

# **FCA Enterprise Act Report**

21 June 2019 to 12 December 2019



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# 1 Introduction

We have a strategic objective to ensure that financial markets work well. We serve the public interest by improving how markets and firms work to benefit those who use them – both through our day-to-day activities and by making specific market interventions. We regulate a wide variety of financial services markets and have a wide range of powers and tools available.

We are required by the Financial Services and Markets Act 2000 (FSMA) to report to Parliament at least annually on our overall performance, through our [Annual Report](#). We published the 2019 Annual Report on 9 July 2019.

Our obligations under the Small Business, Enterprise and Employment Act 2015 (the Act), as amended by the Enterprise Act 2016 (the Enterprise Act), provide additional transparency over the cost of our regulation to business.

Under the Act, we have a statutory requirement to publish a range of information. We are required to report on any changes we make that impose/amend a requirement, restriction or condition, set/amend standards or give/amend guidance for business or relate to securing compliance with, or enforcement of, such requirements, standards, guidance etc. These activities are classified as 'Regulatory Provisions' (RPs) under the Act. The information we are required to publish includes:

- a list of qualifying regulatory provisions (QRPs) that came into effect or ceased to have effect during the relevant period
- impact assessments (IA) verified by the independent [Regulatory Policy Committee](#) (RPC) for those QRPs
- a summary of non-qualifying regulatory provisions (ie those regulatory provisions that fall within exclusions applying under the Act) which came into effect or ceased to have effect during the relevant period

On 4 July 2019, we published our [Enterprise Act Annual Report](#) covering the reporting period 21 June 2018 to 20 June 2019 and were not due to publish our next report until July 2020. However, due to the early General Election we are required to publish a report on any Regulatory Provisions for the period covering 21 June 2019 to 12 December 2019.

## **Qualifying Regulatory Provisions (QRPs) and Non-Qualifying regulatory provisions (NQRPs)**

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There are 2 categories of regulatory provisions (RPs): Qualifying Regulatory Provisions (QRPs) and Non-Qualifying Regulatory Provisions (NQRPs). We are required to publish an IA for each QRP. These assess the cost imposed on business by our regulatory provisions according to a specified methodology and must be validated by the RPC.

Most of what the FCA does by way of requirements etc, falls within the scope of the Act. They are treated as qualifying regulatory provisions unless those requirements fall under one of the exclusion categories listed in a [written ministerial statement](#) by the Secretary

of State for Business, Energy and Industrial Strategy (BEIS). Where a category of exclusion applies the requirement is classified as NQRP.

### **Cost benefit analysis (CBAs)**

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In addition to the IAs produced as part of the Act, the FCA also undertakes CBAs. FSMA, as amended by the Financial Services Act 2012, requires us to publish a CBA of our proposed rules, subject to certain exceptions and exemptions. CBAs provide a broader perspective than Enterprise Act IAs. They analyse a broader range of costs and benefits, for example to consumers and society in addition to the cost to business. Our CBAs also look at significant direct and indirect effects of our intervention, where IAs generally focus only on initial and direct impact on businesses.

## 2 Executive summary

Reporting under the Act provides an estimate of costs to business created by regulation. This is captured by our QRPs. During this reporting period (21 June 2019-12 December 2019) using the Government's specified methodology, our estimates suggest that a cost of £1,577.4m over the prescribed 5-year period has been created from our QRPs, as validated by the RPC.

A significant proportion of costs to firms during this reporting period is due to the extension of the Senior Manager and Certification Regime (SM&CR) rules to all 47,000 solo-regulated firms. This followed changes to legislation in 2016, when Parliament required us to extend the SM&CR rules to all FSMA authorised firms from 9 December 2019. Parliament originally passed legislation in December 2013 following recommendations by the Parliamentary Commission for Banking Standards (PCBS) that led to SM&CR being applied to the banking sector.

