



Consultation Paper | CP18/21

# Remuneration: Identification of material risk takers

September 2021





BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Consultation Paper | CP18/21

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Responses are requested by Monday 8 November 2021.

**In light of current measures to help prevent the spread of COVID-19, please address any comments or enquiries by email to: [CP18\\_21@bankofengland.co.uk](mailto:CP18_21@bankofengland.co.uk).**

Alternatively, please address any comments or enquiries to:

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## 1 Overview

1.1 This Consultation Paper (CP) sets out the Prudential Regulation Authority's (PRA) proposed changes in respect of the applicable requirements on the identification of material risk takers (MRTs) for the purposes of the PRA's remuneration regime.

1.2 The PRA's proposals would result in:

- changes to the Remuneration Part of the PRA Rulebook, to insert the criteria for identifying MRTs and relevant definitions (Appendix 1);
- updates to Supervisory Statement (SS) 2/17 'Remuneration', to reflect the rule changes and the amended process for excluding an employee identified solely based on the quantitative criteria (Appendix 2);<sup>2</sup> and
- the revocation of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 (2014 Regulatory Technical Standards (2014 RTS)) as regards PRA-regulated firms (Appendix 3).

1.3 This consultation is relevant to banks, building societies, and PRA-designated investment firms, including third country branches. This CP is not relevant to credit unions or PRA-authorised insurers.

1.4 The proposed amendments to the PRA Rulebook and the revocation of the onshored regulatory technical standards in regards to PRA-regulated firms serve the purpose of rationalising the MRT identification regime, removing duplications, and promoting clarity by consolidating all legislative requirements within the PRA Rulebook. The PRA does not expect that firms would incur additional costs as a direct result of the proposals. The PRA would expect that removing duplicative and partially-diverging requirements, and consolidating the MRT identification rules into the PRA Rulebook, would provide clarity for firms and reduce the cost of compliance.

1.5 The PRA has considered the interaction between its primary and secondary objectives and the requirements to which the PRA must have regard (the 'have regards'), including in relation to the desirability of sustainable growth, the principle that the PRA should exercise its functions transparently, and to the need to use the PRA's resources in the most efficient and economical way. Overall, the PRA considers that rationalising the regime for identifying MRTs will advance firms' safety and soundness and ensure that incentives are aligned with prudent risk-taking.

1.6 Rationalising the MRT identification regime would be beneficial for firms by removing duplicative requirements and reducing the burden of complying with two sets of requirements regarding the identification of MRTs. Subject to currency threshold amendments, the substance of the provisions remains the same, and therefore the PRA does not expect that firms will incur additional costs.

### Background

1.7 Individuals identified as MRTs are subject to all PRA remuneration rules. MRTs are subject to the application of PRA rules derived from Capital Requirements Directive (CRD) IV. These requirements were previously based on the PRA rules and the 2014 RTS.

1.8 CRD V required the European Banking Authority (EBA) to publish new regulatory technical standards (RTS) for the purpose of identifying employees whose professional activities have a

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<sup>2</sup> April 2017: <https://www.bankofengland.co.uk/prudential-regulation/publication/2017/remuneration-ss>.

material impact on the firm's risk profile. On Thursday 18 June 2020, the EBA published the revised draft RTS (MRT Regulation), which would replace the 2014 RTS (once adopted by the European Commission).

1.9 At the end of the transition period, the EU had not yet adopted the MRT Regulation and, in turn, this meant that the 2014 RTS was onshored into UK law. In light of this, the PRA included references in the Remuneration Part of the PRA Rulebook to the MRT Regulation as part of its transposition of CRD V.<sup>3</sup> This led to a situation whereby two sets of duplicative and partially-diverging requirements currently apply in relation to the identification of MRTs in the UK for PRA-regulated firms.

1.10 In order to provide further clarity regarding the application of both sets of requirements following the end of the transition period, the PRA published a statement on Tuesday 25 May 2021 to clarify how firms can approach the application of the Remuneration Part of the PRA Rulebook.<sup>4</sup> The statement explains the PRA's position that in applying the MRT Regulation, firms will also meet the requirements of the 2014 RTS.

### Summary of proposals

1.11 The policy proposals included in this CP are:

- (a) to revoke the application of the onshored version of 2014 RTS in regards to PRA-regulated firms;
- (b) to insert the provisions of the MRT Regulation (as adopted by the European Commission on Wednesday 9 June 2021)<sup>5</sup> into the Remuneration Part of the PRA Rulebook, without substantive policy amendments and amended only as needed for consistency with Rulebook style;
- (c) to make technical drafting fixes; and
- (d) to update SS2/17 to reflect the rule changes and the amended process for excluding an employee identified solely based on the quantitative criteria.

### Implementation

1.12 The PRA proposes that the implementation date for the changes resulting from this CP would be from the first performance year starting after the publication of final rules, which, subject to the extent and nature of feedback received, is currently planned for Q4 2021.

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<sup>3</sup> PRA PS29/20 'Capital Requirements Directive V (CRD V)', December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.

<sup>4</sup> PRA statement on updating requirements on the identification of 'material risk takers', May 2021: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/may/updating-requirements-on-the-identification-of-material-risk-takers>.

<sup>5</sup> Commission Delegated Regulation (EU) 2021/923 of 25 March 2021: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0923&from=EN>.

## Responses and next steps

1.13 This consultation closes on Monday 8 November 2021. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to [CP18\\_21@bankofengland.co.uk](mailto:CP18_21@bankofengland.co.uk).

1.14 References related to the UK's membership of the EU in SS2/17 covered by this CP have been updated as part of these proposals to reflect the UK's withdrawal from the EU. Unless otherwise stated, any remaining references to EU or EU-derived legislation refer to the version of that legislation which forms part of retained EU law.<sup>6</sup>

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<sup>6</sup> For further information please see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

## 2 Proposals

### Revoking the 2014 RTS

2.1 The PRA proposes to consolidate the provisions for the identification of MRTs directly into the PRA Rulebook and revoke the outdated and duplicative technical standards that were onshored at the end of the transition period. As such, the PRA proposes to revoke the application of the onshored version of the 2014 RTS in regards to PRA-regulated firms.

