

Call-Off Schedule 20 (Call-Off Specification)

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Buyers under this Call-Off Contract

As per the Statement of Requirements:

1. PURPOSE

- 1.1 As the UK's finance ministry, the Authority has a significant programme of business-as-usual work, including on the financial services system and fiscal events, and is heavily involved in the critical work of the government that is being undertaken in these highly unprecedented times. The programme of work continues to be extensive, ambitious and, to some extent, unpredictable.
- 1.2 The Authority anticipates that this programme of work will mean that it will be heavily involved in critical aspects of the UK's post-Brexit policy work, including reshaping the domestic regulation of financial services (including work on the "Future Regulatory Framework" (FRF) and the review of the Overseas Framework), work on prudential regulation, financial stability, climate change related work and crypto assets, as well as the establishment of a new domestic subsidy control regime and the way in which the future arrangements with the EU will be shaped. In this regard, the Authority's interests lie in establishing an effective and efficient customs regime, and in respect of international projects and trade in services, the Authority will have an extensive role to play as the UK seeks to establish global financial and trade partnerships, supported by free trade agreements and bilateral arrangements with key jurisdictions across the rest of the world.
- 1.3 The Authority anticipates that this post-Brexit policy work will result in a significant programme of domestic legislation. For example, it is anticipated that there will be at least one financial services bill during the period of the contract. In addition, the Authority will have an interest in a number of cross-Whitehall bills, as well as a very significant programme of statutory instruments across various subject matters (including financial services) that will be necessary following the implementation of the FRF.
- 1.4 Finally, the Authority has a significant programme of business-as-usual work, which includes, but is not limited to, monitoring, maintaining, and legislating in relation to the financial services regulatory system, preparing for various fiscal events, such as budgets, and general work relating to the public finances, public law and pensions, as well as sanctions, money laundering and other related matters for which the Authority has policy responsibility.
- 1.5 The combination of this work means that the Authority will continue to need significant legal support from Treasury Legal Advisers (TLA). This demand cannot be fully met from TLA's resources. Therefore, the Authority seeks the assistance of expert external lawyers, with particular experience in the areas of financial services law, public law, international law (including sanctions and climate change related expertise) and trade law, both domestically and internationally, to work with TLA on an instruction-by-instruction basis in order to increase the legal resources available to support the Authority.

2. BACKGROUND TO THE CONTRACTING AUTHORITY

- 2.1 The Authority is the UK government's economic and finance ministry, maintaining control over public spending, setting the direction of the UK's economic policy and working to achieve strong and sustainable economic growth.
- 2.2 TLA is a team within the Government Legal Department (GLD). The primary function of TLA is the provision of legal services to the Authority, although other clients include the Royal Mint, National Savings and Investments, and pensions work for the Cabinet Office.

3. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 3.1 Following the UK's exit from the EU, the Authority continues to work on reshaping the domestic regulation of financial services and developing the UK's policy on financial services (including in international trade and climate policy). It is expected that over the term of this contract work will continue to be at a level for which TLA will be unable to support the demand the Authority has for legal services. This is because, during the course of this contract, there will continue to be a period of continued change as the UK consolidates its position, both internationally and domestically, following its exit from the EU. The reshaping of the regulation of financial services, including through the FRF and Overseas Framework Review are expected to produce considerable work. It is anticipated that this heightened workload will encompass EU exit-related work, trade law, work relating to climate change and the Government's commitments to sustainability/net zero, restructuring Financial Services regulation, negotiations work, and a considerable volume of necessary business-as-usual work.
 - 3.2 The Authority's requirement for legal services is increasing in line with the demands on it. Over the period of this contract, it is envisaged that this will entail advice across a wide range of discrete financial services, public law, public spending, sanctions, climate change and linked trade law issues. This will include advice to the Authority on the legal implications of policy options, advice on the negotiation and implementation of international agreements, and regarding the drafting of legislation as appropriate.
 - 3.3 The requirement is for the supplier to work with TLA to support the Authority in relation to issues identified in this Statement of Requirements, on an instruction-by-instruction basis. Matters likely to be included in instructions within this requirement and examples of possible specific projects, and the sorts of issues that it is anticipated are likely to be included in instructions, are identified in **Annex 1**.
 - 3.4 The Supplier may be asked to co-work matters with TLA lawyers or may be the principal Supplier of legal support; the degree of TLA involvement will be
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determined by TLA and the Authority on an instruction-by-instruction basis. The Authority would welcome proposals for cost-effective joint working, including the option for the Supplier to work on a co-located basis with the Authority (subject to security-clearance and IT) at a day rate (discounted in accordance with the framework agreement).

