



BANK OF ENGLAND

February 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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February 2019

## Contents

<b>Overview</b>	<b>1</b>
<b>Section A: Use of the transitional power</b>	<b>9</b>
<b>Chapter 1 Background</b>	<b>9</b>
<b>Chapter 2 Feedback to responses received</b>	<b>11</b>
<b>Chapter 3 Implementation</b>	<b>22</b>
<b>Section A Appendices: Transitional directions and guidance</b>	<b>24</b>
<b>Section B: Nationalising the Acquis</b>	<b>25</b>
<b>Part 1 Feedback on responses to CP25/18 - the Bank's general approach and guidance on EU Guidelines and Recommendations</b>	<b>25</b>
<b>Part 2 Feedback to responses to changes to the PRA Rulebook and PRA BTS</b>	<b>27</b>
<b>Part 3 Feedback to responses to changes to Resolution BTS</b>	<b>41</b>
<b>Part 4 Feedback to Bank Consultation Paper 'UK withdrawal from the EU: Changes to FMI rules and onshored Binding Technical Standards'</b>	<b>45</b>
<b>Part 5 The Bank's and PRA's obligations under the European Union (Withdrawal) Act 2018</b>	<b>46</b>
<b>Section B Appendices – Nationalising the Acquis</b>	<b>48</b>

## Overview

1.1 This Bank of England (Bank) and Prudential Regulation Authority (PRA) Policy Statement (PS) and the appended policy materials are relevant to:

- all firms authorised and regulated by the PRA;
- firms that might seek to apply to the PRA or Financial Conduct Authority (FCA) for authorisation;
- firms that will be operating in the UK under the temporary permissions regime (TPR) or financial services contracts regime (FSCR) post-exit;
- firms authorised and regulated by the FCA;
- the Financial Services Compensation Scheme (FSCS);
- firms in scope of the UK resolution regime;
- financial market infrastructure providers (FMIs) that are currently supervised by the Bank, as well as market infrastructures and market participants more generally;
- FMIs that might apply to the Bank for recognition; and
- FMIs that will be operating in the UK under the temporary recognition regime (TRR) or the FSCR post-exit.

## Structure of the document

1.2 This PS is structured as follows:

### Section A: Transitional directions and guidance<sup>1</sup>

- Chapter 1 sets out background to the Bank's use of the transitional power.
- Chapter 2 sets out the Bank's feedback to responses received on the Bank's proposed approach to the use of the transitional power.<sup>2</sup>
- Chapter 3 sets out the implementation of the use of the transitional power and next steps.
- Section A Appendices: Transitional directions and guidance.

### Section B: Nationalising the Acquis (NtA)<sup>3</sup>

- Part 1 sets out feedback to Consultation Paper (CP) 25/18 on the Bank's general approach to NtA, including any cross-cutting issues raised:

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<sup>1</sup> Unless otherwise stated, references in Section A of this PS to 'the Bank' include the PRA except where 'the Bank and PRA' is stated in which case powers are exercised separately and the reference to 'the Bank' excludes the PRA.

<sup>2</sup> Bank of England Consultation Paper and PRA Consultation Paper (CP) 25/18 'The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018', October 2018: <https://www.bankofengland.co.uk/paper/2018/the-boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

<sup>3</sup> Unless otherwise stated, references to 'the Bank' in Section B of this PS; Parts 1, 2 and 5 include the PRA except where 'the Bank and PRA' is stated in which case powers are exercised separately and the reference to 'the Bank' excludes the PRA; in Part 3 are to the Bank as resolution authority; and in Part 4 are to the Bank as FMI competent authority.

- 1.A: The Bank's general approach.
  - 1.B: Statement of Policy (SoP) on EU Guidelines and Recommendations.
- Part 2 sets out feedback on CP26/18<sup>4</sup> and CP32/18<sup>5</sup> on changes relating to the PRA Rulebook and PRA Binding Technical Standards (BTS) for:
  - 2.A: All PRA-regulated firms.
  - 2.B: PRA-regulated banks, building societies and designated investment firms.
  - 2.C: PRA-regulated insurers.
  - 2.D: Financial conglomerates.
  - 2.E: Credit unions.
  - 2.F: FSCS protection (including relevant obligations under the Financial Services and Markets Act 2000 (FSMA)).
  - 2.G: Firms in the TPR and FSCR.
- Part 3 sets out feedback to the consultations relating to the Bank (as resolution authority), including changes relating to Bank (as resolution authority) BTS.<sup>6</sup>
- Part 4 sets out feedback to the consultations relating to the Bank (as FMI competent authority), including changes to Bank (as FMI competent authority) BTS and FMI rules.<sup>7</sup>
- Part 5 sets out the Bank's and PRA's obligations under the European Union (Withdrawal) Act 2018 (the 'Act').
- Section B Appendices: EU Exit Instruments, supervisory statements (SSs) and SoP.

## Background

1.3 The UK's withdrawal from the European Union (EU)<sup>8</sup> requires amendments to be made to UK legislation to ensure that it remains functional post-exit. The Act converts directly applicable EU law into UK law and preserves domestic law that relates to EU membership, including domestic law that was introduced to implement EU Directives. This body of law is referred to as 'retained EU law'. The Act also provides Government ministers with powers to make changes to the law so that it continues to operate effectively after the UK's withdrawal

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<sup>4</sup> 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards', October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>.

<sup>5</sup> 'UK withdrawal from the EU: Further changes to 'PRA Rulebook and Binding Technical Standards' and 'Resolution Technical Standards', December 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-further-changes-to-pra-rulebook-bts-and-resolution-bts>.

<sup>6</sup> CP32/18 and Bank CP 'UK Withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards', October 2018: <https://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-boes-approach-to-resolution-sop-and-onshored-binding-technical-standards>.

<sup>7</sup> Bank CP 'UK withdrawal from the EU: Changes to FMI rules and onshored Binding Technical Standards', October 2018: <https://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-changes-to-fmi-rules-and-onshored-binding-technical-standards>.

<sup>8</sup> References in this PS to the EU and/or its Member States include, as appropriate, the European Economic Area (EEA) States of Norway, Iceland and Liechtenstein.

from the EU – these processes are referred to as 'onshoring' or 'Nationalising the Acquis'<sup>9</sup> (NtA).<sup>10</sup>

1.4 HM Treasury has delegated powers under the Act to the financial services regulators<sup>11</sup>, including the Bank and the PRA, through the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018<sup>12</sup> (the 'Regulations'). This gives the regulators responsibility for fixing deficiencies in onshored BTS. The delegated power can also be used by the regulators to make amendments to their respective rules.

