

28 December 2020: this guidance document supports the final PRA Transitional Direction published as part of Policy Statement 30/20.

## **PRA Rulebook**

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

#### **Introduction**

- This document provides guidance on the PRA's transitional direction in relation to the PRA Rulebook (see the PRA Rulebook: (EU Exit) Instrument 2020. The PRA's transitional direction is made under the temporary transitional power (**TTP**) conferred on the regulators by Parliament (via The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019).<sup>1</sup>
- This guidance is intended for all PRA-regulated firms (i.e. UK credit institutions and designated investment firms), apart from former EEA firms that will be in the Temporary Permissions Regime (**TPR**) or Financial Services Contracts Regime (**FSCR**) after the end of the transition period.
- Firms should have regard to this guidance while the transitional relief granted under the transitional direction is in effect. Firms should note that this guidance is non-binding in nature, that it may be amended from time-to-time and that the transitional direction should be followed in the case of any inconsistency with this guidance.
- The transitional direction will come into effect from the end of the transition period (11pm on 31 December 2020) and will apply until 31 March 2022 unless the PRA decides to make any changes to this timing in the future. This document refers to the period when the transitional direction is in effect as the '**TTP period**'.
- 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.
- For further details on the PRA's general 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>2</sup>
  - b. the Bank of England's Policy Statement on the amendments to financial services legislation under the European Union (Withdrawal) Act 2018 (PS5/19); and
  - c. the general guidance provided with the PRA's transitional direction.<sup>3</sup>

#### **General guidance**

1. Many of the onshoring changes to the PRA Rulebook will not result in firms needing to take any different action after the end of the transition period – for example, where we have replaced a cross reference to an EU Directive with a reference to the relevant UK implementing legislation having the same effect.
2. In addition, many changes reflect the loss of passporting and are only relevant to formerly incoming EEA firms (who will be in TPR or FSCR after the end of the transition period). The direction contains specific provisions for these firms (see paragraph 10 of the PRA transitional

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

<sup>2</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>.

<sup>3</sup> Available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps3020app3.pdf>.

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direction). Obligations which apply to such firms for the first time (or apply to them differently) by reason of the repeal of EEA passports will apply to them notwithstanding paragraph 6 of the PRA transitional direction. These changes are not relevant to the firms to whom this guidance is addressed given onshoring would not result in previously authorised firms needing to take any additional action by the end of the transition period.

### Delay to onshored requirements

3. In some areas we are providing transitional relief to delay onshoring changes such that firms should continue to comply with their regulatory obligations as they applied immediately before the end of the transition period. The impact of onshoring changes will be delayed in the following areas:
  - a. **Credit Unions.** Credit unions can continue to comply with rules 6.3 and 6.4 of the Credit Unions Part in the same way as before the end of the transition period. For example, they can continue to place deposits with EU credit institutions and invest in certain EU assets. However, the maturity of EEA investments made after the end of the transition period must be no later than 31 March 2022 (rules 6A.1 and 6A.2).
  - b. **Recovery Plans and Resolution Pack.** Firms should continue to prepare and maintain a group recovery plan and a group resolution pack on the same basis as before the end of the transition period.

### No transitional relief

4. No transitional relief is being provided in respect of the following onshoring changes:
  - a. **Rules relating to the Financial Services Compensation Scheme (FSCS) Parts of the Rulebook.** No transitional relief is provided. All firms must comply with their obligations relating to the FSCS, as modified by onshoring changes, from the end of the transition period.
  - b. **Contractual recognition of bail in.** Firms must start to including contractual recognition terms in certain new or materially amended contracts governed by the laws of EEA states:
    - i. For EEA law-governed phase two liabilities, firms will need to include contractual recognition terms in contracts which are issued or materially amended after the end of the TTP period (except where it is impracticable to do so). Firms will not need to update contracts issued before the end of the TTP period, unless these are subsequently materially amended.<sup>4</sup>
    - ii. For all other EEA law-governed liabilities, firms will need to include contractual recognition terms in contracts, which are issued or materially amended after 31 December 2020. Firms will not need to update contracts issued before 31 December 2020, unless these are subsequently materially amended.
  - c. **Stay in Resolution.** Firms are required to comply with the Stay in Resolution rules in respect of new EEA law governed financial arrangements (or existing financial arrangements materially amended) after the end of the transition period. The existing stock of financial arrangements governed by EEA law at the end of the transition period would not need to be updated, unless they are materially amended.

