The British Blockchain Association

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Advocating Evidence Based Blockchain

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The British Blockchain Association's Response To HM Treasury's Draft Statutory Instrument (DSI) FSMA 2000 (Regulated Activities and Miscellaneous Provisions Cryptoassets Order 2025 Consultation

1. Overall Assessment and Scope, and Executive Summary

We commend HM Treasury's proactive regulatory approach in extending the FSMA perimeter to capture key cryptoasset-related activities. However, in seeking to regulate a rapidly evolving sector, the definitions and scope require additional refinement to ensure proportionality, clarity, and operational feasibility.

The Draft SI demonstrates a well-calibrated move from principles to technical codification, with notable parallels to the EU's MiCA and existing UK financial promotion regimes. We welcome HM Treasury's invitation for technical comments on the draft statutory instrument and accompanying explainer on forthcoming statutory provisions to create new regulated activities for cryptoassets. While the DSI does codify a broader oversight, some areas remain high-level and open to interpretation. Our response highlights key ambiguities, evidence gaps, and policy considerations requiring further attention.

1. Amendment of the Regulated Activities Order

(Chapter 2B: **Cryptoassets Issuing qualifying stablecoin)**

1A. In Section 3 of Part 2, Amendment of the Regulated Activities Order (p. 2), the definition of a "qualifying cryptoasset trading platform" lacks clarity regarding whether both decentralised

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and centralised cryptocurrency exchanges fall within its scope. It is particularly important to ensure that decentralised exchanges are covered by the same legislative framework and are included within the definition of "qualifying cryptoasset trading platforms." Recent research by Farag et al. (2025) highlights that decentralised exchanges play a significant role in providing liquidity to cryptocurrency markets, including the stablecoin segment. Moreover, the liquidity of stablecoins directly impacts the broader cryptoasset ecosystem. To maintain financial stability and reduce the risk of liquidity shocks, it is therefore essential to establish clear regulatory requirements for decentralised exchanges (Yousaf et al, 2023). It may be helpful to explicitly clarify that both centralised and decentralised platforms are included within this definition.

1B. In the same section, only two types of qualifying exchange assets are listed: (a) money (including electronic money); and (b) other qualifying cryptoassets. Since CBDCs and non-fungible assets appear to be excluded from the definition of qualifying cryptoassets (p. 10), it is important to clarify whether, as a consequence, NFT trading platforms and marketplaces are excluded from regulation and fall outside the scope of "qualifying cryptoasset trading platforms." More broadly, this categorisation appears limited, and an expansion of the regulatory scope may need to be considered in the future.

1C. In Chapter 2B: Cryptoassets – Issuing Qualifying Stablecoin (9M, p. 3), the definition "For the purposes of paragraph (1), issuing means a person ('A'), established in the United Kingdom, carrying on any of the following activities" is unclear. It raises the question of whether "issuing means a person" should instead read "issuer means a person" for greater clarity.

1D. In 88G (p. 11), the definition of "qualifying stablecoin" appears to exclude algorithmic (uncollateralised) stablecoins. Given that such stablecoins are widely considered among the riskiest—particularly in light of recent high-profile failures such as TerraUSD—the potential issuance and use of these instruments may benefit from further consideration under a separate regulatory framework. We recommend that HM Treasury or the FCA consider launching a dedicated consultation or establishing a distinct category for algorithmic stablecoins. This would help ensure that appropriate and proportionate safeguards are explored without stifling innovation in decentralised financial systems.

2. Definitions of Cryptoassets and Stablecoins

Article 88F – Qualifying Cryptoassets:

The requirement for cryptoassets to be "fungible" and "transferable" is aligned with practical regulatory needs, but clarity is needed on edge cases.

Evidence Gap: A significant proportion of tokens (e.g., semi-fungible tokens like ERC-1155s or in-game utility tokens) may have hybrid characteristics. It is also important to take into consideration UK-traded tokens that exhibit limited fungibility.

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Recommendation: Consider a "restricted cryptoassets" category to accommodate tokens with partial transferability or conditional fungibility. This approach would be conceptually aligned with the FCA's sandbox philosophy.

Article 88G – Qualifying Stablecoin:
The reliance on fiat-referencing as the primary criterion risks excluding algorithmic or hybrid stablecoins:

While DAI and Frax constitute a relatively small portion of the overall stablecoin market, it is important to take into consideration the emergence of decentralised stablecoins and their regulatory challenges.

Recommendation: Introduce a subclass of "algorithmically stabilised assets" subject to separate prudential assessments rather than exclusion.

3. Regulated Activities and Technical Observations

a. Issuance of Stablecoins (Article 9M)

The definition captures issuance, redemption, and value maintenance. While this is comprehensive, it is silent on reserve disclosures and real-time auditing mechanisms, critical for consumer trust.

Example: Tether controversies highlight systemic risks from opaque reserves. The FCA should be empowered to mandate independent reserve attestation (akin to MiCA's ART obligations).

b. Custody and Safeguarding (Article 9O)

This article is well-constructed but complex in practical application:

The definition of "control" via private key custody is appropriate, yet should also consider multi-sig, threshold signature schemes (TSS), and smart contract escrow mechanisms. We believe that the UK-based cryptoasset firms are increasingly using MPC-based custody.

