UK, European governments force the hand of regulators

With an increasing number of branch closures across the United Kingdom, particularly since 2015, a February 2020 independent "Access to Cash" review, warned that the British cash system was already at a "tipping point" and would collapse without legislative intervention. This led to the British Treasury, in its 2020 budget, announcing it would prepare legislation to protect cash access and to "ensure that the UK's cash infrastructure is sustainable in the long-term". It conducted a consultation, and the *Financial Services Act 2021* made some minor, initial changes that allowed for easier cash access from existing facilities. In mid-2021 a Treasury consultation was launched for a more thorough going legislative change, including the establishment of geographic requirements for access to cash. (See "UK forced to legislate to protect cash access", *AAS*, 25 Aug. 2021 for the banks' immediate reaction—obviously they were not happy.)

A banking hub in the UK, which combines different bank branches in one outlet, often combined with the local post office. Photo: Screenshot

On 18 August 2023 legislation to protect cash access contained in the *Financial Services and Markets Act 2023* passed the UK Parliament. A government statement declared the need "to ensure that cash remains available for those who need it", particularly individuals who transact in cash and businesses that rely upon taking cash. "[I]n the absence of government intervention", noted the statement, "the provision of services to access cash may decline in a disorderly way which is detrimental to users."

According to the statement, the new Act introduced "a requirement for the Financial Conduct Authority (FCA) to exercise its new functions for the purpose of 'seeking to ensure reasonable provision of cash access services in the United Kingdom, or a part of the United Kingdom'. This includes the ability for the FCA to set rules which designated firms, and, where applicable, designated operators of cash access coordination arrangements, must follow."

In December 2023, the FCA commenced a consultation on the "regulatory regime" required to "ensure reasonable provision" of cash. The consultation closed on 8 February 2024 and will finalise its rules in the third quarter of 2024.

According to the FCA consultation document, the new Act specifies that for consumers and SMEs in urban areas cash access must be available within 1 mile of where at least 95 per cent people in the local area live; for rural areas the relevant distance is within 3 miles.

The FCA proposes to develop a cash assessment program to ensure that designated firms (banks, post offices and other cash distributors) conduct a cash access assessment if there is any change to cash access, by their actions or that of another party, that might lead to gaps in service. Designated firms must provide local consumers with the ability to submit a "cash access request" if they believe cash access (including by virtue of restricted hours) is inadequate. Any designated firm that intends to close must provide notice to the FCA and must take into consideration the cash access required by all local citizens, including people with disabilities, businesses, community groups and organisations, not just its own customers. A "cash access assessment" is triggered by the closure of any cash distributor, or, by a reported local deficiency in cash access, made via the program. Any branch closure would be prevented by the FCA until additional services are put in place.

(Note that, according to the FCA, "The existing regulatory framework does not ensure that the wider impact of cash access facility closures on the overall availability of cash access services for all consumers and SMEs in a local area is considered when making decisions about closures.")

Ireland and elsewhere

In Ireland, the November 2022 report of the Retail Banking Review "highlighted the continuing importance of cash in ensuring that people do not experience financial exclusion, that consumers can budget efficiently, and that there is a safety net in the event of electronic banking or the payments infrastructure being impacted by outages or cyberattacks", according to a Department of Finance press release dated 23 January 2024. Legislation was released to preserve December 2022 levels of cash infrastructure and set regional requirements for a minimum number of ATMs and cash service points, provided by the main three banks, per 100,000 people and within 10 kilometres.

Finance Minister Michael McGrath said that “The move to a more digitalised banking model, along with the costs involved in handling cash, have incentivised the traditional banks to move away from cash”. But, he said, “it is important to protect its role in our society and economy in the future” because “In the absence of a legislative intervention, it is likely that over time we would see more and more ATMs removed from communities across the country and I do not want to see this happen.”

The Minister noted that the government’s Access to Cash bill, which will impose regulations on banks, ATMs and cash providers, will be paired with a National Payment Strategy which includes “plans to ensure the ability to spend cash in certain settings” to ensure “people are not left behind”. A public consultation is currently underway on the topic. “We must recognise the important role that cash continues to play in all our lives, and this is a role I am determined to protect”, said McGrath.

Like the UK and Ireland, Sweden has amended its legislation to ensure “reasonable access” (within 25km) to cash services. And in Finland the central bank itself proposed a legislative initiative to protect cash access advocating for maintenance of cash infrastructure as a safeguard against payment system interruptions. But there is an additional factor here. There is no point being able to access cash if no local businesses will accept it as payment. As facilities to access cash floats decline, more businesses have found it all but impossible to keep operating with cash. Moves to protect customers’ right to use cash, therefore, are on the rise. Progress on this has been made in Norway and Spain. Legislation in Norway states that cash is a “compulsory payment method” and must be accepted, but businesses have increasingly found ways to get around this, so in September 2022 amendments to the legislation were proposed to mandate stricter acceptance of cash, overseen by the banking supervisor. The following month changes were adopted to strengthen legislation requiring banks to ensure cash services. In May 2022 Spain’s *General Law for the Protection of Consumers and Users* made it mandatory for retailers to accept cash. Refusal to take payment in cash is a violation of the law.

By Elisa Barwick, Australian Alert Service, 13 March 2024