4. DEFINITIONS

Expression or Acronym	Definition
EU	European Union
FCA	Financial Conduct Authority
GLD	Government Legal Department
HMG	Her Majesty's Government
ISDA	International Swaps and Derivatives Association
IT	Information Technology
PRA	Prudential Regulation Authority
TLA	Treasury Legal Advisers
UK	United Kingdom of Great Britain and Northern Ireland
Secondment Rate	No more than the base salary of the individual and any relevant pension contributions ordinarily payable by the Supplier in respect of a Secondee (exclusive of VAT)

5. SCOPE OF REQUIREMENT

- 5.1 The in-scope requirement under this contract is for the supply of legal services by the Supplier in respect of matters identified on an instruction-by-instruction basis.
- 5.2 At present it is not envisaged that this requirement should include direct involvement in negotiations with other sovereign countries or international bodies.
- 5.3 It is worth noting that nothing in the scope of this requirement prevents the Authority, GLD, or TLA putting matters out for separate tender.

6. THE REQUIREMENT

- 6.1 The Supplier will be required to support the Authority through the following:
 - 6.1.1 Providing risk-based legal advice, applying the GLD risk framework (identified at Annex 2), in concise plain English, in a form agreed with TLA

and the Authority at the outset of the Supplier's involvement on each instruction, on a wide range of issues;

- ▲ 6.1.2 It is expected that these matters will be largely related to financial services law, including consumer credit and Green Finance, climate change and trade law, but could also include public law, public spending, market interventions and subsidy control, sanctions and anti-money laundering and general commercial work. Matters likely to be included in instructions within this requirement are identified in Annex 1; and
- 6.1.3 Such advice is to be provided in the most cost-effective fashion and in a timeframe as determined by TLA, GLD and/or the Authority and agreed with the Supplier.
- 6.2 Recognising the diverse communities who will be affected by the matters on which legal advice is sought, the Supplier shall ensure that any work is delivered by diverse teams, in line with the inclusion and diversity civil service values, such that advice is provided by lawyers from a diverse set of backgrounds.
- 6.3 Reviewing policy proposals, correspondence and draft legislation in order to: (a) identify effects inconsistent with the Authority's stated policy aims; (b) provide accurate summaries of legal issues, internal inconsistencies and ambiguities; and (c) on financial services matters, provide industry insight relevant to the issue under consideration.
- 6.4 Providing drafting proposals for inclusion in legal instruments, correspondence, policy documents and other purposes.
- 6.5 Undertaking ad hoc, but in depth, legal research supported by concise, readily digestible summaries and advice in a form determined by the Supplier.
- 6.6 The Supplier will work as part of a wider team of lawyers, policy experts and officials, within the Authority, across Government and with stakeholders in UK regulators – including the FCA and the Bank of England – and internationally. Where required, this will include effectively working as in-house counsel on a long-term project, requiring the ability to work with individuals of varying seniority and with varying degrees of subject-matter expertise. To support this, the Supplier may be expected to co-locate staff at the Authority's premises where reasonably requested.
- 6.7 The Supplier will adopt a demand-led and responsive approach: assessing its ability to meet the deadlines specified in instructions on a project-by-project basis, identifying where there are gaps in instructions, working to the level of input sought in respect of a particular project or aspect of a project, whilst ensuring that the advice is provided in the most cost-effective manner.
- 6.8 The Supplier will be expected to assess whether any potential, actual or perceived conflicts of interest exist on an instruction-by-instruction basis. Where

conflicts are identified, the Supplier will be expected to identify how that conflict may be mitigated and to put in place mitigants, as appropriate.

