

# **FCA Enterprise Act**

Annual report 2019/20



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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 that use them – consumers and businesses.

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 2019/20 Annual Report on 10 September 2020.

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. a list of qualifying regulatory provisions (QRPs) that came into effect or ceased to have effect during the relevant period
- b. impact assessments (IA) verified by the independent Regulatory Policy Committee (RPC) for those QRPs
- c. 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

This report covers the period 13 December 2019 to 16 December 2020.

## 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 impact assessment for each QRP. These set out our assessment of the costs imposed on business by our regulatory provisions according to a specified methodology and must be validated by the RPC. There can be occasions where we amend a regulatory provision and this creates benefits for business and these are assessed using the same methodology.

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 the written ministerial statement by the Secretary of State for Business, Energy and Industrial Strategy (BEIS). This allows us to know, with certainty, what the exclusion categories will be for the following 5 years (unless an early General Election is called). They also announce what the Business Impact Target (BIT) for the Parliament will be. Usually a new statement is released during the first year of a new Parliament and remains in place for the full term of the Parliament. However, due to the ongoing pandemic, BEIS have confirmed that the

methodology and exclusions from the last Parliament will apply and that a 'holding' BIT will be announced in due course. 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 all direct and indirect effects of our interventions, where IAs 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 using the Government's specified methodology, our estimates suggest that a cost of £4.9bn over the prescribed 5-year period has been created from our QRPs, as validated by the RPC. Of this £4.9bn, £4.6bn is a result of our action to address serious failings in pension transfer advice.

Our 2018 Thematic Review into pension transfer advice found that more than 50% of the advice reviewed was unsuitable, causing material harm to consumers. Despite our previous action, both with individual firms and across the sector, we think the risk of harm from unsuitable advice remains unacceptably high. As a result, we introduced a number of rules and guidance to address this in our Policy Statement (PS20/6) including:

- A ban on contingent charging – to remove the incentive for firms to recommend a transfer out of a defined benefit pension. We estimate this will save consumers £370-£450m per year. This results in lost profits to industry of £370-£450m per year.
- Addressing ongoing conflicts of interest by requiring firms to demonstrate why an alternative scheme which may incur high fees and charges is more suitable than an available workplace pension scheme as a receiving scheme for a transfer. We estimate this will save consumers £400-£600m per year. This results in lost profits to industry of £400-£600m per year.

We estimate that as a result these 2 measures will save consumers between £770m and £1,050m per year. By enabling consumers to have a better understanding of the implications of transferring their pension, we also expect to reduce the overall number of consumers that suffer harm from transferring their pension when it is not in their best interests to do so.

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. Wider costs and benefits

We concentrate our resources on markets and firms most likely to create consumer harm, damage market integrity or weaken competition. 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.

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 covered 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.

## ii. Our use of NQRPs

Most of the work the FCA does within the scope of the Act is recorded as NQRPs. 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. NQRPs during this reporting period include:

- regulator activities: regulator casework
- systemic financial risk
- pro-competition measures
- regulator activities: policy development
- falling under the 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.

## Coronavirus (Covid-19)

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Since the start of the pandemic we have issued a large amount of guidance to firms on how they should treat and help consumers who faced financial difficulty due the impact of coronavirus. This guidance is not captured under the Act – either because it is of a temporary nature (under 12 months) or because it was issued in draft form. If these measures were to remain in force for more than 12 months then these would become QRPs and we would report on them in our next Enterprise Act Annual Report.

## 3 Qualifying Regulatory Provisions (QRPs)

During the reporting period, we have produced 4 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.

### PS19/16: High-Cost Credit Review: Overdrafts Policy Statement

In CP18/42 we explained why fundamental reform was needed to the way banks charge for overdrafts. Our package of remedies to make overdraft pricing simpler, fairer and easier to manage was widely supported. Our remedies:

- stopped firms from charging higher prices for unarranged overdrafts than for arranged overdrafts
- banned fixed fees for borrowing through an overdraft – no daily or monthly fees, or fees for having an overdraft facility
- required firms to price by a simple annual interest rate
- issued new guidance to reiterate that refused payment fees should reasonably correspond to the cost of refusing payments
- required firms to do more to identify customers who are showing signs of financial strain or are in financial difficulty and implement a strategy to reduce repeat use

We expect that the changes will result in a fairer distribution of charges, particularly benefitting vulnerable consumers, who were disproportionately hit by high unarranged overdraft charges. We would expect that the 30% of Personal Current Accounts (PCA) holders living in the most deprived areas in the UK, could see an aggregate reduction in overdraft charges of around £101m per year as a result of our pricing interventions.

### PS19/30: Independent Governance Committees: extension of remit

Having considered the feedback from stakeholders that we received on CP19/15, in December 2019 we published PS19/30 with final rules to extend the remit of Independent Governance Committees (IGCs) and Governance Advisory Arrangements (GAAs) to:

- a new duty for IGCs to consider and report on their firm's policies on environmental, social and governance (ESG) issues, member concerns, and stewardship, for the products that IGCs oversee
- a new duty for IGCs to oversee the value for money of investment pathway solutions for pension drawdown (pathway solutions)

These rules aim to protect consumers from investments that may be unsuitable because of ESG risks, make sure that consumer concerns are taken into account, and encourage good stewardship of investments. Additionally, these rules address recommendations made by the Law Commission in its June 2017 report on Pension Funds and Social investments.