### Incorporating the content of the MRT Regulation into the PRA Rulebook

2.2 The PRA proposes to insert the substantive content of the MRT Regulation into the PRA Rulebook. In doing so, the PRA refers to the final version of the MRT Regulation which was adopted by the EU in March 2021 and published in the Official Journal of the EU on Wednesday 9 June 2021. The June 2021 version of the MRT Regulation does not materially differ from the June 2020 version. The PRA proposes to amend the substantive content of the MRT Regulation only as required to reflect the UK's withdrawal from the EU and the end of the transition period, as well as to ensure consistency with the wider PRA Rulebook. The PRA considers that this approach will ensure that the PRA Rulebook is consistent with the changes implemented in December 2020.

### Definitions

2.3 The PRA proposes to amend Rule 1.3 of the Remuneration Part of the PRA Rulebook to incorporate and update the definition of certain terms that previously cross-referred to the MRT Regulation. The new or amended definitions are: business unit, control functions, core business line, managerial responsibility, and material business unit.

2.4 In addition, the PRA proposes to insert new Rules to clarify how firms must calculate the amounts of fixed and variable remuneration (3.1A and 3.1B), the reference year for the variable remuneration (6.6), and what is considered to be a significant impact on the risk profile of a material business unit (3.1C). The content of the proposed new rules mirrors the relevant provisions in the MRT Regulation.

### Qualitative criteria

2.5 The PRA proposes to amend Chapter 3 of the Remuneration Part in order to insert the list of the qualitative criteria which are currently set out in Article 6 of the MRT Regulation and cross-referred to in Rule 3(1)(d), without substantive changes. The PRA proposes to add a new Rule (3.2A) which will set out that employees would be deemed to be MRTs if they have managerial responsibility for certain business areas. These include, for example, legal affairs, human resources, and information technology. In addition, the new Rule 3.2A would include other circumstances which would deem the employee as an MRT, such as the employee's authority to take, approve, or veto decisions on credit risk above a certain threshold.

### Quantitative criteria and exclusion process

2.6 The PRA proposes to transfer the content of the quantitative criteria which are currently set out in Article 7 of the MRT Regulation and cross-referred to in Rule 3(1) (d) to a new Rule (3.3A), without substantive changes except as regards currency thresholds as discussed in paragraph 2.10 below. The proposed Rule sets out which employees must be deemed as MRTs if certain total remuneration thresholds are met. The PRA proposes the thresholds to be expressed in pound sterling (GBP) (see paragraph 2.10 below). Again, these requirements already apply via the MRT Regulation, and are consolidated into the PRA Rulebook in order to provide consistency.

2.7 The PRA proposes to amend SS2/17 in order to update the references to the PRA Rulebook described above, and to explain the process to exclude any employee who is identified solely based on the quantitative criteria. This process must be amended in order to align with the PRA's powers to waive or modify rules otherwise applicable to MRTs. A firm wishing to exclude an employee earning more than the quantitative thresholds will need to apply for a waiver or modification of the remuneration rules in respect of that person under section 138A of the Financial Services and Markets Act 2000 (FSMA). A rule modification by consent, and relevant guidance, have been published on the PRA website.<sup>7</sup> This rule modification will be available only if the individuals are deemed not to have a material impact on the firm's risk profile. Other waivers and modifications will be subject to the usual process. An application to take up the modification by consent will be judged on the basis of the statutory test set out in section 138A of FSMA. SS2/17 further explains the specific matters which will be taken into consideration by the PRA and how to submit applications.

### Drafting fixes

2.8 The proposed approach to insert the substantive content of the MRT Regulation into PRA rules requires some language and style amendments that are not intended to alter the substantive effect of the provisions. For example, the PRA proposes to replace the expression 'staff member' with 'employee', and 'institution' with 'firm'. The PRA consulted on the majority of these drafting fixes in September 2020 in the context of the UK's withdrawal from the EU, and proposed changes to the MRT Regulation to ensure it remained functional had it been adopted before the end of the transition period and formed part of retained EU law.<sup>8</sup>

2.9 The PRA proposes some further drafting fixes, such as replacing cross-references to EU legislation with the references to relevant UK legislation. For example, reference to CRD has been replaced by reference to the Internal Capital Adequacy Assessment Part of the PRA Rulebook.

### Euro denominated thresholds

2.10 The remuneration thresholds set out in MRT Regulation are denominated in Euros (EUR). The PRA proposes to redenominate currency references from EUR to GBP by using the average of daily GBP/EUR spot exchange rates over a 12-month period for the relevant performance year, prior to Friday 10 July 2020: £1 = €1.14, rounded to the nearest integer. This is the only substantive change in the proposals. The PRA considers that redenominating the currency references would provide greater certainty to firms regarding the value of thresholds and monetary values contained in PRA rules, irrespective of fluctuations in the GBP/EUR exchange rate. The PRA has had regard to the need to use its resources in the most efficient and economical way, as the proposals aim to remove duplication of requirements and therefore to improve the efficiency of allocation of resources by firms and the PRA.

<sup>7</sup> <https://www.bankofengland.co.uk/prudential-regulation/authorisations/waivers-and-modifications-of-rules>.

<sup>8</sup> CP13/20 'UK withdrawal from the EU: Changes before the end of the transition period', September 2020: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2020/cp1320.pdf>. Paragraphs 4.23 – 4.29 refer to the Remuneration BTS.



### 3 The PRA's statutory obligations

3.1 In carrying out its policymaking functions, the PRA is required to comply with several legal obligations. The PRA has a statutory duty to consult when changing rules (FSMA s138J), or making new standards instruments (FSMA s138S). When not making rules or standards instruments, the PRA has a public law duty to consult widely where it would be fair to do so.