- 6.9 The Supplier will be expected to assist the Authority in providing advice concerning jurisdictions across the globe. To this end, the Supplier will be expected to coordinate timely access to their network of associated foreign firms for relevant, cost effective jurisdictional expertise. In respect of jurisdictions outside that network, the Supplier will be expected to assist with identifying appropriate firms that are able to advise on the specific matter and, where requested by the Authority, sub-contracting for such advice.
- 6.10 The Authority will provide instructions detailing the work required and relevant contact points for each instruction. The Authority and TLA will provide access to relevant information and staff members to provide guidance and answer questions. Where the Authority or TLA has undertaken previous analysis that relates to the questions posed, this analysis will be made available to the Supplier in the most convenient manner (including oral means to supplement any written analysis). Where such analysis is available – and subject to any exceptions stated in the instructions – the Authority expects that this analysis will be utilised by the Supplier and that the Supplier will not validate this work independently, but rather will use its expertise to apply the Authority's conclusions to the matter in hand.
- 6.11 The Authority will provide training on the use of the GLD risk guidance at **Annex 2**, on providing advice to the Authority, and will share lessons learned from experience of previous, similar contracts.
- 6.12 The requirement is for a period of one year initially. With that period being subject to an extension by the Authority for a period of one further year.

7. KEY MILESTONES AND DELIVERABLES

- 7.1 The following Contract milestones/deliverables shall apply:

Milestone/Deliverable	Description	Timeframe or Delivery Date
1	First meeting with the Authority	Within 2 working days of contract award
2	Monthly review of work completed by the Supplier together with management information.	End of every calendar month
3	Monthly cost breakdowns to be provided to the Authority (in the form of consolidated invoices)	One week in advance of monthly review meetings

- ▲ 7.2 Key milestones will be identified on an instruction-by-instruction basis and communicated by the Authority in each instruction.

7.3 Subject to extension, the contract will last for one year and, during the last month, the Supplier will work with the Authority and TLA to ensure that all relevant information has been transferred from the Supplier to the Authority and/or to any third party (including a new supplier that may be put in place under a separate procurement exercise) nominated by the Authority.

8. MANAGEMENT INFORMATION/REPORTING

8.1 The Supplier will be expected to report to the service manager and contract manager appointed by the Authority on a monthly basis at contract review meetings.

8.2 Monthly cost breakdowns, in the form of a finance dashboard, are to be provided by the Supplier one week in advance of the contract review meeting and should contain such information as the Authority deems necessary.

8.3 At contract review meetings, the Supplier will be expected to report on matters including—

8.3.1 lessons learned from that month's work, and suggestions for improvement in the delivery of the service, in line with the duty to continually improve the way the required Services are delivered (at 10 below);

8.3.2 the Supplier's success in delivering work-products to meet the service-level requirements (at 15.2 below); and

8.3.3 market intelligence updates outlining risks to the Authority's objectives, drawing upon the Supplier's experience and its contacts with other participants in the market.

8.4 The Supplier will be expected to provide weekly written reports detailing instructions where work has been undertaken that month and to provide a rolling estimated record of the associated bill, in a form agreed with the Authority.

8.5 Supplementary reporting requirements may be determined on an instruction-by-instruction basis and agreed with the Supplier.

8.6 The Supplier will be expected to make available web-based client service portals or other technical solutions for the automation of initial instructions, fee estimates, on-going e-mail correspondence and document storage tailored to the Authority's business model.

9. VOLUMES

- 9.1 As this is a call-off contract, volumes of work cannot be guaranteed.

10. CONTINUOUS IMPROVEMENT

- 10.1 The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 10.2 The Supplier should present new ways of working to the Authority during monthly Contract review meetings.
- 10.3 Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

11. SUSTAINABILITY

- 11.1 There are no sustainability considerations for this requirement.

12. QUALITY

- 12.1 The Authority will measure the quality of the Supplier's delivery by:
- 12.1.1 assessing whether the supplier meets the deadlines, and any fee arrangements, agreed for the delivery of work-products in respect of each instruction;
 - 12.1.2 assessing whether the work-products are fit for purpose and meet agreed forms and standards, providing relevant feedback where appropriate; and,
 - 12.1.3 assessing the suitability of the advice in respect of the extent to which it engages with the commission in the relevant instruction.

