GBBC UK Working Group:

HMT Draft SI: Financial Services and Markets Act 2000 (Regulated Activities & Miscellaneous Provisions) (Cryptoassets) Order 2025

About us:

Global Blockchain Business Council (GBBC) is the trusted non-profit association for the blockchain, digital assets, and emerging technology community. Founded in 2017 in Davos, Switzerland, GBBC comprises more than 500 institutional members and 284 Ambassadors across 124 jurisdictions and disciplines.

GBBC furthers adoption of blockchain and emerging technologies by engaging regulators, business leaders, and global changemakers to harness these transformative tools for more secure and functional societies.

GBBC industry verticals: Financial Services, Global Commerce/Supply Chain, and Commodities, underpinned by AI, digital identity, governance, hardware, infrastructure, policy, regulation, and security.

GBBC initiatives: BITA Standards Council (BITA), Food for Crisis, Global Standards Mapping Initiative (GSMI), International Journal of Blockchain Law (IJBL), InterWork Alliance (IWA), and U.S. Blockchain Coalition (USBC).

Introduction

The Global Blockchain Business Council (GBBC) welcomes the opportunity to engage with HM Treasury's proposed statutory instrument under the Financial Services and Markets Act 2000, which introduces regulated activities for cryptoassets within the UK perimeter through amendments to the Regulated Activities Order (RAO).

The GBBC UK Working Group brings together a cross-section of participants from digital asset exchanges, custodians, technology firms, legal advisers, and financial institutions to support constructive, forward-looking regulatory development. Our objective is to provide HM Treasury and UK regulators with technical, proportionate and innovation-conscious input on the implementation of cryptoasset regulation.

Section 1 – Definitions and Perimeter

Observations:

- The use of “fungible” in the definition of qualifying cryptoasset (Art. 88F) is legally undefined and may not reflect how tokens function in practice.
- Assets such as large-scale NFT drops or synthetics may be economically interchangeable but fail the “fungible” test due to metadata or provenance.
- The definition of qualifying stablecoin (Art. 88G) risks overlap with e-money. A token such as USDC may meet both definitions depending on interpretation, with differing perimeter implications.

Recommendations:

- Replace “fungible” with “fungible or interchangeable”, or define it as “fungible within its class” to reflect custody and operational practice.
- Introduce a clear rule to manage dual-classification: where an asset meets both the stablecoin and e-money definitions, one regime should take precedence.
- Consider reintroducing a blockchain reference or DLT-nexus to assist in classification, reflecting the original MLR definition of cryptoasset.

We support the use of FSMA’s existing RAO structure to define activities based on financial risk and function. However, the foundational definitions of qualifying cryptoasset (Art. 88F) and qualifying stablecoin (Art. 88G) raise several issues that merit further attention.

The stablecoin definition, as drafted, is unduly complex and could benefit from simplification. A clearer statement that stablecoins are tokens referencing fiat value and backed by assets to maintain that value would be preferable to the existing, more technical formulation.

The use of the term “fungible” in the definition of qualifying cryptoasset is problematic. As currently drafted, it excludes non-fungible and non-transferable tokens. While this aims to focus the perimeter on tradeable assets, it may not capture real-world complexity. In particular, there is no statutory definition of “fungibility,” and as noted by participants in our roundtable, not all “fungible” cryptoassets are truly interchangeable in practice. Bitcoin, for example, is legally treated as fungible, yet tokens can be traced and differentiated based on transaction history. Meanwhile, certain NFTs—such as large-scale collections with uniform features and fixed pricing—are economically indistinguishable from fungible tokens.

This ambiguity poses compliance challenges for custodians, marketplaces, and developers alike. It also risks inconsistent regulatory outcomes across products that behave similarly. We therefore suggest replacing the term “fungible” with “fungible or interchangeable,” or clarifying that tokens are to be assessed as “fungible within their class.”

Turning to stablecoins, we note with concern the possibility of dual-classification between qualifying stablecoins and e-money. Under current definitions, a single asset (e.g. USDC) could plausibly meet both sets of criteria, depending on its technical structure, commercial terms, and jurisdictional treatment. This creates serious legal uncertainty—particularly since the stablecoin regime appears to impose stricter territorial constraints than the e-money regime.

