

Rule review framework

UK Finance response to consultation from Prudential Regulation Authority

15 September 2023

Introduction and executive summary

1. UK Finance is the collective voice for the banking and finance industry. Representing around 300 firms, we act to enhance competitiveness, support customers and facilitate innovation. We welcome the opportunity to respond to the Prudential Regulation Authority's (PRA consultation on its approach to reviewing its rules.¹
2. We strongly support the requirement under the new Financial Services and Markets Act (FSMA) 2023 for the FCA and PRA to publish statements of policy on how they review their rules. As we argued throughout HM Treasury's future regulatory framework (FRF) review, it is right that the regulators assess whether an intervention has had the impact (including the costs and benefits arising) that they expected it to have at the time that it was introduced, and whether it is contributing to the advancement of their statutory objectives.
3. Such a reappraisal of the evidence provides the opportunity to revise a rule (or a set of rules) if the regulator concludes that it is not having its intended effect. This helps to ensure that regulation achieves its aims – namely protecting consumers and ensuring financial stability – in as efficient a way as possible, minimising unnecessary costs and frictions that could dampen economic growth and the UK's global competitiveness or stifle competition. Moreover, emergent issues and risks can often be addressed by modifying existing rules, rather than the introduction of entirely new regulatory regimes. A proactive approach to reviewing rules should help to promote this mode of thinking. It will also encourage the regulators to ensure that their rules are clear and easily understandable for regulated firms.
4. Overall, we welcome and support the PRA's proposed framework as a serious – if incomplete – approach to rule reviews that will further enhance the UK's international reputation for sound regulation. This response sets out the most important features of a rule review framework for UK Finance and our members, and proposes some changes that we think would make the framework even more effective.
5. We set out below the features we believe are necessary for the rule review framework to deliver the best possible results in the interests of firms, their customers and wider society. We believe these points are valid for both the FCA's and PRA's approaches to rule review, given the similarity of the institutions and their statutory roles in setting binding requirements of firms. Although the two draft frameworks are broadly aligned, there are key differences, such as in the methodologies employed. We would strongly urge both regulators to coordinate closely as they finalise their respective approaches and to harmonise them to the greatest possible extent (recognising operational differences), so

¹ <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/june/review-of-rules>

industry has certainty that both prudential and conduct regulation will be reviewed and updated according to the same approach.

Transparency

6. We think it is vital that every stage of a rule review be conducted transparently. This is necessary for regulatory predictability, as those affected by rules should be kept informed about potential changes to them, and for regulatory accountability, as it would open the regulator's decisions with regard to rule review to healthy challenge, including by Parliament. In particular, we believe transparency is necessary in:
 - a. **Monitoring rules for the potential need to review.** We think the PRA should provide regular updates on rules that they are monitoring closely and considering reviewing. This could take the form of an annual or biannual 'dashboard' list of rules (or a set of rules) that the regulator is monitoring closely for a potential need for review, along with the reasons for doing so (e.g. emerging evidence that they are not functioning as intended). This information would be especially useful to those scrutinising the regulator, such as Parliament's Treasury Select Committee, and to stakeholders that might have evidence to contribute regarding the effectiveness of a rule. When introducing a new rule, the PRA should already set out a timeline for when it will assess the need to review it.
 - b. **Deciding whether to review.** The outcome of a decision to undertake (or not) a review of a rule should be set out publicly, along with the rationale. Once decided on, reviews should be included in the Regulatory Initiatives Grid, along with indicative timelines. The certainty this would provide – including when the decision reached is to *not* undertake a review – would be greatly valued by stakeholders. Where applicable, the regulator should also set out why certain rules have been prioritised for review over others where the rules share similar objectives. Here too, transparency would allow for a fair degree of scrutiny and challenge of consequential decisions.
7. **Conducting the review.** Once a decision to undertake a rule review has been initiated, the regulator should set out the issues being considered as part of the review, the methodologies it will employ and the evidence it will examine, as well as the timeline for conducting the review.
8. **Communicating the outcomes of the review.** Once a review has been completed, its outcome should always be published. This should include the findings of the review and the rationale for any proposed action (including maintaining the status quo). Here too, making these public will aid scrutiny and regulatory predictability. As the consultation recognises, this would be in addition to – not a substitute for – the normal practice of consulting on any proposed rule changes. The regulator should also provide an annual summary of the number of reviews it has conducted each year, along with the associated outcomes.