13. PRICE

- 13.1 Potential Suppliers are requested to provide a rate card (for hourly rates) for work that may arise during the contract. Where possible, the rate card for this requirement should include a discount on the Supplier's standard rate card for this Lot. This rate card may be used by the Authority to pay on a resource consumption basis, or to fix a capped fee for larger pieces of work or in respect of particular instructions.
- 13.2 All further *ad hoc* work is subject to requirements arising, and any costs incurred must be agreed with the Authority in writing prior to being incurred, or the Authority is not obligated to meet these costs.
- 13.3 Work conducted by associated foreign firms is to be charged in £ sterling at the lower of (a) the contractual rate charged for equivalent personnel in the UK, or (b) the Supplier's sterling guideline rate for the personnel discounted by a factor corresponding to the discount from guideline rates applied in respect of the contractual rate.

- 13.4 Where secondees are requested by the Authority, the Supplier shall provide at any time for the duration of the contract a secondee free of charge to the Authority. Where any additional secondees are supplied they shall be provided at the secondment rate (in accordance with the panel terms).
- 13.5 Prices are to be submitted via the e-Sourcing Suite Attachment 4 – Price Schedule excluding VAT and including all other expenses relating to Contract delivery.

14. STAFF AND CUSTOMER SERVICE

- 14.1 The Supplier shall provide a sufficient level of resource throughout the duration of the Contract in order to consistently deliver a quality service.
- 14.2 The Supplier's staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract to the required standard. The Supplier will notify the Authority of the staff it intends to supply in respect of specific instructions, and where requested will supply the Authority with details of their relevant qualifications and experience, subject to approval by the Authority. Should the Authority inform the Supplier that it has concerns regarding the performance of any staff assigned to the contract, the Supplier will take steps to ensure that performance is improved, including by replacing the staff concerned.
- 14.3 The Supplier shall ensure that staff understand the Authority's vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.
- 14.4 The Supplier shall provide or contribute to such policy or legal training as may reasonably be requested by the Authority free of charge.

15. SERVICE LEVELS AND PERFORMANCE

- 15.1 The Supplier shall provide accurate invoices (after the relevant instructing lawyer from the Authority approves the same), with a discount of 0.5% of the accurate invoice value applied for every whole 1% below a 98% target. Please see point IV in the Contract Order Form – Special Terms.
- 15.2 The Supplier shall meet the deadlines agreed for the delivery of work-products in respect of each instruction. Deadlines suggested by the Authority in writing shall be taken to be agreed unless the Supplier expressly indicates – in writing – some difficulty in meeting the deadline. Where agreed deadlines are missed (without prior agreement and revision of the deadline with the Authority), a 10% discount to the bill associated with that work-product is to be applied for every whole day that passes after the deadline before the product provided. Please see point V in the Contract Order Form – Special Terms.
- 15.3 Work that is undertaken by the Supplier at partner rates, without the written authority of the Authority shall not be billed.

- 15.4 Exit Management will include the transfer of knowledge to the Authority (or the Authority's nominee) at the end of the contract in such format as the Authority reasonably requests.

16. SECURITY AND CONFIDENTIALITY REQUIREMENTS

- 16.1 Potential Suppliers are to note that all material for and communications in relation to this procurement, and the subsequent contract, are not to be shared with any third parties without first obtaining permission in writing to do so from the Authority.
- 16.2 The Supplier must have appropriate IT, physical, personnel and procedural security measures in place to prevent any unauthorised access to data collected under or in connection with the contract.

IT Security

- 16.3 The Supplier's IT systems (including end user devices, servers, firewalls, etc.) used to meet the Authority's requirement must comply with the technical requirements prescribed by "Cyber Essentials". This may be demonstrated by appropriate certification or evidence of compliance with the relevant technical standards. The resilience of the Supplier's IT systems must be tested periodically.
- 16.4 Where remote access is used, the Supplier is expected to have measures in place to ensure that encryption is applied to both 'data at rest' on end user devices and to 'data in transit' during any remote access sessions.
- 16.5 The Supplier's IT systems must have the capability to employ encryption to data which shall be sent across a network or extracted by electronic means (e.g. sent via email, extracted from an online web portal or during online meetings). Where this is required, the solution adopted, and any encryption method used as part of that solution, must be agreed with the Authority.

Physical Security

- 16.6 Suppliers are expected to have appropriate physical security measures in place in any data centres, or other buildings, used to host the Authority's data and to be able to demonstrate this. The Authority's preference is that the Supplier hosts the data entirely within the UK. Where the Supplier wishes to host data outside the UK the Supplier should inform the Authority that is the case and must obtain the Authority's agreement to the country (or countries) the data is to be hosted in.