1.5 The Bank's amendments to financial services legislation under the Act as set out in the appendices to this PS are to ensure an operable legal framework after the UK leaves the EU, and to reflect onshoring changes made by HM Treasury in the relevant Statutory Instruments (SIs). The Bank set out its approach to making these amendments in CP25/18.

1.6 HM Treasury has committed to provide the financial services regulators, including the Bank and PRA, with transitional powers to give the financial services industry additional time to adjust following a no-deal exit in order to prevent or mitigate disruption that could otherwise arise. This power is conferred through an SI under the Act that was laid in Parliament on Thursday 31 January 2019.<sup>13</sup>

### The Bank's NtA consultations

1.7 This PS provides feedback to responses to the Bank's NtA consultation packages published on Thursday 25 October 2018 and Thursday 20 December 2018:

- Bank Consultation Paper and PRA CP25/18 'The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018';<sup>14</sup>
- PRA CP26/18 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards';<sup>15</sup>
- Bank (as resolution authority) CP 'UK Withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards';<sup>16</sup>
- Bank (as FMI competent authority) CP 'UK withdrawal from the EU: Changes to FMI rules and onshored Binding Technical Standards';<sup>17</sup>
- Bank Consultation Paper and PRA CP32/18 'UK withdrawal from the EU: Further changes to 'PRA Rulebook and Binding Technical Standards' and 'Resolution Binding Technical Standards''.<sup>18</sup>

<sup>9</sup> Acquis refers to the 'acquis communautaire'.

<sup>10</sup> HM Treasury has set out its approach to onshoring EU financial services regulation in 'HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act', June 2018:  
<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>.

<sup>11</sup> Bank, PRA, FCA and Payment Systems Regulator.

<sup>12</sup> <https://www.legislation.gov.uk/ukdsi/2018/9780111171394/contents>, as expected to be amended by The Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019:  
<https://www.legislation.gov.uk/ukdsi/2019/9780111179475/contents>.

<sup>13</sup> The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019:  
<https://www.legislation.gov.uk/ukdsi/2019/9780111179970/contents>.

<sup>14</sup> See footnote 2.

<sup>15</sup> See footnote 4.

<sup>16</sup> See footnote 6.

<sup>17</sup> See footnote 7.

<sup>18</sup> See footnote 5.

1.8 Firms and FMIs should also be aware that the FCA has published feedback on their consultations relating to the UK's withdrawal from the EU, which may be of interest, particularly to PRA-regulated firms.<sup>19</sup>

### Near-final materials

1.9 This PS also contains the near-final materials setting out the Bank's final policy, as follows:

#### Section A: Transitional directions and guidance

1.10 Further to the Bank's approach to the use of transitional powers set out in the Bank's NtA consultations, this PS contains:

- PRA transitional direction instrument (Appendix A.1);
- Bank<sup>20</sup> transitional direction instrument (Appendix A.7);
- two general guidance notes on transitional directions (Appendices A.2 and A.8); and
- six specific guidance notes on transitional directions (Appendices A.3, A.4, A.5, A.6, A.9 and A.10).

#### Section B: Nationalising the Acquis

1.11 Further to the Bank's consultations on changes resulting from the UK's withdrawal from the EU, this PS contains:

##### *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 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 the 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);

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<sup>19</sup> Available at: <https://www.fca.org.uk/publications>.

<sup>20</sup> Excluding the PRA.

- Amendments to onshored BTS in the Bank's (as FMI competent authority) remit (Appendix B.9); and
- Bank<sup>21</sup> 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).

### What 'near-final' means

1.12 The draft instruments and directions mentioned above are published as near-final, and the Bank does not intend to change policy or make significant alterations to the text of the instruments as published as part of this PS. The instruments and directions have been approved for publication by the relevant Bank and PRA governance committees but they have not been formally made at this stage. This reflects that there are some legislative processes that must be completed before the instruments and directions can be made – specifically:

- HM Treasury is required to formally approve any EU Exit Instrument made by the regulators under the Regulations.
- The SI granting the transitional power to the Bank and PRA has not completed its passage through Parliament in time for the directions to be made at this stage and therefore the making of the directions that give effect to the transitional power is subject to Parliament making this SI.<sup>22</sup>

1.13 The instruments and directions, when made, will enter into force on, and apply from, 'exit day'. This is currently defined in the Act as 23.00 on Friday 29 March 2019 and the Bank intends to formally make the instruments and directions before this date.

1.14 It remains unclear whether there will be an Implementation Period<sup>23</sup> after exit day or if exit day will be redefined due to an extension of the Article 50<sup>24</sup> negotiation period. If an Implementation Period is in place or if the Article 50 negotiation period is extended, then the current legislative framework relevant to the Bank's NtA changes will remain in force for the duration of the Implementation Period or extended negotiation period. Therefore, these instruments and directions would not come into effect on 29 March 2019 and would not need to be made prior to that date. In such an event, the Bank will publish an update.

### Summary of responses

#### Bank Consultation Paper and PRA CP25/18

1.15 The Bank received 13 responses to CP25/18 (7 covered both CP25/18 and PRA CP26/18).

1.16 Respondents broadly welcomed the Bank's overall NtA approach being consistent to that of HM Treasury. Some noted a preference for maintaining the existing preferential treatment relating to the EU. One respondent argued that there should be capital neutrality, rather than moving to third country treatment of EU exposures but also recognised that this is a change that is being made across HM Government legislation and welcomed the proposed use of transitional powers as providing some mitigating effect.

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<sup>21</sup> As FMI competent authority.

<sup>22</sup> See footnote 13.

<sup>23</sup> A draft Withdrawal Agreement was agreed in November 2018. The draft Withdrawal Agreement provides for an implementation period ending on 31 December 2020 (the 'Implementation Period'):  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/759019/25\\_November\\_Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf).

<sup>24</sup> Treaty on European Union (TEU).



1.17 Respondents supported the Bank's decision not to amend SSs, SoPs, EU Guidelines and Recommendations pre-exit, but they argued that post exit, the Bank should consolidate these different materials so that firms do not need to keep referring to EU documents and future changes should be subject to consultation and cost benefit analysis.

1.18 Respondents requested clarity on the Bank's approach to other EU materials such as European Supervisory Authority (ESA) Opinions, and Questions and Answers (Q&As).

1.19 The majority of feedback was on the use of the transitional power, particularly on the three exceptions outlined in CP25/18. Respondents supported the Bank's proposed broad use of transitional relief, so that firms in all but limited circumstances do not need to prepare now to implement onshoring changes. Respondents requested further clarity on how this would work in practice, for instance whether firms need to apply. Respondents also made points in relation to duration, where they want to have transitional relief as long as possible, scope, and alignment between the PRA and FCA where they preferred the approaches to be in line. Section A of this PS discusses the expected use of the transitional power in detail.