3.2 The PRA fulfils its statutory obligations and public law duties by providing the following in relation to the proposed policy:

- (i) **a cost benefit analysis;**
- (ii) **compatibility with the PRA's objectives:** an explanation of the PRA's reasons for considering that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,<sup>9</sup> insurance objective<sup>10</sup> (if applicable), and secondary competition objective;<sup>11</sup>
- (iii) **FSMA regulatory principles:** an explanation of the ways in which having regard to the regulatory principles has affected the proposed rules;<sup>12</sup>
- (iv) **CRR rules:** in addition to the above, FSMA requires the PRA to 'have regard' to several further matters when making CRR rules (including rules made under the HoldCo power which are deemed to be CRR rules under FSMA s192XB).<sup>13</sup> It also requires the PRA to explain how the new 'have regards' have affected its proposed rules.<sup>14</sup> Furthermore, when making CRR rules, the PRA is required to 'consider, and consult the Treasury about, the likely effect of the rules on relevant equivalence decisions';<sup>15</sup>
- (v) **impact on mutuals:** a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons;<sup>16</sup>
- (vi) **HM Treasury recommendation letter:** the Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury;<sup>17</sup> and
- (vii) **equality and diversity:** the PRA is also required by the Equality Act 2010<sup>18</sup> to have due regard to the need to eliminate discrimination, and to promote equality of opportunity in carrying out its policies, services, and functions.

3.3 Appendix 4 lists the statutory obligations applicable to the PRA's policy development process. The analysis in this Chapter explains how the proposals have had regard to the most relevant

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<sup>9</sup> Section 2B of FSMA.

<sup>10</sup> Section 2C of FSMA.

<sup>11</sup> Section 2H(1) of FSMA.

<sup>12</sup> Sections 2H(2) and 3B of FSMA.

<sup>13</sup> Section 144C(1) of FSMA. Part 9D FSMA (s144) defines CRR rules as PRA general rules related to either (i) provisions of the UK CRR revoked by HMT or (ii) 'CRR Basel standards' (as defined under s4 of the FS Act 2021). CRR rules also include rules made under section 192XA, which gives powers to the PRA to make rules in relation to specific matters and applying to financial holding companies and mixed financial holding companies that are approved or designated by the PRA ('Holdco rules').

<sup>14</sup> Section 144D of FSMA.

<sup>15</sup> Section 144C(3) of FSMA.

<sup>16</sup> Section 138K of FSMA.

<sup>17</sup> Section 30B of the Bank of England Act 1998.

<sup>18</sup> Section 149.

matters listed in paragraph 3.2, including an explanation of the ways in which having regard to these matters has affected the proposals.

### **Impact on mutuals**

3.4 The PRA considers that the impact of the proposed rule changes on mutuals is expected to be no different from the impact on other firms.

### **Equality and diversity**

3.5 The PRA considers that the proposals do not give rise to equality and diversity implications because the content of this CP proposes to identify individuals based on qualitative and quantitative criteria relating to their position to take decisions that impact the risk profile of the firm, as well as their total remuneration.

### **PRA objectives and ‘have regards’**

3.6 Appendix 4 lists the statutory obligations applicable to the PRA’s policy development process. Where ‘have regards’ have not been explicitly considered in this Chapter, it is because the PRA has considered them not to be relevant to the proposals.

### **Proposal on updating requirements on the identification of ‘material risk takers’**

3.7 The PRA proposes to:

- revoke the application of the onshored version of 2014 RTS in regards to PRA-regulated firms;
- insert the provisions of the MRT Regulation into the Remuneration Part of the PRA Rulebook without substantial policy amendments; and
- update SS2/17 to reflect the rule changes and the amended process for excluding an employee identified solely based on the quantitative criteria.

3.8 The PRA considers that the proposed approach would advance its primary objective to promote the safety and soundness of PRA-regulated firms by ensuring remuneration rules are clear, consistent and applicable, in line with the Financial Stability Board (FSB) Principles for Sound Compensation Practices and their Implementation Standards.<sup>19</sup> The PRA has considered in particular the need to use its resources in the most efficient and economical way, and the principle that the PRA should exercise its functions transparently and should promote sustainable growth. The PRA’s proposals would reduce complexity and improve clarity of the PRA’s expectations and decision making with respect to MRT exclusions. The proposals would also increase transparency for the public, particularly in relation to waivers and modifications that firms may apply for.

### *PRA objectives*

3.9 The PRA has a primary objective to promote the safety and soundness of PRA-regulated firms, focusing on the adverse effects that they can have on the stability of the UK financial system. The identification of MRTs is a fundamental aspect of the PRA remuneration rules, which aim to ensure effective alignment of incentives and prudent risk-taking. Clarity over the criteria to identify and exclude MRTs ensures that the remuneration regime is applied correctly and consistently by firms. PRA-regulated firms already must comply with the MRT Regulation and the 2014 RTS, therefore

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<sup>19</sup> <https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/post-2008-financial-crisis-reforms/building-resilience-of-financial-institutions/compensation/>.

transferring these requirements into the PRA Rulebook would remove unnecessary complexity and potential uncertainty.

3.10 When discharging its general function in a way that advances its primary objectives, the PRA has, as a secondary objective, a duty to facilitate effective competition in the markets for services provided by PRA-regulated firms carrying on regulated activities. The PRA considers that the proposals in this CP do not have a material impact on competition, as the proposals aim to rationalise the MRT identification process without changing the substance of its underlying criteria. The proposals are not intended to amend the scope of the MRT identification rules, which will continue to apply to banks, building societies, and PRA-designated investment firms, including third country branches.

#### *Have regards*

3.11 **The need to use the PRA's resources in the most efficient and economical way:** The proposals aim to remove duplication of requirements, and therefore to improve the efficiency of allocation of resources by firms and the PRA. In addition, the proposed rules and expectations would provide clarity to firms and streamline the procedure of identifying and excluding MRTs.

3.12 **The principle that a burden or restriction which is imposed on a person should be proportionate to the benefits which are expected to result from the imposition of that burden:** The proposals would reduce the cost and administrative burden to firms, by removing the duplication of requirements. The exclusion process will now be submitted through a rule modification, in line with the PRA's powers. This process adds a small administrative step, but no new material burden, as the substance of the criteria used to identify MRTs is maintained. Furthermore, the PRA published a modification by consent which will allow a more efficient use of both the PRA's and firms' resources.

3.13 **Finance for the real economy, growth, and sustainable growth:** The PRA has had regard to this principle by ensuring that MRTs are subject to remuneration requirements (as revised by the MRT Regulation) and have incentives that are appropriately aligned with prudent risk-taking, which also ensures the stability of the UK financial system. As such, the PRA considers that these proposals would have an indirect, positive impact on sustainable economic growth, because they ensure that individuals who pose a risk to a firm's profile are identified and their remuneration structures do not encourage risk-taking that exceeds the level of tolerated risk, supporting financial stability.