Personnel Security

- 16.7 Where the Supplier's staff require unescorted access to the Authority building, such staff will be expected to either already have, or be prepared to undergo,

UK Security Vetting to Counter Terrorism Check (CTC) level (including Government Baseline Personnel Security Standard checks).

- 16.8 The Supplier shall ensure that any suspected or actual security breaches related to Authority data/information are reported to the Authority immediately. Where any actual security breaches have been identified, the Supplier shall, as soon as reasonably practicable, provide to the Authority a report setting out the details of the security breach, including an impact assessment, a root cause analysis and of the steps taken to address and mitigate the breach.

Intellectual Property Rights (IPR)

- 16.9 All materials produced during the delivery of the contract will be retained by the Authority. The Supplier is advised that no material, information or outcomes about or relating to the contract are to be shared with third parties until such time that the Authority notifies the Supplier in writing that the information is no longer subject to an embargo.

17. PAYMENT AND INVOICING

- 17.1 Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables.
- 17.2 Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.
- 17.3 Invoices should be submitted to: H.M. Treasury, **REDACTED TEXT under FOIA Section 40, Personal Information**
- 17.4 Electronic invoices can be submitted to: **REDACTED TEXT under FOIA Section 40, Personal Information**

18. CONTRACT MANAGEMENT

- 18.1 The Supplier will be expected to report to the service manager and contract manager appointed by the Authority on a monthly basis at contract review meetings. The contract review meetings will be attended by the Supplier's contract manager and at least one senior lawyer responsible for overall conduct of the contract. A lawyer working on either of the two instructions which have incurred the greatest cost in the reporting period may also be required to attend. The contract review meeting may be held by telephone if appropriate.
- 18.2 In addition, during the first two months of the contract the Supplier's contract manager will be expected to provide weekly updates by telephone as requested.
- 18.3 Attendance at Contract Review meetings shall be at the Supplier's own expense.

19. LOCATION

19.1 The location of the Services will be carried out at the Supplier's premises, with meetings held at the Authority's premises as required, save where specific instructions seek-

19.1.1 the co-location of personnel from the Supplier at the Authority's premises, or

19.1.2 the secondment of personnel from the Supplier to the Authority.

ANNEX 1 to Attachment 3 – Examples of possible instructions

Financial Services Projects

1. Assistance to the Authority regarding domestic financial services regulation

- a. Following the UK's exit from the EU, the Authority will undertake a significant volume of work in respect of domestic financial services regulation, and this will need to be extensively supported by legal work. The following paragraphs set out, at a high level, the sort of work that the Authority anticipates the Supplier might be called upon to assist with in respect of this. Certain specific examples are provided below.
- b. The Authority intends to undertake a programme of primary and secondary legislation to ensure that the domestic regulation of financial services is appropriately adapted to the revised position of the UK. In respect of this, instructions may concern—
 - i. undertaking a detailed review and analysis of the existing legal position and producing focused summaries,
 - ii. the drafting of instructions setting out the existing legal background, the Authority's policy intent, and legal issues arising in respect of delivering the policy,
 - iii. reviewing proposed drafting against the policy objectives, and
 - iv. reviewing stakeholder views on the policy or drafting.
- c. These sorts of instructions may also concern the provision of support to the Authority's development of new policies through advice on the UK implementing its international commitments including, for example, in respect of the implementation of "Basel 3" and international trade and climate change obligations.
- d. Instructions may also seek advice on a wide variety of other domestic policy issues, including in respect of:
 - i. the powers and duties of the FCA, PRA, PSR and the Bank of England, including the delivery of the Future Regulatory Framework,
 - ii. the implementation of appropriate prudential requirements on firms,
 - iii. the scope of consumer protections including under the Financial Services and Markets Act 2000, the Consumer Rights Act 2015, the Consumer Credit Act 1974 and the application of the deposit guarantee scheme,
 - iv. the regulation of confidential information within financial services and personal data more generally,
 - v. The development and delivery of the UK's Green Finance initiative, including Green Bonds and the introduction of carbon border adjustments,
 - vi. Establishing the UK as a world leader in FinTech, including how that might be regulated,
 - vii. any issues in respect of the regulation of the financial markets and infrastructure including in respect of innovative financial technologies and 'green finance',
 - viii. financial services industry precedents including, for example, the ISDA master agreements,
 - ix. subsidy control and competition law questions, both in respect of financial services and more generally in relation to policy interventions, including the international legal framework as it applies in the UK,

- x. seeking views/insights on comparisons between the UK and other jurisdictions in relation to the above policy issues, and
 - xi. Trade related questions arising in relation to items i-x above.
- e. Instructions may also seek input into other financial services topics within HMT's remit, where they impact on the UK's interests, including matters relating to equivalence and mutual recognition.
- f. Specific examples of likely instructions are provided below.