An active role for stakeholders

9. We welcome the PRA's recognition of the importance of stakeholder engagement throughout the rule review process. We think stakeholders should have a particularly important role in informing decisions to undertake a review. As those directly subject to rules, regulated firms have particularly valuable insights into their effectiveness, their actual costs and benefits, and any unintended consequences. It should be noted that

stakeholders may not always have quantitative data available to evidence, and we would encourage the regulators to give due weight to qualitative inputs and insights provided by practitioners.

10. We support and agree with the various channels for engaging with stakeholders listed in the consultation, including a dedicated inbox (as proposed by the PRA) and an interactive online rulebook (as proposed by the FCA). However, as we argued throughout the FRF consultations,² we believe there should be a more formal mechanism for making a representation to the regulator about the need for a review of a particular rule (or set of rules), to ensure stakeholders' views are given due weight. We suggest this mechanism should be available to representative bodies (such as trade associations and consumer bodies), which could make representations to the regulator about the need for a rule review, with supporting evidence. The regulator would be required to respond to such representations, setting out its assessment of the case for a review.
11. Similarly, we strongly encourage the PRA to establish industry engagement groups to facilitate quarterly roundtable-style discussions between the regulator and industry participants of rules throughout the policy lifecycle. These groups would:
 - a. add an additional feedback mechanism for the PRA to test and receive feedback on the suitability of prospective rules and policies through the initiation and development phases; and
 - b. support the implementation and evaluation stages of the cycle by providing the PRA with insight into rules that are not delivering the intended outcome, are creating unintended consequences and/or are not being applied consistently across firms. This information could help to inform the regulator's decisions around whether to make changes to the rules or otherwise offer clarification through supervisory statements, guidance or similar instruments. It would also reduce interpretation risk and aid consistent industry implementation.
12. It is essential that the PRA be transparent about the rules that it receives the most representations about through the various available channels, as well as any recurring or frequently raised themes. This information could be included as part of the 'dashboard' of monitored rules proposed above.

Competitiveness and growth

13. We strongly recommend the PRA reviews its rulebook in light of its new secondary growth and competitiveness objective, as assigned by FSMA 2023.
14. We recognise that resource constraints mean that not all rules can be reviewed immediately, and we broadly agree with the criteria for prioritisation proposed in the consultation. However, we believe special priority should be given to reviewing rules that may – in their current form – not be entirely compatible with the new secondary objective. The vast majority of the PRA's rules were set before the regulator was assigned the new objective, and it is likely that some would have been designed differently had the impact

²<https://www.ukfinance.org.uk/system/files/UK%20Finance%20response%20to%20FRF%20consultation%20on%20proposals%20for%20Oreform.pdf>

on growth and competitiveness been more important to their decision making at the time of their introduction.

15. We recognise and entirely agree that regulatory rules exist, above all, to advance the regulator's primary objectives. However, we think it is right to explore opportunities to modify rules or regulatory regimes so that they can better support growth and competitiveness while continuing to advance the PRA's primary objectives. This would be consistent with the commendable approach taken to date in the exercise of replacing retained EU law with rules better adapted to the UK's needs and the specificities of its markets.
16. Similarly, we believe that the PRA should pay particular attention to the compatibility of its rules with its existing secondary objective to promote effective competition, as competitive markets are often the best way to ensure good outcomes for customers. Rules which raise undue barriers to entry or to open competition can cause more harm than the original issue they were introduced to address. For scale challengers, one of the key issues is the coherence of the overall PRA, BoE and FPC frameworks, which contain a large number of thresholds. We encourage the PRA to review (with relevant parts of the BoE) what a holistic coherent regime is for a bank as it grows from start-up, to scale, to systemic.
17. As an overall comment, we would caution against being overly focused on a "rule-by-rule" approach to reviewing the suitability of existing regulation. Just as important is the overall coherence of the rules (be they set by the PRA, FCA, Bank of England, or another body) that a firm is subject to, with myriad thresholds. In reviewing its rules, we recommend that the PRA consider this broader context and how the rules under review interact with wider regulatory requirements, with a view to improving the overall coherence of the regulatory framework.
18. If you have any questions relating to this response, please contact Matthew Young, Principal, Strategic Policy, at matthew.young@ukfinance.org.uk.