The actions we take are designed to benefit consumers or markets. In most years, we would expect there to be an immediate net cost to businesses that will be offset by other benefits, including businesses operating in markets with stronger standards and reputations. An example of this is SM&CR, which aims to reduce harm to consumers and strengthen market integrity by creating a system that enables firms and regulators to hold individuals to account. A robust individual accountability regime can reinforce acceptable standards of behaviours and be a critical factor in deterring misconduct. Ultimately, its main aim is to drive culture change by making Senior Managers accountable and by applying baseline standards to all financial services staff. SM&CR aims to encourage staff to take personal responsibility for their actions, improve conduct at all levels and make sure firms and staff clearly understand and can demonstrate who does what.

There are many uncertainties and limitations in estimating the benefits for wide reaching policy interventions such as the SM&CR. A simple estimate of harm from misconduct that the SM&CR seeks to reduce is estimated between £1,622m and £2,271m. We believe that the reduction in harm resulting from this intervention will outweigh the implementation costs and be net beneficial to firms. For solo regulated firms, a 9-16% reduction in the harm would lead to benefits that are larger than the compliance costs. The introduction of SM&CR will also bring lower staff recruitment costs as regulatory approval will be required for a narrower set of individuals than under the current regime, where everyone performing controlled functions needs to be approved by the regulator. Under the SM&CR, only those performing Senior Manager Functions will require approval. People who previously required our approval but who won't be performing Senior Manager Functions under SM&CR will instead require Certification. This takes place at firm level and so gives firms more control over the speed of their recruitment process. We expect the removal of certified individuals from the approval process will reduce the downtime between outgoing staff and new staff starting. This will help reduce the cost of lost productivity associated with staff turnover. The reduction in people requiring approval will provide a total saving to firms of £4.6m per year and will therefore offset some of the costs of applying the SM&CR. Additional, non-quantifiable benefits, such as better decision making or improved trust in financial services, will outweigh the indirect costs. The full SM&CR CBA can be found [here](#).

The figures provided by reporting under the Act do not give a complete picture of the costs and benefits of our interventions. Two examples of this are particularly relevant:

### **i. The importance of NQRPs**

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Most of the work the FCA does within the scope of the Act is recorded as non-qualifying regulatory provisions. This is because it will fall within one of the exclusion categories and is excluded from the requirement to complete an IA. The exclusions most relevant to our work are:

- de minimis threshold
- regulator activities: regulator casework
- pro-competition measures
- European Union and international regulations, decisions and directives including measures incorporating EU law into domestic law under the EU Withdrawal Bill and legislation made for the purpose of implementing the EU Withdrawal Agreement, including implementation of new EU law during the implementation period
- deficiencies in retained EU Law under the European Union (Withdrawal) Act 2018 and other legislation
- regulator activities: policy development
- systemic financial risk
- fines and penalties, and redress and restitution
- regulator activities: information, education and advice

While reporting under the Act does not require us to quantify the impact of NQRPs, these activities provide significant benefits to users of financial services and create costs for businesses. Non-qualifying regulatory provisions during this reporting period include:

- implementation of significant EU directives
- supervisory meetings with firms
- information, education and advice
- de minimis threshold

We summarise the NQRPs introduced during the reporting period later in this report. The number and size of NQRPs makes it disproportionate for us to list them individually.

### **ii. Wider costs and benefits**

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We concentrate our resources on markets and firms most likely to create consumer harm, damage market integrity or weaken competition. Our Mission sets out the Decision-Making Framework (DMF) for the strategic decisions we take, the reasoning behind our work and the way we choose how we intervene. We consider both costs and benefits and seek to maximise the public value we provide – ie the value we provide to users of financial services.

Many of the decisions we take are designed to benefit consumers or markets rather than businesses. It is also important, when deciding whether to act or not, that we consider the

harm and potential costs to the industry if we did not act. For example, there could be an increase in Financial Services Compensation Scheme (FSCS) costs for those businesses that continue to act in markets where the businesses who were potentially causing the harm have failed and left the market.

The IAs we are required to complete under the Act give only a partial view of our work. They exclude the benefit our work provides to end users, and the trust this creates in financial markets. Similarly, our work on promoting competition and firm-specific supervision is not in this report.

