

Response to HM Treasury Call for Proposals

Financial Services Regulation: Measuring Success

Introduction

We very much welcome the new secondary objective for the regulators introduced by the Financial Services and Markets Act 2023 (the Act). We also welcome the new 'reporting requirement' introduced by Clause 37 of the Act.

The government's approach to the exercise of the power of direction in Clause 37 of the Act

We advocated for the government to add Clause 37 to the Act to give HM Treasury (HMT) a new power to require regulators to report on their performance. This Clause is intended to be used to enhance accountability on the regulators' approach and effectiveness in putting their new secondary objective into effect to promote economic growth and international competitiveness.

The purpose of the power is to identify and address issues before they become ingrained and create significant and persistent negative impacts. After years of missed statutory deadlines, the current accountability processes take too long to drive change.

The Call for Proposals states that "in many cases, the government expects that, if it is reasonably practicable to gather and publish the information, the regulator will do so of its own accord. However, where required, HM Treasury will direct the regulator to publish the required information." We are concerned that historically, regulators have shown hesitance to publish certain information voluntarily, particularly regarding operational failures.

For example, there have been significant regulator delays in approving authorisations since 2019. These are now being addressed. But the existing accountability measures did not swiftly identify and address this operational problem and its impacts on the industry and UK competitiveness. The recent move by regulators to publish authorisations data with more granularity and cadence followed pressure during the passage of the Act. Significant and persistent operational problems with regulators' processing of authorisations was a key driver for TheCityUK advocating for the Act to give HMT greater powers to hold regulators to account.

The Call for Proposals also states that "this power will only be used where existing forms of engagement have been exhausted".

There are concerns in the industry that the power allows too much room for regulators to resist or delay the publication of metrics that would support scrutiny and accountability of aspects of their approach or performance, negatively impacting confidence in the UK's regulatory environment.

We are proposing a number of metrics for regulators and strongly recommend that the power in Clause 37 be used to ensure meaningful and timely reporting, scrutiny, and accountability.

Key metrics that the FCA and the PRA should publish in relation to their new secondary growth and competitiveness objectives

We recommend that the regulators ensure and make it clear that the mechanisms they use to gather data for metrics from the industry are as light touch as possible and ensure anonymity. This will help to maximise the volume and openness of the data provided by industry.

We also recommend that HMT measures the outcomes of regulation, and regulatory change, in meeting the public policy objective by using the permanent metrics we propose, and reviewing how these are reflected in regulators' annual reports. This would help inform government and Parliament on achieving the right balance between regulating to protect consumers from risk of harm and supporting economic growth and competitiveness. It can also inform reviews of regulation and how rules could be changed to better achieve the intended outcomes, or with lower costs and compliance burdens for firms. For example, a regulatory perceptions survey would give regulators an overarching sense of how the industry views alignment or a set of rules with the secondary objective.

We are pleased that the regulators already report a number of metrics, measures, and indicators through, for example, the Regulatory Initiatives Grid, Operating Metrics, Outcome and Metrics document, and the Complaints Scheme. However, in some instances we find that these are not necessarily providing measures relevant to the secondary objective.

There is also a need to advertise where this information is held. For example, many in the industry were unaware of the Financial Regulatory Complaints Commissioner and the data they report. We recommend that existing metrics are reported on a six-monthly basis.

The metrics we propose address a number of desired outcomes related to the new secondary objective. In isolation, none are a sufficient measure of implementation or impact of the objective. But collectively they would provide useful indicators of the impacts of regulation and the regulators' operational efficiency on the competitiveness of our industry and its contributions to economic growth. Where metrics are proposed around authorisations, these should cover the full range of authorisations that require regulatory approval.

Outcome	Proposed metrics	Cadence	Justification
The regulators have regard to the regulatory burden on firms	Cumulative cost to firms of regulations which have come into force in the previous 12 months and an estimate of costs over the next 12 months, by financial services sector / activity type	Annual	While Cost-Benefit Analysis (CBA) panels inform the policy made by regulators, it is important that there be a consideration of the cumulative impact of regulation. This can be published with the cumulative benefits to justify these costs. International comparisons can also be part of this broader justification.
	Number of regulations repealed or disapplied in the previous 12 months	Annual	This will be part of a measure of the volume of work for the industry.
	Number of additional regulations which have come into force in the previous 12 months	Annual	This will be part of a measure of the volume of work for the industry.
	Number of opinions issued by the Regulatory Policy Committee on FCA regulatory proposals	Annual	Complaints are made through complaint schemes, but these schemes did not appear to capture issues in authorisation approvals over the last couple of years.
	Number of complaints logged by firms regarding regulatory/supervisory burden, broken down by sector and firm type	Annual	This should be part of a new regulatory complaints process intended to identify emerging issues.
	Targeting of supervisory resource (under supervisory approach) in comparison to where material regulatory failings have occurred over the previous 12 months	Annual	This can inform HMT and Parliament of where there are issues resulting from resource constraints.
	Number of ad hoc data requests made to the industry	Annual	This would contribute to measuring the volume of work for the industry.
	Percentage of policies implemented found to be achieving outcomes as expected and with the expected cost benefit.	Annual	This can be part of policy evaluation reviews and measuring the success of individual regulations.