3.14 **The principle that the PRA should exercise its functions transparently:** The proposed changes would reduce complexity and would clarify how the PRA plans to monitor the identification of MRTs by PRA-regulated firms. For example, the proposed changes to SS2/17 clarify how firms can apply for a modification by consent to exclude MRTs identified solely by reference to quantitative criteria, and which specific matters the PRA will consider in taking that decision, so that firms can better understand regulatory expectations.

3.15 **Relative standing of the UK and competitiveness:** The proposals align with international standards, as the proposed changes also maintain the PRA requirements in line with the FSB Principles for Sound Compensation Practices and Implementation Standards (2009). The existing requirements are being transferred from the MRT Regulation into the PRA Rulebook with the only substantive difference being the currency threshold amendments. The continued application of these requirements for MRTs ensures prudent risk-taking in firms, which supports the UK offering a safe and attractive domicile for internationally active financial institutions.

### Cost benefit analysis

3.16 The PRA considers that removing the duplication of requirements and inserting all legislative MRT identification requirements into the PRA Rulebook would promote clarity, consistency, and efficiency, and therefore potentially reduce firms' costs of compliance. The PRA considers that the amendments proposed in this CP would introduce no additional cost, since in substance the regulatory requirements are intended to remain unchanged.

3.17 In addition, the PRA considers that setting the remuneration thresholds in sterling amounts would reduce the uncertainty for firms and individuals regarding the scope of application of remuneration rules that could arise as a result of exchange rate fluctuations.

## Appendices

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<b>1</b>	<b>Draft Remuneration instrument</b>	<b>11</b>
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## 1 Draft Remuneration instrument

### PRA RULEBOOK: CRR FIRMS: REMUNERATION INSTRUMENT (No.2) 2021

#### Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (The PRA’s general rules);
  - (2) section 137H (General rules about remuneration);
  - (3) section 137T (General supplementary powers); and
  - (4) section 192V (Rules imposing consolidated requirements).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

#### Pre-conditions to making<sup>20</sup>

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.
- D. In accordance with sections 144C(3) and 144E of the Act, the PRA consulted the Treasury about the likely effect of the rules on relevant equivalence decisions within the meaning of section 144C (4) of the Act.

### PRA Rulebook: CRR FIRMS: REMUNERATION INSTRUMENT (NO.2) 2021

- E. The PRA makes the rules in the Annex.

#### Commencement

- F. This instrument comes into force on [date].

#### Citation

- G. This instrument may be cited as the PRA Rulebook: CRR Firms: Remuneration Instrument (No.2) 2021.

#### By order of the Prudential Regulation Committee

[DATE]

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<sup>20</sup> These conditions will be completed prior to the making of any final instrument.

## Annex

### Amendments to the Remuneration Part

In this Annex new text is underlined and deleted text is struck through.

...

#### 1 APPLICATION AND DEFINITIONS

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...

1.3 (1) In this Part, the following definitions shall apply:

...

*business unit*

means any separate organisational or legal entities, business lines, or geographical locations.

...

*control functions*

~~has the meaning provided in Article 3 of the Material Risk Takers Regulation~~means a function that is independent from the *business units* it controls and that is responsible for providing an objective assessment of the *firm's* risks or to review or report on those and which includes (but is not limited to) the risk management function, the compliance function and the internal audit function.

*core business line*

means business lines and associated services which represent material sources of revenue, profit or franchise value for a *firm* or for its *group*.

...

*managerial responsibility*

~~has the meaning provided in Article 2 of the Material Risk Takers Regulation~~means a situation in which an *employee*:

- (1) heads a *business unit* or a *control function* and is directly accountable to the *management body* as a whole or to a member of the *management body* or to the *senior management*,
- (2) heads one of the functions set out in 3.2A(1); or
- (3) heads a subordinated *business unit* or a subordinated *control function* in a *large institution* and reports to an *employee* that has the responsibilities referred to in (1).

*material business unit*

~~has the meaning provided in Article 4 of the Material Risk Takers Regulation~~means a *business unit* that meets either of the following criteria:

- (a) it has allocated internal capital of at least 2% of the internal capital of the *firm* as set out in Internal Capital Adequacy Assessment Part 3.1(1) or is otherwise assessed by the *firm* as having a material impact on the *firm's* internal capital; or
- (b) it is a *core business line*.

...

*Material Risk Takers Regulation*

means the draft regulatory technical standards on criteria to define managerial responsibility and control functions, a material business unit and a significant impact on its risk profile, and categories of staff whose professional activities have a material impact on an institution's risk profile published by the EBA on 18 June 2020.

...

*significant impact on the relevant business unit's risk profile*

has the meaning provided in Article 5 of the Material Risk Takers Regulation

...

**3 MATERIAL RISK TAKERS**

3.1 A *firm* must, save where otherwise stated, apply the requirements of this Part in relation to a *person* (a "material risk taker") who is:

(1) an *employee* of a *CRR firm* whose professional activities have a material impact on the *firm's* risk profile, including:

...

(c) *employees* entitled to a significant total *remuneration* in the preceding financial year, where:

...

(ii) the *employee* performs the professional activity within a *material business units* and the activity is a kind that has a ~~*significant impact on the relevant business unit's risk profile*~~ *significant impact on the risk profile of a material business unit*;

(d) *employees* whose professional activities are deemed to have a material impact on the *firm's* risk profile under ~~Articles 6 and 7 of the *Material Risk Takers Regulation*~~ 3.2A and 3.3A; or

...

**[Note: ~~Article 92 of the *CRD* and the *Material Risk Takers Regulation*~~]**

3.1A For the purposes of 3.1(1)(c) and (d), a *firm* must calculate all amounts of variable and fixed remuneration on a gross and full-time equivalent basis.

3.1B For the purposes of 3.1(1)(c)(i):

(1) a *firm* must calculate the average total remuneration of all members of the *firm's* management body and senior management by taking into account the total of the fixed and variable remuneration of all members of the *firm's* management body in its management function and supervisory function as well as all members of senior management; and

(2) a *firm* must value variable remuneration that has been awarded but has not yet been paid as at the date of the award without taking into account the application of the discount rate referred to in 15.13 or reductions in pay-outs through clawback, malus or otherwise.



