

Demise of FSA – the new regulatory regime for financial institutions

Introduction

In 2010 the UK government announced plans for radical reform of the domestic regulatory regime. Following the initial announcements in June, HM Treasury elaborated on their proposals in a consultation document – ‘A new approach to financial regulation: judgement, focus and stability’ and in the subsequent summary of consultation responses. This report outlines what regulated firms need to know about the current plans for the new regulatory framework, and provides an analysis of the likely impact.

The policy behind the changes

The coalition Government took the decision to overhaul financial regulation to address perceived weaknesses in the current regime and lessons learnt from the financial crisis. The main changes had been proposed by the Conservative party in opposition and built on the Sassoon review published in March 2009. In the government’s view, the crisis demonstrated that

- the single financial regulator, the Financial Services Authority (FSA), was stretched too thin and was therefore unable to identify and tackle issues early. It also relied too heavily on a ‘tick box’ or rules-based approach to regulation;
- the Bank of England (Bank) had a responsibility to ensure financial stability but lacked the ‘tools or levers’ with which to achieve this;
- the Treasury’s role was not clearly defined, they ‘had responsibility for maintaining the institutional framework but no clear responsibility for dealing with a crisis which put public funds at risk’; and
- there was a lack of general oversight, no single institution had the responsibility or authority to monitor the system as a whole, to identify risks to financial stability and act decisively to tackle them.

This uneasy division of responsibilities meant that there was a failure to monitor the overall levels of debt and, as the crisis developed, a lack of clarity about who was in charge. To combat this the Government propose to separate the responsibility for prudential regulation from the responsibility for consumer protection and market conduct, and to bring micro and macro-prudential responsibilities under the same roof- that of the Bank of England. This shift will give the Bank of England responsibility for the oversight of ‘financial stability’ alongside their current role of maintaining monetary stability, and thereby provide a more coordinated defence against a future crisis.

Analysis and impact assessment- Box 1

Firms have been generally hostile towards the idea of splitting up FSA and the introduction of ‘twin peaks’ regulation. It will undoubtedly make life more complicated for regulated institutions.

The Government, however, believes that twin peaks is a more effective model for the new post-crisis world of macro-prudential regulation. It will enable it to house this new macro-prudential (or financial stability) role and the financial regulation and supervision of banks under one roof and under the same roof that also houses monetary policy and the supply of liquidity to the banking sector. All four roles are closely connected and arguably can be better executed within a single structure. For example, the Governor of the Bank of England emphasised, ‘monetary stability and financial stability are two sides of the same coin. During the crisis the former was threatened by the failure to secure the latter.’ Another example of the connection is apparent in the US; it is clear that the antidote to inflationary pressure from quantitative easing (a monetary policy tool), would be to limit lending by the banking sector through increases in the reserve requirements for individual banks.

These are the priorities; the government sees the inconvenience for those firms that will be subject to twin peaks regulation as a price worth paying.

New regulators and their roles

Outline of the proposed new institutional structure

- FSA will effectively be abolished and the current model of a unitary (one stop shop) regulator/supervisor abandoned in favour of a twin peaks structure, i.e. one where financial institutions are each supervised by two separate regulators - a Prudential Regulatory Authority (the PRA) and a Consumer Protection and Markets Authority (the CPMA);
- All banks, building societies, investment banks and insurers, both general and life and pure reinsurers, (twin peaks firms) will be regulated by the new PRA, which will be a subsidiary of the Bank of England. The PRA will be headed by Hector Sants and will deal with prudential and financial regulation, both in setting policy and in supervising individual firms (so called 'micro-prudential' regulation);
- All firms will be regulated by the new CPMA, which will deal with various areas of regulation including conduct of business and market regulation. It will also take over FSA's role as the UK Listing Authority (UKLA).
- Macro-prudential regulation (see box 2 below) will be the responsibility of the Bank of England and its new Financial Policy Committee (the FPC). There will be cross-membership between the FPC and the MPC which will ensure that monetary and macro-prudential policies are developed in a coordinated fashion.
- The Government plans to consult on the transfer of OFT responsibility for Consumer Credit to the CPMA and the creation of a new 'Economic Crime Agency' (the ECA), to take over the roles of various government departments and agencies (including the Serious Fraud Office).

