



BANK OF ENGLAND

April 2019

# The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018

Bank of England Policy Statement | PRA Policy Statement PS5/19



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# PS5/19: The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018

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## Overview

1.1 On Thursday 11 April 2019 the European Council decided, in agreement with the UK, to further extend the period provided for in Article 50(3) of the Treaty on European Union until 31 October 2019.<sup>1</sup>

1.2 In preparation for circumstances where a withdrawal agreement is not agreed before this date, the Bank of England (Bank) and Prudential Regulation Authority (PRA) are publishing final policy materials including EU Exit Instruments,<sup>2</sup> Supervisory Statements (SSs) and a Statement of Policy (SoP). These all have the effective date of 'exit day' (as defined in the European Union (Withdrawal) Act 2018 (the 'Act'))<sup>3</sup> with one exception.<sup>4</sup>

1.3 These materials were published as 'near-final' in Section B of the February 2019 version of Policy Statement (PS) 5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018', published on Thursday 28 February 2019.<sup>5</sup>

1.4 The instruments and statements published alongside this PS are now final. As required by the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the 'Regulations'), the Bank and PRA have made the EU Exit Instruments following HM Treasury's formal approval of the Bank's and PRA's EU Exit Instruments and the Financial Conduct Authority's (FCA) consent to the joint FCA-Bank and joint FCA-PRA EU Exit Instruments.

1.5 The Bank and PRA have not changed the policy or significantly altered the text of the published materials since their publication as 'near-final'. Section B of this PS sets out the limited updates to these materials since they were published as 'near-final'.

1.6 The Bank and PRA are not publishing final versions of the Bank and PRA transitional directions and transitional guidance materials published as 'near-final' in Section A of the February 2019 version of PS5/19. In light of the extension, the Bank and PRA will consider whether to make any changes to these directions and guidance materials. The Bank will publish further information on this in due course. For further information, please see Section A of the February 2019 version of PS5/19.

1.7 The instruments and statements are relevant to all firms authorised and regulated by the PRA, financial market infrastructure providers (FMIs) that are currently supervised by the Bank and firms subject to the Bank's powers as resolution authority. Some of the changes are also relevant to firms authorised and regulated by the Financial Conduct Authority (FCA), and to the Financial Services Compensation Scheme (FSCS). The instruments and statements may also be relevant to firms that might seek to apply to the PRA or FCA for authorisation, and to FMIs that might apply to the Bank for recognition.

1.8 The Bank and/or PRA may issue further statements in relation to this topic, including in relation to any EU materials issued after the publication of this statement.

<sup>1</sup> This extension will cease to apply on 31 May 2019 in the event that the UK has not held elections to the European Parliament and not ratified the Withdrawal Agreement by 22 May 2019.

<sup>2</sup> Made under regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

<sup>3</sup> The definition of 'exit day' was amended on 11 April 2019 to mean 31 October 2019 at 11pm.

<sup>4</sup> Annex BF of the PRA Rulebook: EU Exit Instrument 2019 (Appendix B.2) has a commencement date of 1 July 2019. The PRA will provide further updates in relation to this Annex in due course.

<sup>5</sup> February 2019: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

1.9 For ease of cross-reference this PS follows the same structure as Section B of the February 2019 version of PS5/19. Section A in the February 2019 version of PS5/9 related to the Bank and PRA transitional directions and guidance, and as set out in paragraph 1.6, these materials have not been published in this PS.

### **Final policy**

1.10 The final policy materials are set out below:

#### **Section B: Nationalising the Acquis**

##### *For all regulated entities (Part 1 Appendix)*

- Bank SoP 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU' (Appendix B.1).

##### *For firms (ie not FMIs) (Part 2 Appendices)*

- Amendments to the PRA Rulebook (Appendix B.2);
- Amendments to onshored Binding Technical Standards (BTS) in the PRA's remit (Appendix B.3);
- PRA SS1/19 'Non-binding PRA materials: The PRA's approach after the UK's withdrawal from the EU' (Appendix B.4);
- PRA SS2/19 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU' (Appendix B.5); and
- Update to PRA SS18/15 'Depositor and dormant account protection' (Appendix B.6).

##### *For firms in scope of the UK resolution regime (Part 3 Appendix)*

- Amendments to onshored BTS in the Bank's (as resolution authority) remit (Appendix B.7).

##### *For financial market infrastructure providers (FMIs) (Part 4 Appendices)*

- Amendments to Financial Market Infrastructure (FMI) rules (Appendix B.8);
- Amendments to onshored BTS in the Bank's (as FMI competent authority) remit (Appendix B.9); and
- Bank (as FMI competent authority) SS 'Non-binding Bank materials relating to Financial Market Infrastructure Supervision: The Bank's approach after the UK's withdrawal from the EU' (Appendix B.10).

### **Updates to final materials**

1.11 The Bank and PRA have made minor changes to three EU Exit Instruments, the update to SS18/15 and the SoP on 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU' compared to the versions published as near-final. The changes are to clarify drafting and do not constitute policy changes. The Bank's overall NtA policy remains unchanged from that set out in the February 2019 version of PS5/19. The relevant updates are outlined in the remainder of this PS.