2. Future Regulatory Framework (FRF)

- a. Over the past 20 years, the EU has been responsible for developing policy on the regulation of FS firms and business. The UK has been intimately involved in developing and negotiating this policy and has then been responsible for implementing the policies, where necessary through domestic law.
- b. Following Brexit, the UK is now free (subject to any equivalence requirements or international law obligations) to develop an independent FS policy which is designed to recognise the UK's sovereign status and to ensure the continuing importance of London as a hub for financial services.
- c. The FRF is a project which looks at how the UK might restructure the domestic regulation of FS firms, perhaps moving away from the EU model where the details of regulation are contained in legislation, to a model where the FS regulators (Bank of England, PRA and FCA) include the details in their rule books.
- d. Instructions in this area might involve:
 - (i) providing high-level advice on the principles underpinning the FRF project;
 - (ii) Advice on specific subject areas (for example, Solvency 2, consumer credit agreements, or promotion of FS activities) and how they might be accommodated within the FRF architecture;
 - (iii) The matters which the regulators should consider when making rules in particular areas and how the regulators are held to account for the exercise of their rule-making powers (including international law obligations/commitments); and
 - (iv) Advice on different regulatory structures from different jurisdictions, including the US and EU. Collation of information from Supplier's international practice and/or contacts.

3. FinTech

- a. The Chancellor has recently announced that innovation is to be at the heart of financial services. The Fintech sector are a key driver in this innovation. There are lots of proposals for future regulation of fintech services, including stable coins and central bank digital currencies.
- b. We anticipate a significant amount of policy development and possibly developing legislative proposals to deliver policy outcomes. There will be a significant amount of legal work to support this work, including advice on the approach that is being taken in third country jurisdictions.
- c. Instructions on this area might involve advice and policy development support on cryptocurrencies and central bank digital currencies.

4. Payments

- a. Instructions on this area might involve advice on payment services and systems under Part 5 of the Banking Act 2009, Part 5 of the Financial Services (Banking Reform) Act 2013, the Payment Services Regulations 2017 (PSRs) and the Electronic Money Regulations 2011.
- b. There may be legislative proposals on maintaining access to cash, both on the retail (e.g. ATMs and counter services) and wholesale (cash processing and distribution) side, which are likely to need legal support, including on issues of competition law.
- c. There may also be legal support needed in ensuring the FCA and PSR have adequate powers to make rules and directions on areas currently covered by retained EU law, in line with the FRF legislative proposals.

Regulation of Financial Market Infrastructure

5. Assistance to the Authority in relation to the Regulation of Financial Market Infrastructure, for example:

- a. DLT (Distributed Ledger Technology) and how it might be employed in the settlement of securities. This may extend to other forms of technology and other parts of the trade cycle. The creation of a new Central Securities Depository (CSD) and what regulatory issues this may throw up, noting the EU's own initiative in this area.
- b. Dematerialisation – supporting the Authority in their work modernising the holding of shares in the UK market. Engages interests from across the industry, including other Government departments, issuers, CSDs, registrars, banks and investors to identify and assist in the development the most appropriate dematerialisation model.
- c. Inbound issuance / Article 49 CSDR / creation of an International CSD – assessing long running questions around UK trust / property law and other law, to ensure equitable holding of securities in the UK is sufficiently legally certain. Considering conflict of law in terms of the foreign governing law of the security and the governing law of the UK CSD.

International projects

6. Assistance to the Authority in respect of international projects

Overseas Framework Review and FRF related work

Following the Call for Evidence on the Overseas Framework in December 2020 and Response to the Call of Evidence in July 2021 HMT is assessing how the UK's current overseas framework supports its position as a global financial centre, identifying any problematic areas and working towards ensuring its regime is coherent, fair and easy to navigate.