### PRA CP26/18

1.20 The PRA received 31 responses to CP26/18 (including those also covering CP25/18).

1.21 The majority of responses focused on specific aspects of the transitional relief proposals. This is discussed in Section A.

1.22 Respondents requested clarity on a number of areas and issues within CP26/18, eg whether pure reinsurance branches would now fall within scope of the third country branch rules.

1.23 Respondents also queried aspects of how the Senior Managers and Certification Regime (SM&CR) would apply to firms in the TPR and Supervised Run-off regime (SRO). In particular, respondents queried the interaction between the PRA's and FCA's proposals, the application of prescribed responsibilities and differentiating of senior management functions from those usually applied.

### Bank Consultation Paper and PRA CP32/18

1.24 The Bank received five responses to CP32/18. Respondents largely supported the proposals and made points in relation to clarity of PRA materials post-exit, securitisation BTS yet to be adopted and requested additional clarification on aspects of FSCR.

### Consultations relating to the Bank (as resolution authority)

1.25 The Bank received five responses specific to the resolution consultations<sup>25</sup>, which were largely supportive of the proposals. Respondents requested clarity on legacy EU law governed minimum requirements for own funds and eligible liabilities (MREL) and on the application of transitional relief in relation to resolution issues. Respondents also commented on Stay in Resolution rules and raised the same issues as in relation to PRA CP26/18.

### Consultation relating to the Bank (as FMI competent authority)

1.26 The Bank received four responses to the FMI consultation paper<sup>26</sup>. Respondents generally supported the Bank's overall approach to onshoring the relevant BTS and FMI rules. One respondent agreed with all of the proposals and provided no further comment.

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<sup>25</sup> See footnote 6.

<sup>26</sup> See footnote 7.

Comments from the other three respondents covered a number of technical drafting points as well as queries on issues such as reference points for EUR exchange rates and how to treat ESA Level 3 material.

### Changes to draft policy

#### Changes made to the use of the transitional power

1.27 The Bank considers that a broad use of the transitional power is needed to provide firms with certainty, ensure continuity, and mitigate the risk of disruption to firms of having to implement thousands of onshoring changes by exit day. The Bank noted in CP25/18 that it was considering the duration of the transitional relief, with a view to ensuring that firms and FMIs could implement these changes in an orderly way. This PS sets out that the Bank intends to provide transitional relief for 15 months. This would be extendable up to 2 years should circumstances warrant this.

1.28 The Bank has identified further exceptions to the use of the transitional power (in addition to those exceptions that the Bank consulted on in October). In particular, these relate to:

- (i) provisions that already contain specific transitional or savings provisions and so use of the transitional power is not required. This notably includes the temporary permissions and recognition regimes and changes relating to Gibraltar; and
- (ii) exemptions for central banks and other bodies from certain requirements, where HM Treasury will have the power to provide exemptions from those requirements.

1.29 The Bank has also clarified the interaction between the use of the transitional power and equivalence decisions and equivalence directions made by HM Treasury, which results in some additional exceptions to the use of the transitional power.

1.30 There are two additional specific transitional provisions that have been made to relevant BTS and PRA rules. A specific transitional provision:

- (i) on bilateral margining has been made through the EMIR No. 3 BTS instrument<sup>27</sup> (Appendix B.3); and
- (ii) for credit unions' existing EEA deposits is made through an amendment to the Credit Union Part of the PRA Rulebook (Appendix B.2).

1.31 The details of these changes are set out in Section A of this PS.

#### NtA changes made under the Act

1.32 The Bank's overall NtA policy remains unchanged from that consulted on and the changes made to the draft instruments are minimal. Most have arisen from respondents spotting minor errors, drafting clarifications or format changes.

1.33 The Bank has also undertaken a consistency check of the made (or laid) SI text to pick up any relevant changes introduced in the final versions of the text compared to the versions that the draft instruments for consultation were based on.

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<sup>27</sup> EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (EU EXIT) (No. 3) INSTRUMENT 2019.

1.34 The minor changes that have been made to the near-final EU Exit instruments appended to this PS since consultation include:

- clarificatory changes to reflect responses received to the Bank's consultations;
- other changes to clarify existing rules and proposals in light of the UK's exit;
- changes made following further consultation with the FCA;
- consequential changes to changes made by HM Treasury to the relevant underlying SI since the Bank's consultations; and
- minor administrative and corrective changes to ensure the accuracy of the PRA Rulebook and amended BTS.

1.35 There are two areas where the PRA has adjusted the policy consulted on as a result of feedback and developments in HM Treasury policy. Those changes are reflected in changes to the PRA Rulebook in the following policy areas:

- Senior Management Functions Part of the PRA Rulebook: prescribed responsibilities for use by firms in the TPR; and
- Depositor Protection Part of the PRA Rulebook: minor changes to reflect policy on the treatment of Gibraltar.

1.36 The details of these changes are set out in Section B, Part 2 of this PS.

1.37 As highlighted in paragraph 1.30 above, there are two areas where the PRA has given effect to specific transitional provisions through changes to onshored BTS and PRA rules. The details of these changes are set out in Section A of this PS.

#### **NtA changes made under FSMA**

1.38 There is only one area relating to FSCS levies which was consulted on under FSMA.<sup>28</sup> As set out in Section B, Part 2.F of this PS, there have not been any changes to the rules regarding FSCS levies since the consultation.

#### **Implementation and next steps**

1.39 As noted in paragraph 1.12 above, all EU Exit Instruments and directions appended to this PS, including those giving effect to the transitional power, are 'near final'.

1.40 The Bank will communicate when the EU Exit Instruments, directions and policy materials appended to this PS, including the directions that give effect to the transitional power, are formally made and the final policy is confirmed to enter into force on, and apply from, exit day.

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<sup>28</sup> Section 138J(5) and 138K(4).

## Section A: Use of the transitional power

This Section sets out the Bank and PRA's detailed approach to the use of the transitional power. First, it provides elements of background on the transitional power. It then sets out feedback to the responses received on the Bank's and PRA's proposed use of the transitional power. Third, it provides information on the implementation of the Bank's and PRA's approach to the transitional power and next steps. It is applicable to all regulated entities.

This Section should be read in conjunction with Appendices A.1, A.2 and A.7, A.8, which include near-final directions and general guidance that implement the PRA's and Bank's approaches to the transitional power respectively. Appendices A.3 to A.6, A.9 and A.10 provide additional guidance to help firms and FMIs interpret the specific effects of the directions in relation to obligations in the onshored Capital Requirements Regulation (CRR) (Appendix A.3), Solvency II (Appendix A.4), the Securitisation Regulation (Appendix A.5) and the PRA Rulebook (Appendix A.6), and obligations relating to FMIs (Appendix A.10) and resolution (Appendix A.9).

