Regulation as an opportunity to introduce a new "strong and simple" regime for smaller deposit takers.

Looking Ahead

The new government has said very little so far on its views on the Edinburgh Reforms as a package, choosing instead to present its own vision for financial services at the Chancellor's Mansion House speech (see our blog post). Therefore, in many ways, the Mansion House package is now the new benchmark for the regulatory reform agenda. That said, there is no indication that the government plans to drop the outstanding elements of the Edinburgh Reforms; it will simply combine these with its own priority areas of reform. Some reforms that are yet to be completed may also take a slightly different approach, after the Chancellor stressed the government's intention to regulate for growth, not risk. Therefore, some of the outstanding reforms could be pursued more ambitiously than before.

In the past few months, the new government has helped push forward various outstanding aspects of the reforms, such as work on the proposed intermittent trading venue (PISCES), ESG ratings providers, and the SMCR review. Notable areas where we expect to see progress in the coming months include FCA consultations on the PRIIPs, short selling, and ESG ratings provider regimes, an FCA consultation on its rules for PISCES, a final report and concrete timeline for moving to T+1 settlement from the Accelerated Settlement Taskforce, finalisation of FCA rules on the new prospectus regime, a second-stage consultation on reforming the Consumer Credit Act, and consultations under the Advice Guidance Boundary Review.

On the Smarter Regulatory Framework, the PRA will continue its work on restating the CRR, the FCA is consulting on restating the MiFID II Delegated Regulation on organisational requirements, and work is due to start on repealing and restating the AIFMD and the UCITS Directive. Hopefully HM Treasury will also provide some clarity on which Tranche 3 files will be reviewed next, and which files will be subject to the "lift and shift" approach (copied into the regulators' rulebooks with minimum policy change).

Status of the Reforms

Topic		HM Treasury's Description	Status (HM Treasury)	Status (Our Assessment)	(Expected) Impact of Full Reform	Comment
1.	Regulators' objectives	Issuing new remit letters for the PRA and FCA with clear, targeted recommendations on growth and international competitiveness	Complete	Complete	Low	These recommendations have since been formalised in the new secondary objectives given to the regulators by the Financial Services and Markets Act 2023.
2.	Smarter Regulatory Framework	Publishing the plan for repealing and reforming EU law using powers within the FSM Bill, building a smarter regulatory framework for the UK	Complete	In progress	High	Arguably this is not a genuine reform and will only be complete once the exercise of repealing and restating assimilated law relevant to financial services has been completed. While HM Treasury and the regulators have made good progress on various key files, there are still a number of important files left to review.
3.	Prospectus regime	Overhauling the UK's regulation of prospectuses	Complete	In progress	High	Legislation has been made to amend the UK's public offers and admissions to trading regime. FCA rules on prospectuses to be finalised H1 2025. There would likely be a further transition period prior to the new public offers and admissions to trading regime coming into force.
4.	Settlement	Establishing an Accelerated Settlement Taskforce	Complete	In progress	Medium	Arguably this is not a genuine reform. The Taskforce has published draft recommendations for consultation, with a final report due to be published shortly. We would consider this complete when the recommendations have been finalised and implemented.
5.	Financial market infrastructure	Implementing a Financial Market Infrastructure Sandbox in 2023	Complete	Complete	Low	The Sandbox has been open for applications from 30 September 2024.

Status of the Reforms (continued)