Institutional structure charts

We have prepared a [chart](#) to show the new UK institutions and their roles and relationships. Additional charts also show the [international, European and UK arrangements as they currently stand](#) and [as they would look under the proposed new EU and UK regulatory regimes](#). There is also a [detailed report](#) on the new EU authorities.

CPMA

All firms will be subject to regulation by the CPMA in one or more areas (see 'What this will mean for firms' below). The CPMA will effectively undertake all areas of supervision and regulation, other than those falling under the PRA's role as prudential of twin peak firms. It will therefore have a broad mix of roles including –

- Wholesale (and commercial) market regulation and supporting infra-structure
- Market abuse (including both criminal and civil enforcement)
- Retail market regulation (including conduct of business) and consumer protection
- Prudential regulation/supervision of single regulator firms
- FSA's current role as the UK Listing Authority

A 'consumer champion'? The CPMA's consumer role has been emphasised by the government, referring to the CPMA as a 'consumer champion' with an enhanced emphasis on addressing what are perceived to be the 'unacceptable' levels of consumer harm in the previous decade. To this end the CPMA will be given greater powers of intervention and disclosure and will seek to

- Intervene earlier and more proactively (even at the risk of being overturned on appeal) to try to pre-empt harm to consumers
- Operate a lower risk tolerance than the FSA
- Implement a more detailed prescriptive attitude in preference to guidance and principles.
- Pursue more stringent enforcement
- Move away from a supervisory reliance on a firms own system and controls and disclosures
- Undertake thematic industry-wide interventions in addition to firm specific interventions and the current 4 year cycle core inspection programme

The CPMA will also be expected to review the failings of the current system to deal with wholesale conduct issues and to provide a clearly articulated strategy for this area.

Europe

The CPMA will be the lead authority representing the UK in the European Securities and Markets Authority.

PRA

The PRA will only be responsible for the prudential regulation of certain firms- see 'What this will mean for firms' below. It will build on the FSA's prudential programme, but its statutory objective demonstrates a clear departure from the regulatory philosophy of the FSA. The draft objective is to 'promote the stable and prudent operation of the financial system through the regulation of financial firms in a way which minimises the disruption caused when they fail.' This puts the whole issue of regulating, or minimising, the impact of failure at the very heart of PRA's remit. In contrast, FSA has no such objective and pre-crisis, regulation was focused on preventing failure but not on minimising the impact of failure.

Hector Sants has already outlined the likely approach as between regulating to prevent failure and regulating to avoid an unacceptable impact from failure. The balance will depend on the assessment of the likely consequences of that firm failing (both in normal market conditions and in times of market stress) on the financial system as a whole.

For 'low impact firms' there will be greater emphasis (compared to FSA) and a shift of resources from reducing the probability of failure to ensuring resolvability. There will be monitoring to ensure compliance with PRA rules (a model seen as an extension of that currently applied by FSA to small insurers and credit unions) but PRA will not regard the failure of low impact firm as a failure of PRA regulation; it will have ensured that all such firms can be resolved without unacceptable impacts on consumers or the financial system as a whole. This is a long way from a 'zero failure regime'.

The PRA will operate a graduated attitude to the possibility to failure, as the likely impact on the financial system increases. So the PRA's tolerance for failure will decline and a greater proportion of its resources be dedicated to reducing the probability of failure through its supervisory strategy. Therefore, at the other end of the scale, high-impact firms will be subject to 'intensive, intrusive, judgement-based supervision focusing on issues that really matter to the safety and soundness of the firm' – all with the intention of reducing the risk of failure. This new approach will require a new forward-looking risk model which was outlined in December 2010 by the future head of the PRA, Hector Sants. This will require supervisors to make judgements on

- the gross impact of firm failure
- the business models that firms have in place
- systems and controls, culture, senior management and governance
- capital, liquidity and asset quality
- resolution and recovery planning (living wills).

