



## The Overseas Funds Regime: Where are we now and what should firms be doing?

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25 June 2024

HM Treasury (**HMT**) and the Financial Conduct Authority (**FCA**) jointly published a [roadmap](#) to implementing the Overseas Funds Regime (**OFR**) on 1 May 2024, along with further information for firms on planned next steps and timeframes for bringing the OFR into force. In this briefing, we outline the legislation that is already in place in relation to the OFR, the progress made so far towards implementing the regime, the planned timeframe for implementation, and practical steps firms should be taking now to prepare.

### Background to the OFR

Following the UK's withdrawal from the EU and the loss of the passporting regime on 1 January 2020, the FCA set up the Temporary Marketing Permissions Regime (**TMPR**) to allow certain EEA-based funds that were already passporting into the UK to continue to be marketed in the UK without the need to apply for individual recognition under section 272 of the Financial Services and Markets Act 2000 (**FSMA**) – which is a far more onerous process requiring an in-depth FCA assessment of the fund, its operator and the depositary.

A new equivalence regime for overseas funds – the OFR – was subsequently introduced by the Financial Services Act 2021, which added a new section 271A of FSMA. The OFR is a new gateway which is intended to provide a new, streamlined way of offering an overseas fund to UK retail investors, if the fund is from a jurisdiction that HMT has determined as equivalent.

While the OFR effectively came into force on 23 February 2022 as a result of the Financial Services Act 2021 (Commencement No. 4) Regulations 2022, it is not yet operational as the rules and procedures to implement the regime are still to be finalised. A further statutory instrument (**SI**) will be required in order to bring the OFR itself into force.

### Which funds can use the OFR?

At the outset, standalone undertakings for collective investment in transferable securities (**UCITS**) established in the EEA and sub-funds of those EEA UCITS will be able to use the OFR, with the exception of those that have been authorised as money market funds (**MMFs**). HMT may in future specify additional categories of funds that can use the regime, by enacting further legislation following an equivalence determination.

## What progress has been made towards implementing the OFR?

In December 2023, the FCA published consultation paper [CP23/26](#) on the implementation of the OFR. CP23/26 set out the FCA's proposed rules and guidance to integrate the OFR into its Handbook and to enable overseas funds to be recognised under the regime, in preparation for HMT making an equivalence determination in relation to any jurisdiction.

HMT did then make an [equivalence determination](#) on 30 January 2024, confirming that it had found the EEA states (including EU Member States) to be equivalent under the OFR. The equivalence assessment of the EEA was the first to be conducted under the regime due to the importance of EEA-domiciled funds to the UK market. [The Financial Services and Markets Act 2000 \(Overseas Funds Regime\) \(Equivalence\) \(European Economic Area\) Regulations 2024](#), which enact this equivalence decision, were published on 14 May 2024 and will enter into force on 16 July 2024. As explained above, the equivalence decision applies to UCITS funds, except those that are MMFs due to ongoing regulatory development.

When announcing the equivalence decision, HMT also confirmed that that the TMPR – which was due to expire at the end of 2025 – will be extended until the end of 2026 to ensure funds can smoothly transition to the OFR.

On 1 February 2024, an SI – the Financial Services Act 2021 (Overseas Funds Regime and Recognition of Parts of Schemes) (Amendment and Modification) Regulations 2024 – was [published](#). The SI is intended to support the operationalisation of the OFR, by making various consequential amendments to provisions across the statute book to ensure the OFR works as intended. It came into force on 26 February 2024.

The most recent development to note is the publication by the FCA and HMT, on 1 May 2024, of a [joint roadmap](#) to implementing the OFR. The roadmap explains how the OFR will be opened to EEA funds that are authorised under the UCITS Directive, following HMT's equivalence decision in relation to the EEA. It sets out the key stages of the process, so that operators of EEA UCITS that want to use the OFR as a gateway to the UK market can prepare, and it also gives a high-level overview of the application process and of the various other requirements for OFR funds, including operational rules, retail disclosure, and the potential future application of sustainability disclosure requirements and labelling.

## What is the timeline for implementing the OFR?

HMT and the FCA's joint roadmap, together with the FCA's new [webpage updating firms on the OFR](#) and HMT's [press release](#), provide a useful overview of the timeline and further steps for bringing the new regime into force for EEA UCITS.

The opening of the OFR gateway will take place in three stages:

- **September 2024** for non-TMPR funds, which will be able to apply for recognition without a landing slot.
- **October 2024** for TMPR standalone schemes.
- **November 2024** for TMPR umbrella schemes.

The roadmap also sets out the following helpful timings:

- **July 2024:** The FCA's final rules for OFR funds (as consulted on in CP23/26) are likely to come into effect.
- **September 2026:** The final landing slot closes for non-MMF TMPR schemes.
- **December 2026:** The TMPR ceases for non-MMF schemes (although the Government may choose to extend the TMPR).

## How will firms apply for OFR recognition?

All operators of EEA UCITS wishing to become recognised under the OFR will need to complete an application form and pay a fee to the FCA. Applications will be made online using the FCA Connect system, and the FCA will then have two months to make a decision.

