The COVID-19 pandemic has created unprecedented challenges for compliance professionals around the world, including those in the UK. The following is a selection of UK and constituent countries actions as well as news and analysis articles compiled by the Thomson Reuters Regulatory Intelligence editorial staff. The selection includes Regulatory Intelligence and Reuters news coverage. More COVID-19 news and information can be found via the TRRI platform's search facility.

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1 This COVID-19 Coverage was compiled by Thomson Reuters Regulatory Intelligence editorial staff.
This Week’s Legislative and Regulatory Actions

England

**Health Protection (Coronavirus, International Travel and Public Health Information) (England) (Amendment) (No. 2) Regulations 2020** amends the self-isolation period from 14 to 10 days and the list of exempt countries, among other matters.

Scotland

**Health Protection (Coronavirus) (International Travel and Public Health Information) (Scotland) (No. 2) Regulations 2020** amends the list of exempt countries, among other matters.

**Health Protection (Coronavirus) (International Travel and Public Health Information) (Scotland) Regulations 2020** amends the self-isolation period from 14 to 10 days, and the list of exempt countries, among other matters.

Northern Ireland

**Business Tenancies (Coronavirus) (Restriction on Forfeiture: Relevant Period) (Northern Ireland) (No. 3) Regulations 2020** extends the relevant period to March 31, 2021 regarding the enforcement of re-entry or forfeiture for non-payment of rent under a relevant business tenancy.

**Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Relevant Period for Meetings of Registered Societies and Credit Unions No. 2) Regulations (Northern Ireland) 2020** extends the temporary arrangements for holding certain meetings of credit unions and co-operative and community benefit societies.

**Health Protection (Coronavirus, Public Health Advice for Persons Travelling to Northern Ireland) (No. 2) (Amendment) Regulations (Northern Ireland) 2020** amends the self-isolation period from 14 to 10 days, among other matters.

**Health Protection (Coronavirus, International Travel) (Amendment No. 25) Regulations (Northern Ireland) 2020** amends the list of exempt countries, among other matters.

Regulators – COVID-19 Updates

Financial Conduct Authority

**COVID-19: Information for Firms (Updated) (December 16, 2020)**

The Financial Conduct Authority (FCA) has updated its COVID-19: Information for firms page. Specifically, payment and retail banking content has been moved to new page.

Other News and Summaries

**COVID-19 lending will not see NatWest repeat mistakes of GRG, says banker**

(Regulatory Intelligence) - NatWest is committed to the "highest regulatory standards", Paul Thwaite, chief executive of commercial banking at the group, told lawmakers yesterday. The bank would aim to avoid any mistakes made by Royal Bank of Scotland's
Global Restructuring Group after the 2008 financial crisis, he told the Treasury Select Committee.²

"NatWest Restructuring is very different from RBS's GRG. We are determined there will be no repeat of the mistakes of the past," Thwaite said.

Thwaite was responding to a question from Harriett Baldwin (Con) on how banks would deal with small and medium-sized enterprises (SMEs) that run into problems with the government's Bounce Back Loan Scheme (BBLS) and Coronavirus Business Interruption Loan Scheme (CBILS). The two schemes have seen banks channel £65.5 billion to SMEs, according to the latest update from the British Business Bank (BBB).

RBS's now notorious GRG unit mistreated SMEs after the 2008 crisis and the bank's behaviour was the subject of an investigation by the Financial Conduct Authority.

Thwaite said the industry protocols regarding consistency for recoveries were an important step to ensuring fair outcomes for SME businesses. The Office for Budget Responsibility has suggested that up to 30% of BBLS loans, for which the government has provided a 100% guarantee to the banks, could default.

The BBB and HM Treasury have agreed a set of protocols with the banks which must be followed when SME customers get into arrears or default on one of the government-backed loans. The banks and the government are still in discussion as to whether they should chase up such debts separately or if lenders can set up a central entity to pursue SMEs.

Anthony Browne (Con) asked which was the preferred solution.

David Oldfield, group director for commercial banking at Lloyds, said the creation of a central entity would help ensure all SMEs received the same treatment.