This new risk assessment model will rely on supervisors making their own judgements, conducting their own market and model analysis, and even conducting their own in-depth stress testing, rather than relying upon information or judgements made by firms and their auditors. Firms should expect intrusive action earlier and more frequently. PRA will aim to detect concerns at an early stage so as to instigate remedial action or better manage failure; this will be achieved through a proactive intervention framework operating in coordination with the Special Resolution Unit. Hector Sants has also been keen to emphasise the 'unhesitating' approach the PRA will take to enforcement action.

FPC

The FPC will be in charge of macro-prudential regulation. For more information on this topic, see our report on 'The new financial stability objective' [add/convert to link]

Coordination

Hector Sants has recognised industry concerns about the burden of dual regulation (and the risk of conflicting standards) for twin peaks firms. Coordination between CPMA and PRA will be critical but the exact manner in which this is to be achieved remains unclear; the current suggestions are:

- A high-level memorandum of understanding, with detailed annexes covering potential high risk areas;
- Domestic colleges for joint working on supervision of individual firms;
- Cross representation of policy boards; and

- legal provisions for information gateways.

Analysis and impact assessment- Box 2

The Government's plans to restructure the institutional framework reflect a dramatic shift in regulatory philosophy – this is not business as usual.

Under the old system the FSA made decisions based on a number of objectives and considerations including the global competitiveness of the UK and innovation in financial services. The words 'financial stability' did not appear (although a rather weak reference to financial stability was added to FSA's objectives by the Financial Services Act 2010).

Under the new system, the FPC of the BoE will have a strong financial stability mandate with new macro-prudential powers or 'tools'. The FPC will effectively trump both the PRA and the CPMA: it will be able to require both regulators to implement its macro-prudential policies by imposing the FPC's requirements (on capital or liquidity or leverage etc) on individual firms (e.g. through PRA/CPMA rules).

In addition, the PRA will have a primary objective clearly focused on the same financial stability goal; a duty to "promote the stable and prudent operation of the financial system through the effective regulation of firms in a way which minimises the disruption caused by any firms that do fail". Thus the PRA's first priority will be to make sound rules for financial institutions - and to supervise and enforce their implementation - so that national financial stability prevails.

For a full consideration of the new macro-prudential regime please see 'The new financial stability objective- macro-prudential regulation and oversight of the financial system'. This report explains this important new layer of regulation and covers the current debate on issues before the Independent Banking commission such as living wills, the regulation of Systemically Important Financial Institutions (SIFIs and GSIFIs).

'Planning for failure' will be a priority of the new regime

The PRA will not operate a 'zero-failure' regime; it will be mandated to "minimise the disruption caused by any (twin peaks) firms that do fail". This novel primary objective will entrench some of the policies that have been discussed at high-level since the crisis. PRA will have to report to and satisfy Parliamentary committees that under its regime they can be confident that firms can be allowed to fail without unacceptable risks to consumers or the financial system - risks which might otherwise trigger the need for a taxpayer funded rescue. A primary objective of this kind is likely to encourage a risk-adverse approach, potentially resulting in broad and demanding PRA rules in these areas.

The PRA and its Special Resolution Unit will have to focus on establishing an effective regime for resolution and recovery planning (living wills). This will bring a whole new layer of regulation into effect. It seems that all twin peaks firms will be subject to analysis of the impacts of their failure on consumers and on the financial system. Firms will be under pressure to take steps to mitigate these effects both from the regulator and as a means of avoiding more stringent on-going requirements, for example on capital and liquidity. The PRA regime will build on FSA's work on reverse stress testing (as an additional means of failure prevention through recovery planning) to focus on analysis of the impacts of failure and steps to mitigate these effects. This new regime will be heavily influenced by the outcome of the post-crisis debate on issues such as "too big to fail" and the break up of universal banks or complex systemically important institutions; these issues are currently with the UK Banking Commission but the end result will depend on both domestic policy decisions by the government and the enhanced Bank of England agencies and, critically, on the extent to which the EU decides to adopt these measures into EU law.