This overlap is not merely theoretical. A UK-based firm assessing whether a token is a qualifying stablecoin or e-money must make that determination with a high degree of legal certainty, since the consequences differ significantly: cross-border offerings, licensing requirements, and criminal liability all turn on that classification. Without a rule of precedence or a clearer dividing line, firms may find themselves unable to proceed without legal opinions or regulatory forbearance. This is not consistent with the regime's goal of clarity and predictability.

We therefore recommend that the Treasury establish a rule of interpretation—either in the SI or in FCA guidance—making clear that where a token meets the definition of e-money, it should be treated as such and fall outside the stablecoin perimeter. Alternatively, the definitions should be restructured to be mutually exclusive based on issuer characteristics or technology used.

Additionally, we note that the stablecoin definition includes the clause: "irrespective of whether the holding of a fiat currency… or other asset contributes to the maintenance of the stable value." This phrasing generated considerable discussion. While we understand the intent is to capture coins referencing a fiat value, regardless of whether the underlying assets are denominated in the same currency, the current wording is unclear. As one participant noted, if a stablecoin references GBP but is backed by US T-bills, the phrase may suggest it is out of scope—contrary to policy intent.

We suggest simplifying this provision to state that qualifying stablecoins are those referencing the value of fiat currency and seeking to maintain that value through the holding of any form of reserve asset. To increase the likelihood of regulatory uptake, we recommend specifying that qualifying reserve assets be "approved by the regulator" to balance flexibility with prudential oversight

Section 2 – Territorial Scope & FSMA S.418

Observations:

- The revised s.418 seeks to bring overseas firms dealing with UK consumers within scope. However, the absence of an Overseas Persons Exclusion (OPE) or equivalent carve-out for institutional B2B activity creates material perimeter uncertainty.

- The current structure could capture overseas firms engaging with UK-based intermediaries—even where no consumer is involved.

- This exposes standard affiliate models and cross-border institutional flows to perimeter risk, including potential criminal offences and proceeds of crime treatment.

Recommendations:

- Introduce a targeted exclusion within s.418 or the RAO for activity conducted with UK institutional clients or intermediaries.

- Alternatively, adapt the existing OPE framework to apply to cryptoassets, limiting its use where direct consumer engagement exists.

- Clarify, through guidance or drafting, that business conducted "by way of business" with regulated UK institutions does not, in itself, create a UK nexus.

The revised territorial scope under s.418 FSMA is perhaps the most significant technical concern.

The SI seeks to bring within scope overseas firms that engage directly with UK consumers, even if services are provided remotely. While this reflects the policy intent to protect UK retail users, the drafting does not provide a clear exclusion for firms that interact with UK intermediaries or institutional clients only. Nor does it distinguish adequately between direct and indirect UK-facing activity.

This omission has substantial implications. In traditional finance, the Overseas Persons Exclusion (OPE) provides a long-standing and well-understood route for overseas firms to conduct wholesale business with UK counterparties without triggering authorisation requirements. The absence of an equivalent exclusion for cryptoassets means that overseas firms will need to rely on perimeter analysis alone—raising legal uncertainty, risk of breach, and operational caution.

This issue is not academic. A firm dealing with its own UK affiliate, or with a UK-based crypto platform on a B2B basis, may struggle to conclude with confidence that its activity falls outside the perimeter. This creates substantial legal exposure not just for the firm itself, but for banks, service providers, or counterparties who interact with those flows.

This creates an adverse effect on legitimate institutional engagement. Rather than promote safe, intermediated access to UK markets, the absence of clarity may drive overseas firms to avoid UK-facing activity altogether, reducing competitiveness and limiting innovation.

In traditional markets, the OPE provides a high-confidence route for cross-border institutional engagement. This has facilitated efficient market access without creating perimeter risk. The current SI removes that certainty for cryptoassets, requiring institutions to interpret territorial scope on a case-by-case basis. This potentially undermines consistency across asset classes.

There is also a concern that under the current language, even a representative office with no involvement in regulated activity could bring an overseas firm within scope. This broad interpretation risks deterring even limited UK presence and should be clarified through guidance or an exclusion.