"What we can't have is inconsistencies over arrears," Oldfield said.

A total of 28 lenders have been approved to issue the government loans.

FCA says 4,000 firms at "heightened risk of failure"; issues client data handling warning

(Regulatory Intelligence) - The Financial Conduct Authority (FCA) has said the COVID-19 pandemic and the economic climate have put 4,000 of the firms it regulates at a heightened risk of failure. Separately, it has warned firms to handle client data responsibly and lawfully in merger and closure events.³

"As of the end of October, we have identified potentially 4,000 firms as having low levels of financial resilience and being at a heightened risk of failure, though many will be able to find ways to bolster their resilience as economic conditions improve," Nikhil Rathi, chief executive, wrote in a November 26 letter to Mel Stride, MP (Con) and chair of the Treasury Select Committee.

At-risk firms are "predominately small and medium-sized" and 30% have the potential to cause a "higher degree of harm". Of those, 68% "potentially" have Financial Services Compensation Scheme (FSCS) coverage, Rathi said.

² Lindsey Rogerson, COVID-19 lending will not see NatWest repeat mistakes of GRG, says banker, Regulatory Intelligence (December 15, 2020) at http://go-ri.tr.com/IR33wF
³ Rachel Wolcott, FCA says 4,000 firms at "heightened risk of failure"; issues client data handling warning, Regulatory Intelligence (December 14, 2020) at http://go-ri.tr.com/ApNBuw

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"The economic situation is rapidly evolving and therefore these numbers are dynamic. ... We have also identified some sectors where a combination of market dynamics, or the regulatory and legislative framework, present barriers to orderly wind down. We are actively speaking to Treasury officials on these issues," he said, not identifying the sectors of concern.

**Improper data handling**

Improper data handling and the potential for customers' personal information to be misused is another FCA concern.

"The current economic climate is changing the way many firms operate and may cause some to leave the market or merge with other firms. When this happens, firms must make sure they lawfully process and transfer client data," the FCA said in a separate statement recently.

Firms have client data-handling obligations under the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Privacy and Electronic Communications Regulations (PECR).

There are FCA requirements firms must consider too. They are obligated to control and organise their affairs responsibly and effectively (Principle 3). "Before transferring clients' personal data, firms should consider whether this is fair to and in the interests of their clients (Principle 6). Firms should also pay due regard to the information needs of their clients and communicate with them clearly and fairly (Principle 7)," the FCA wrote.

**Bad actors**

Gone are the days when firms or individuals can freely buy and sell valuable customer data. Under the GDPR and the DPA, firms could run into trouble if they are seen to be using ("processing") the data differently from the original purpose for which it was collected. That was the case in the UK Information Commissioner's Office's recent enforcement action against Experian.

"There's always an issue about the transfer of personal data from one [firm] to another, even in a happy merger of willing parties, let alone where there are bad actors involved," said Robert Baugh, chief executive at Keepabl, a data protection compliance platform.

Examples of bad actors' misuse of customer data would be repurposing it or using it without proper consent in the start-up of a new business. There have been many instances where the ICO has fined firms and individuals for spam texts and emails pushing mortgages or pension transfer products.

The culture regarding data use has changed somewhat since the GDPR ushered in much bigger fines, Baugh said. Responsible businesses would structure a sale or merger so that either there was no change of data controller — for example, in a share sale where the legal entity (and therefore data controller) remains the same. In an asset sale where the data controller would change to another legal entity, firms must be able to show an appropriate legal basis for transferring customer data. Typically, firms should have anticipated this possibility through their privacy policies with the inclusion of a notification that customer data may transfer to an acquirer of a business.

"Even among generally good actors there are individuals within them that might be bad actors. Now we're coming up to Brexit as well and there's a lot of reorganisations going on. Actually, there's probably quite a lot of liquidations going on, and a lot of business restructuring, which will increase data privacy risks," Baugh said.
ICO guidance and FAQs

The UK ICO draft data-sharing code of practice guidance says: "If merger or acquisition or other change in organisational structure means that you have to transfer data to a different or additional controller, you must take care. You must ensure you consider data sharing as part of the due diligence you carry out, including establishing the purposes for which the data was originally obtained, and your lawful basis for sharing it. You must comply with the principles and document your data sharing. Consider when and how you will inform individuals about what's happening to their data. You must also ensure sound governance, accountability and security."