The Bank of England is the clear winner – it is deliberately being made an extremely powerful new regulatory force.

The Bank of England will clearly be in command; its FPC and PRA subsidiary will be hugely powerful (even when compared with the Bank of England's pre-FSA role) – with much broader oversight over firms, new objectives and much more powerful tools/levers at its disposal. This will be, as Sants has described it, 'a strong independent central bank which is accountable to Parliament and not industry.' The 2010 HMT consultation paper recognised the potential might of the new central-bank regulator and the subsequent responses highlighted widespread concern about the concentration of power within the Bank. The Government responded to calls for adequate checks and balances by promising to mirror MPC accountability and transparency for the FPC and develop 'appropriate mechanisms' to ensure the PRA is fully accountable.

It may be years before the full impact of the enhanced role, described above, is fully realised, because it will take time to develop policy, negotiate internationally and then phase in changes to avoid damaging recovery and growth in the real economy. Some requirements that are already well developed will not be fully implemented until 2020 and beyond.

The new 'judgment-based approach' to prudential regulation is intended to be very different from the FSA regime – but how realistic is this?

One of the government's arguments in favour of adopting "twin-peaks" is the perceived need for different approaches in the two distinct areas of consumer protection/market regulation and prudential regulation. The CPMA approach is seen as being rules-based with strong enforcement; however the Government proposes that the PRA will adopt a new style of prudential regulation. This is described as being less legalistic and avoiding a compliance-driven style of regulation. There will be greater emphasis, it is said, on the judgement of the supervisor and potentially discretionary standards in setting capital and liquidity requirements.

Financial institutions appreciate the clarity and transparency provided by the current weight of rules and guidance in FSA's Handbook. The 2010 HMT consultation, however, proposed that in light of this new judgment-based approach, the PRA would seek to reduce and simplify the prudential parts of FSA's Handbook. It remains to be seen how this might be achieved in the face of ever greater EU harmonization (see box 4 below).

The consumer protection role will be re-examined - more intervention on product regulation and competition are on the agenda.

The CPMA will be a "strong consumer champion in pursuit of a single objective". The Government intends to examine whether the consumer protection regime enshrined in the Financial Services and Markets Act 2000 ought to be updated or strengthened in light of this. The FSA's increasingly interventionist approach to consumer protection will continue and even intensify under the CPMA. The 2009 Turner Review considered means of enhancing consumer protection and Lord Turner returned to this theme in his speeches. Options include more intensive supervision, a re-examination of competition in consumer banking and retail markets, as well as increased regulation and potential product regulation e.g. banning of unsafe high 'loan-to-income' and 'loan-to-value' mortgages.

The government's plans are clearly driven by the lessons of the recent crisis in the banking sector. FSA regulation and supervision worked effectively in the insurance market and there seems to be no argument that the move to twin-peaks style regulation of insurers is necessary or beneficial. It seems clear that little attention has been paid to the insurance market in the design of the new regulatory regime; insurance is now being "fitted into" a system driven by banking sector priorities and problems. For example, the 2010 HMT consultation said little about how the Lloyd's insurance market will be regulated; the domestic regulator for insurance brokers – the CPMA – will not be a member of the new European Insurance and Occupational Pensions Authority (EIOPA), which will be responsible for broker regulation and supervision in the EU.

