

Electronic Money Association

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HM Revenue & Customs

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Dear Sir/Madam,

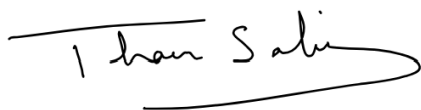
Re: EMA response to HMRC Draft regulations: The Cryptoasset Service Providers (Due Diligence and Reporting Requirements) Regulations 2025

The EMA is the trade body representing electronic money issuers, alternative payment service providers, and virtual asset service providers. Our members include leading payment institutions, e-commerce businesses, and cryptoasset firms worldwide, providing online payment services, card-based products, electronic vouchers, mobile payment instruments and virtual currency-related services. Most members operate across the EU and UK, frequently on a cross-border basis.

We welcome the opportunity to contribute to the HMRC consultation on the draft Cryptoasset Service Providers (Due Diligence and Reporting Requirements) Regulations 2025.

We would be grateful for your consideration of our comments and proposals.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thaer Sabri", with a long horizontal flourish extending to the right.

Dr Thaer Sabri

Chief Executive Officer

Electronic Money Association

EMA Response

The EMA thanks HMRC for the opportunity to provide feedback on the draft Cryptoasset Service Providers (Due Diligence and Reporting Requirements) Regulations 2025. As a body representing cryptoasset firms in the UK, we are committed to supporting a regulatory environment that is clear, efficient, and effective in ensuring compliance, while considering the operational realities that our members face. In this response, we seek to provide constructive feedback on key provisions within the draft regulations, with an emphasis on clarity, practicality, and the impact these requirements will have on crypto firms.

I. Relevant Transactions

While the draft regulations reference “relevant transactions,” the term is not explicitly defined within the regulations themselves. However, the OECD Crypto-Asset Reporting Framework (CARF), which the UK regulations are seeking to implement, defines relevant transactions in Section II of the CARF as those that involve the exchange of cryptoassets for fiat or another cryptoasset, as well as the transfer of cryptoassets between different providers.

Impact on RCASPs:

The lack of an express definition within the regulations may cause confusion among reporting cryptoasset service providers (RCASPs), as firms will need to rely on external sources, such as the OECD framework, to interpret which transactions are subject to reporting. This may lead to inconsistencies in compliance practices and difficulties in aligning with HMRC’s expectations, particularly for firms that may be unfamiliar with the OECD framework or operate in multiple jurisdictions with differing definitions.

Recommendation:

We recommend that HMRC explicitly define “relevant transactions” within the regulations to ensure clarity. While the reference to the OECD framework is helpful, having a clear and consistent definition in the regulations will simplify compliance, reduce ambiguity, and ensure alignment with UK law. This is particularly important for new entrants or smaller firms that may struggle to access resources for interpreting the OECD framework.

2. Due Diligence and Record-Keeping Requirements

The regulations require UK RCASPs to establish and maintain due diligence procedures, aligned with the OECD framework, and to retain records of these procedures for five years. No further detail or clarity pertaining to this is provided.

Impact on Operational Practices:

Many firms, particularly those with limited resources, may find the implementation of comprehensive due diligence and record-keeping procedures challenging. While the OECD framework sets out broad guidelines, the practicalities of applying these procedures to different types of cryptoasset transactions (including complex or cross-border transactions) could be difficult to navigate.

Recommendation:

The EMA recommends that HMRC provide further guidance or examples to help firms understand how to apply these procedures effectively. Guidance on handling complex cross-border transactions, multi-currency operations, and the treatment of customers in high-risk jurisdictions would be particularly helpful. Additionally, ensuring that the record-keeping requirements are not overly burdensome, especially for smaller firms, will support practical implementation.

Regulatory Risk:

Firms may face heightened risks of non-compliance if due diligence procedures are not clearly understood or applied consistently. While the penalties for non-compliance (which we discuss below) are significant, the challenge of ensuring all records are kept and due diligence measures are applied consistently across all transactions is a concern. Clarity on how firms should demonstrate compliance, especially in cases of automated or algorithmic trading, is necessary.

3. Self-Certification Requirements – Issues of Validity and Penalties

The draft regulations require cryptoasset users to provide self-certification, which is central to a firm's compliance with reporting obligations. A key issue for firms will be the determination of what constitutes a "valid" self-certification and the consequences for failure to obtain one.