### *Funds currently in the TMPR*

For the many funds currently using the TMPR – which is now being extended to the end of 2026 – the FCA's plan is to have a structured process in place for those funds to transition across to the OFR. To do this, each eligible fund currently in the TMPR will be allocated a so-called “landing slot” (i.e. a 3-month time slot in which to apply for recognition under the OFR gateway). The FCA notes in the roadmap that the landing slots will be allocated to funds “usually by alphabetical order of name”, beginning with standalone funds in October 2024 and followed by umbrella schemes in November 2024. An application for OFR recognition will need to be made for each eligible TMPR fund within that 3-month time slot.

Funds that miss their allocated landing slots will be removed from the TMPR, will no longer be a recognised scheme and will not be able to be promoted to retail investors until they have successfully applied under the OFR and become recognised again. In the meantime, the operator and UK distributors of those funds will be required to comply with the financial promotion restrictions.

There are some concerns in the industry that it does not appear that firms will be able to express a preference for a landing slot, and the FCA has not confirmed whether it will allow for any flexibility if an allocated landing slot is not feasible for the fund. It is therefore even more important that firms are prepared in advance of the OFR gateway opening.

### *Funds not in the TMPR*

Both standalone and umbrella funds that are new to the UK market, and therefore not currently in the TMPR, will be able to apply for recognition under the OFR as soon as the gateway is open, and at any time afterwards – they will not be allocated, or limited to, a landing slot.

### *Money market funds*

MMFs were not recognised in the UK Government's equivalence determination so they are not currently eligible to apply for recognition under the OFR. However, MMFs that are registered under the TMPR can continue to be promoted whilst the TMPR remains in place, and a more permanent access route for overseas MMFs is still under discussion. It is understood that the UK government could still extend the TMPR beyond 31 December 2026 to avoid what they call any “cliff edge risks” for MMF products. It is also worth noting that MMFs currently in the TMPR could end up remaining in the TMPR even if the

rest of the umbrella of non-MMF funds transfer to the OFR. It appears that firms could be looking to manage two separate regulatory administrative processes for the same fund.

## What information will firms need to provide?

The FCA's proposals require funds to provide various pieces of information, both at the outset when they are applying for recognition under the OFR and also on an ongoing basis. CP23/26 set out the details of those proposed disclosure and notification requirements, which include:

- **When applying for OFR recognition:** Key information about the scheme's name and legal structure, its investment objective and policy, the main categories of assets that it invests in, its fees and charges, marketing and distribution strategy, and parties connected to the scheme (e.g. management company, depositary and delegated portfolio manager), amongst other details.
- **On an ongoing basis:** Notifications to the FCA of changes to each OFR recognised scheme's most important characteristics, as and when such changes occur – for example, changes to the scheme's name or legal structure, termination of the scheme (or a sub-fund) in its home jurisdiction, supervisory sanctions by the home regulator, suspension of dealing in the scheme's units or shares, or a fundamental change to the investment objective/policy/strategy.
- **Information on customer protection:** Enhanced disclosure requirements to ensure investors are made aware of the protections they have (or do not have), such as access to the Financial Ombudsman Service and the Financial Services Compensation Scheme, if they invest in an overseas fund.

The industry has raised concerns with some of the notification requirements proposed by the FCA, warning that they go further than the requirements on UK-authorized funds, for example in relation to the level of disclosure required around fees and charges. The FCA's policy statement, which will confirm its final position and set out final rules and guidance, is expected to be published in the coming weeks before they enter into effect in July 2024 (according to the timeline in the roadmap).

## Will the SDR apply to OFR recognised funds?

HM Treasury is planning to consult on potentially extending the UK Sustainability Disclosure Requirements (**SDR**) and labelling regime so that it includes funds recognised under the OFR.

According to the roadmap, the Government is planning to launch its consultation on this in Q3 2024 and to lay any legislation needed to implement an extension (if it decides to proceed with it) by the end of 2024. If the Government does choose to legislate on SDR and labelling for OFR funds, the FCA is currently expected to consult during 2025 on rules and guidance to implement that extension, ahead of the legislative requirements coming into force potentially in H2 2025. We will have to wait to see how all of those steps unfold before firms have much certainty around this.

If the SDR were to be extended to cover OFR funds, there are concerns that those requirements could potentially conflict with requirements around sustainability that apply in an OFR fund's home state – which could cause particular difficulties around fund names and labels, for example. Managers of OFR funds would have to comply with two regimes, which would be difficult and costly, and the risk is that this

could deter overseas funds with sustainability-related objectives from being distributed to the UK market. As a result, there is likely to be a lot of interest within the industry as to how this all unfolds.

## **What should firms be doing now to prepare?**

Fund operators should by now have reviewed the FCA register to check contact details are correct and to ensure the fund population in the TMPR is correct. If a fund is no longer being marketed via the TMPR, the FCA should be notified using form TMPR CH. This can be done now.

At this stage funds already within the TMPR must also be watching out for their allocated landing slots. It is crucial that the application for OFR recognition is made within the three-month allocated time slot and no later, as funds that miss their landing slots will be removed from the TMPR and will no longer be able to market their funds.

Fund operators should ensure that they register on the Connect system as soon as they can, so that they are able to submit their OFR applications once this opens.

If you would like further information or assistance on any aspect of the OFR, please do contact us and we would be happy to discuss.