What this will mean for firms

Individual firm regulation

Under the current system all firms are regulated and supervised by one and the same regulator. In future, there will be a split between "twin-peaks" firms, which will be regulated by both the PRA and CPMA, and single regulator firms, which are only regulated by the CPMA. All firms will be regulated by the CPMA in various areas including conduct of business. Single regulated firms will also be prudentially regulated by the CPMA, whereas the PRA will conduct prudential regulation of "twin-peaks" firms.

Twin Peaks Regulation

The 2010 HMT consultation confirmed that the following firms will be subject to "twin-peaks" regulation:

- All banks
- All other deposit-takers – building societies and credit unions
- All insurers – general insurers, life offices and pure reinsurers
- The Lloyd's insurance market (the precise scope of PRA regulation is still being considered)
- Friendly societies
- Broker-dealers and "investment banks" – i.e. firms that deal in investments as principal. This will include some MiFID investment firms such as those subject to BIPRU/CRD.

Twin peaks regulation is expected to apply to 2,200 firms. The perimeter of twin-peaks regulation will be defined in secondary legislation, and exactly which firms are to be caught will be consulted on at a later date.

The consultation envisaged that twin-peaks regulation would apply to firms conducting certain regulated activities, which are expected to include deposit taking, effecting and carrying out contracts of insurance, and dealing in investments as principal. In broad terms, a distinction is being drawn between, on the one hand, financial balance sheet firms with principal obligations to clients and counterparties, and, on the other hand, intermediaries and brokers, who act as agents without incurring principal obligations. After 2012, it will be the FPC that is responsible for deciding whether new activities/firms need to be brought into the twin peaks regime.

The funds sector

The 2010 consultation, and the Treasury's response to it, were silent on the question of how the funds sector will be regulated and the respective roles of PRA and CPMA. This is, perhaps, surprising considering the heated debate about hedge and money-market funds and the ongoing international work on funds regulation, including the new EU AIFM directive.

Single regulator firms

All FSA regulated firms, other than twin peaks firms, (expected to be around 25,000 firms) will continue to be regulated by one authority – the CPMA. This is expected to include:

- Insurance brokers and intermediaries including general managing agents
- Mortgage brokers
- IFAs and advisory firms. This will include non-MiFID investment firms and MiFID investment firms which advise/arrange transactions but do not deal as principal.
- Non-bank FSA regulated e-money and payment services providers
- Lloyd's corporate advisers and members' agents

Other regulation

The recognition and regulation of investment exchanges will be subject to single regulation by the CPMA (potentially under a revised regime similar to authorisation); the CPMA will also be responsible for other investment exchanges/ multi-lateral trading facilities.

The Bank of England will oversee central counterparties (CCPs) and settlement systems. It will continue its current oversight of payment systems.

Analysis and impact assessment- Box 3

Under the new system some regulated firms will be directly responsible to a number of different bodies – notably the PRA and CPMA. (It was even suggested that a third company regulator be created, encompassing the UKLA and FRC but this has been rejected; it has now been decided that the CPMA will also house the UK Listing Authority function (currently an additional role undertaken by FSA).) The FPC might take an interest in specific firms and will prescribe macro-prudential driven rules for firms. In addition, the new European authorities (the ESAs – ESM, EIOPS and EBS) are set to have greater powers – in both their rule-making and supervisory capacities. Clearly this re-landscaping of financial regulation will have significant effects for all firms, both during the prolonged period of change-over and subsequently.

There will be a fragmentation of regulation. The new regime will be much more complex and difficult for firms as they will lose their single point of contact/rulebook/supervisor at FSA; this will be replaced by a mix of different and overlapping relationships with agencies that will have differing priorities and styles. The architecture will be designed to achieve different policy focus and style at multiple agencies. A firm will no longer benefit from a single set of rules, guidance and 'Dear CEO' letters but a range of material (and, no doubt, styles of communication) from the various regulators.

The greatest impact may well be in terms of firms' relationships with the new regulators. Most obviously, the old FSA-style relationship management arrangement will need to be replicated across new regulators. A firm that previously had one port of call for a query, a variation of permission or an application for an approved person may need to duplicate the request. There will also potentially be a multiplicity of routine supervisory inspections – prudential, conduct of business and financial crime.