Consultation questions

Q.1 What type of information should the PRA be collecting to inform its reviews?

19. We broadly agree with the types and sources of information identified in the draft framework. As set out in the introduction, we would urge the PRA to give particular weight to feedback received from regulated firms, who often have the best insight into whether a rule (or set of rules) is working as intended, is inadequate/excessive in addressing a risk, is having unintended consequences or has become obsolete.
20. We would suggest that, when gathering information to inform a review, the PRA give sufficient weight to qualitative, judgement-based inputs from market practitioners. Firms will not always have the quantitative data to support their perspectives, or be able to prioritise resources to obtain the necessary data, but expert views by experienced practitioners can provide valuable and valid insights much more directly.
21. We recommend that, when introducing new rules, the PRA set out the intended outcomes of the rules and identify lead indicators with which to monitor their performance post-

implementation. Such an empirical approach would be consistent with that proposed by the FCA in its draft rule review framework.

22. In addition, it would be beneficial for the PRA to expand its data sources to include the metrics (where relevant) it will soon begin publishing in relation to its new secondary growth and competitiveness objective, to help detect where rules may be contributing to sub-optimal outcomes in this respect. This should help to foster a proportionate regulatory framework that reduces overall costs and operational burdens.

Q.2 Do you have any views on how the PRA prioritises and select rules to review?

23. We agree with the criteria identified by the PRA for prioritising and selecting rules to review. As set out in the introduction, we believe that, in the immediate period following the introduction of the PRA's new secondary growth and competitiveness objective, it should give special priority to reviewing existing rules that could be adapted to contribute to these important goals, while continuing to advance the PRA's primary objective of maintaining financial stability.
24. Where possible, the approach to rule reviews and work to repeal and replace retained EU law should be aligned.
25. The PRA and FCA should seek to align their rule review plans in areas of joint/common focus, such as governance.

Q.3 Do you have views on how the PRA select review methods?

26. We agree with the PRA's proposals to employ both quantitative and qualitative methods in conducting reviews, depending on the nature of the rule, its outcomes and the issues being examined in the review. Use of qualitative data is particularly important, as stakeholders may not always have clear quantitative data collected and available, but will be able to provide important insights based on their experience of operating within the regulatory framework.

Q.4 Do you have views on the channels for stakeholders to engage with the PRA on rule reviews?

27. We welcome the PRA's recognition of the important role for stakeholders throughout the rule review process. We support the PRA's intention to set up a new inbox to which stakeholders can make representations about the need for a review of a rule. However, it will be important for the inbox to be adequately staffed and resourced, so that the PRA can routinely provide feedback to stakeholders who make representations. Without this, there is a risk that stakeholders will not make full use of the inbox, undermining its usefulness.
28. Nonetheless, as set out in our introduction, we strongly believe a more formal mechanism should be established to allow stakeholders to make representations to the PRA about the need for a review, with transparency over the decision of whether to proceed with a review based on such representations, along with the reasoning for doing so.
29. We would also urge the PRA to consider introducing an interactive function to its online handbook, through which firms could directly provide feedback on rules. The FCA's proposals to this effect have been well received by the industry.
30. Supervisory interaction is an important channel through which to seek feedback, particularly relating to the clarity of requirements in the rule book.

Q.5 Do you have views on the way the PRA communicates its ongoing reviews and outcomes of past reviews?

31. As we set out in our introduction, we would urge the PRA to be transparent throughout the rule review process, to aide regulatory predictability and accountability. We believe the outcomes of all reviews should be communicated publicly, even when the ultimate decision is to not modify the rule under review. Similarly, firms would welcome transparency about the rules that the PRA is monitoring closely, and when an active decision is made not to review a rule.
32. We are keen to understand how the PRA will take account of the outcomes of rule reviews and its wider secondary competitiveness and growth objective in its approach to contributing to the development and implementation of international standards.