3.1C For the purposes of 3.1(1)(c)(ii), in determining whether the professional activity of an *employee* has a significant impact on the risk profile of a *material business unit* a *firm* must apply all of the following criteria within its *remuneration* policies, practices and procedures:

- (1) the risk profile of the *material business unit*;
- (2) the distribution of internal capital to cover the nature and level of the risks, as referred to in Internal Capital Adequacy Assessment Part 3.1(1);
- (3) the risk limits of the *material business unit*;
- (4) the risk and performance indicators used by the *firm* to identify, manage and monitor risks of the *material business unit* in accordance with General Organisational Requirements Part 2.1;
- (5) the relevant performance criteria set by the *firm* in accordance with 15.4 and 15.6; and
- (6) the duties and authorities of *employees* or categories of *employee* in the *material business unit* concerned.

...

3.2A In addition to *employees* identified under the criteria set out in 3.1(1)(a) to (c), a *firm* must deem an *employee* to have a material impact on a *firm*'s risk profile where one or more of the following qualitative criteria are met:

- (1) the *employee* has *managerial responsibility* for any of the following:
  - (a) legal affairs;
  - (b) the soundness of accounting policies and procedures;
  - (c) finance, including taxation and budgeting;
  - (d) performing economic analysis;
  - (e) the prevention of money laundering and terrorist financing;
  - (f) human resources;
  - (g) the development or implementation of the *remuneration* policy;
  - (h) information technology;
  - (i) information security; or
  - (j) managing *outsourcing* arrangements of a function, where a defect or failure in the performance of that function would materially impair the continuing compliance of the *firm* with the conditions and obligations of its authorisation, financial performance, or the soundness or continuity of its services and activities;
- (2) the *employee* has *managerial responsibility* for any of the risk categories set out in Internal Capital Adequacy Assessment Part 3.1(2) (a) to (g), (i) and (j) or is a voting member of a committee responsible for the management of such a risk category;
- (3) with regard to credit risk exposures of a nominal amount per transaction, representing 0.5 % of the *firm*'s common equity tier 1 capital and which is at least £4.5 million, the *employee* member meets either of the following criteria:
  - (a) the *employee* has the authority to take, approve or veto decisions on such credit risk exposures; or
  - (b) the *employee* is a voting member of a committee which has the authority to take the decisions as referred to in (a);
- (4) in relation to a *firm* for which the derogation for small trading book businesses set out in Article 94 of the *CRR* does not apply, the *employee* meets either of the following criteria:

- (a) the *employee* has the authority to take, approve or veto decisions on transactions on the trading book that in aggregate represent one of the following thresholds:
  - (i) where the standardised approach is used, an *own funds* requirement for *market risk* that represents 0.5 % or more of the *firm's* common equity tier 1 capital;
  - (ii) where an internal model based approach is approved for regulatory purposes, 5% or more of the *firm's* internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval level); or
- (b) the *employee* is a voting member of a committee that has the authority to take the decisions referred to in (a);
- (5) the *employee* heads a group of *employees* who have individual authorities to commit the *firm* to transactions and either of the following conditions is met:
  - (a) the sum of those authorities equals or exceeds the threshold referred to in 3.2A(3)(a) or 3.2A(4)(a)(i); or
  - (b) where an internal model based approach is approved for regulatory purposes, those authorities amount to 5% or more of the *firm's* internal value-at-risk limit for trading book exposures at a 99th percentile (one-tailed confidence interval level); where the *firm* does not calculate a value-at-risk at the level of that *employee*, the value-at-risk limits of *employees* under the management of that *employee* must be aggregated; or
- (6) the *employee* meets either of the following criteria with regard to decisions on approving or vetoing the introduction of new products:
  - (a) the *employee* has authority to take such decisions; or
  - (b) the *employee* is a voting member of a committee that has authority to take such decisions.

...

3.3A In addition to *employees* identified under the criteria set out in 3.1(1)(a) and (b), a *firm* must deem an *employee* to have a material impact on a *firm's* risk profile where either of the following quantitative criteria are met:

- (1) the *employee*, including an *employee* referred to in 3.1(1)(c), have been awarded in or for the preceding performance year a total *remuneration* that is equal to or greater than £660,000; or
- (2) where the *firm* has over 1,000 *employees*, the *employee* is within the 0.3% of *employees* within the *firm* (rounded to the next higher integral figure) who have been awarded the highest total *remuneration* in or for the preceding performance year on an individual basis.

...

## **6 REMUNERATION POLICIES**

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6.1 In this Chapter, 6.2 and 6.5 and 6.6 apply to *firms* in relation to a *firms' remuneration* policies, practices and procedures generally, not only in relation to *material risk takers*.

...

6.6 A *firm* must ensure that its *remuneration* policy sets out the reference year for the variable *remuneration* that it takes into account when calculating total *remuneration* and that reference year must be either:

- (1) the year preceding the financial year in which the variable *remuneration* is awarded; or

(2) the year preceding the financial year for which the variable *remuneration* is awarded.

## 15 REMUNERATION STRUCTURES

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...

15.17 (1) ...

(2) A *firm* must not award, pay or provide a variable *remuneration* component to a *higher paid material risk taker* unless a substantial portion of it, which is at least 40%, is deferred over a period which is not less than:

(a) in the case of a *higher paid material risk taker* who does not perform a *PRA senior management function*, but

(i) who meets the criteria in 3.1(1)(a) or (b); or

(ii) whose professional activities meet the qualitative criteria set out in ~~Article 6(1), 6(2) or 6(5) of the Material Risk Takers Regulation~~ 3.2A(1), 3.2A(2) or 3.2A(5)

five years vesting no faster than on a pro-rata basis; or

(b) ...

...

## 2 Draft amendment to Supervisory Statement SS 2/17 - Remuneration

...

### 1 Introduction

1.2 This SS is intended to be read together with the rules contained in the Remuneration Part. This version of this SS applies to remuneration awarded in respect of a performance year starting on or after Tuesday 29 December 2020. The April 2017 version of this SS continues to apply to remuneration awarded in respect of a performance year starting before Tuesday 29 December 2020. Chapter 3 of this version of the SS applies to the identification of material risk takers in relation to performance years starting on or after Friday 31 December 2021.