In contrast, our published CBAs seek to capture the total costs and benefits from our interventions. Our CBAs also look at significant direct and indirect effects of our intervention, where IAs only focus on initial and direct impact on businesses.

With these important caveats in mind, this report only explains the costs and benefits created for business by QRPs during this reporting period as required under the Act. We do not report on the benefits our interventions have created for consumers, and more broadly for the standards and reputation of business and markets.

### 3 Qualifying Regulatory Provisions (QRPs)

During the reporting period, we have produced 3 QRPs. These QRPs are summarised below and further detailed information on each QRP can be found in the IAs published alongside this report. The costs and/or benefits of the QRPs that have been validated by the RPC for this reporting period are in Annex 1.

The IAs will contain links to the relevant Policy Statements (PS) and Consultation Papers (CP) which contain more detailed information from the CBAs that were conducted for each measure.

#### PS18/14: Extending the Senior Managers & Certification Regime to solo-regulated firms

We believe that holding individuals to account is a key component of effective regulation. The Senior Managers and Certification Regime (SM&CR) currently applies to banking firms and insurers and, following the Bank of England and Financial Services Act 2016, is now being extended to FCA solo-regulated firms.

It replaces the current Approved Persons Regime, changing how individuals working in financial services are regulated. The aim of the new SM&CR is to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence.

#### PS19/18: Restricting contract for difference products sold to retail clients

Contracts for difference (CFDs) are complex, leveraged derivatives. They are typically offered to retail consumers through online trading platforms.

We have intervened in this market to address poor conduct by UK and European Economic Area (EEA) firms who offer CFDs to retail consumers, and to limit the sale of CFDs and similar products with excessive risk features that result in harm to retail consumers. Had we chosen not to intervene retail consumers would have continued to suffer significant harm. We expect retail consumers will save between £267 million and £451 million per year from our measures.

#### PS19/17: Buy Now Pay Later offers - feedback on CP18/43 and final rules

In CP18/43 we proposed a combination of disclosure remedies and a product/pricing intervention to address various harms we had identified in relation to Buy Now Pay Later (BNPL) credit offers. The proposals confirmed in PS19/17 mean:

- Firms cannot charge backdated interest on amounts of money that have been repaid by the consumer during the BNPL offer period.
- Firms have to provide better information to consumers about BNPL offers. The information should be more balanced and appropriately reflect the risks as well as the benefits of the product.
- Firms must give prompts to consumers to remind them when the offer period is about to end, so that consumers are more likely to repay the credit before they incur interest.

As a result of our intervention we expect consumers will benefit by paying less interest and that the total saving will be between £39.5m and £60.5m per year. As well as the interest savings, we believe there will be further benefits to consumers, such as psychological benefits associated with a reduction in debt and high or unexpected

interest payments. We were not able to estimate these benefits as a financial benefit to consumers, as it is difficult to predict consumers responses to these measures, especially the extent to which consumers no longer buy products.

We expect that some consumers who no longer purchase using BNPL will purchase from other retailers or use other types of consumer finance. Consumers will benefit from these cheaper deals but retailers will also earn revenue that was previously directed only to BNPL firms.

## 4 Non-qualifying regulatory provisions (NQRPs)

As noted above, there are a number of exclusions which mean our work is considered an NQRP. These exclusions cover interventions that may create significant costs for businesses.

This chapter summarises both our activities which are considered NQRPs and key examples of the exclusions we have applied.

There are 12 regulatory provisions that are recorded as NQRPs because they are covered by the de minimis rule. This means they have an estimated equivalent annual net direct cost to business (EANDCB) of less than £5m. These measures include standalone policy changes, thematic reviews, letters to firms, handbook notices etc. See Annex 2 for a full list of the NQRPs which fall under this exclusion.

### Regulator activities: regulator casework

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By number, casework was the most common category of NQRP during the reporting period.