The ICO has specific guidance on its website for data controllers to follow in merger and closure situations.

FCA issues draft guidance for insurers and brokers on proof of COVID-19 presence

(Regulatory Intelligence) - The Financial Conduct Authority (FCA) has published draft guidance to help insurers, insurance intermediaries and policyholders judge how the presence of COVID-19 in a particular area may be proved. It expects firms to consider the draft guidance which is related to pandemic-related claims in business interruption insurance policies.4

The draft guidance is based on a September 2020 High Court judgment, now awaiting a Supreme Court appeal decision by January 2021, after which the FCA will be in a position to issue the guidance as soon as possible. The judgment provided authoritative guidance for the interpretation of business insurance policy wordings relevant to pandemic-related claims. This was in a test case initiated by the FCA, which, as reported, could have long-term ramifications for insurers.

Some business interruption insurance policies require the policyholder to prove the presence of a disease before the policy will respond, the FCA said in the draft guidance. The first step in these cases is to see if the policy has wording that requires the presence of the disease within a particular distance or zone from the premises, and, if so, would be expected to have impact on the policyholder.

In such cases, the FCA said policyholders should use evidence for their case in the following order of priority: specific evidence, such as media reports, of a case near the premises; NHS data on deaths due to COVID-19; Office of National Statistics data on such deaths; and reported cases of COVID-19 in different areas.

If none of these prove COVID-19 was present in the relevant policy area, the policyholder may adopt the geographical distribution methodology, where reported cases of COVID-19 are averaged across an area, the FCA said in the guidance.

Otherwise, the policyholder may uplift the number of reported cases, using a measure is used to assess the true number of cases, since not all were detected by the UK government, it said.

Sufficient evidence

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4 Alex Davidson, FCA issues draft guidance for insurers and brokers on proof of COVID-19 presence, Regulatory Intelligence (December 14, 2020) at http://go-ri.tr.com/y1XE2j
Where a policyholder has provided cogent evidence in accordance with the approach in this guidance, insurers should accept that evidence as sufficient to handle claims fairly," the FCA said.

If the insurer puts forward counter-evidence, it will need to be more cogent than the evidence put forward by the policyholder, the FCA said. The insurer will need to clearly explain to the policyholder the basis on which it considers the evidence provided does not discharge the burden of proof required by the policy, it said.

The FCA encourages insurers to streamline and expedite claims handling, it said. Insurers may wish to propose to policyholders a data that COVID-19 will be considered established in one or more relevant policy areas, and to publish records of those areas where COVID-19 has been proved by policyholders.

Where an insurer delegates any aspect of claims or complaints handling to a third party, it should ensure that party is aware of this guidance and applies it appropriately, the FCA said.

When one policyholder has proved COVID-19 was sustained or occurred in a location, the insurer should not require other policyholders to prove it too, the FCA said.

Insurance intermediaries helping policyholders with claims should have regard to this guidance in the same way as insurers, the FCA said.

"In terms of the consultation issued today, we shall be considering the matter with our members," a spokesman for the Association of British Insurers said.

The FCA's draft guidance is based on the judgment handed down on September 15 and declarations by the High Court, providing authoritative guidance for the interpretation of about 700 policy wordings affected by the test case by about 60 insurers.

The High Court declarations are not under appeal and not expected to be affected by an appeal to the Supreme Court on aspects of the High Court judgment. But should the outcome, expected by January 2021, affect the draft guidance, the FCA will amend the guidance, it said.

The FCA invites comments by January 18, 2021.