A return to the 1990's 'alphabet soup' style of regulation would be an unwelcome development, so the Bank must take the lead in insisting on proper coordination and homogeneity, if not uniformity, of style.

What remains to be seen

Dividing up the many roles of FSA

Although the government has decided on the main functions of PRA and CPMA respectively, there are many FSA functions and areas of regulation where little, if anything has been said, about how they will be divided between the two new bodies. This is 'still being worked on' and will be tested when FSA trials a 'shadow twin peaks' internal structure next year (see 'Run down of FSA' below). A detailed examination of the individual areas of regulation currently undertaken by the FSA and how we believe these may be divided under the new regime, is set out in our table 'The new authorities: who does what and how'.

Will coordination between the new authorities work in practice?

Industry is concerned that a fragmented regulatory system will lead to confusion, to delays and even conflicting standards from the different bodies; twin-peaks firms – regulated by both PRA and CPMA – are very concerned that the government has underestimated the dangers and difficulties in splitting regulation between different bodies. When necessary the PRA, CPMA and FPC will all be consulted on difficult decisions. There has been some suggestions of basic provisions such as information gateways (see the paragraph headed 'Coordination' above) but it is all still very unclear as what the "dual competence" of the CPMA and PRA will mean in practice and, for example, as to the exact circumstances in which one body is obliged to have regard to the objectives of the other and the sorts of potential risks at firm level that will trigger the PRA and CPMA's obligation to report to the FPC.

Groups The consultation has been opaque on the extent to which the PRA will have reach into single-regulated firms that belong to groups that contain twin-peaks regulated institutions.

Incoming EEA firms It is as yet unclear how UK branches of EEA banks, insurers and broker-dealers will be regulated. Clearly they will be subject to CPMA regulation – CPMA deals with the majority of host state matters. However, some of the regulation that UK imposes on EEA firms will fall within the PRA remit – e.g. host state involvement in branch solvency.

Europe. How will the new EU and UK regimes operate together? The government has said very little about how the new domestic regime will operate within the parameters of the extensive current EU legislation on financial services and the reform of EU institutions, with its emphasis on enhanced powers for the new European Supervisory Authorities (ESAs) and greater standardisation of rules. There are many unresolved issues about, on the one hand, the harmonisation process and the powers of the ESAs in setting technical standards and the ESA supervisory and tie-breaker powers and, on the other hand, the discretion of national authorities both as policy makers and as supervisors. (For a detailed examination of the new European System of Financial Supervision and the new EU legislative policy and agenda click [here](#))

Analysis and impact assessment- Box 4

Many current FSA functions do not map across into the new regime. Who will approve a corporate treasurer? Must a start-up bank file one, two or three applications for approval? Will there be one, two or three enforcement procedures? Each of these issues is key to the smooth operation of regulation, and firms must be prepared to ensure that their voices are heard on these issues.

The UK government and FSA have already been caught out "talking tough", as if they controlled regulatory policy, and with promises of international convergence and agreement, only to retreat later recognising their lack of sovereignty within the new EU regime and their inability to get consensus on the policies they advocated. It is too early to know how much of the aspirations for the new UK system will suffer the same fate. There are a host of international measures which will the FPC/PRA/CPMA will have to implement and work within – some such as Basel III and the Financial Stability Board's work on cross-border crisis management and recovery and resolution plans – which will not provide the international consensus that the UK would like to see.

There will be changes in the rulebook regime as the new regulators proceed to reformulate their rules or apply them to different sectors. However, in most cases such as best execution and suitability, the changes may be largely cosmetic as the FSA rules are required to implement standards laid down in EU directives such as CAD or MiFID. Financial regulation is more complex, the rules are heavily EU driven but the new PRA will clearly be looking to treat EU requirements as minimum standards, with national supervisors retaining discretion on individual capital and liquidity requirements.