Our work means that we process applications for authorisation. For example, in this reporting period we have processed 1,924 applications for authorisation from firms (this includes applications which were approved, rejected and withdrawn).

During this reporting period, we also processed 757 applications for approval of a change in control, 1,674 cancellations of permission and 204 individual waivers. We also varied 1,347 firms' permissions, processed 3,574 mutual societies' returns and 4,181 firms' applications for passporting. This is the number of new passports and amendments to existing passports. Passporting allows firms to establish a presence or carry out its permitted activities in another country in the European Economic Area (EEA).

Once firms are authorised we undertake a range of supervisory activities. Our [Approach to Supervision](#) document sets out how we use our decision-making framework to shape and prioritise our supervision work cost-effectively, as well as the range of supervision activities we undertake. The following captures a small sample of wide-ranging supervisory tools. For example, during the reporting period we held approximately 1900 meetings with our larger – fixed-portfolio - firms. While not all of these meetings would have resulted in RPs, the wide definition of guidance under the Act means individual guidance may often have been given.

In addition, as part of our supervision of our largest firms, we proactively intervene to make sure issues do not escalate. This reporting period saw the FCA identify and track approximately 117 potential issues at our largest firms. Not all of these interactions would have involved giving specific guidance or imposing a requirement however, as above, it is likely many of them would have amounted to RPs under the Act.

Firms and individuals can phone, email and write to our supervision hub for individual help and guidance on regulatory processes, application of rules and other regulatory matters. For example, between June 2019 and November 2019, the supervision hub took 67,547 phone calls from firms, answered 15,005 emails/web forms/webchats and 881 letters.

Similarly, we run 'Live & Local' events across the whole of the UK, to provide advice for investment, general insurance and mortgage firms.

We also investigate firms where we suspect serious misconduct has occurred; the outcome of which can be enforcement or supervisory action, or a combination of both. At any given time, we have a number of matters at different stages of investigation and litigation across a range of sectors such as retail lending, financial crime, wholesale conduct and insider dealing. Over the period (21 June 2019 to 12 December 2019), we closed 49 investigations about firms and we opened 30. We commenced 7 proceedings against firms. At the end of the period (as at 12 December 2019), we had 244 live matters about firms, of which 215 were at investigation stage and 29 were in litigation (referred to the Regulatory Decisions Committee, Upper Tribunal or Courts). This gives only some of the background of the work we do where we suspect serious misconduct has occurred. For more detailed information on our Enforcement action please see the [Enforcement annual performance report](#) that is published as part of our Annual Report and Accounts.

Between 21 June 2019 and 12 December 2019, we cancelled the permissions of 84 firms, imposed requirements on 1 firm, and issued 6 fines to firms. We also took enforcement action against a firm operating an unauthorised collective investment scheme and illegal deposit-taking, resulting in a [High Court order](#) for the firm and directors to pay restitution to consumers. We have classified all this work as NQRPs on the basis that it falls within the exclusion for regulator casework. These figures exclude threshold conditions cases, where the firms, against which we take enforcement action, do not satisfy the FCA's minimum standards to remain authorised by the FCA to carry out regulated activities. They also exclude cases against individuals. These figures also only relate to Restrictions/Requirements imposed in the reporting period due to Enforcement action via published statutory Final Notice, First Supervisory or Second Supervisory Notice.

## Pro-competition measures

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We have an operational objective to promote competition in the interests of consumers, a competition duty and powers to enforce against breaches of competition law. As a result, a number of areas of our work this reporting period were covered by the pro-competition measures exclusion.

In this period, we published our interim report into [General Insurance Pricing Practices Market Study](#) and began our [Credit Information Market Study](#).

## Market studies underway

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Market studies are in-depth, evidence-driven investigations, generally taking 12-18 months. Following a market study, we typically make rules or take other action to make the market work better in the future. Remedies and interventions targeted at promoting competition are covered by the pro-competition exclusion of the Act. No market studies were completed during this reporting period. However, we did publish our interim report on the General Insurance Pricing Practices Market Study and began our Credit Information Market Study in this reporting period.