Topic		HM Treasury's Description	Status (HM Treasury)	Status (Our Assessment)	(Expected) Impact of Full Reform	Comment
6.	Intermittent Trading Venue	Working with the regulators and market participants to trial a new class of wholesale market venue which would operate on an intermittent trading basis	In progress	In progress	Medium	Government consultation published on PISCES in March 2024. Consultation response and draft legislation published in November 2024. HM Treasury intends for the legislation to be in place by May 2025. The FCA will also need to consult on accompanying rules.
7.	Secondary capital raising	Delivering the outcomes of the Secondary Capital Raising Review	In progress	In progress	Medium	Many of the recommendations will be addressed by the FCA's work on the prospectus regime (see above) and the government is expected to implement other recommendations through amendments to the Companies Act. The Digitisation Taskforce has been considering the digitisation of shareholdings and is due to publish a final report. Certain recommendations impacting non pre-emptive fundraisings have already been implemented through updates to investor guidelines.
8.	Consolidated tape	Committing to having a regime for a UK consolidated tape in place by 2024	Complete	In progress	Medium	Arguably, this is not complete until a consolidated tape provider (CTP) is in place. The regime came into effect on 5 April 2024, with a CTP for bonds expected to be operational from the second half of 2025. The FCA plans to commence the tender process for the CTP for bonds in early 2025. It also intends to provide a further update on the CTP for equities this year.
9.	Securitisation	Reforming the Securitisation Regulation	Complete	In progress	Medium	While the new UK regime came into effect on 1 November 2024, the regulators have indicated that they plan to consult on further changes to their rules in 2025. Many of the original rules have been restated in the regulators' rules without significant policy change.

Status of the Reforms (continued)

Topic		HM Treasury's Description	Status (HM Treasury)	Status (Our Assessment)	(Expected) Impact of Full Reform	Comment
10.	MiFID II	Bringing forward secondary legislation to implement Wholesale Markets Review reforms	Complete	In progress	Medium	There are many strands to this work, and although much has been achieved already such as removing the share trading obligation and the double volume cap, arguably this is not complete until all of the relevant primary and secondary legislation is in place, along with revised FCA rules. Various provisions in primary legislation, such as those amending the systematic internaliser definition, are yet to come into force.
11.	Investment research	Committing to establish the independent Investment Research Review	Complete	In progress	Medium	Arguably, this is only complete when all of the Review's recommendations have been implemented. The FCA has amended its rules on research unbundling, although it has not permitted full re-bundling. The additional six recommendations are yet to be progressed.
12.	Short selling	Launching a Call for Evidence on reforming the Short Selling Regulation	Complete	In progress	Low	Arguably, this is only complete when the restated regime is in place. The necessary legislation is almost in place, but then the FCA will need to consult on its rules. Although the government has outlined some policy changes, the reform of this regime has not been as ambitious as was expected. The full impact is difficult to assess while we await the FCA rules.
13.	PRIIPs	Repealing the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, and consulting on a new direction for retail disclosure	Complete	In progress	High	Arguably, this is only complete when the new Consumer Composite Investments (CCI) regime is in place. The necessary legislation is now in place, but the FCA will need to consult on many of the important details, which will fall under its rules. If the issues with the PRIIPs regime are properly addressed this will have a significant impact.

Status of the Reforms (continued)

Topic		HM Treasury's Description	Status (HM Treasury)	Status (Our Assessment)	(Expected) Impact of Full Reform	Comment
14.	Consumer credit	Consulting on Consumer Credit Act Reform	Complete	In progress	High	The government has only consulted on the strategic direction of the reforms so far, and is due to publish a second stage consultation containing further detail. The government's aim is to achieve an "ambitious overhaul" of the regime.
15.	Advice guidance boundary review	Committing to work with the FCA to examine the boundary between regulated financial advice and financial guidance	In progress	In progress	Medium	The FCA published a Discussion Paper on proposals for closing the advice gap in December 2023, and plans to publish a consultation on targeted support for pension savers this month, followed by a consultation on better support for consumers of retail investments and pensions in the first half of 2025.
16.	Building societies	Announcing changes to the Building Societies Act 1986	Complete	Complete	Low	Changes made by legislation to exclude some sources of funding from the funding limit calculation and update building society corporate governance requirements in line with modernisations made to the Companies Act 2006.
17.	Ring-fencing	Reforming the Ring-Fencing Regime for Banks	In progress	In progress	Low	Short-term reforms to the regime have almost been finalised, including raising the threshold from £25 billion to £35 billion. The government is yet to set out its plans for the longer-term future of the regime.
18.	Non-performing exposures (NPEs)	Welcoming the PRA consultation on removing rules for the capital deduction of certain non-performing exposures held by banks	Complete	Complete	Low	Changes made to PRA rules in November 2023 to remove the CET1 deduction requirement for NPEs that are treated as insufficiently covered by firms' accounting provisions, and to remove the related reporting requirements.
19.	SMCR	Commencing a review into reforming the Senior Managers & Certification Regime	Complete	In progress	Medium	Arguably, simply commencing the review is not a reform. The regulators and HM Treasury are due to publish proposals to streamline aspects of the SMCR shortly.