Recommendation: FCA should issue technical guidance on custody arrangements that qualify under Art. 9O(2)(a) and exclude self-custody where the service provider does not hold access credentials. FCA's current crypto guidance does not yet explicitly encompass TSS/MPC-based models.

c. Dealing as Principal and Agent (Articles 9U and 9X)

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The scope risks capturing DeFi liquidity providers or developers who never "hold out" but interact with automated market makers (AMMs).

Recommendation: Explicitly carve out "autonomous protocol interactions" from dealing activities unless there is operational control or economic ownership.

d. Operation of Trading Platforms (Article 9T)

The definition rightly includes platforms facilitating crypto-to-crypto trading. However, it does not differentiate centralised platforms (CEXs) from decentralised exchanges (DEXs). The draft is ambiguous on whether permissionless protocols fall under scope unless there is identifiable control or UK nexus.

Evidence: A Financial Stability Board report (2024) recommends regulatory sandboxes for DEX innovation due to enforcement complexity.

Recommendation: Introduce a proportional exemption regime for DEX front-end developers not involved in KYC or execution functions.

e. Staking Arrangements (Article 9Z7)

Article 9Z7 is notable for being the first formal recognition of staking as a regulated activity in the UK.
Technical Observation: The term "arrangements for staking" must distinguish between:

Validator node operators
Delegation services
Protocol-native staking (non-custodial)

Risk: Without this distinction, software developers may be wrongly captured as regulated persons.

Recommendation: Apply the "holding out" and "client relationship" tests strictly to ensure passive stakers and protocol contributors are not inadvertently regulated. This is a current gap in both the UK and MiCA frameworks.

4. Extraterritorial Reach (Section 418 FSMA Amendment)

The Ninth and Tenth Case expansions to section 418 significantly widen the jurisdictional reach:
Risk of Overreach: Without clear thresholds, foreign DeFi protocols could be considered in breach for enabling token access to UK users.

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Comparable Jurisdictions: The MAS (Singapore) and Finma (Switzerland) have adopted "point of contact" doctrines based on UI localisation, language, and marketing. The HM Treasury should consider similar metrics.

Recommendation: HM Treasury and FCA should issue a Perimeter Guidance Note outlining the application of extraterritoriality in practical scenarios, especially where no intermediary exists.

5. Transitional Provisions and Grandfathering

Articles 12–20 are broadly appropriate but require tighter risk controls. The 2-year grace period under Article 14 could be misused by firms whose applications are already pending rejection. The requirement under Article 19 to notify clients of the lack of authorisation is essential but should also include a mandatory disclosure template to ensure consistency and prevent obfuscation.

Recommendation: Mandate quarterly reporting of pre-existing contract performance metrics and consumer complaints to FCA for exempted firms.

6. Interaction with Other Legislative Frameworks

Overlap with MiCA and EMR 2011: The Draft SI takes the commendable step of excluding qualifying stablecoins from e-money definitions. However, this must be cross validated against PRA authorisation frameworks to avoid supervisory gaps.

Compatibility with the Money Laundering Regulations 2017 (MLRs): The introduction of obligations under regulation 56B must include safeguards to avoid duplication for firms already FCA-registered under AML provisions.

Recommendation: A joint FCA-HM Treasury Technical Note should be issued to clarify overlaps between cryptoasset permissions and AML registration under MLRs. The exclusion of stablecoins from e-money under the Draft SI must be cross-referenced with PRA rules. AML duplication is a current industry concern.

Conclusion

We are happy to support HM Treasury through stakeholder roundtables or technical briefings to advance the implementation of an evidence-based regulatory regime. This Draft SI is a pivotal step toward establishing a coherent and proportionate regulatory framework for cryptoassets in the UK. By refining definitions, narrowing scope where appropriate, and providing clear technical guidance on emerging modalities such as DeFi and staking, HM Treasury can ensure that innovation and regulation advance hand-in-hand.

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END.

If you have any questions relating to this response, please contact BBA Secretariat at Secretary@britishblockchainassociation.org

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About the British Blockchain Association:

Established in 2017, The British Blockchain Association (The BBA) is the world's leading industry body advancing evidence-based adoption of Blockchain, Cryptoassets and Distributed Ledger Technologies (DLT). The BBA has advisors, ambassadors, members, partners, and editorial board network in 78 countries across six continents. In 2021, BBA authored the UK's National Blockchain Roadmap. BBA is home to the world's first peer-reviewed blockchain research journal The JBBA - Journal of The British Blockchain Association; The world's first Centre for Evidence-Based Blockchain (CEBB); the world's first trans-national collaboration consortium of 53 countries - BAF - The Blockchain Associations Forum, as well as BBA Fellowships (FBBA), Blockchain International Scientific Conferences (ISCs), and a host of other world-class blockchain initiatives. BBA also has its headquarters in the Metaverse. BBA president was awarded the UK's most prestigious National Honour (King's Honour) for services to Blockchain, in New Year's Honours 2023. The BBA is also the Secretariat of the UK's All-Party Parliamentary Group on Blockchain Technologies.