

18 December 2020: this guidance document supports the final Bank Transitional Direction published as part of Policy Statement 27/20.

## **Bank Recovery and Resolution**

### **Guidance on the Bank's use of the transitional direction**

#### **Introduction**

- This document provides guidance on the Bank's transitional direction in the context of the Bank Recovery and Resolution Directive (Directive (EU) No 2014/59) (BRRD) and related legislation. The Bank's transitional direction is made under the temporary transitional power (TTP) conferred on the regulators by Parliament (via Regulation 198 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019).<sup>1</sup>
- This includes Directive (EU) No 2019/879 amending BRRD (BRRD II), Regulation (EU) 2019/876 amending the Capital Requirements Regulation (EU) No 575/2013 (CRR II) and relevant onshoring UK legislation. The Bank's transitional direction has been made under regulation 198 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.
- Firms should have regard to this guidance while the transitional relief granted under the direction is in effect. Firms should note that this guidance is non-binding in nature, non-exhaustive, that it may be amended from time-to-time and that the direction should be followed in the case of any inconsistency with this guidance.
- The transitional direction will come into effect at the end of the transition period and will apply until 31 March 2022 unless the Bank decides to change this in future.
- Any reference to an EU regulation, including to a binding technical standard, is a reference to the UK version of that regulation, unless otherwise stated. The UK version includes any modifications made by Parliament, HM Treasury or the relevant regulators.
- This guidance document covers onshoring changes introduced including, without limitation, by:
  - a. The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (i.e. the BRRD SI)<sup>2</sup>;
  - b. The Technical Standards (Bank Recovery and Resolution) (Amendment Etc.) (EU Exit) (No. 1) Instrument 2019;
  - c. The Capital Requirements (Amendment) (EU Exit) Regulations 2019 ('the CRR II SI')<sup>3</sup> and
  - d. The Bank Recovery and Resolution (Amendment) (EU Exit) EU Regulations 2020 (i.e. the BRRD II SI).<sup>4</sup>
- For further details on the Bank's approach to the exercise of the transitional direction, firms should consult:
  - a. the Bank of England Policy Statement | PRA Policy Statement PS27/20 on 'the Bank of England's amendments under the European Union (Withdrawal) Act 2018: Changes before the end of the transition period'<sup>5</sup>
  - b. the Bank of England's Policy Statement on the amendments to financial services legislation under the European Union (Withdrawal) Act 2018 (PS 5/19),<sup>6</sup>

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<sup>1</sup> Available at: <<https://www.legislation.gov.uk/uksi/2019/632/contents/made>>

<sup>2</sup> Available at: <<https://www.legislation.gov.uk/uksi/2018/1394/contents/made>>

<sup>3</sup> Available at: <<https://www.legislation.gov.uk/uksi/2019/1232/made>>

<sup>4</sup> Available at: <<https://www.legislation.gov.uk/uksi/2020/1350/contents/made>>

<sup>5</sup> December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

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- c. the general guidance provided with the Bank's transitional direction (published alongside this document on 18 December 2020);<sup>7</sup> and
- d. the Bank of England's and the PRA's statement on 'The Application of the temporary transitional power to CRD V and BRRD II derived legislation' (published on 13 November 2020).<sup>8</sup> The Bank has not identified any further exceptions to the draft Bank transitional direction necessary from onshoring amendments to BRRD II.

## Background

1. The BRRD established a framework for recovery and resolution of credit institutions and certain investment firms within the European Union. Accordingly, it envisaged resolution authorities and competent authorities being given certain tools to manage the failure of a firm. This means that firms are subject to comparatively few direct obligations in this area where the transitional direction applies.

## Specific guidance

2. No transitional relief is being provided in respect to the following onshoring changes that are relevant to bank recovery and resolution:
  - a. **Stay in resolution.** Please refer to paragraph 4c of the '*PRA Rulebook: Guidance on the PRA's use of the transitional direction*'.
  - b. **Contractual recognition of bail-in.** Please refer to paragraph 4b of the '*PRA Rulebook: Guidance on the PRA's use of the transitional direction*'.
3. Readers should also refer to the following clarification that is relevant to bank recovery and resolution:
  - a. **Recovery plans and resolutions packs.** Please refer to paragraph 3b of the '*PRA Rulebook: Guidance on the PRA's use of the transitional direction*'.

## Guidance on specific Binding Technical Standards

4. The BRRD is supplemented by binding technical standards made under it. A summary is provided below of how transitional relief applies to BRRD binding technical standards.

## Regulation 2018/1624 (resolution planning BTS)

5. The transitional relief applies to the amendment made to Article 3(1) of the resolution planning BTS. This means that where "UK parent undertakings" are newly obliged to submit specified information solely due to this onshoring change (where before the information would have been submitted by their EEA parent), they will not need to do so for the duration of the transitional relief, i.e. fifteen months following the end of the transition period (until 31 March 2022).

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<sup>6</sup> Available at: < <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018.pdf?la=en&hash=1B26AA88A7DCA56C731498A74DB2B688EC79CD58>>

<sup>7</sup> Available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a8.pdf>.

<sup>8</sup> Available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/statement-on-application-of-ttp-to-crdv-and-brrdii>.

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6. By contrast, firms should note this does not apply where a UK parent undertaking was the “Union parent undertaking” prior to the onshoring amendment. Here the obligation would not begin to apply, or apply differently, as a result of an exit instrument. In such cases, the Bank expects firms to continue submitting templates on the same basis in practice as before the end of the transition period, consistent with the principle at paragraph 8 of the Bank’s transitional direction. For example, the reference to DGS membership in Annex 1, template “Z 06.00 – Deposit Insurance (DIS)” of the resolution planning BTS should be interpreted as including the FSCS. At the end of the transitional period, changes will be required to reflect the UK’s withdrawal from the EU. The Bank has published further guidance on its website concerning these changes.<sup>9</sup>

#### **Guidance on the Capital Requirement Regulation II (CRR II)**

7. The transitional relief applies to the amendment made to Article 92b(2) of CRR II (i.e. Regulation (EU) 2019/876 amending Regulation (EU) No 575/2013 (i.e. CRR)).
8. This relates to the requirement where “material subsidiaries of non-UK G-SIIs” are newly obliged to ensure that Additional Tier 1 (AT 1), Tier 2 and eligible liabilities instruments issued directly or indirectly to the ultimate parent undertaking are issued only via entities in the same third country as the ultimate parent undertaking or in the UK. These entities will not need to meet this requirement for the duration of the transitional relief, i.e. until 31 March 2022 (fifteen months following the end of the transition period).
9. “Material subsidiaries of non-UK G-SIIs” will still need to ensure that AT1, Tier 2 and eligible liabilities instruments issued to meet the requirement in Article 92a(1) are issued only via entities in the same third country as the ultimate parent undertaking, or in the UK, or a Member State of the European Union.

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<sup>9</sup> For more information, please refer to the *‘Interpretive guidance in relation to Commission Implementing Regulation (EU) 2018/1624 on information for resolution planning’*.