### 1 Background

#### Summary of the Bank's proposals on the use of the transitional power

1.1 In October 2018, the Bank consulted on its general approach to the use of the transitional power, in the event that there is no Implementation Period.<sup>29</sup>

1.2 The Bank expected to use the transitional power in such a manner that would ensure that firms and FMIs providing services within the Bank's regulatory remit did not generally have to prepare now to implement onshoring changes by exit day.

1.3 The Bank considered exercising the transitional powers in a broad way to delay the application of onshoring changes that would otherwise result in firms or FMIs needing to take action before exit to comply with them, with certain limited exceptions.

1.4 The PRA had identified three areas – Contractual Recognition of Bail-In rules, Stay in Resolution rules and FSCS rules – where granting transitional relief could undermine the PRA's statutory objectives. For these areas, the PRA expected firms to comply with onshoring changes by 29 March 2019 in the absence of an Implementation Period.

1.5 The Bank did not consult on the duration of the transitional relief. CP25/18 noted that duration would be considered with a view to ensuring that firms and FMIs could implement these changes in an orderly way.

1.6 In addition, CP26/18 set out a specific approach to the use of the transitional power in relation to firms within the TPR.

#### Statutory Instrument introducing the transitional power

1.7 When the Bank consulted on the use of the transitional power, HM Treasury had set out its intention to legislate to provide the financial services regulators with a temporary power to introduce transitional relief that could be used to phase in onshoring changes that alter firms' and FMIs' regulatory obligations.

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<sup>29</sup> <https://www.bankofengland.co.uk/news/2018/october/boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

1.8 On 31 January 2019, HM Treasury laid in Parliament the 'Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019' draft SI<sup>30</sup> (the 'FSMA SI') that is expected to introduce the transitional power. The power could be applied to any obligation that the Bank or PRA (or FCA) is responsible for supervising, or has other functions relating to a person's compliance with the obligation, and which is changing as a result of an SI made under the Act. This includes onshoring changes that the Bank and PRA are making to rules and BTS as set out in this PS, as well as any such changes to onshored EU legislation or EU-derived domestic legislation that Government makes using its powers under the Act.

1.9 The use of the power would be subject to certain limitations and exceptions. It could only be used to prevent or mitigate disruption that could reasonably be expected to arise for firms and FMIs, on an individual or collective basis, where the Bank and PRA are satisfied that using the power would not adversely affect the advancement of the Bank's and PRA's statutory objectives. The power could only be used for a period of two years after exit and any transitional direction could not have effect more than two years after exit. Also, the power cannot be used in relation to an obligation relating to firms meeting threshold conditions for authorisation.

1.10 At the time of publication of this PS, the FSMA SI is yet to be made. As a result, the directions and guidance contained in Appendices A.1 to A.10, are published as 'near-final'. Once the FSMA SI is made, and in a scenario in which the UK withdraws from the EU with no Implementation Period, the final directions will be made and published alongside the final guidance.

#### Obligation to consult with HM Treasury and the FCA on the use of the transitional power

1.11 The Bank and PRA are required to consult HM Treasury on a draft of the proposed directions implementing the approach to the transitional power. The Bank, PRA and FCA are also subject to an obligation to consult each other on how they use the transitional power.

1.12 Consistent with these obligations, the approach set out in this PS has benefited from close co-ordination and consultation with HM Treasury and the FCA. The Bank, PRA and FCA have actively engaged and ensured that their respective approach to the use of the transitional power is generally aligned. Draft directions in relation to the implementation of the transitional power have been shared between the Bank, PRA, FCA and HM Treasury.

1.13 The Bank welcomes the FCA's statement published on Friday 1 February 2019 setting out their proposed approach to the use of the transitional power.<sup>31</sup> The Bank and PRA are satisfied that the financial services regulators are, to the extent possible, aligned in the way they implement the transitional power.

#### Obligations to provide an explanation, guidance where appropriate, and an annual report to Parliament on the use of the transitional power

1.14 The FSMA SI provides that regulators must prepare an explanation of the purpose of the direction, such guidance in connection with the direction as the regulators consider appropriate and a statement that they are satisfied that the statutory criteria for making the directions are met.

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<sup>30</sup> See footnote 13.

<sup>31</sup> 'Brexitee – what we expect firms and other regulated persons to do now': <https://www.fca.org.uk/news/statements/brexit-what-we-expect-firms-now>.

1.15 This PS, alongside the directions and guidance set out in Appendices A.1 to A.10, meets these obligations. The PS provides firms and FMIs with an explanation of the Bank's approach to the use of the transitional power.

1.16 The FSMA SI also notes that regulators must provide annual reports to Parliament in relation to the exercise of the powers. The Bank and PRA intend to report on the use of the power after the end of the first calendar year in which the power was used (ie after end 2019).

## 2 Feedback to responses received

2.1 This chapter first sets out the feedback to responses received on the Bank's proposed general approach to the use of the transitional power. It then provides feedback to responses received on the specific use of the transitional power for EEA firms entering into the TPR and FSCR.

### Feedback to responses received on the Bank's and PRA's proposed general approach to the use of the transitional power

#### Broad use of the transitional power

2.2 Respondents supported the Bank's proposed broad use of transitional relief so that firms and FMIs in all but limited circumstances did not need to prepare now to implement onshoring changes.

2.3 The Bank therefore confirms the proposed broad use of the transitional power, subject to limited exceptions as set out in paragraphs 2.27 to 2.55 of Section A.

2.4 This approach is needed to provide certainty, ensure continuity, and mitigate the risk of disruption to firms and FMIs of having to implement all onshoring changes by exit day. It will effectively provide a 'standstill' for firms and FMIs. They will be subject to pre-exit requirements for the duration of the transitional relief, at the end of which all onshoring changes will apply.

2.5 The broad use of the transitional power will give firms and FMIs time to consider onshoring changes and prepare accordingly. This is in line with the Bank's and PRA's approach to operational resilience, ensuring systems are thoroughly tested with appropriate governance and controls. The aim is to minimise the risk of avoidable systems disruptions which ultimately inconvenience customers and, at the extreme, could affect financial stability.

#### Duration of the transitional relief

2.6 A number of respondents requested that transitional relief last for two years. Some respondents noted that other transitional regimes (for example the TPR) provided a longer transitional period. Respondents also requested that the Bank, PRA and FCA align their respective approaches on the duration of the transitional relief.

2.7 In light of these responses and considering the size and scale of onshoring changes, the Bank intend to provide transitional relief for 15 months. This would be extendable up to two years should circumstances warrant it.

2.8 The Bank and PRA typically give firms between 6 to 12 months to implement significant system changes. The Bank and PRA therefore consider that 15 months should provide an adequate timeframe for firms and FMIs to prepare and implement the totality of onshoring changes.