We therefore strongly recommend that the Treasury introduce a tailored exclusion—either in s.418 or in the RAO—for overseas persons who engage only with UK intermediaries or institutional clients. If there are policy concerns about extending the full OPE to cryptoassets, an alternative model could be developed that preserves its commercial logic while addressing consumer protection concerns.

At a minimum, the Treasury should clarify—either in the SI or accompanying guidance—that dealing with a UK-regulated institutional counterparty, where no UK consumer is involved, does not in itself bring a firm within scope of the regime.

Section 3 – Stablecoin Issuance (ART. 9M)

Observations:

- The definition of "issuing" a stablecoin extends to those who "offer" coins in the UK, regardless of whether they mint, redeem, or hold reserves.
    - Additionally, the territorial scope of Article 9M raises interpretative challenges. While the principal definition in Article 9M(2) appears to require that the issuer be "established in the United Kingdom," this concept is not clearly defined. It remains unclear, for instance, whether a non-UK incorporated entity could be deemed to be "established" in the UK by virtue of its use of a UK-based distributor. This ambiguity is compounded by Article 9M(5), which contains a deeming provision that would treat a UK group subsidiary as an issuer if it engages in distribution or related activities concerning a stablecoin issued by a non-UK parent. As drafted, this could lead to overlapping or duplicative obligations within corporate groups, and extend issuer-level compliance requirements to entities that do not control minting or reserve assets.

- This could capture agents, distributors, or technology providers, inadvertently assigning them issuer-level obligations.

- The clause "irrespective of whether the holding of fiat currency… contributes to the maintenance of stable value" is unclear and could misalign intent and scope.

Recommendations:

- Limit issuer obligations to entities that mint or control redemption and hold reserve assets.

- Provide a clear exclusion for parties acting solely on behalf of an authorised issuer, e.g. wallet providers, underwriters or arrangers.

- Simplify the reserve clause. Consider: "Where a cryptoasset references a fiat currency and seeks to maintain that value by holding assets, regardless of denomination."

- We recommend that HM Treasury clarify the intended scope of "establishment in the UK" and limit the effect of the deeming provision to avoid unintended extraterritorial reach or regulatory over-capture.

We support the policy objective of regulating fiat-referenced stablecoins that are made available to UK users. However, the current drafting of Article 9M risks bringing into scope a broader range of actors than appears intended.

Under the SI, “issuing a qualifying stablecoin” includes not only the act of creating or redeeming the token, but also “offering” it in the United Kingdom. While we understand the desire to capture commercial entities marketing or distributing stablecoins to UK consumers, the term “offering” is not clearly defined and may extend issuer-level obligations to firms with no meaningful control over the asset.

For example, UK-based distributors, wallet providers, or exchanges may be deemed “issuers” simply because they facilitate access to a stablecoin issued elsewhere. These entities do not mint, redeem, or manage reserves. Treating them as issuers under FSMA could create duplicative compliance requirements and legal misalignment, particularly where the true issuer is already authorised in another jurisdiction.

This approach risks creating a product governance-style perimeter, where any actor involved in the lifecycle of a stablecoin—from technical integration to distribution—is potentially treated as an issuer. Such breadth is not aligned with traditional FSMA practice and may result in overlapping or misapplied obligations. Furthermore, the inclusion of group company structures within the issuer definition introduces unnecessary complexity. A UK firm involved in related activities could be deemed an issuer solely due to group affiliation, even where its activities mirror those of unaffiliated firms that remain out of scope. This asymmetric treatment is difficult to justify and risks deterring international group structures from locating support functions in the UK.

In many cases, market participants involved in distribution or underwriting do not control the issuance function but may be captured as “issuers” under Art. 9M. We encourage HMT to consider whether these actors should instead fall under arranging (Art. 9Z), with issuer obligations confined to those directly managing minting, redemption, and reserve operations. HMT should split out the activity of true issuance from the 9M(b) and (c) activities because these are functionally different.

Moreover, we note that the arranging activity (Art. 9Z) explicitly excludes stablecoin issuance. This exclusion has the unintended effect of forcing all activity related to making stablecoins available into the “issuer” category—regardless of actual function.