1.12 The minor changes that have been made to the final EU Exit instruments appended to this PS include:

- clarification changes;

- consequential changes to reflect relevant underlying Statutory Instruments (SIs) made or laid by HM Treasury or other Government departments since publication of the February 2019 version of PS5/19; and
- minor administrative and corrective changes to ensure the accuracy of the PRA Rulebook and amended BTS.

### **Implementation and next steps**

1.13 As noted in paragraph 1.2 above, all EU Exit Instruments appended to this PS have been finalised and have the commencement date of 'exit day' with one exception. The exception is that Annex BF of the PRA Rulebook: EU Exit Instrument 2019 (Appendix B.2) has a commencement date of 1 July 2019. The PRA will provide further updates in relation to this Annex in due course.

1.14 The Bank will communicate further in the event of other relevant developments.

## Section B: Nationalising the Acquis

### 1 Part 1: Final Bank guidance on EU Guidelines and Recommendations

1.1 The Bank has updated the list of Guidelines complied with in the UK (as relevant to the Bank and PRA) which is annexed to the final Bank SoP 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU' (Appendix B.1).

### 2 Part 2: Final PRA Rulebook and PRA BTS<sup>6</sup>

#### i) PRA non-binding materials

2.1 No change has been made compared to the near-final SS.

#### ii) PRA reporting and disclosure requirements and regulatory transactions forms

2.2 No change has been made compared to the near-final SS.

#### iii) Other PRA Rulebook changes

2.3 The PRA has made a limited number of minor changes to the final PRA Rulebook: EU Exit Instrument 2019 (Appendix B.2) since publication as near-final. None of these amendments constitute a policy change. These are:

- Additional PRA rules which were published by the PRA since the February 2019 version of PS5/19 have been reflected in the final Instrument where relevant. These additional rules are not part of the PRA's work on the UK's withdrawal from the EU, but are rules that have been made under the PRA's general rule-making power (Section 137G FSMA). The PRA has consulted on these additional rules separately.<sup>7</sup> These additional rules have been included in the PRA Rulebook: EU Exit Instrument 2019 to reflect the PRA's rules accurately as at the date of making:
  - Changes have been made to the Depositor Protection and Policyholder Protection Parts of the PRA Rulebook, as published in PS6/19 'Responses to Chapters 3-7 of CP24/18 'Occasional Consultation Paper'',<sup>8</sup> including updating references to the Money Laundering Regulations 2007 to the 2017 Regulations in the definition of 'eligible deposits' in the Depositor Protection Part.
- Additional minor updates have been made to align the rules with changes made in relevant SIs which were laid after the publication of the February 2019 version of PS5/19:
  - International Accounting Standards Regulation references have been aligned with the relevant BEIS EU Exit SI: The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019.
  - The Glossary definition of 'State Aid' has been amended to closely align with text in the laid State Aid SI (The State Aid (EU Exit) Regulations 2019) rather than cross

<sup>6</sup> The PRA Rulebook changes referred to in this Part can be found in Appendix B.2: PRA RULEBOOK: (EU EXIT) INSTRUMENT 2019. Changes to PRA BTS referred to in this Part can be found in Appendix B.3: PRA Binding Technical Standards (EU Exit) Instruments.

<sup>7</sup> Under s138J FSMA. See: <https://www.bankofengland.co.uk/news/prudential-regulation>.

<sup>8</sup> March 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>.

referring to the State Aid SI, as this SI was not made by the date on which the PRA Rulebook EU Exit Instrument was made.

- Minor formatting changes and drafting changes for clarification have been made to the Instrument.

#### **iv) Other PRA BTS changes**

##### **CRR BTS No 2 Instrument**

###### **2.4 Minor drafting amendments:**

- Article 2 of Commission Delegated Regulation amended so that new text reads Article 2(5) & (6) instead of Article 2(6) & (7).
- Annex A - ellipsis between Article 2(4) & (5) removed.

##### **CSDR BTS Instrument**

2.5 Minor drafting amendment: inclusion of missing text in Article 14(b)(ii) shown in strikethrough.

#### **v) Changes relating to FSCS protection**

##### **Changes to SS18/15 'Depositor and dormant account protection'**

2.6 As a result of the delay in exit day from 29 March 2019 some changes were required to the final version of SS18/15 that will apply in the event of a no-deal withdrawal from the EU relative to the near-final version in PS5/19 published on 28 February 2019. A reference to '29 March 2019' as exit day was removed and the paragraph on FSCS levies for deposit-takers was amended to reflect the way the levy rules apply for firms that join the FSCS part way through a levy year. This is not a change in policy, but describes how the FSCS levy rules in the PRA Rulebook apply in light of the delay in exit day past 29 March 2019.