2.9 There is one specific area, relating to the use of credit ratings, where the Bank and PRA intend to provide a shorter transitional relief of twelve months. This is further detailed in paragraph 2.16 of Section A.

2.10 The Bank's and PRA's approach to the duration of the transitional relief is in line with the FCA's approach.

### **Clarifying the implications for firms and FMIs of the Bank's broad use of the transitional power**

2.11 A number of respondents requested further clarity on how the transitional power would apply in practice.

2.12 Key implications of the Bank's use of transitional powers are set out below. This list of examples is not exhaustive.

2.13 Firms and FMIs should read this PS alongside the transitional directions and additional guidance set out in Appendices A.1 to A.10 to determine the specific effects of the directions in relation to all relevant financial services legislation.

### **Exposures to EU assets and firms**

2.14 The use of the transitional power means that firms and FMIs will continue to treat, for 15 months after exit, EU exposures and assets preferentially, under the applicable capital frameworks, and under the CRR liquidity and large exposure regimes. For example, with regards to liquidity requirements, firms may continue to recognise claims on EU sovereigns as level 1 assets.

### **Use of credit ratings issued by EU credit rating agencies**

2.15 The use of the transitional power means that firms will be provided with a run-off period in which they can continue to use, for regulatory purposes, credit ratings issued or endorsed, before exit day, and not immediately withdrawn before exit day, by EU credit ratings agencies without an affiliate which has, before exit day, registered with the FCA or applied for registration.

2.16 In this specific area, transitional relief would only be provided for a period of 12 months after exit. This time period aligns with the existing transitional provision in the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019<sup>32</sup> (the 'CRA SI'), which provides for the continued regulatory use of ratings issued or endorsed (and not withdrawn) by EU CRAs with a group affiliate registered or applying for registration in the UK on exit day.

2.17 The cumulative effect of the run-off period applied by the transitional power and the separate transitional provision in the CRA SI is that UK firms may, for a period of one year beginning with exit day, use a credit rating for regulatory purposes if it was issued or endorsed by an EU credit rating agency before exit day and was not withdrawn immediately before exit day.

### **Group supervision and consolidation requirements**

2.18 The use of the transitional power means that, for 15 months after exit:

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<sup>32</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111176696/contents>.



- UK groups that are part of EU headquartered banking groups would not need to comply with consolidated liquidity requirements at the UK level;
- firms may continue to prepare and maintain a group recovery plan and a group resolution pack on the same basis as before exit day. As such, firms are not required to prepare and maintain a UK specific (rather than EEA) group recovery plan and a group resolution pack, in circumstances where the PRA is not the EEA consolidating supervisor on exit day;
- groups with an EEA group supervisor, and any UK sub-groups they may have, will not be subject to group supervision by the PRA unless or until the group ceases to be supervised by an EEA group supervisor, unless or until the PRA decides it is appropriate;<sup>33</sup> and
- financial conglomerates with an EEA coordinator, and any UK sub-groups they may have, will not be subject to supplementary supervision by the PRA unless or until the group ceases to be supervised by an EEA coordinator, unless or until the PRA decides it is appropriate<sup>34</sup>.

### Reporting and disclosure

2.19 The use of the transitional power means that for 15 months after exit, firms would continue to report and disclose regulatory data (for the purposes of CRR and Solvency II) on the same basis as before exit day.

2.20 In particular, the level of application of CRR and Solvency II reporting and disclosure requirements will remain unchanged while the transitional relief is in effect, and firms should continue to report and disclose data according to the same methodology as used for reporting and disclosure before exit. This is explained in SS2/19 (Appendix B.5 of Section B) which sets out the PRA's expectations for how firms should interpret reporting and disclosure requirements after the UK's withdrawal from the EU.

2.21 In addition, the Bank in its capacity as resolution authority confirms that the transitional power will be used to provide relief from the application of changes where EU Exit Instruments impose new or different obligations to those that applied immediately prior to exit day. Specifically in the context of requirements under BTS 2018/1624<sup>35</sup>, a UK parent undertaking:

- (a) newly in scope of a reporting obligation solely by virtue of amending the term 'Union parent undertakings' to 'UK parent undertakings', will not be subject to the new reporting obligation until the end of the transitional relief; or
- (b) already in scope of the reporting obligation prior to the UK's withdrawal from the EU will continue to report on the basis of the existing definitions in the templates until the end of the temporary transitional period, ie no changes are required in practice to the information submitted. Consistent with the principle in paragraph 8 of the Bank's transitional direction (Appendix A.7), the Bank expects firms to interpret EU references in such a way as to achieve this effect. For example, the reference to Deposit Guarantee Scheme (DGS) membership in Annex 1, template 'Z 06.00 – Deposit Insurance (DIS)' of the resolution planning BTS 2018/1624 should be interpreted as including the FSCS. The Bank

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<sup>33</sup> The PRA will only be able to grant this transitional relief if Parliament approves the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019, which were laid before Parliament on Thursday 21 February 2019: <http://www.legislation.gov.uk/ukdsi/2019/9780111181799/contents>.

<sup>34</sup> The PRA will only be able to grant this transitional relief if Parliament approves legislation that relieves the PRA of its obligation to apply supplementary supervision to financial conglomerates with an EEA coordinator.

<sup>35</sup> Commission Implementing Regulation (EU) 2018/1624. See Appendix B.7: EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RECOVERY AND RESOLUTION) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT 2019.



has published guidance on its website<sup>36</sup> for how firms should interpret the resolution templates after the transitional period, when EU references should be replaced by their UK equivalent concepts.

### Audit requirements

2.22 The use of the transitional power means that a firm which is currently entitled to the exemption under Rule 1.2 of the Audit Committee Part of the PRA Rulebook because it has an EEA parent that complies with the Audit Committee rules or with Article 39 of the Statutory Audit Directive<sup>37</sup> can continue to take that exemption until 29 June 2020 and only at that point will it need to have an audit committee.

### Specific areas where transitional relief is introduced directly by making changes to technical standards and rules

#### Bilateral margining

2.23 Given the complexity of the onshoring changes, the PRA has replicated the effect of the application of the general transitional power with specific amendments within the regulatory technical standard (RTS) on bilateral margining under the European Market Infrastructure Regulation (EMIR).<sup>38</sup> Firms can therefore continue to rely on existing operational and legal arrangements for compliance with this RTS.

2.24 The Bank and PRA would like to highlight two aspects:

- counterparties may elect to comply with the narrower onshored RTS requirements at any point during the transitional period. In many cases, the RTS already provides firms discretion in how to comply with the requirements. For instance, firms may already accept a more limited range of collateral than permitted under the RTS. This approach also allows firms to spread the operational challenges over the full transitional period, (ie 15 months) rather than concentrated at a single end-date; and
- the RTS supplements transitional provisions provided for in the CRA SI (and the general use of the transitional tool with respect to credit ratings as set out above) to extend the transition for use of regulatory ratings to apply to non-financial firms. The specific transitional period within the RTS is aligned with that of the CRA SI (ie 12 months).