A more proportionate approach would be to limit issuer obligations to those who perform the core issuance functions—i.e., entities who control minting, redemption, or reserve assets. Ancillary actors should fall under the arranging or dealing provisions, depending on their role. Where such entities act on behalf of an authorised UK issuer, their obligations should be derivative, not duplicative.

In this light, we invite HM Treasury to consider whether it may be more appropriate to address issuer obligations through a clearer territorial restriction, aligned with the consumer protection objectives of the regime. For example, an approach that prohibits cross-border issuances to UK consumers unless the issuer is established onshore—akin to the model adopted under MiCA—could offer greater legal certainty without creating a novel product governance framework. In parallel, extending an Overseas Persons Exclusion (OPE) to cover institutional engagement with stablecoin activities could preserve cross-border market access while maintaining appropriate consumer safeguards.

The current formulation leaves material uncertainty as to who is an "issuer," particularly where UK affiliates or distributors are deemed in scope despite not performing core issuance functions. There is a real risk that such deemed entities may be unable to comply with issuer-level obligations in practice. A clearer delineation of roles, supported by either territorial limitations or revised drafting on deemed issuance, would improve both clarity and enforceability.

Additionally, the functions of minting and burning are frequently technical execution tasks, distinct from the core decisions of issuance or redemption. The entity initiating or authorising minting/redemption typically retains the substantive issuer responsibility. This distinction should be reflected in regulatory drafting to ensure obligations are assigned based on control, not merely operational role

Finally, as discussed under Section 1, the language around reserve backing in Art. 88G(1)(b)—specifically, the phrase "irrespective of whether the holding of fiat currency… contributes to the maintenance of the stable value"—is opaque. Its intent appears to be that stablecoins referencing fiat are in scope even if backed by other assets (e.g., US T-bills, crypto collateral). However, the formulation risks confusion, as it seems to decouple the reserve from the stabilisation mechanism.

We recommend redrafting this provision in plainer terms, such as: "a qualifying stablecoin means a cryptoasset that references the value of a fiat currency and seeks to maintain that value through the holding of fiat or other assets."

Section 4 –Custody/Control (ART. 9O)

Observations:

- The inclusion of "control by any means" risks capturing smart contract developers, software agents, or custodians in secured lending transactions.
- The reference to "rights of return" could inadvertently bring non-custodial collateral arrangements (e.g. repo, DeFi collateral) within scope.

Recommendations:

- Narrow the definition to align with AML/MLR custody frameworks, which distinguish between technical access and safekeeping obligations.
- Remove or refine the "right of return" test. Outright title transfer or financing arrangements should not be treated as custody.
- Introduce a clear carve-out for non-custodial roles, including protocol developers, front-end interfaces, and software service providers.

Article 9O defines custody to include exercising “control by any means” over cryptoassets on behalf of another person. While this broad phrasing seeks to capture the variety of custody models in the cryptoasset ecosystem, it risks significant overreach. In our view this would benefit from a technical service provider style exemption. The control by any means definition is broad enough to potentially cover businesses who regard themselves as software providers and do not hold themselves out as providing custody services to third parties.

Control in the crypto context can be exercised through smart contracts, shared key arrangements, or delegated signing authorities. Without a clear link to safekeeping, this could capture parties who are not providing a custody service in any conventional sense—such as developers, governance participants, or protocol maintainers.

Of particular concern is the inclusion of scenarios involving residual “rights of return.” This phrase risks capturing secured lending arrangements, repo transactions, and DeFi collateral models where title is transferred but an obligation to return an equivalent asset exists. In traditional markets, these would not be considered custody. Bringing them within scope here could criminalise ordinary financing activity and introduce uncertainty for institutions operating within legitimate capital markets infrastructure.

This definitional overreach could inadvertently capture established financial market infrastructure, including securities financing transactions and collateral arrangements. These structures—such as repo and title-transfer collateral—do not constitute custody under current market practice and should not be reclassified merely due to residual return mechanics. Their inclusion could deter institutional adoption and introduce unintended criminal risk into legitimate activities.