Challenges for Firms:

The regulations mandate that firms obtain self-certification from users, but the draft does not fully specify the circumstances under which self-certifications may be considered invalid. For example, firms may encounter cases where users are unable or unwilling to provide the necessary information, or where the self-certifications submitted do not meet the standards outlined in the OECD framework.

Impact on Cryptoasset Users:

The impact of these requirements will be felt most acutely by individual cryptoasset users and smaller firms, who may struggle to meet these requirements. For users in high-risk jurisdictions or those with complex financial profiles, gathering the necessary information for self-certification could be challenging, leading to delays or potential non-compliance.

Recommendation:

EMA suggests that HMRC consider providing more detailed guidelines on what constitutes a valid self-certification in various scenarios. This could include guidance on handling complex cases, such as users from high-risk jurisdictions or users who provide incomplete or ambiguous information. Additionally, a framework for addressing instances where users refuse to comply with self-certification requests would help firms mitigate penalties for non-compliance.

Penalties for Failure:

While penalties are intended to ensure compliance, we believe that the regulations could be more nuanced. Firms should not be penalised when they have made reasonable efforts to obtain self-certification, especially in cases where the failure is due to the user's lack of cooperation rather than the firm's negligence. Please see the section below for concrete recommendations.

4. Penalties for Non-Compliance

The draft regulations set out a range of penalties for non-compliance with due diligence, record-keeping, and reporting obligations. No amount is specified within the draft regulations, but they are very broad, particularly for firms that inadvertently fail to meet reporting requirements.

Proportionality of Penalties:

It is critical to ensure the penalties are not disproportionate, especially for firms that are making good-faith efforts to comply but face operational challenges. The penalty regime should consider the size of the firm, the severity of the breach, and whether the breach was intentional or accidental.

Impact on Firms:

Smaller firms, which may not have the same resources or compliance infrastructure as larger institutions, could be disproportionately impacted by these penalties. This may create a barrier to entry for new or smaller crypto firms, limiting innovation and competition in the UK market.

Recommendation:

EMA strongly recommends that HMRC adopt a graduated penalty system that considers the nature of the breach, the size of the firm, and the firm's compliance history. Furthermore, providing a "grace period" or a warning system for first-time or minor breaches could help firms adjust to the new regulations without facing harsh penalties immediately.

A more proportional penalty system would consider the severity of the failure, allowing firms to demonstrate the nature of the issue. Additionally, a more flexible penalty regime, with scaling and opportunities for mitigation, would help balance enforcement with fairness, fostering a more equitable regulatory environment.

5. Registration and Notification to HMRC

The regulations require UK reporting cryptoasset service providers to register with HMRC by 31st May 2027 or within 30 days of qualifying as a reporting firm.

Operational Impact:

The registration requirement is clear, but firms will need to know exactly what information will be required for registration and the specific process to follow. Without a clear and user-friendly registration process, firms may struggle to comply.

Recommendation:

EMA suggests that HMRC provide a clear, step-by-step guide on the registration process, including what specific information is required and how firms can access and complete the necessary forms. This will help streamline compliance and reduce the administrative burden on crypto firms.

6. Electronic Reporting System – Practical Considerations

The requirement to submit reports electronically using a validated system is a positive move towards streamlining the compliance process. However, the regulations provide limited details on how the system will work in practice.

Challenges for Firms:

The lack of clarity around the technical specifications of the reporting system may create uncertainty for firms that need to invest in software or technology to meet these requirements. Additionally, technical difficulties or system outages could result in missed reporting deadlines, leading to penalties.

Recommendation:

The EMA recommends that HMRC provide more detailed guidance on the electronic reporting system, including technical specifications, timelines for system rollout, and support resources available to firms that are facing challenges. Clear communication around the system's availability and functionality will be crucial to ensuring smooth implementation.

Conclusion

The EMA's members support the UK's efforts to implement the OECD's Crypto-Asset Reporting Framework and promote transparency and compliance within the crypto industry. However, the draft regulations, as currently drafted, leave several critical areas open for interpretation or lacking in detail, which could present significant challenges for compliance, particularly for smaller firms.

We urge HMRC to provide additional guidance, refine certain provisions, and consider the operational realities of crypto firms when finalizing the regulations. We are keen to continue engaging with HMRC to ensure that the final regulations strike the right balance between ensuring compliance and supporting the growth and innovation of the UK's crypto sector.

Thank you for considering our feedback.