2.25 Further information can be found in Section B, Part 2.B.

#### Credit unions' investments in the EEA

2.26 The PRA has made a change to PRA rules so that credit unions will be able to hold pre-exit EEA investments to maturity (maximum of 5 years) but any (non UK) EEA investments made post exit cannot have a maturity that exceeds the duration of the transitional relief. Further information can be found in Section B, Part 2.E.

### Exceptions to the general use of the transitional power

#### Exceptions consulted on in October 2018

2.27 The Bank confirms that its policy is unchanged with respect to the three exceptions to the use of the transitional power identified by the Bank and PRA in their October consultations.

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<sup>36</sup> Available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

<sup>37</sup> Directive 2014/56/EU.

<sup>38</sup> Commission Delegated Regulation (EU) 2016/2251. See Appendix B.3: EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (EU EXIT) (No. 3) INSTRUMENT 2019.

*(i) and (ii) Stay in Resolution and Contractual Recognition of Bail-In rules*

2.28 In CP26/18, the PRA proposed exceptions from the general use of the transitional power in relation to the Stay in Resolution and Contractual Recognition of Bail-In rules. These exceptions were proposed due to the importance of these rules in executing resolution.

2.29 The PRA proposed to exclude the Stay in Resolution rules from the general use of the transitional power, so the requirement to include a contractual recognition term would apply to new or materially amended EEA law<sup>39</sup> governed financial arrangements after exit day.

2.30 The PRA also proposed that EEA law governed liabilities, other than phase two liabilities,<sup>40</sup> that are issued or materially amended after exit day, and are subject to the PRA's Contractual Recognition of Bail-In rules, would not be subject to the transitional power. The PRA proposed to use the transitional power in respect of new or materially amended EEA law governed phase two liabilities after exit day. This means that firms do not need to add contractual recognition clauses to unsecured liabilities that are not debt instruments during the transitional period.

2.31 Respondents broadly supported the PRA's policy proposal to use the transitional power to delay the onshoring changes relating to EEA law governed phase two liabilities in scope of the Contractual Recognition of Bail-In rules. One respondent noted that time would be needed to put in place arrangements to comply with the contractual recognition requirement in respect of EEA law-governed liabilities, other than phase two liabilities, in scope of the rules.

2.32 Respondents also expressed the view it would be burdensome to amend existing agreements, to the extent that this was required, to comply with the Stay in Resolution rules from exit day.

2.33 Two respondents argued that the Stay in Resolution rules should be subject to transitional relief to align the treatment with phase two liabilities under the Contractual Recognition of Bail-in rules. They asserted that not granting the transitional relief in respect of the Stay in Resolution rules could undermine the transitional relief for phase two liabilities also in scope of the Contractual Recognition of Bail-In rules.

2.34 The PRA does not propose to change its policy proposals, and maintains its view that these rules are important to the resolvability of firms. The PRA recognises that these exceptions to the general use of the transitional power may require firms to take certain measures to comply with the rules from exit day, but respondents did not provide evidence that the burden would outweigh the importance of these rules for resolvability.

*(iii) FSCS Protection*

2.35 Respondents were generally in agreement with the FSCS proposals (see Section B, Part 2.F). Three respondents expressed the view it was unreasonable to expect deposit-takers to comply with the FSCS-related customer disclosure and Single Customer View (SCV) requirements by exit day and that a transitional should be provided for those rules.

2.36 The PRA recognises that in the past it has provided more time for deposit-takers to comply with similar rule changes on customer disclosure and SCV and that compliance may be challenging for some firms. However, the PRA is not including a transitional for the changes to the Depositor Protection Part of the PRA Rulebook (or other FSCS-related rules); the changes

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<sup>39</sup> In this part, the reference to EEA law is as it would be after exit day and does not cover UK law.

<sup>40</sup> Phase two liability means an unsecured liability that is not a debt instrument.

to the scope of protection and the requirements on both new and existing FSCS members will apply immediately.

2.37 It is the PRA's view that in the unique context of the UK's withdrawal from the EU and the changes to FSCS protection, depositors need accurate information about depositor protection and for financial stability reasons firms need to be able to provide SCV information to the PRA or the FSCS to enable pay-out within 7 days.

2.38 Templates reflecting the requirements for posters and stickers will be available from the FSCS website.

### **Additional exceptions**

2.39 The Bank has identified further exceptions to the use of the transitional power in addition to those consulted on in October.

2.40 The majority of these exceptions should not require firms to make any changes before exit day. Further information on specific exceptions is set out below.

#### ***(i) Additional exceptions relating to both the Bank and PRA-regulated entities***

2.41 The Bank and PRA will not use the transitional power in relation to:

- (i) provisions that already contain specific transitional or savings provisions and so use of the transitional power is not required. This notably includes provisions in relation to the temporary permissions and recognition regimes and changes relating to Gibraltar; and
- (ii) exemptions for central banks and other bodies from certain requirements, where HM Treasury will have the power to provide exemptions from those requirements.

#### ***(ii) Additional exceptions specifically relating to PRA-regulated firms***

2.42 The PRA has identified three areas where additional specific exceptions will be made in relation to its use of transitional powers for PRA-regulated firms:

##### ***(a) Obligations relating to the Securitisation Regulation***

2.43 The amendments made to the Simple, Transparent and Standardised (STS) framework in the onshored Securitisation Regulation<sup>41</sup> already achieve the intended objective of the transitional power by removing barriers to a UK STS market which would be introduced following the UK's withdrawal from the EU. The PRA does not consider that these onshoring changes are disruptive for firms and therefore obligations relating to STS securitisation are exempt from the use of the transitional power. This includes the modifications to Article 270(a) CRR and introduction of 270(aa) to the onshored version of CRR.

2.44 The transitional power will also not be used in relation to obligations relating to securitisation repositories. This is to ensure that UK regulators are able to exercise appropriate oversight of the UK securitisation market, given that access to non-UK securitisation repositories by UK regulators may face barriers in the event of no-deal before the UK's withdrawal from the EU. This would adversely affect the advancement of the PRA's and FCA's statutory objectives. Therefore, firms will be required to make information on securitisations which are not 'private' available through a securitisation repository authorised by the FCA

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<sup>41</sup> 'The Securitisation (Amendment) (EU Exit) Regulations 2019' draft SI: <http://www.legislation.gov.uk/ukdsi/2019/9780111179024/contents>.