We understand that, following implementation of the SI, the FCA will consult on the detailed regulatory framework applicable to cryptoasset custody. We support a principles-based approach that distinguishes clearly between entities providing safekeeping services and those offering technical tools or interfaces without fiduciary responsibility. It would be helpful for the Treasury’s perimeter drafting to enable such flexibility in implementation.

We recommend narrowing this definition by aligning it with existing AML/MLR guidance on cryptoasset custody, which is better attuned to distinguishing between access, control, and safekeeping. We also urge the removal or limitation of the “right of return” limb, or at a minimum, clarifying that outright title transfer or security arrangements do not, on their own, constitute custody.

Additionally, Treasury should consider an express exclusion for software developers, front-end interface providers, and other infrastructure participants who may interact with custody systems but do not provide custodial services themselves

Section 5 – Staking (ART. 9Z7)

Observations:

- The current SI defines staking as a regulated activity based on the use of a qualified cryptoasset in blockchain validation. This broad definition does not distinguish between custodial and non-custodial models, nor between enterprise-grade services and protocol-native participation.

- This could result in disproportionate perimeter capture, inadvertently treating individual users validating blockchains from home as regulated service providers. Such a reading would undermine decentralisation and is at odds with the treatment of comparable activities globally.

- The current proposal to regulate qualified cryptoasset staking as the "use of a qualified cryptoasset in blockchain validation" is too broad and ambiguous. Non-custodial, native staking on a blockchain should fall outside of the scope of the Financial Services and Markets Act. Only custodial staking services where the service provider safeguards the qualified cryptoassets on behalf of another should be regulated.

Staking as such does not have a direct equivalent in traditional financial markets - it is unique to the blockchain industry. Placing all forms of staking into the scope of FSMA risks introducing unnecessary operational barriers and compliance burdens, limiting the options available to UK users and reducing the attractiveness of the UK market.

Recommendations:

- **On Qualifying Cryptoasset Staking:**

  We propose a binary classification of staking activities under the Order:

- **Staking-as-a-service**: where staking is offered as a service by:
  (i) cryptoasset exchange providers; or
  (ii) custodial wallet providers
  —should be considered a regulated activity under this Order.
- **Native staking**: performed directly by users as part of the protocol/network operation, without the involvement of an intermediary and where no single party exercises control of the cryptoassets should *not* be considered a regulated activity under this Order.

  This interpretation aligns with section 2.10 of the Policy Note, which clarifies that where activities are undertaken on a truly decentralised basis, such that no party can be considered to be carrying them out "by way of business," the authorisation requirements would not apply. The FCA would retain discretion to assess whether any controlling party exists, in line with section 19 of FSMA. However, the current drafting does not make this distinction explicit. We therefore recommend clarifying that only entities providing staking services "by way of business"—including platforms or intermediaries that offer pooled or custodial staking—fall within scope.

By contrast, protocol-native validators or actors who coordinate staking in a non-custodial manner should be expressly excluded to avoid disproportionate perimeter expansion.

- Additionally, we encourage Treasury to clarify the treatment of algorithmic and overcollateralised stablecoins, particularly where the stabilisation mechanism involves cryptoassets or other volatile reserves. The definition of "qualifying stablecoin" should either clearly include or exclude such models—depending on policy intent—but cannot remain ambiguous.
- Clarify that "making arrangements" does not include providing software, infrastructure, or UI tools for non-custodial staking.
- Provide legal certainty that participation in protocol-native staking, without intermediation or customer asset custody, does not require authorisation.

Section 6 – Transitional Regime

Observations:

We support the transitional regime's purpose—to allow continuity for firms winding down or awaiting authorisation. However, clarification is needed on the scope of permissible activity during this period. We assume that further clarification regarding the criteria and principles related to the transitional regime will be elaborated on by the FCA.

Conclusion

GBBC welcomes the clarity and structure the SI brings to the UK cryptoasset regime and recognise the significant progress it represents. At the same time, we believe that a number of technical adjustments are required to ensure the regime delivers on its core aims—namely, legal certainty, investor protection, and innovation readiness.

We remain committed to engaging collaboratively and welcome the opportunity to support the successful implementation of the UK's digital asset regulatory framework.