**Good insurance business: Has COVID-19 changed the insurance market for the better?**

(Expert Analysis) - The UK Financial Conduct Authority (FCA) last month gave general insurance, and in particular London market, firms a sharp reminder of where their culture stands in regulators’ eyes compared with other financial services industries.5

The FCA seems to be reassuring financial services firms in general that their cultural change is "on the right track". In a speech at the 6th Annual Culture and Conduct Forum for the Financial Services Industry last month, Jonathan Davidson, executive director of supervision- retail and authorisations, said the coronavirus had, for many financial services firms, swept away some of the larger barriers to healthy cultures.

**COVID-19: overcoming barriers to healthy culture**

The FCA believes that healthy cultures are:

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5 Jeremy Irving of Browne Jacobson LLP, Good insurance business: Has COVID-19 changed the insurance market for the better?, Expert Analysis (December 14, 2020) at http://go-ri.tr.com/Do3yIR

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• purposeful;
• diverse and inclusive; and
• deliver healthy returns to shareholders.

The speech did not single out any specific firm that had succeeded in marrying healthy returns and healthy culture, although Davidson did note that "there was a solid business case for firms being purposeful". The regulator did, however, provide more detail on the barriers to healthy cultures, which were seen to be fear of:

• "the short-term focus on profits, elevated in importance by financial key performance indicators (KPIs) and short-term horizons for reporting"; and
• "taking the initiative to do the right thing and being blamed if it goes wrong — especially by the regulator".

This tended to result in firms having:

• "a purpose which is a thin veneer for the outside world which doesn't resonate internally;
• bureaucracy (including dense and thorny barriers of compliance);
• slow, legalistic, command and control approaches;
• lack of empowerment and engagement especially of [a] mid-management ... often constrained by bureaucracy and fear of blame, and unfairly and unkindly referred to as the permafrost layer;
• the domination of a compliance box-ticking mindset at the expense of a systems thinking outcome and learning mindset."

The need to deal with COVID-19 had resulted in "early and thoughtful engagement of firm leadership in problem-solving at the outset — leaders have de-layered the organisation for these issues and role-modelled system-based thinking on how to deliver outcomes", Davidson said.

This revised approach had in turn engendered a purpose within firms of supporting customers and colleagues. The effect on culture had been to:

• empower staff to make decisions quickly and consistently with ingenuity and judgement in adapting to ensure continuation of customer service, especially to the vulnerable;
• create the trust for colleagues to do the right thing at speed without paralysing fear of the consequences; and thereby
• melt the permafrrost by the reciprocation of trust between employees and senior management, thus enabling the "empowerment of middle management".

For the FCA, the role of financial services is to "channel and guide" the investment and funding upon which the economy is built, diversify risks and provide affordable financial support to those in need by advancing credit, and facilitate every single economic transaction through the payments system. A healthy culture in the financial services market is sustained by the purpose of "providing support to consumers and small businesses and keeping the economy going".

**Insurance market: in need of modernisation and monitoring**

Insurance firms should think carefully about basking in any reflected glory, however, as is shown by a letter sent to the chief executive officers of London market intermediaries and managing general agents by Charlotte Cross, head of wholesale general insurance at the FCA. This letter was originally sent on November 3, 2020, but not published until November 23, 2020, and has a less optimistic, and certainly sterner, tone.
In contrast to Davidson's points about the financial services industry's effective use of technology, Cross recognised that the London market required modernisation and careful monitoring to ensure that the interaction between brokers and underwriting capacity did not become dysfunctional, which would prevent the London market from creating and maintaining healthy competition, efficient distribution chains, good claims services and better use of data.

Cross' point is based on regulatory work (such as the FCA's Wholesale Insurance Broker Market Study) that pre-date the dominant economic factors now in play due to COVID-19 and the "hardening market" of rising premiums and reducing cover. Among the areas warranting further action, Cross identified conflicts of interest emanating from intermediaries' remuneration practices. It is possible to infer exasperation about the lack of progress from Cross' comments:

"We want firms to behave ethically and responsibly in the way they treat their customers, their employees and their counterparties. We believe that we have provided sufficient information to help them do so."

**Drivers of harm**

Instead of Davidson's praise for overcoming barriers, Cross identified four "drivers of harm", against which London market firms must promptly "identify and address any shortcomings":

- Financial resilience and orderly wind down.
- Ineffective governance and oversight of businesses.
- Culture and non-financial misconduct.
- Business models which provide poor oversight of distribution chains.