(where one exists) rather than to repositories based in the EU following the UK's withdrawal from the EU.

2.45 The PRA is not responsible for supervising any obligations which relate to Third Party Verifiers (TPVs). However, the PRA supports the decision of the FCA to exempt obligations relating to TPVs from the scope of the FCA transitional relief.

*(b) Accounting and audit legislation*

2.46 References in PRA rules, onshored legislation and BTS to International Accounting Standards (IAS) should be read as references to EU-adopted IAS throughout the transition period unless and until a firm is required to move from EU-adopted IAS to UK-adopted IAS. This exception to the use of the transitional power has been made in order to avoid firms needing to potentially refer to two separate accounting requirements – one for statutory accounts purposes and another for the purpose of complying with PRA rules and relevant legislation.

2.47 As a result of the transitional power not applying to provisions that already contain specific transitional or savings provisions, the end dates of the transitional provisions contained in the Audit Committee Part of the PRA Rulebook are unchanged by the transitional power. Audit Committee 4.1 to 4.4 give relief until financial years beginning on or after 17 June 2018 and this period of application is not affected by the transitional power.

*(c) Technical information produced by EU authorities*

2.48 EU authorities are currently responsible for the publication of various registers, lists and technical information. For example, the European Insurance and Occupational Pensions Authority (EIOPA) is responsible for publishing technical information under Article 77e of the Solvency II Directive<sup>42</sup> that insurers use for regulatory valuations.

2.49 Where the PRA will be responsible for publishing that information on exit, firms should use information published by the PRA after exit, rather than continuing to rely on the EU information published by EIOPA.

*(iii) Additional exceptions specifically relating to FMIs*

2.50 The Bank<sup>43</sup> has identified the following further exceptions in relation to its use of transitional power for FMIs. In accordance with paragraphs 2.41 and 2.59 of Section A, these mainly relate to the interaction with specific transitional regimes and equivalence decisions and equivalence directions. The Bank's approach is aligned with that of the FCA in these areas.

*(a) Central counterparty (CCP) obligations under the Markets in Financial Instruments Regulation (MiFIR)*

2.51 The transitional power does not at this time apply to any relevant obligations for central counterparties (CCPs) under the Markets in Financial Instruments Regulation (MiFIR) and relevant BTS. As set out in paragraph 2.59 of Section A, the Bank and PRA will not use the transitional power in relation to areas in the onshored MiFIR where the effect of the transitional power could be achieved by HM Treasury making an equivalence decision or direction.

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<sup>42</sup> Directive 2009/138/EC.

<sup>43</sup> As FMI competent authority.

*(b) Specific CCP obligations under EMIR*

2.52 The transitional power does not at this time apply to any relevant obligations for CCPs relating to the definition of over-the-counter (OTC) derivative in Article 2 of EMIR. As set out in paragraph 2.59 of Section A, the Bank and PRA will not use the transitional power in relation to areas in the onshored EMIR where the effect of the transitional power could be achieved by HM Treasury making an equivalence decision or direction.

2.53 The transitional power does not apply to the arrangements that the UK has put in place for the temporary and permanent recognition of CCPs. Specifically:

- the transitional power does not apply to the requirement for a third country CCP to notify the Bank of any material changes affecting the conditions of its recognition under Article 25(4) of EMIR;
- the transitional power does not apply to the CCP temporary recognition regime; third country CCPs providing clearing services under this regime will be 'deemed recognised' under Article 25 of EMIR, and any relevant obligations will need to be complied with as set out therein; and
- similarly, the transitional power does not apply to third country CCPs providing clearing services under the 'run-off regime' set out in the Financial Services Contracts (Transitional and Savings Provision) (EU Exit) Regulations 2019<sup>44</sup> (the 'FSCR SI').

*(c) Amended settlement finality regulations and the temporary designation regime*

2.54 The transitional power does not apply to the arrangements that the UK has put in place to extend settlement finality protection to FMI's not governed by UK law and to certain third country central banks. Specifically, the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019<sup>45</sup> are exempt from the use of the transitional power. These regulations give the Bank powers to grant permanent designation to FMI's that are not governed by UK law and establishes a temporary designation regime for FMI's that are currently designated in other EEA states. The Bank also has the ability to extend UK settlement finality protection for collateral security to certain third country central banks.

*(d) Central Securities Depositories Regulation (CSDR)*

2.55 The transitional power does not apply to the arrangements that the UK has put in place for the recognition of third country Central Securities Depositories (CSDs). Specifically:

- the transitional power does not apply to the requirement for a third country CSDs to notify the Bank of any material changes affecting the conditions of its recognition under Article 25(6A) of CSDR; and
- Articles 69 of CSDR as amended by the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018<sup>46</sup> is exempt from the transitional power. This exempts the transitional regime for third country CSDs which allows for continuity of settlement services following the UK's withdrawal from the EU.

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<sup>44</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111178416/contents>.

<sup>45</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111176887/contents>.

<sup>46</sup> <http://www.legislation.gov.uk/ukdsi/2018/9780111174050/contents>.

### Clarifying the interaction between the use of the transitional power and equivalence decisions and equivalence directions

2.56 In certain areas, use of the transitional power will temporarily produce the same effects as HM Treasury finding the EU jurisdictions equivalent under specific provisions in UK legislation.

2.57 For example, if HM Treasury found the EU equivalent under Article 114(7) of the onshored CRR, UK banks on the standardised approach to credit risk would be able to continue to 0% risk weight their exposures to EU sovereign debt. Similarly, as explained in paragraph 2.14 of Section A, the PRA's broad use of the transitional power will allow firms to continue to treat EU exposures, including sovereign exposures, preferentially for 15 months.

2.58 Overall, the Bank's use of the transitional power will achieve the same outcomes, for the duration of the transitional relief, as HM Treasury making an equivalence decision under the onshored CRR and Solvency II in relation to the EU, or an equivalence direction under the same provisions using the power of direction provided for in the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.<sup>47</sup>

2.59 However, in coordination with the FCA, and as detailed in paragraph 2.51 to 2.53 of Section A, the Bank and PRA will at this time exempt all areas of the onshored MiFIR and certain areas of EMIR from the scope of the transitional power where the effect of the transitional power could be achieved by HM Treasury making an equivalence decision or equivalence direction. The Bank does not consider that it needs to use the transitional power at this stage in these areas to mitigate financial stability risks. The Bank's approach is consistent with the FCA's approach in this regard. The Bank will keep this approach under review noting that HM Treasury may decide to make an equivalence decision or equivalence direction in these areas.

### Feedback on the specific approach to the use of the transitional power for firms in the TPR and SRO

2.60 In CP26/18 and CP32/18 the PRA stated that it expected firms in the TPR and SRO to meet UK third-country requirements from exit day and in the absence of an Implementation Period, whereby firms with an establishment in the UK will have to comply with third country branch rules and firms without an establishment will have to comply with a more limited set of rules.