In October 2019, we published our interim report into General Insurance Pricing Practices.

The interim report sets out our concerns about how pricing in these markets leads to consumers who do not switch or negotiate with their provider paying high prices for their insurance. It also includes potential remedies. We intend to publish a final report and consultation on remedies in Q1 2020. So, we are not required to report on this.

In June 2019, we launched our Credit Information Market Study. Credit information plays a critical role in many markets. It can impact consumers' access to a range of financial services (including mortgages, loans and credit cards) and in some cases the price they pay for them. The market study will focus on the following themes:

- the purpose, quality and accessibility of credit information
- market structure, business models and competition
- consumers' engagement and understanding of credit information and how it impacts their behaviour

We aim to publish our interim report in Spring 2020, setting out our preliminary conclusions including, where appropriate, a discussion of potential remedies. So, we are not required to report on this.

## EU and international obligations

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Our remit includes implementation, supervision and enforcement of EU and international regulatory policy and standards in the UK. We classify associated implementation activities, with the exception of 'gold-plating' or going beyond what is required to comply, as NQRPs.

Policy changes that were not required in relation to EU or international legislation are captured separately as QRPs unless they fall under a different exclusion.

Examples of NQRPs due to the EU and international obligation exclusion during this reporting period include:

- [PS19/12: Changes to align the FCA Handbook with the EU Prospectus Regulation: Feedback to CP19/6](#)
- [PS19/28: Proxy Advisors \(Shareholders' Rights\) Regulation Implementation \(DEPP and EG\)](#)

## Regulator activities: policy development

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We launched 16 consultations during the reporting period. This includes Quarterly Consultation Papers (QCPs), guidance consultations, discussion papers and calls for input. Under the exclusion for policy development, we classify these as NQRPs. We report separately on QRPs for final policy rules and guidance made in the same period.

## Regulator activities: information, education and advice

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An undertaking is a promise by a firm under the Consumer Rights Act 2015 or Unfair Terms in Consumer Contracts Regulations 1999 that it will amend or remove an unfair and/or insufficiently transparent contract term from its consumer contracts. These

undertakings are published on our website and firms should remain alert to undertakings and review their contract terms. As such these are classified as non-qualifying as they are providing 'information, education and advice' to firms without giving examples of best practice or imposing new requirements on firms. Here's an example of an undertaking that we have published in this period.

# Annex 1

## List of QRPs validated by the RPC

Full title of measure	Date	BIT <sup>1</sup> Score (£million) burden to business <sup>2</sup>
PS18/14: Extending the Senior Managers & Certification Regime to solo-regulated firms	Dec 2019	1,144.8
PS19/18: Restricting contract for difference products sold to retail clients	Aug 2019	206.1
PS19/17: Buy Now Pay Later offers - feedback on CP18/43 and final rules	Sep 2019	226.5
<b>Total</b>		<b>1,577.4</b>

Further detailed information can be found in the IAs that have been published alongside this report for the above measures and these will include links to the relevant policy statements containing the CBAs that were completed.

1 Business Impact Target in respect of the economic impact on business of regulation which comes into or ceases to be in force for this Parliament, along with related matters as required under section 21 of the Small Business, Enterprise and Employment Act 2015 ("the Act").

2 The BIT Score only reflects costs to business; it does not reflect benefits or burdens to consumers. When making regulatory decisions the FCA considers both costs and benefits to businesses, consumers and the wider economy.

## Annex 2

### List of de minimis NQRPs

This section provides a list of the 12 NQRPs which are covered by the de minimis exclusion as they have an estimated cost or benefit of below the de minimis threshold.