- a. Advice on the following (including on overseas jurisdictions' equivalent/analogous frameworks) may be included:
 - i. the overseas persons exclusion (OPE)

- ii. Markets in Financial Instruments Regulation (MiFIR) Title VIII
 - iii. recognised overseas investment exchanges (ROIE)
 - iv. Financial Promotion Order (FPO)
 - v. overseas long-term insurers
- b. Assisting the Authority in relation to its work and policy development on how to amend and/or improve the UK's overseas framework and/or specific parts of it taking into account the UK's international law commitments and obligations.
- c. Advice may include how amendments can be given effect and impacts/interaction of amendments with international law commitments.

Deference

The UK anticipates there being a considerable volume of legal work relating to deference in financial services, including equivalence and the negotiating and conclusion of mutual recognition agreements relating to financial services. The following is an indicative list of the related legal work that may arise in this area:

- a. Aiding the UK in securing equivalence from overseas jurisdictions, including assisting in preparing responses to any questionnaires on specified aspects of the UK's financial services framework to the authorities of overseas jurisdictions;
- b. Assisting the UK in determining the suitability of overseas jurisdictions to be granted equivalence by the UK which, in addition to the types of issue referred to in (a) above will require arranging for and the furnishing of reports to the Authority on the regulatory regimes in place in foreign jurisdictions in specified areas;
- c. Advising the Authority in relation to any reforms of its equivalence framework; and
- d. Assisting the UK in negotiations on and implementation of both agreements on mutual recognition of financial services and other non-binding arrangements relating to cooperation on financial services.

All of the above tasks will be conducted by the Authority in close cooperation with the Bank of England (and PRA) and the FCA.

Advice on international law

- a. The Authority is closely associated with the UK's ambitious programme of negotiating free trade agreements with key trading partners and has primary responsibility for negotiations on the Financial Services Chapters for inclusion in those agreements.
- b. It intends also to create a series of new global financial partnerships with different countries around the world. Negotiations are expected to entail a significant volume of legal work.
- c. The Authority has responsibility for the setting and maintenance of the UK's tariff policy and for broader issues relating to trade in goods and border management including issues relating to climate change. Instructions in this area may include:
 - i. Advice regarding the legal risks associated with particular issues such as challenges to the Authority's free trade agreement model chapter on financial services;
 - ii. Assisting in the development and drafting of clauses for inclusion in UK trade agreements to take account of developments in financial services, climate change, digital financial services trade (including data localisation) and new regulatory challenges that these might present;
 - iii. Urgent advice in the course of live free-trade negotiations, including regarding the General Agreement on Trade in Services under the World Trade Organisation and public international law and the interface between financial services provisions and other proposed chapters of agreements such as investment and dispute settlement;

- iv. Research and drafting to support the formation of agreements such as memoranda of understanding to support closer co-operation and information sharing between national authorities;
- v. Advice and preparations of reports on the legislative and regulatory frameworks applicable to financial services in prospective trading partners;
- vi. Advice on the development of a UK tariff system and tariff negotiations, or other elements of trade in goods including issues around border management and the international law compliance assessment of proposed new measures (for example, a carbon border adjustment tax);
- vii. Advice on the development/management of UK's domestic initiatives, including, the development and establishment of Freeports;
- viii. Advice relating to the Withdrawal Agreement and Northern Ireland Protocol and the EU-UK Trade and Cooperation Agreement; and
- ix. Advice in relation to the UK Internal Market.

Continued dossier- specific support on 'onshoring' under the EU (Withdrawal) Act 2018

- a. The Authority has undertaken an extensive programme of legislation to 'onshore' the EU acquis under the EU (Withdrawal) Act 2018.
- b. Continued work in this area may include advice in connection with work which will continue to fix deficiencies under retained EU law, for example adaptations for access to the UK for firms from Gibraltar.

7. Public law, public spending and subsidy control issues

Large-scale market interventions are likely to be the subject of bespoke legal procurements with separate budgets. However, under the current procurement there may be a need for advice on specific issues, e.g. where Treasury ministers require specific assurance on legacy or wind-down issues concerning existing or expired schemes, or wish to refresh, extend or revive such schemes. This could include advice on governance, corporate law or regulatory aspects (e.g. financial services regulation, consumer and competition law, subsidy control or corporate finance issues).