The bigger issue is changes in supervisory standards, which are (for the moment) not laid down by EU regulators. While promulgation of common supervisory standards is definitely on the EU agenda, certainly for major cross-border firms, supervisory stance is at present within FSA's discretion. We shall see whether super-equivalent or UK specific concepts, such as, ARROW visits and close and continuous supervision survive into the new regime, but this does seem likely.

Gold plating will remain an issue to which firms must remain alert. FSA rules go well beyond the scope of EU directives in a number of ways, including the individual regulation of senior management under the Approved Persons regime, FSA's remuneration code, the rules resulting from the retail distribution review and many aspects of the market abuse regime. These, again, are likely to survive, but firms must remain vigilant in resisting further encroachments.

Run down of FSA – transition

- The FSA says it has curtailed efforts to introduce new rules and policies, except as mandated by Europe, ahead of the break-up.
- An interim FPC will begin to perform a monitoring role in advance of formal powers.
- By April 2011 FSA will introduce a 'shadow internal structure' – replacing their Risk and Supervision business unit with a Prudential business unit and a Consumer Protection and Markets business unit. This will allow them to separate out their staff and to 'road test' certain elements of their proposals including 'shadow' running of the twin peaks structure.
- Recent press reports suggest that the Prudential Unit/PRA will be staffed as follows - Chief Executive: Hector Sants, Deputy and Head of Retail Banks: Andrew Bailey (currently a Bank of England executive director), Head of wholesale firms: Stephen Bland, Insurance firms: Julian Adams, Prudential Policy: Paul Sharma
- CPMA – Chief Executive: still to be announced (Martin Wheatley, from the Hong Kong regulator, or Margaret Cole are seen as front runners), Markets: Alexander Justham, Authorisations: Graeme Ashley-Fenn, Enforcement: Margaret Cole

Analysis and impact assessment- Box 5

There will be a period of upheaval, probably prolonged over several years, while the regulators are re-shaped. This will cause uncertainty within the regulators: significant staff turnover will possibly result in lower quality supervision and policy making, in routine decisions being deferred, and new EU initiatives receiving less scrutiny and challenge than ought to be the case. Already the FSA has announced the deferment of introducing new policy or rules ahead of the break-up and the loss of the head of supervision of asset managers and director of conduct risk due to the upheaval. There are concerns that this regulatory upheaval and the drive for tougher regulation, combined with present uncertainty over the taxation regime, is making the UK a relatively less favourable place to attract and retain financial services firms.

Firms in all sectors will need to devote additional resources to monitoring the developments, participating in the consultations and then to adapting their systems and controls to the new requirements.

Timetable

The 2010 consultation closed on the 18th October 2010. The Government has published a summary of consultation responses and its preliminary responses to those issues highlighted. It will draw on these responses to develop more detailed proposals and will consult on draft primary legislation in February 2011. It is expected that a Bill will be introduced to Parliament before the Parliamentary recess in summer 2011, with formal separation planned for the second half of 2012 following Royal Assent.

In December 2010 the HMT and BIS jointly issued a consultation on proposals for a single regulatory regime for consumer credit – specifically, whether responsibility for consumer credit should transfer from the OFT to CPMA. Click [here](#) to view.

Analysis and impact assessment- Box 6

When will key issues be resolved and when will the detail emerge?

This is unclear. It seems that the timetable will be driven by the legislative process; so issues which have to be dealt with in the primary legislation (such as the precise wording of the statutory objectives for the new bodies) must be dealt with first. Key issues for firms – such as which firms will be regulated by the PRA – can be left to secondary legislation made at the end of the process. For example the July 2010 HMT consultation and the summary of responses said nothing about the regulation of the funds industry, Firms will find it frustrating that many key issues for them have not been resolved yet and may remain open questions for some time. Firms may wish to press the government to address important issues sooner rather than later.