Status of the Reforms (continued)

	Topic	HM Treasury's Description	Status (HM Treasury)	Status (Our Assessment)	(Expected) Impact of Full Reform	Comment
20.	Payments	Publishing a draft Statutory Instrument to demonstrate how the new powers being taken forward in the FSM Bill will be used to ensure that the FCA has sufficient rulemaking powers over its retained EU payments legislation	Complete	Complete	Low	Arguably this is not a genuine reform. However, the Electronic Money, Payment Card Interchange Fee and Payment Services (Amendment) Regulations 2023 were later made to remove certain conditions on the use of the FCA's rulemaking power in relation to payments regulation. This legislation ensures that the FCA has sufficient powers to make rules for payment services and e-money, so that the FCA can make rules to replace repealed EU legislation.
21.	Payment account information	Consulting on removing burdensome customer information requirements set out in the Payment Accounts Regulations 2015	Complete	Complete	Low	Repeal took effect on 1 January 2024.
22.	CBDC	Consulting on a UK retail central bank digital currency alongside the Bank of England	Complete	In progress	High	The Bank of England and HM Treasury consulted on their assessment of the case for a retail CBDC to inform future work in this area. They have now moved to a "design phase". Arguably this is not complete until a policy decision is made on whether, and how, to introduce a CBDC.
23.	Green finance	Publishing an updated Green Finance Strategy in early 2023	Complete	Complete	Low	Arguably, publication of the updated Strategy is not a genuine reform.
24.	ESG ratings	Consulting in Q1 2023 on bringing Environmental, Social, and Governance ratings providers into the regulatory perimeter	Complete	In progress	Medium	Arguably, this is only complete once the new regime is in place. HM Treasury published a consultation response in November 2024 and plans to lay the relevant legislation to bring ESG ratings providers into scope of regulation in early 2025. Following this, the FCA will consult on its related rules and guidance.

Status of the Reforms (continued)

	Topic	HM Treasury's Description	Status (HM Treasury)	Status (Our Assessment)	(Expected) Impact of Full Reform	Comment
25.	ELTIFs	Repealing EU legislation on the European Long-Term Investment Fund (ELTIF)	Complete	Complete	Low	The ELTIF Regulation was repealed on 1 January 2024.
26.	REITs	Improving the tax rules for Real Estate Investment Trusts	Complete	Complete	Low	Part 12 of the Corporation Tax Act 2010 was amended from April 2023 to change the conditions for property rental business, the rules for disposals within three years of significant development work, and the rules concerning payment of property income distributions to partnerships without deduction of tax.
27.	Fund management	Consulting on reform to the VAT treatment of fund management	Complete	Complete	Low	The government consulted on codifying current practice into UK law, but ultimately decided that reform was not necessary.
28.	Cryptoassets	Publishing a response to the consultation on expanding the Investment Manager Exemption to include cryptoassets	Complete	Complete	Low	Legislation made to define "designated cryptoassets" and include them in the list of investment transactions that qualify for the Investment Manager Exemption, which came into force in January 2023.
29.	Pensions	Consulting on issuing new guidance on Local Government Pension Scheme asset pooling	Complete	Complete	Low	Government has taken forward a package of proposed reforms regarding investments of Local Government Pension Scheme funds.
30.	Pensions	Increasing the pace of consolidation in Defined Contribution pension schemes	In progress	In progress	Medium	FCA continues to work on a value-for-money framework.
31.	Pensions	Laying regulations in early 2023 to remove well-designed performance fees from the pensions regulatory charge cap	Complete	Complete	Low	Legislation to effect this came into force in April 2023.

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