#### European Banking Authority (EBA) Guidelines

1.9 Save where the Remuneration Part mandates a different approach, the PRA expects all firms to continue to make every effort to comply with all aspects of the EBA's 2015 Guidelines, and all existing domestic requirements. The EBA has published ~~consulted on~~ new Guidelines under CRD V and the PRA will consider whether to update its expectations ~~this SS~~ in light of the new EBA Guidelines in due course, once finalised.<sup>21</sup> In the following chapters, the PRA provides additional clarification of its expectations regarding a number of specific remuneration requirements.<sup>22</sup>

## 2 Proportionality

...

#### Remuneration disclosures (under Article 450 CRR)

##### Requirement to make remuneration disclosures

2.24 Article 450 CRR requires certain firms that are subject to the Remuneration Part to disclose a series of qualitative and quantitative information relating to remuneration. Table ~~E\_D~~ on the following page sets out these requirements.

...

## 3 Material risk takers (MRTS)

~~3.1 [Deleted] On 18 June 2020, the EBA published a revised draft regulatory technical standards (RTS) on criteria to define 'managerial responsibility', 'control functions', a 'material business unit', a~~

<sup>21</sup> The EBA launched a consultation on revised Guidelines on 29 October 2020. As the outcome of that consultation ~~will~~ occurred after the end of the transition period, the revised Guidelines will not apply in the UK.

<sup>22</sup> ~~Following the end of the transition period when the transition period ends~~, in line with its Statement of Policy on the Interpretation of EU Guidelines and Recommendations after the UK's withdrawal from the EU, the PRA expects firms to continue to make every effort to comply with EU Guidelines and Recommendations to the extent that they remain relevant when the UK leaves the EU. April 2019: <https://www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop>.

~~‘significant impact on its risk profile’, and categories of staff whose professional activities have a material impact on an institution’s risk profile published also known as material risk takers (MRTs). All references to Articles in this chapter relate to the revised draft RTS unless otherwise specified.~~

3.2 All firms are required to identify MRTs in accordance with Chapter 3 of the Remuneration Part ~~and the RTS~~, regardless of their size or whether they are required to apply certain Rules in line with the provisions in the Remuneration Part of the PRA Rulebook. This includes UK-headquartered firms, subsidiaries and branches of non-UK firms.

....

3.4 Individuals in firms not subject to the Remuneration Part should be included as MRTs if they pose risk to the CRR consolidation group or directly to a CRR firm. The requirements of the remuneration rules apply to MRTs identified on a solo and/or consolidated basis or sub-consolidated basis. Firms will need to assess at solo as well as consolidated and sub-consolidated levels (if applicable) whether certain requirements (such as deferral or payment instruments) must be complied with.

3.5 The PRA expects remuneration proportionality level one firms to provide a list of MRTs on an annual basis to the PRA. Proportionality level two and three firms are expected to keep a list of current MRTs and provide that list to the PRA if requested. ~~All firms, where necessary, should submit applications for exclusion from identification in accordance with the RTS annually.~~

3.6 Where a CRR firm or third-country CRR firm wishes to deem an employee who earning more than the quantitative thresholds set out in Remuneration 3.3A but does not have a material impact on the firm’s risk profile ~~Article 7.1 of the RTS~~ not to be an MRT, the firm should apply for a waiver of the Remuneration rules in respect of that person under section 138A of the Financial Services and Markets Act 2000 (FSMA). A rule modification by consent is available for these purposes and has been published on the PRA website.

## Types of roles identified

3.7 Chapter 3 of the Remuneration Part ~~and the RTS~~ sets out minimum criteria for the identification of MRTs. The PRA takes the view that all staff members carrying out activities which enable them to expose the firm to a material level of risk should be identified as MRTs, even where these staff members do not fall within any of the mandatory criteria established under ~~Remuneration 3.1~~ Chapter 3 of the Remuneration Part ~~or the RTS~~.

3.8 The PRA expects all firms to apply Chapter 3 of the Remuneration Part ~~the RTS~~ as a minimum standard and firms should exercise discretion to identify all relevant staff as MRTs where necessary. The PRA considers it would be appropriate for firms to assess risks that individuals may pose to the risk profile of the firm beyond those set out under the Remuneration Part ~~RTS~~. As such, PRA expectations of the types of roles that should be identified as MRTs may evolve over time.

....

## Credit and trading risk

3.19 Any staff member with the ability to take, approve, or veto credit proposals or trading book transactions above the thresholds under Remuneration 3.2A (3), (4) and (5) ~~Article 6(3) and 6(4)~~ on

behalf of the institution should be identified as an MRT. This requirement is not affected by the geographical location of the staff member.

....

3.21 ~~Under Articles 6(3) and 6(4), t~~The PRA expects firms to identify those staff members who have the authority to sanction any transaction specified under Remuneration 3.2A (3), (4) and (5) ~~Articles 6(3) and 6(4).~~

3.22 The PRA expects firms to identify all staff members in a trading capacity with the ability to materially affect the risk profile of the institution, even where these staff members do not meet the limits specified under Remuneration 3.2A (4) ~~Article 6(4)~~, or the quantitative remuneration criteria under Remuneration 3.3A3.1 and Article 7(1). For example, certain roles such as foreign exchange traders may not operate under a value-at-risk limit but should be identified given their potential to affect the risk profile of the institution.

3.23 Where the total remuneration of staff members in the trading function exceeds the quantitative thresholds under Chapter 3 of the Remuneration Part 3.1 and Article 7(1), the PRA expects firms to provide more detailed evidence as compared to other categories of staff if a firm wishes to exclude this employee by applying for a modification by consent as described below (paragraph 3.29) in order to justify whether they meet the conditions for exclusion under Article 7(2) to (5).

### **PRA approach to MRT exclusion applications for asset management roles**

3.24 The PRA will review applications for a rule waiver or modification to exclude staff members employed by asset management entities within the consolidation, or sub-consolidation, group of a PRA-authorized person following the same process for staff employed by deposit-takers and investment banks. The PRA will do this by assessing the materiality of the impact of the professional activities of the staff member's role on the risk profile of the firm on a consolidated basis. Working in an asset management role is not in itself a basis for determining that the staff member meets one of the considerations mentioned in paragraph 3.31 ~~conditions for exclusion set out in Article 7(2) to (5).~~

3.25 In determining whether asset management staff members are MRTs, the PRA expects the factors below should be considered alongside Remuneration 3.1 ~~and Articles (2) and (6)~~. These factors include, but are not limited to, the following:

- the seniority of the role in the context of reporting lines and managerial responsibility;
- the size of the desk assets under management (AUM) as a portion of the total firm/group AUM and the size of the AUM for which the individual has overall responsibility as a portion of desk AUM;
- the extent to which the fund relates to retail clients;
- the strength of investment risk controls in place to ensure the individual adheres to the agreed fund risk profile, strategy and client expectations; and
- wider safeguards in place for liquidity, operational and product risk and independent risk monitoring.