In relation to financial resilience, it seems that the FCA regards a number of London market firms as being close to needing, or being forced, to exit the market. In particular, the FCA has once again highlighted the importance of firms having appropriate professional indemnity insurance (PII), previously highlighted as a problem in Thematic Review 16/9. The fact that the FCA has issued a reminder on PII indicates its awareness that London market firms have been, or are at serious risk of, failing to obtain suitable cover. Again, an undertone of exasperation can be discerned.

**Widespread and embedded cultural issues**

Effective governance is inextricably linked to culture, and there is significantly less optimism in Cross' letter than in Davidson's suggestion that the financial services industry simply needs to "tip the balance" to advance its "journey to healthy, purposeful, safe, diverse and inclusive cultures". By contrast, Cross states that the FCA:

- recognises that some London market firms have been taking steps to tackle major conduct failings; and
- has been "encouraged by some of the commitment we have seen in this area".

The FCA describes conduct failings in the London market as "often widespread and embedded cultural issues which will require considerable and consistent commitment to address at all levels of the organisation".

**Certification Regime**

Linked to the issue of healthy culture at all levels (and the implication of the possibility of an unhealthy culture at one or more levels) is Cross' admonition regarding the new Certification Regime, which will now apply from March 31, 2021.
"Certification connects to almost every stage of the people management process, including recruitment, performance management, training and development, exit and disciplinary processes ... Firms that do not integrate certification into these processes are unlikely to be able to operate certification effectively. We anticipate that ... some individuals will not meet these standards. Firms should remove staff who are not fit and proper from certified roles," Cross said in the letter.

She went on to say that "firms mustn't assume someone is fit and proper just because the individual had been [an] approved [person] ... in the past.

**Dissatisfaction with distribution arrangements**

The FCA is clearly expressing significant dissatisfaction with London market distribution arrangements. Despite longstanding expectations that firms deliver clear, fair outcomes for consumers who will be better-informed about products which meet their needs, the FCA has "seen evidence [that] business models employ elongated distribution chains, with poor product oversight both in design and purpose".

It would be prudent for both London market and general insurance firms to focus on Cross' letter rather than Davidson's speech, and quickly work out what they might need to do.

**Bank of England set to wait for end to Brexit stand-off**

(Reuters) - The Bank of England is expected to refrain from yet more stimulus on Thursday as it waits to see if a possible no-deal Brexit in two weeks’ time deepens the problems already facing Britain’s coronavirus-damaged economy.6

London and Brussels are still trying to avoid the shock of import tariffs on trade from Jan. 1, so the BoE looks set to leave its bond-buying programme at 895 billion pounds ($1.2 trillion), having ramped it up by 150 billion pounds last month.

That should provide enough fire-power until late 2021, and the BoE’s Monetary Policy Committee is expected to detail how front-loaded its new bond-buying will be.

The MPC is also likely to keep its benchmark interest rate at a historic low of 0.1% at 1200 GMT.

“We continue to expect a (Brexit) deal will be done,” JP Morgan economist Allan Monks said. “But the main focus from the MPC this week will be any guidance it chooses to offer about how it would react to a no-deal.”

Last month, the BoE said it was "ready to take whatever additional action is necessary to achieve its remit”.

Now it might have to be more explicit, with the Brexit deadline approaching and COVID-19 restrictions spreading again.

Britain’s budget forecasters say a failure to strike a trade deal would wipe 2% off economic output, drive up inflation and unemployment and add to public borrowing of 400 billion pounds this year.

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Even with a deal, the BoE thinks the economy will suffer as companies struggle with paperwork, port delays and other effects of leaving the world’s biggest single market.

For now, with a Brexit deal still possible and COVID-19 vaccines being administered, the MPC is likely to be relatively calm about the outlook.

Unemployment has not risen as sharply as the BoE predicted, and surveys of businesses have suggested the economy might shrink by less than its forecast of 2% in the fourth quarter.