### **3 Part 3: Final Resolution BTS**

3.1 There are no changes to the BRRD BTS Instrument.

3.2 Corrections to the Simplified Obligations BTS<sup>9</sup> which were consulted on in December 2018 remain excluded from the final BRRD BTS Instrument despite the BTS entering into force on 24 March 2019. This is because the Bank cannot make amendments to this BTS at this stage, as the SI which confers the mandate to correct deficiencies has not yet been updated to include this BTS. As such, the Simplified Obligations BTS will be amended in due course by a separate EU Exit instrument once this mandate is conferred by HM Treasury.

3.3 The Bank's existing Resolution Policy statements will be updated on exit day to note the need to read these in accordance with the Bank's policy on interpreting non-binding materials set out in Appendix B.1.

### **4 Part 4: FMI rules and BTS**

4.1 There have been no changes to the EU Exit Instruments that the Bank published in its capacity as competent authority for FMIs since they were published as near-final in the February 2019 version of PS5/19.

<sup>9</sup> This BTS (Commission Delegated Regulation (EU) 2019/348) sets out the criteria for the resolution and competent authorities to decide to exclude smaller firms from resolution and recovery planning requirements.



## **5 Part 5: The Bank's and PRA's obligations under the European Union (Withdrawal) Act 2018**

### **Final EU Exit Instruments**

5.1 HM Treasury has delegated a power, under Section 8 of the Act, to the Bank and PRA to make changes to Bank and PRA rules and relevant BTS. As such, similar restrictions that apply to the power in Section 8 of the Act also apply to the Bank's and PRA's delegated power. These are outlined in Part 5 of the February 2019 version of PS5/19. The relevant requirements were met in advance of the final instruments being made.

### **Changes made under the Act**

5.2 The changes made to EU Exit Instruments since the February 2019 version of PS5/19 are minor and in the Bank's and PRA's opinion meet the obligations under the Act, as set out in Part 5 of the February 2019 version of PS5/19.

### **Changes made under FSMA**

5.3 There is only one area relating to FSCS levies which was consulted on under FSMA.<sup>10</sup> There have not been any changes to the rules regarding FSCS levies since the February 2019 version of PS5/19.

### **Other regulators' consent to joint BTS**

5.4 Regulation 5 of the Regulations requires that changes made by any regulator to a joint BTS require the consent of the other regulators that share the mandate for that BTS in advance of them being made. The Bank and PRA have received the relevant regulator's consent to the changes made to the joint BTS that the Bank or PRA are leading on as published in the February 2019 version of PS5/19. There are no additional BTS since the publication of the February 2019 version of PS5/19 which require the Bank or PRA to receive another regulator's consent.

### **HM Treasury approval of EU Exit Instruments**

5.5 Regulation 5 of the Regulations requires that any EU Exit Instrument the Bank or PRA proposes to make using its deficiency fixing powers must be approved by HM Treasury before it is made. HM Treasury have been informed of all relevant changes and the final EU Exit Instruments have been approved by HM Treasury.

### **Equality and diversity (Requirements under the Equality Act 2010)**

5.6 The Bank and PRA have performed an assessment of the policy in the February 2019 version of PS5/19 and the changes outlined in this PS and do not consider that the changes gives rise to equality and diversity implications.

<sup>10</sup> Section 138J(5) and 138K(4).

## Section B Appendices – Nationalising the Acquis

### Part 1 Appendices: Bank (relevant to all regulated entities)

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- B.1 Bank Statement of Policy ‘Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK’s withdrawal from the EU’, available at: <https://www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop>

### Part 2 Appendices: PRA

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- B.2 PRA Rulebook: (EU Exit) Instrument 2019, available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.
- B.3 PRA Binding Technical Standards (EU Exit) Instruments, available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.
- B.4 PRA Supervisory Statement 1/19 ‘Non-binding PRA materials: The PRA’s approach after the UK’s withdrawal from the EU’, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/non-binding-pra-materials-the-pras-approach-after-the-uks-withdrawal-from-the-eu-ss>
- B.5 PRA Supervisory Statement 2/19 ‘PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK’s withdrawal from the EU’, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/pr-approach-to-interpreting-reporting-and-disclosure-regs-and-reg-trans-forms-ss>
- B.6 Updated PRA Supervisory Statement 18/15 ‘Depositor and dormant account protection’, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/depositor-and-dormant-account-protection-ss>

### Part 3 Appendices: Bank (as resolution authority)

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- B.7 Bank (as resolution authority) Binding Technical Standards (EU Exit) Instrument, available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

### Part 4 Appendices: Bank (as FMI competent authority)

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- B.8 EU Exit Instrument: Recognised Clearing House Rules (Amendment etc.) (EU Exit) Instrument 2019, available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.
- B.9 Bank (as FMI competent authority) Binding Technical Standards (EU Exit) Instruments, available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.
- B.10 Bank Supervisory Statement ‘Non-binding Bank materials relating to Financial Market Infrastructure Supervision: The Bank’s approach after the UK’s withdrawal from the EU’, available at: <https://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-changes-to-fmi-rules-and-onshored-binding-technical-standards>