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<sup>4</sup> See paragraph 2 of the PRA Transitional Direction. Available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a1.pdf>.

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5. The Annex to this note sets out further detail on the effect of the PRA's transitional direction on relevant parts of the Rulebook. The list is not exhaustive. Firms must continue to satisfy themselves that they comply with all required PRA Rules.

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### Annex – Application of transitional relief to relevant PRA Rulebook Parts

*Unless otherwise clarified, “firms” in this table refers to firms in scope of the individual part of the Rulebook as defined by the relevant Rule.*

<b>Relevant Rulebook Part</b>	<b>Summary of effect of transitional relief</b>
Audit Committee	The transitional direction means the exception for a subsidiary of an EEA parent in rule 1.2 will continue to apply during the TTP period, after which it will apply only to subsidiaries of UK parents.
Change in Control	Firms will still have to notify the PRA if a ‘controller’ who is authorised in an EEA state, ceases to be so authorised during the TTP period.
Contractual Recognition of Bail In	Firms should start to include contractual recognition terms in certain new or materially amended contracts governed by the laws of EEA states. For EEA law-governed phase two liabilities, firms will need to include contractual recognition terms in contracts which are issued or materially amended after the end of the TTP period (except where it is impracticable to do so). Firms will not need to update contracts issued before the end of the TTP period, unless these are subsequently materially amended. For all other EEA law-governed liabilities, firms will need to include contractual recognition terms in contracts which are issued or materially amended after 31 December 2020. Firms will not need to update contracts issued before 31 December 2020, unless these are subsequently materially amended.
Credit Risk	During the TTP period, EEA exposures secured by mortgages on commercial immovable property are treated in the same way as before the end of the transition period.
Credit Unions	During the TTP period, credit unions can continue to comply with rules 6.3 and 6.4 in the same way as before the end of the transition period. However, the maturity of EEA investments made after the end of the transition period must be no later than 31 March 2022 (rules 6A.1 and 6A.2).
Depositor Protection	No transitional relief: all firms must comply with obligations as modified by onshoring changes from the end of the transition period.
Dormant Account Scheme	No transitional relief: all firms must comply with obligations as modified by onshoring changes from the end of the transition period.
External Audit	Transitional direction does not affect this Part. “Group supervisor” means the PRA.
Financial Conglomerates	This transitional direction means that during the TTP period:

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Relevant Rulebook Part	Summary of effect of transitional relief
	<ul style="list-style-type: none"> <li>- For a firm that is a member of a financial conglomerate where the coordinator is a supervisory authority in an EEA State, obligations in this Part of the Rulebook will continue to apply as they would have applied immediately before the end of the transition period. This is provided that the PRA or FCA does not seek to apply supplementary supervision during the TTP period.</li> <li>- For a group that would not meet Threshold Test 2 in Annex 1 of the Financial Conglomerate part of the Rulebook but for the amendment to the definition of ‘sectoral rules’ for the purposes of rule 2.8 of that Part, ‘sectoral rules’ has the same meaning as before the end of the transition period.</li> <li>- A financial conglomerate shall be categorised as either a banking and investment services conglomerate or an insurance conglomerate during the TTP period, in the same way as before the end of the transition period, as though paragraph 3.1 of Annex 2 of the Financial Conglomerate Part had not been amended.</li> <li>- This point relates to calculating the conglomerate capital resources requirement for a financial conglomerate. The solo capital resources requirement for an entity that is regulated in the EEA shall continue to be calculated during the TTP period in the same way as before the end of the transition period. This is as though paragraphs 6.4 and 6.5 of Annex 2 of the Financial Conglomerates Part had not been amended.</li> </ul>
Friendly Society - Liability Valuation	Transitional direction does not affect this Part. The only change to this Part is a minor technical clarification of rule 11.8.
FSCS Management Expenses Levy Limit and Base Costs	Transitional direction does not affect this Part.
General Provisions	During the TTP period, firms should comply with obligations in Chapter 3 (disclosures to retail clients) as they did before the end of the transition period. For the purposes of the application of Chapters 5 & 6, business which was ‘MiFID business’ before the end of the transition period will continue to be treated as such during the TTP period.
Group Supervision	<p>The transitional direction means that:</p> <ul style="list-style-type: none"> <li>• For a firm that is a member of a group where the group supervisor is a supervisory authority in an EEA State, this Part of the Rulebook would continue to apply as it would have applied immediately before the end of the transition period, provided that the PRA does not seek to apply group supervision during the TTP period.</li> <li>• If the PRA seeks to apply group supervision to a group where the group supervisor is a</li> </ul>