8. Financial sanctions and anti-money laundering

The work of the Treasury and the Office of Financial Sanctions Implementation on financial sanctions continues to grow. While mostly done in-house, there may be a need for advice on specific issues related to the licensing and enforcement of financial sanctions. Advice may also be required on discrete issues related to the interpretation or application of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

ANNEX 2 to Attachment 3 - Guidance Note on Legal Risk

Guidance Note on Legal Risk

Meaning of legal risk

A risk involves a threat and the possibility of suffering harm or loss. 'Legal risk' means any risk of court action occurring whether domestic, European or international, or the risk of any penalty resulting from non-compliance with legal requirements. Losing a court action may lead to harm to the policy objectives and financial or reputational loss.

Why is legal risk important?

As civil servants, our job is to advise Ministers. Before deciding upon a policy or course of action they will want to understand the risks associated with it. Legal risk is one, but not the only, type of risk that they will want to consider. All legal advice should be risk-based and offer options for mitigating or avoiding risk. It is important that Ministers and officials have confidence that lawyers are acting in their interests and looking actively for ways to deliver policy objectives while identifying ways of minimising risks.

How to assess legal risk

In conjunction with policy colleagues you need to consider:

1. Likelihood of a legal challenge being brought

Policy colleagues are likely to be in a better position than lawyers to assess who, if anyone, might want to challenge and the likelihood of this occurring. The timeframe of such a challenge should also be considered.

2. Likelihood of that challenge being successful

This will depend on the robustness of the legal arguments on both sides and is for lawyers to assess with policy input.

3. Impact and consequences of that challenge, whether successful or not

You will need to work closely with policy colleagues when assessing impacts. Examples include financial penalties (infraction fines, disallowance, Francovich damages), reputational damage, quashing of decisions that have to be retaken, regulatory confusion and enforcement gaps, criticism by the Ombudsman and resource implications. Many of these impacts may result from the challenge process itself irrespective of the outcome e.g. defending a judicial review or infraction can be very resource-intensive. You should also consider mitigation that can be put in place to reduce risks and impacts.

Presenting legal risk

It is important that legal risks are fully integrated into policy analysis and the appraisal of options. It is also vital it is communicated **accurately and clearly** to senior decision makers and to Ministers (including in any submission). Make sure that the legal risk section of the submission is clear and succinct (even if you attach a more detailed annex). Any subsequent changes must be checked by a lawyer so that it still properly reflects the legal advice.

When presenting legal risk to policy colleagues and Ministers, lawyers sometimes use the same words to mean different things, and different words to mean the same thing. In addition, policy colleagues might interpret those descriptors in different ways to how they are intended. Consequently, Ministers have not always had a clear or accurate picture of the legal risks involved. For example, some colleagues use percentages, others refer to weak/ good/strong or significant chance of winning, others use a traffic light system etc. What percentage does 'a significant chance of winning' equate to for example?

To achieve greater transparency and clarity in the assessment and presentation of legal risk, lawyers should use the percentage bands referred to below, in conjunction with a narrative based on these descriptors. The key point is that when describing a risk as (for example) red or high it should be accompanied by the relevant percentage band so that a red or high chance of losing a case does not mean 55% to one lawyer and 90% to another. The narrative describing the risk should also be based around these three elements. Ministers may legitimately decide to proceed with a proposal even if it carries a high risk (70%+).

Likelihood of legal challenge being brought Policy lead with Legal input	Likelihood of a challenge being successful * Legal lead with policy input	Impact of challenge Policy lead with Legal input	Colour key
High - 70% +	High - 70%+	High	red
Medium High - 50-70%	Medium High - 50-70%	Medium High	amber/red
Medium Low - 30-50%	Medium Low - 30-50%	Medium Low	amber/green
Low - Less than 30%	Low - Less than 30%	Low	green

* If there is no respectable legal argument that we could put to the Court, then you will need to advise that the proposed action is unlawful. This is likely to be highly exceptional and if you are in this territory you should refer the matter to your line manager and Legal Director before you advise (a respectable legal argument is a credible argument the Government could properly run in court).

Legal Quality Committee

Revised June 2019 (to include Annex on International Context)