Applications are processed within statutory timeframes (broken down by financial services sector and application type)	Mean processing time ¹ of cases completed within the six-monthly period (working days or weeks)	Six-monthly	This would be an additional metric to include on the quarterly reporting done by the FCA. We recommend the PRA begin to conduct similar reporting as well.
	Number of cases determined within the six-monthly period within the statutory deadline	Six-monthly	We recommend the PRA begin to conduct similar reporting as well.
	Number of cases determined within the six-monthly period outside the statutory deadline	Six-monthly	We recommend the PRA begin to conduct similar reporting as well.
	Average time taken for each step of the application processes to be completed (e.g. allocation of a case officer, determination of complete application, initial review, closed)	Six-monthly	This is to increase the transparency of the processing of applications.
	Median average time taken to determine if an application is considered complete or incomplete	Six-monthly	This is to increase the predictability of time taken to complete processes.
Firms have greater certainty about likely processing timelines	Modal average processing time for cases completed within the six-monthly period (working days or weeks)	Six-monthly	This would be an additional metric to include on the quarterly reporting done by the FCA; we recommend the PRA begin to conduct similar reporting as well.
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¹ For the purpose of this response, 'processing time' refers to the time from the point from submission until completion including weekends, bank holidays, and working days.

Applications are managed in a transparent way	Number of outstanding applications at the end of the six-monthly period	Six-monthly	This is to give greater transparency and accountability for potential backlogs.
Firms are being attracted to the UK, or the UK is an attractive place to conduct business	Number of new applicants by firm type and entity structure	Annual	This is part of evidencing aspects of the UK regime which foster innovation, entrepreneurship, and competition.
	Number of firms leaving the UK market	Annual	This is part of evidencing where the UK environment might be driving businesses away from the UK.
	Number of third country branch applications by firm type and entity structure	Annual	This is part of evidencing the attractiveness of the UK regulatory environment.
	Trends in business written in the UK in comparison to trends in other jurisdictions over previous 12 months	Annual	This will be a part of demonstrating the UK's attractiveness compared to other jurisdictions.
	Trend in proportion of business written in the UK by third country branches over previous 12 months	Annual	This will be a part of demonstrating the UK's attractiveness compared to other jurisdictions.
	Average time taken from a firm registering at Companies House to being authorised	Annual	This is a key KPI used by international benchmarking agencies which measures the ease of doing business.

UK market innovation provides creative solutions in response to changing societal and business needs	Number of applications to the FCA's Regulatory Sandbox, and percentage accepted	Annual	This is part of evidencing aspects of the UK regime which foster innovation.
	Number of applicants to the FCA's Innovation Pathways, and percentage which received/are now receiving that support	Annual	This is part of evidencing aspects of the UK regime which foster innovation
	Number of applications to the FCA's Digital Regulatory Sandbox, and percentage accepted	Annual	This is part of evidencing aspects of the UK regime which foster innovation
	Number of new ideas proposed and selected for implementation to facilitate: <ol style="list-style-type: none"> 1. The creation of, and benefit from, new technologies 2. The UK pathway to Net Zero, and the wider transition to green sustainable finance 	Annual	This is part of evidencing aspects of the UK regime which foster innovation

Additional performance indicators to consider

The regulators should also create a more user friendly “shop window” for regulatory information consisting of:

1. The number of firms, by firm type, legally operating in the UK.
2. Dashboards consisting of the metrics relating to the UK’s international competitiveness, and the trends in these metrics over time.
3. A plan for measuring the success of critical regulations in delivering on Primary and Secondary Objectives. Critical regulations should be defined by each sector regulated by the regulators.
4. A plan for benchmarking the UK against the next 2 or 3 competitor jurisdictions for the UK, by sector (e.g. The ‘P7’ for pensions: the seven largest pension markets (92% of total assets in the study): Australia, Canada, Japan, Netherlands, Switzerland, UK, and US). An example benchmark could be a comparison of capital requirements in different jurisdictions. Though regulators should only collect or publish new information where this will be genuinely additive to the information and analysis that already exists.

Efficient and adaptive regulation

We find that the reviews undertaken by regulators over recent years are evidence of a need for better feedback mechanisms between firms and regulators. This feedback should form part of measuring success in meeting the public policy objectives of regulations (e.g. the Senior Manager and Certification Regime’s objectives to increase accountability and improve firm cultures). Hence, we recommend that regulators conduct ‘policy evaluation reviews’ for critical regulations. These reviews should consider the metrics we are recommending in the ‘regulators have regard to the regulatory burden on firms’ section above. These reviews should seek to measure whether implemented regulations are achieving the intended outcomes, the cost versus the benefits of achieving these outcomes, and whether there may be other ways of achieving the desired outcomes with a greater benefit to cost ratio.

We believe that this recommendation is achievable as the regulators already collect information pertaining to their objectives (e.g. the FCA Financial Lives Survey). With greater collection and refinement of Cost Benefit Analyses for regulations, we believe that a review to evidence the cost to benefit ratio of regulations should not be too burdensome.

We recognise the importance of the regulator annual reports, and we believe these should include an explanation of how, in their opinion, they have each complied with their duty to advance the secondary competitiveness and growth objectives. We also recognise the need for effective scrutiny and challenge these annual reports by all stakeholders.

We also recommend an annual satisfaction survey to gather and assess firms' views on regulators' operational performance. This survey would need to be anonymous and preferably run by an independent and reputable third party who does not report into the regulator, so that firms feel safe in providing honest feedback without damaging relationships with their supervisors. The OECD produced a report on Measuring Regulatory Performance which recognised the value of perception surveys and how to get the best out of them.

If the government and Parliament would appreciate an honest view of how regulators' performance is perceived by those regulated by them, commissioning such a survey and analysis report would be of considerable help.

Concluding remarks

We believe the recommendations set out in this paper would help to ensure that the regulators are accountable for their approach, operational performance, and meeting the secondary objective of promoting economic growth and international competitiveness. This will ultimately be in the best interest of the regulators' effectiveness, the UK's international competitiveness and attractiveness, and the service and returns provided to customers. We thank the government for the opportunity to respond to this Call for Proposals. We look forward to continuing to work with the government and regulators to ensure the UK's financial services industry remains competitive and innovative and contributes to the growth and success of the UK economy.