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	supervisory authority in an EEA State, a firm that is a member of such a group will need to comply with obligations under this Part as amended by onshoring changes.
Insurance Company – Exposure Limits	Transitional direction does not affect this Part. The only change to this part is a minor technical clarification of rule 9.4.
Insurance Company - Technical Provisions	During the TTP period, this part will continue to apply to all business written within the EEA (or in the UK); and will continue to enable firms to localise assets within any EEA state (or the UK).
Large exposures	The transitional direction does not affect this part.
Notifications	For financial conglomerates, the transitional direction means that the reporting and disclosure requirements under Rule 9.5 would not apply to UK financial conglomerates during the TTP period where these would otherwise have begun to apply as a result of onshoring changes.
Policyholder Protection	No transitional relief: all firms must comply with obligations as modified by onshoring changes from the end of the transition period.
Recovery Plans	<p>Onshoring changes to rule 3.1 should not result in firms needing to draw up and submit a group recovery plan to the PRA during the TTP period, in circumstances where the PRA was not the EEA consolidating supervisor immediately before the end of the transition period.</p> <p>Where firms engage in restructuring related to the end of the transition period following the UK's withdrawal from the EU, material changes to the document must be notified to the PRA promptly and, in any event, within one month. Firms must keep the recovery plan up to date to reflect, among other matters, changes to their business. These obligations are not affected by the transitional direction, since they will not begin to apply, or apply differently, as a result of the operation of an exit instrument.</p>
Remuneration	<p>The Transitional Direction provides three categories of relief for incoming EEA firms who previously benefited from passporting and who will be within scope of the Remuneration Part after the transition period ends:</p> <ol style="list-style-type: none"> <li>1. Where the PRA imposes additional requirements than required under the Capital Requirements Directive, former passporting firms will not be required to comply with those additional requirements until the beginning of the performance period which follows IP completion day by at least three months. In place of those stricter PRA requirements the firm must comply however with corresponding CRD requirements.</li> </ol>

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	<p>2. Former passporting firms will not need to notify or seek new approvals from the PRA for the exclusion of Material Risk Takers in accordance with the Material Risk Taker Regulation in respect of the performance period in which IP completion day falls, where they have notified or obtained approval from their home state supervisor before IP Completion Day.</p> <p>3. Former passporting firms may comply with certain proportionality thresholds either in sterling or in the Euro thresholds set out in CRD V.</p>
Resolution Pack	<p>Onshoring changes to rule 3.1 should not result in firms needing to prepare and maintain a group resolution pack, in circumstances where the PRA is not the EEA consolidating supervisor immediately before the end of the transition period.</p> <p>Where firms engage in restructuring related to the end of the transition period following the UK's withdrawal from the EU, material changes to the document must be notified to the PRA promptly and, in any event, within one month. Firms must keep the resolution pack up to date to reflect, among other matters, changes to their business. These obligations are not affected by the transitional direction, since they will not begin to apply, or apply differently, as a result of the operation of an exit instrument.</p>
Stay in Resolution	No transitional relief: all firms must comply with obligations as modified by onshoring changes from the end of the transition period.
Technical Provisions	During the TTP period the 'fundamental spread' for the matching adjustment will continue to be assessed in accordance with rule 7.3(2) for exposures to central governments and central banks in all EEA states (and the UK).
Third Country Branches	<p>During the TTP period, the localisation requirements for third country branch undertakings in Chapter 3 will continue to apply as they did immediately before the end of the transition period.</p> <p>The transitional direction will also mean that the effect of obligations which apply to 'EEA deposit insurer' and 'UK deposit insurer' will be unchanged during the TTP period. However we do not expect this to impact any firms.</p>
Transitional Measures	The transitional measures in this part will continue to apply, during the TTP period, on the same basis as before the end of the transition period.

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<b>Relevant Rulebook Part</b>	<b>Summary of effect of transitional relief</b>
Undertakings in Difficulty	Transitional direction does not affect this Part. After the end of the transition period it will be the PRA (rather than EIOPA) who will be able to declare an “adverse exceptional situation” for the purposes of rule 3.2.

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