We also want pathway solutions that deliver value for money for consumers. That means costs and charges that are good value relative to the quality of the pathway solution and associated services, and a pathway solution that is appropriate for the pathway objective and the characteristics of the consumers likely to be using it.

#### PS20/6: Pension transfer advice: feedback on CP19/25 and our final rules and guidance

In CP19/25, we proposed a combination of remedies to improve the suitability of pension transfer advice. The proposals confirmed in PS20/6 include measures to:

- ban charges for advice that consumers only pay when a transfer or pension conversion proceeds (contingent charging), except in certain limited, identifiable circumstances which we describe as the 'carve-outs'
- require firms to consider an available workplace pension scheme as a receiving scheme for a transfer and to demonstrate why any alternative destination scheme is more suitable
- enable firms to give a short form of advice (abridged advice) to help consumers access initial advice at a more affordable cost, even if they may be unwilling or unable to pay for full advice
- empower consumers to make better decisions by improving how advisers disclose advice charges
- set up new data collections that advice firms must give us to improve our ability to supervise the sector

#### FG20/1: Assessing adequate financial resources

Our intention is to improve the way firms operate so they can take effective steps to prevent harm from occurring to markets and/or customers, by improving controls and/or reducing the risk in their activities and put things right when they go wrong.

Having adequate financial resources:

- allows firms to operate and provide services through the economic cycle
- allows for an orderly wind-down without causing undue economic harm to consumers or to the integrity of the UK financial system

## 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 14 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 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 3,506 applications for authorisation from firms (this includes applications which were approved, rejected and withdrawn).

During this reporting period, we also processed 1,694 applications for approval of a change in control, 3,751 cancellations of permission and 530 individual waivers. We also varied 2,492 firms' permissions, processed 7,942 mutual societies' returns and 7,126 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.

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 3,600 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 at an early stage where appropriate to make sure issues do not unnecessarily escalate. This reporting period saw the FCA identify 222 new Firm Specific Risks at our larger, fixed portfolio 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 December 2019 and November 2020, the Supervision Hub took 137,211 phone calls from firms, answered 39,069 emails/web forms/webchats and 1,648 letters. Similarly, we run 'Live & Local' events across the UK, to provide advice and support 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 we closed 70 investigations about firms, and we opened 54. We commenced 16 proceedings against firms. At the end of the period, we had 224 live matters about firms, of which 190 were at investigation stage and 34 were in litigation (referred to the Regulatory Decisions Committee, Upper Tribunal or Courts). 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. 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 our [Annual Report and Accounts](#) and accompanying [enforcement data](#).

During the period, we cancelled the permissions of 132 firms, imposed a Public Censure on 2 firms, and issued 10 fines to firms. We also obtained [High Court approval](#) for a firm to return £2.5 million to victims of an unauthorised collective investment scheme, secured a [restitution order](#) for a firm to pay nearly £3.62m to members of the public who bought shares that were promoted unlawfully, and secured a [further restitution order](#) for 2 companies to pay restitution to members of the public who were induced to transfer their pensions into self-invested personal pensions (SIPPs). Finally, we have commenced [High Court proceedings](#) against the operator and/or promoter of unauthorised collective investment schemes in which investors appear to have lost at least £30 million. We are seeking injunctions and restitution for investors. We have classified all this work as NQRPs on the basis that it falls within the exclusion for regulator casework. These figures also only relate to Sanctions/Restrictions/Requirements imposed in the reporting period due to enforcement action via published Press Release, 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 during this reporting period were covered by the pro-competition measures exclusion.

### Completed market studies

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.

For example, in September 2020, we published the final report of our [General Pricing Practices Market Study](#). Its aim was to understand whether pricing practices in home and motor insurance support effective competition and lead to good customer outcomes. We

proposed a range of remedies in [CP20/19](#) which focuses on pricing, product governance, auto-renewal and reporting requirements. The consultation closes on 25 January 2021 and we will review the responses and publish a policy statement confirming any remedies in due course.

Remedies and interventions targeted at promoting competition are covered by the pro-competition exclusion of the Act.

### **Market studies underway**

We were due to publish the interim report from our [Credit Information Market Study](#) in Spring 2020, however this has been delayed until 2021. So, we are not required to report on this.

### **Other pro-competition measures**

As part of [CP18/42](#) we published rules to tackle 1 of the drivers of harm we identified in the overdraft market – low levels of awareness and engagement around overdrafts. Our aim with these rules was to promote competition for Personal Current Accounts (PCAs) with overdrafts, and in the wider PCA market, by making it clear to consumers how overdrafts work, what they will cost, and how much consumers are using them. This will lead to consumers being more engaged, and making more informed decisions. Increased competition between firms may reduce prices and increase service quality. The rules that we have put in force follow recommendations to the FCA from the Competition and Markets Authority as part of their [retail banking investigation](#) to improve competition in the retail banking market. As such we have applied the pro-competition exclusion to these measures.