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PS18/24: Approach to final Regulatory Technical Standards and EBA guidelines under the revised Payment Services Directive (PSD2)

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PS19/3: General standards and communication rules for the payment services and e-money sectors

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PS19/22: Guidance on Cryptoassets

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PS19/9: Applying the Senior Managers & Certification Regime to Claims Management Companies (includes PS19/20)

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PS19/7: The Directory

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PS19/27: Changes to mortgage responsible lending rules and guidance - feedback on CP19/14 and final rules

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PS19/14: Loan-based ('peer-to-peer') and investment-based crowdfunding platforms: Feedback to CP18/20 and final rules

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PS19/25: Overdraft Pricing and Competition Remedies

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Financial Crime Supervision & Supervision Hub AML Call Campaign 2019/2020

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Safeguarding arrangements of non-bank payment service providers

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FG19/5: The GI Distribution chain: Guidance for insurance product manufacturers and distributors

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Approving financial promotions

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## Annex 3

### Outstanding QRPs from last reporting period

During the last reporting period, there were 2 QRPs which were outstanding as they had not been validated by the RPC at the time of publication. We have listed them below.

Full title of measure	BIT Score (£million) burden to business
PS18/6: Advising on Pension Transfers: Feedback on CP17/16 and final rules – Part 2	0.5
CP18/43: High-Cost Credit Review: Feedback on CP18/12 with final rules and guidance and consultation on Buy Now Pay Later Offers	60.6
<b>Total</b>	<b>61.1</b>

In our 2018/19 report we estimated that PS18/21: SME access to the FOS would be a QRP however, following a review and validation by the RPC this has now been deemed to be an NQRP as it falls within the de minimis exclusion. Therefore, we will no longer report the cost of the intervention or publish the IA.

## Annex 4

# List of Abbreviations

BEIS	Department for Business, Energy and Industrial Strategy
BIT	Business Impact Target
BNPL	Buy Now Pay Later
CBA	Cost Benefit Analysis
CFD	Contracts for difference
CP	Consultation Paper
DMF	Decision Making Framework
EANDCB	Equivalent annual net direct cost to business
EEA	European Economic Area
EU	European Union
FCA	Financial Conduct Authority
FG	Finalised Guidance
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Market Act 2000
IA	Impact Assessment
NQRP	Non-Qualifying Regulatory Provision
PCBS	Parliamentary Commission for Banking Standards
PRA	Prudential Regulation Authority
PS	Policy Statement
QCP	Quarterly Consultation Paper
QRP	Qualifying Regulatory Provision
RP	Regulatory Provision
RPC	Regulatory Policy Committee
SM&CR	Senior Managers & Certification Regime
the Act	Enterprise Act 2016
UK	UK

## Annex 5

# Glossary

The Act	The Small Business, Enterprise and Employment Act 2015 as amended by the Enterprise Act 2016.
Cost Benefit Analysis (CBA)	We are required to create and publish a cost benefit analysis on certain initiatives under Financial Services and Markets Act (2000). In addition to the cost to business, they also analyse the public value resulting from the intervention.
FCA Mission	The FCA Mission 2017 was launched on 18 April 2017. It sets out the framework for the strategic decisions we make, the reasoning behind our work and the way we choose the tools to do it.
Impact Assessment	The Act requires us to carry out impact assessments that assess the costs to business.
Non-Qualifying Regulatory Provision (NQRP)	Any change the FCA makes that imposes a requirement, sets standards or gives or amends guidance for business or relates to securing compliance with such standards, guidance etc. that falls under one of the exclusion categories listed in a written ministerial statement by Secretary of State for Business, Energy and Industrial Strategy.
Qualifying Regulatory Provision (QRP)	Any change the FCA makes that imposes/amends a requirement, set/amends standards or gives/ amends guidance for business or relates to securing compliance with such standards, guidance etc. unless they fall under one of the exclusion categories listed in a written ministerial statement by Secretary of State for Business, Energy and Industrial Strategy.
Regulatory Policy Committee (RPC)	An independent, advisory, non-departmental public body who rate the quality of evidence and analysis supporting new regulatory and deregulatory proposals, and check the estimates for the equivalent annual net cost to business of new regulations.
Regulatory Provision (RP)	Any change the FCA makes that imposes a requirement, set standards or gives or amends guidance for business or relates to securing compliance with such standards, guidance etc.



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