~~3.26 [Deleted] Applications on behalf of staff members employed by FCA solo regulated firms that are subject to the IFPRU Remuneration Code (SYSC 19A) within a group should be submitted to the FCA only. For those in dual regulated firms, and FCA regulated firms that are not subject to IFPRU Remuneration Code (SYSC 19A) but whose parent institution is regulated by the PRA, applications should be submitted jointly to the PRA and FCA.~~

### Definition of material business units

3.27 Firms are required to identify material business units (MBUs) in accordance with Remuneration 1.3 Article 4. Business units are defined in Remuneration 1.3 the CRR as ‘any separate organisational or legal entities, business lines, or geographical locations’. Where firms do not use internal capital allocation, they may use risk weighted assets (RWAs) as a proxy when defining material business units.

....

### The exclusion process

~~3.29 Remuneration 3.3A RTS~~ establishes a presumption that individuals meeting the specified quantitative threshold under Article 7(1) are to be identified as MRTs. This presumption can only be rebutted by firms providing sufficient evidence that the relevant role does not have a material impact on the firm’s risk profile ~~meets one of the grounds under Article 7(2)~~. A firm may apply to the PRA for a modification by consent (published on the PRA’s website) to exclude such individuals from the list of MRTs when the individuals are deemed to not have a material impact on the firm’s risk profile. Any applications for waivers or modifications in relation to other remuneration rules that require the identification of individuals as MRTs must be submitted to the PRA in line with the process described on the PRA’s website<sup>23</sup>.

~~3.30 The approach under the RTS for excluding staff members from identification as MRTs is set out in the table below.~~

**Table F: MRT Identification and exclusion criteria**

[table deleted]

Criterion	Regulatory oversight requirement	Basis for exclusion application

<sup>23</sup> <https://www.bankofengland.co.uk/prudential-regulation/authorisations/waivers-and-modifications-of-rules>.

[deleted]		
Total remuneration > €750,000; or if the firm has over 1,000 members of staff, top 0.3% high earners	Prior approval of exclusion from PRA	Staff member and explanation of why Article 7(2) applies
Total remuneration > €1 million	Prior approval of exclusion from PRA	Staff member and explanation of exceptional circumstances.

3.31 Applications for prior approval to exclude staff members from identification identified solely by reference to the criteria set out in Remuneration 3.3A should be submitted to the PRA annually in line with the modification by consent process. The PRA will decide whether to grant the modification by consent on the basis of the statutory test set out in section 138A of FSMA ((1) compliance by a firm with the unmodified rules would be unduly burdensome or would not achieve the purpose for which the rules were made and (2) the direction would not adversely affect the advancement of any of the PRA's objectives). In assessing this, the PRA will take into account in particular whether the professional activities of an employee identified solely by the criteria laid down in Remuneration 3.3A do not have a material impact on the firm's risk profile on the basis that either: (a) the employee only carries out professional activities and has authorities in a business unit that is not a 'material business unit'; or (b) the professional activities of the employee have no significant impact on the risk profile of a 'material business unit'.

3.32 In determining whether to seek to exclude staff members from identification by applying for a modification by consent, the PRA also expects other factors to be considered alongside Remuneration 3.1 and Article 6 which include, but are not limited to, the:

- direct reporting lines of the staff member in question, and the number of MRTs identified above them in the management chain;
- independence of the staff member to commit the balance sheet of the CRR firm/institution without further authorisation;
- risk management controls in place to detect unauthorised trades; and
- management of maximum desk limits and the disciplinary policy in place for breaching these limits.

3.33 The RTS states that approval for exclusions regarding those staff members earning over €1,880,000 million shall only be granted under 'exceptional circumstances'. The PRA expects firms to provide additional explanatory reasoning in order to specify the exceptional nature of the circumstances for such staff members, in particular concerning the individual role and impact on the risk profile of the institution.

## Templates

3.34 The PRA has designed a template for firms to use to submit as part of their exclusion requests. The template is available on the Bank of England's website for firms to download and submit.<sup>24</sup> The

<sup>24</sup> [www.bankofengland.co.uk/pr/Pages/supervision/activities/remuneration.aspx](http://www.bankofengland.co.uk/pr/Pages/supervision/activities/remuneration.aspx).



template represents the expectation of the level of detail which should be included when submitting exclusions for approval. However, use of this template is voluntary, and firms may choose to document their request in a different manner.

~~3.35 – Exclusions should be submitted annually to the PRA. The timetable for submission will depend on the financial year of the firm.~~

## 4 Application of malus and clawback to variable remuneration

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### Calculating reductions

**Table G: Minimum deferral and clawback rules applicable to MRTs**

Firm category	MRT category	Higher paid MRT (Total rem >£500,000 or variable rem >33% of total rem, Rule 1.3)		Non-higher paid MRT (Total rem ≤£500,000 and variable rem ≤33% of total rem, Rule 1.3)		MRT below proportionality threshold (Variable rem ≤£44,000 and variable rem ≤one third of total rem, Rule 15.A1(3))	
		Minimum Deferral (years)	Minimum Clawback (years)	Minimum Deferral (years)	Minimum Clawback (years)	Minimum Deferral (years)	Minimum Clawback (years)
Significant firms (as defined in Rule 1.3)	MRT who performs a PRA senior management function (SMF)	7	7 <sup>1</sup>	5	1, 6 <sup>2</sup>	0	1, 6 <sup>2</sup>
	Non-SMF members of the management body and senior management	5	7	5	1, 6 <sup>2</sup>	0	1, 6 <sup>2</sup>
	MRTs: (i) who meets the criteria in Remuneration Rule 3.1(1)(b); or (ii) whose professional activities meet the qualitative criteria set out in <u>3.2A (1)</u> , <u>3.2A (2)</u> or <u>3.2A (5)</u> – <del>Article 6(1), 6(2) or 6(5) of the RTS</del>	5	7	4	1, 5 <sup>2</sup>	0	1, 5 <sup>2</sup>
	Other MRTs	4	7	4	1, 5 <sup>2</sup>	0	1, 5 <sup>2</sup>
Other firms	MRT who performs a PRA SMF	7	7 <sup>1</sup>	4	1, 5 <sup>2</sup>	0	1, 5 <sup>2</sup>
	Non-SMF members of the management body and senior management	5	7	4	1, 5 <sup>2</sup>	0	1, 5 <sup>2</sup>