## **Regulator activities: policy development**

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We launched 67 consultations during the reporting period. This includes quarterly consultation papers, 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.

## **Systemic Financial Risk**

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We are the prudential supervisor for approximately 49,000 firms. Within this 19,000 firms have a prudential regime, which provides more detail on the standards that need to be met. We focus on the prudential soundness of these firms to avoid disorderly failure and minimise harm to consumers, the real economy and the UK financial system itself. We exclude the majority of work undertaken in this area because it addresses systemic financial risk.

For instance, in September 2019 we published [PS19/24](#) following feedback to our consultation on illiquid assets and open-ended funds. It sets out the final rules relating to disclosure, liquidity management and suspension of dealing as proposed in [CP18/27](#). We changed our rules as we are seeking to reduce the potential harm for investors in funds that hold inherently illiquid assets, such as property, particularly under stressed market conditions.

Open-ended funds that invest in inherently illiquid assets can encounter difficulties if many investors simultaneously try to withdraw their money at short notice. This happened following the result of the UK referendum on EU membership in June 2016, when a number of property funds had to suspend dealing temporarily. Many property funds also suspended dealing in March 2020, in the light of market uncertainty due to the coronavirus crisis.

Our measures should:

- Help investors understand better any restrictions on access to their investments and the circumstances in which these restrictions will be placed on the funds
- In the case of the funds investing in immovables, reduce the potential for some investors to gain at the expense of others because units have been incorrectly priced, due to uncertainty about the value of assets held in the fund
- Reduce the likelihood of a run, which could substantially reduce the value of investments for those left in the fund and possibly destabilise the market more widely

Given the implications for market integrity and systemic risk we have classified this work as non-qualifying.

## 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>
<b>PS19/16: High-Cost Credit Review: Overdraft policy statement</b>	Dec 2019 and Apr 20	126.5
<b>PS19/30: Independent Governance Committees: extension of remit</b>	Apr 20	52.5
<b>PS20/6 Pension transfer advice: feedback on CP19/25 and our final rules and guidance</b>	Jun 20 and Oct 20	4,646.4
<b>FG20/1: Assessing adequate financial resources</b>	Jun 20	100.8
<b>Total</b>		4,926.2

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 14 NQRP's 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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PS20/4: Amendment of COBS 21.3 permitted links rules - final rules and feedback to CP18/40

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PS19/23: FCA and PRA changes to mortgage reporting requirements

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PS20/01: Mortgage advice and selling standards: feedback to CP19/17 and final rules

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PS20/2: Publishing and disclosing costs and charges to workplace pension scheme members and amendments to COBS 19.8

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PS20/3: Signposting to travel insurance consumers with medical conditions

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PS20/5: Extending the Senior Managers Regime to Benchmark Administrators: Final rules

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Multi-Firm Review: Outsourcing in the Life Insurance Sector

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Changes to the handbook for the UK corporate governance code

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The equity release sales and advice process: key findings

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TR20/1: The effectiveness of Independent Governance Committees and Governance Advisory Arrangements

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FG20/3: Branch and ATM closures or conversions

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Multi-Firm Review: Retail Banking: Our review of basic bank accounts

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Multi-Firm Review: Relending by high-cost lenders

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PS20/11: Mortgages: Removing barriers to intra-group switching and helping borrowers with maturing interest-only and part-and-part mortgages

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## Annex 3 – List of Abbreviations

<b>CBA</b>	Cost Benefit Analysis
<b>IA</b>	Impact Assessment
<b>BIT</b>	Business Impact Target
<b>FSMA</b>	Financial Services and Market Act 2000
<b>NQRP</b>	Non-Qualifying Regulatory Provision
<b>QRP</b>	Qualifying Regulatory Provision
<b>RP</b>	Regulatory Provision
<b>RPC</b>	Regulatory Policy Committee
<b>the Act</b>	Enterprise Act 2016
<b>BEIS</b>	Department for Business, Energy and Industrial Strategy
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>UK</b>	United Kingdom
<b>PS</b>	Policy Statement
<b>FG</b>	Finalised Guidance
<b>CP</b>	Consultation Paper
<b>PCA</b>	Personal Current Account
<b>IGC</b>	Independent Governance Committees
<b>GAA</b>	Governance Advisory Arrangements
<b>ESG</b>	Environment, Social and Governance



## Annex 4 – Glossary

<b>The Act</b>	The Small Business, Enterprise and Employment Act 2015 as amended by the Enterprise Act 2016.
<b>Cost Benefit Analysis (CBA)</b>	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.
<b>Impact Assessment</b>	The Act requires us to carry out impact assessments that assess the costs to business.
<b>Non-Qualifying Regulatory Provision (NQRP)</b>	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.
<b>Qualifying Regulatory Provision (QRP)</b>	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.
<b>Regulatory Policy Committee (RPC)</b>	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.
<b>Regulatory Provision (RP)</b>	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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