The BoE’s bond-buying programme is widely seen as its most likely weapon should it need to return to the stimulus pumps.

But investors are watching for any fresh signals on Thursday about the feasibility of taking interest rates below zero.

The BoE has asked banks what a move to negative rates - something imposed already in the euro zone and countries such as Japan - would mean for them. On Monday, HSBC and Santander representatives said they were not ready for such a move.

**No judgment in UK COVID business insurance appeal this year -watchdog**

(Reuters) -There will be no judgment in an appeal over business interruption insurance this year, Britain’s markets watchdog said on Tuesday, dashing hopes of an early outcome in a case that could affect billions of pounds in claims.7

Britain’s Financial Conduct Authority has been told by the UK’s Supreme Court that no judgment will be handed down before January 2021, the regulator said on its web page dedicated to the case.

The appeal by the FCA and six insurers in a test case over business interruption payments as a result of the COVID-19 pandemic is being closely watched at home and abroad.

Thousands of small firms in Britain, from holiday cottages to restaurants and night clubs, had to shut down or restrict trading as a result of the pandemic and say they face ruin after insurers rejected claims for business interruption cover.

The FCA said in September that the lower court found in favour of policyholders’ arguments in the majority of key issues.

Both sides appealed some aspects of the original judgment in a four-day hearing last month.

The case revolves around whether 21 policy wordings, affecting potentially 700 types of policies, 60 insurers, 370,000 policyholders and billions of pounds in claims, should cover disruption caused by the virus.

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The wordings cover business interruption when insured premises cannot be accessed because of public authority restrictions, in the event of a notifiable disease within a specified radius and hybrid wordings.

**Move to negative rates in UK may not work, HSBC warns**

(Reuters) - The Bank of England should carefully consider whether negative interest rates would have the outcomes hoped for, a senior HSBC bank executive said on Monday.8

The BoE is consulting with lenders to see what preparations they need to make if the central bank were to cut interest rates to negative levels to help an economy hit by the COVID-19 pandemic.

BoE Governor Andrew Bailey has stressed that no decision has been taken on negative rates, but bankers told lawmakers on Monday such a policy would be costly, distracting and may not even work well.

Lenders in Britain make the bulk of their profits on the difference between the rates charged on lending and paid out on deposits and are concerned margins will be further squeezed by sub-zero rates.

“I do think the (BoE’s) Monetary Policy Committee does have to carefully consider whether negative interest rates have the desired outcomes,” Amanda Murphy, head of commercial banking at HSBC UK, told parliament’s Treasury Select Committee.

“Where we see places where they have already been introduced, Europe, Japan, Switzerland, we haven’t seen inflation rise and the growth hasn’t come back as strongly as one might have hoped,” she added.

“We have a programme underway to get ourselves ready, we are not ready to date to be able to deal with negative interest rates. There is considerable cost associated with that that we put into the system to enable us to do that,” Murphy said.

Susan Allen, chief executive for retail and business banking at Santander UK, said the bank’s legacy systems were not ready for negative interest rates.

“That programme to adapt those systems would realistically be expected to take somewhere in the region of 12 to maybe 18 months to deliver,” Allen said.

David Oldfield, CEO of Lloyds Commercial Banking, said preparations for implementing negative rates were not a trivial matter.

“It’s a tool in the Bank of England toolbox and it’s not clear at this stage quite how they are going to deploy this range of tools over time,” Oldfield said.

Starling Bank CEO Anne Boden said negative rates would not have the impact that people expect.

“We already charge negative interest rates on our euro accounts for sums above 50,000 so our systems are ready,” Boden said.

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8 Huw Jones and Iain Withers, Move to negative rates in UK may not work, HSBC warns (December 14, 2020) https://uk.reuters.com/article/uk-britain-banks-rates/move-to-negative-rates-in-uk-may-not-work-hsbc-warns-idUKKBN28O2GQ
Asked about fraud concerns on more than 42 billion pounds worth of COVID emergency loans granted by the industry to small businesses, Lloyds’ Oldfield said the rate of fraud on its own loans was about five times normal levels, but still less than 1%.