Firm category	MRT category	Higher paid MRT (Total rem >£500,000 or variable rem >33% of total rem, Rule 1.3)		Non-higher paid MRT (Total rem ≤£500,000 and variable rem ≤33% of total rem, Rule 1.3)		MRT below proportionality threshold (Variable rem ≤£44,000 and variable rem ≤one third of total rem, Rule 15.A1(3))	
		Minimum Deferral (years)	Minimum Clawback (years)	Minimum Deferral (years)	Minimum Clawback (years)	Minimum Deferral (years)	Minimum Clawback (years)
	MRTs: (i) who meets the criteria in Remuneration Rule 3.1(1) (b); or (ii) whose professional activities meet the qualitative criteria set out in <u>3.2A (1)</u> , <u>3.2A (2)</u> or <u>3.2A (5)</u> -Article 6(1), 6(2) or 6(5) of the RTS	5	7	4	1, 5 <sup>2</sup>	0	1, 5 <sup>2</sup>
	Other MRTs	4	7	4	1, 5 <sup>2</sup>	0	1, 5 <sup>2</sup>
	<sup>1</sup> Extendable to 10 years in line with Rule 15.20A (2) [subject to rule finalisation]						
	<sup>2</sup> Minimum clawback of 1 year if the variable remuneration is not deferred.						

### 3 Technical instrument to revoke 2014 RTS as regards PRA-regulated firm

#### **PRA STANDARDS INSTRUMENT: THE TECHNICAL STANDARDS (REMUNERATION) INSTRUMENT 2021**

##### **Powers exercised**

- A. The PRA makes this instrument in the exercise of powers under section 138P (Technical Standards) of the Act.
- B. For the purposes of section 138P of the Act, the power to make technical standards which the PRA relies on is conferred on the PRA by Article 464B(2)(e) of Regulation (EU) 575/2013.
- C. Pursuant to section 138P(2)(b) of the Act, the power to make technical standards includes the power to modify, amend or revoke any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law. Commission Delegated Regulation (EU) 614/2014 constitutes EU tertiary legislation (as defined in section 20 of the EUWA) for these purposes.
- D. Pursuant to the Capital Requirements (No. 3) Instrument, Commission Delegated Regulation (EU) 614/2014 has been split into two parts, an FCA part and a PRA part. This instrument amends Part 2 (PRA) of Commission Delegated Regulation (EU) 604/2014.
- E. The powers referred to above are specified for the purpose of section 138Q(2) (Standards instruments) of the Act.

##### **Pre-conditions to making<sup>25</sup>**

- F. The FCA has been consulted on the changes made by this instrument pursuant to section 138P(4) of the Act.
- G. In accordance with section 138J of the Act, the PRA published a draft of the proposed instrument and had regard to representations made.
- H. A draft of this instrument has been approved by the Treasury, as required by section 138R of the Act.

##### **Interpretation**

- I. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.
- J. In this instrument:

“Capital Requirements (No. 3) Instrument” means the PRA’s Technical Standards (Capital Requirements) (EU Exit) (No. 3) Instrument 2019;

“EUWA” means the European Union (Withdrawal) Act 2018;

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<sup>25</sup> These conditions will be completed prior to the making of any final instrument

“PRA” means the Prudential Regulation Authority;

“retained EU law” has the meaning given it in section 6 of the EUWA; and

“the Act” means the Financial Services and Markets Act 2000.

**Deletion**

K. The PRA deletes Part 2 (PRA) of Commission Delegated Regulation (EU) 614/2014.

**Commencement**

L. This instrument comes into force on [date].

**Citation**

M. This instrument may be cited as PRA Standards Instrument: The Technical Standards (Remuneration) Instrument 2021.

**By order of the Prudential Regulation Committee**

[Date]

## 4 PRA statutory obligations

**The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.**

- Purpose of the policy proposals (FSMA s138J(2)(b)).
- Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letter (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22)
- Have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat (Natural Environment and Rural Communities Act 2006, s40).
- Consultation of the FCA (FSMA s138J(1)(a)).
- *Where the consultation proposals a PRA rule change or amendment to onshored BTS that affects the processing of personal data - consultation with the Information Commissioner's Office (article 36(4) General Data Protection Regulation).*
- *For UK Technical Standards Instruments only:* FSMA s138J(1)(a) is replaced with: consultation of the FCA and/or Bank, where that Regulator has an interest in the technical standards (FSMA s138P(4) and (5)).
- *For UK Technical Standards Instruments only:* notice given to HMT of the consultation on the UKTS ('best efforts' basis).
- *For CRR rules only:* subject to certain exceptions, have regard to:
  - relevant standards recommended by the Basel Committee on Banking Supervision from time to time
  - the likely effect of the rules on the relative standing of the United Kingdom as a place for

internationally active credit institutions and investment firms to be based or to carry on activities. For these purposes, the PRA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active credit institutions and investment firms are most likely to choose to be based or carry on activities

- the likely effect of the rules on the ability of CRR firms to continue to provide finance to businesses and consumers in the United Kingdom on a sustainable basis in the medium and long term

- the target in section 1 of the Climate Change Act 2008 (carbon target for 2050)

(s144C (1) & (2) FSMA – exceptions in s144E FSMA).

- *For CRR rules only* – explanation of the ways in which having regard to the matters specified above has affected the proposed rules (s144D FSMA).
- *For CRR rules only* – publication of a summary of the proposed CRR rules.
- *For CRR rules only* – consideration and consultation with the Treasury about the likely effect of the rules on relevant equivalence decisions (s144C (3) & (4) FSMA).