2.61 The PRA also indicated that, in the absence of an Implementation Period following the UK's withdrawal from the EU, it would use its transitional powers to grant transitional relief in four areas of third country branch requirements: (i) branch Solvency and Minimum Capital Requirements for insurance branches; (ii) PRA remuneration rules where they go beyond minimum CRD IV requirements; (iii) certain reporting obligations where they involve the segregation of branch data and the reporting and review of this data where this is not already required; and (iv) certain composite rules for insurance branches.

2.62 In general, firms welcomed the availability of transitional relief for firms in TPR and SRO. Several respondents requested information on the specific details of the transitional relief for firms in the TPR and observed that the period of the TPR did not align with the length of the transitional relief and advocated alignment. One respondent suggested that a full set of third country branch requirements should only be applied when a firm exits the TPR or at a

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<sup>47</sup> <https://www.legislation.gov.uk/ukdsi/2019/9780111178607/contents>.

minimum should be phased in over the three years of the TPR. Specifically on the remuneration rules where they go beyond CRD IV firms stated that they would welcome transitional relief to the end of the performance year in which TPR commences.

2.63 Having considered the feedback and consistent with the general approach to transitional relief, the PRA has decided to provide transitional relief as per Table A below. In calibrating the duration of transitional relief for each set of requirements the PRA had regard to its safety and soundness objective and its principle of risk based, proportional approach to supervision.

**Table A**

Duration of transitional relief	Third country branch requirements	Firms to which transitional relief applies
First performance year starting on or after the date falling 3 months after exit day	Remuneration rules where they go beyond CRD IV requirements: <ul style="list-style-type: none"> <li>- Deferrals</li> <li>- Clawbacks</li> <li>- Buyouts</li> <li>- Risk Adjustment</li> <li>- Personal Investment Strategies</li> </ul>	Firms in TPR Firms in SRO Ex-passporting firms that have gained Part 4A authorisation
3 months	Status disclosure requirements to retail customers	Firms in TPR Firms in SRO
6 months	Solvency II qualitative reporting – ORSA and RSR reports in respect of branch operations excluding information related to the branch SCR and MCR.	Firms in TPR Firms in SRO
15 months	Bank branch level P&L reporting (No transitional relief to be provided for TC bank branches liquidity reporting and bank annual report and accounts)	Firms in TPR Firms in SRO



Duration of transitional relief	Third country branch requirements	Firms to which transitional relief applies
15 months	Branch solvency and minimum capital requirements for insurance branches <ul style="list-style-type: none"> <li>- Branch SCR and branch MCR calculations</li> <li>- Localisation and deposit of assets</li> <li>- Branch scheme of operations</li> </ul>	Firms in TPR  Firms in SRO
	Solvency II quantitative reporting	
	Solvency II qualitative reporting – Complete branch ORSA and branch RSR	
	Composites rules relating to calculation of notational minimum capital requirement	

2.64 As outlined in Table A and in line with the FCA's proposals, the PRA will grant firms in the TPR and SRO a three month transitional relief in respect of the requirement to use specific, bespoke wording for their status disclosures to retail customers. During those three months of transitional relief, firms would be able to use either the existing wording for EU firms or the new prescribed wording.

2.65 Firms in the TPR should also note the specific rule change being made to the prescribed responsibilities applicable in the TPR as set out in Section B, Part 2.G.

### **Impact of transitional relief on the Bank's and PRA's statutory objectives**

2.66 Under the FSMA SI, the Bank and PRA are required to state that they are satisfied that the proposed set of directions would not adversely affect the advancement of their objectives.

2.67 For the reasons set out above, the:

- Bank is satisfied that the proposed directions would not adversely affect its financial stability objective; and
- PRA is satisfied that the proposed direction would not adversely affect its objectives.



2.68 In summary, the Bank's and PRA's broad approach to their use of the transitional power is in line with the approach of the Bank and PRA to safety and soundness and financial stability. Further, because firms and FMIs will remain subject to pre-exit requirements for the duration of the transitional relief, the Bank and PRA are satisfied that this broad approach would not adversely affect their objectives, save where specific exceptions from the general approach are set out in this chapter.

2.69 The PRA's specific approach for firms in the TPR and SRO is designed with the particular circumstances of those firms in mind. Because the majority of relevant PRA rules would apply to them for the first time at exit, applying only the very limited set of pre-exit requirements could adversely affect the PRA's objectives. Therefore, the PRA is proposing to only grant transitional relief in respect of a limited set of such requirements.

### 3 Implementation

#### Directions and guidance

3.1 Alongside this PS, the Bank, in its capacity as supervisor of FMIs and as resolution authority, and the PRA have published near-final directions that will, once the FSMA SI is made, and in a scenario in which the UK withdraws from the EU with no Implementation Period, give effect to their proposed use of the transitional power (Appendices A.1 and A.7).

3.2 The directions would provide transitional relief across the board, postponing the application of onshoring changes to firms' obligations. It would deliver a 'standstill' for firms, which will continue to be subject to pre-exit requirements for a period of 15 months until 30 June 2020. At the end of this period, all onshoring changes will apply. Regulators would have the ability to extend this period to a maximum of two years if circumstances warranted it.

3.3 The directions contain a list of areas that are excepted from the general transitional provision, including where the Bank and PRA have identified that providing transitional relief could adversely affect the advancement of their statutory objectives.

3.4 The directions also set out a number of specific transitional provisions. These include, for example, the amendments made to the PRA Rulebook providing specific transitional arrangements for credit unions. In these areas the general transitional provision will not apply.

3.5 The PRA direction contains specific provisions for firms who are treated as having permission under the EEA Passport Rights (Amendment, etc. and Transitional Provisions) (EU Exit) Regulations 2018<sup>48</sup> (see paragraph 10 of the PRA direction in Appendix A.1). Obligations which only apply to such firms are excluded from the scope of the direction.

3.6 Once made, the final directions will apply without firms needing to take any action to benefit from the transitional relief.

3.7 To ensure clarity for firms, the Bank and PRA are also publishing, as part of this PS, general guidance (Appendices A.2 and A.8) and policy guidance on all key files (including the onshored CRR, Solvency II and the Securitisation Regulation), the PRA Rulebook and in relation to FMIs and resolution (Appendices A.3 to A.6 and A.9, A.10). This guidance provides further information to firms on how they should interpret the general fix with respect to specific requirements, such as the definition of capital, and reporting and disclosure requirements. Firms should consider this guidance carefully.

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<sup>48</sup> <https://www.legislation.gov.uk/ukdsi/2018/9780111172421/contents>.

### **Next steps**

3.8 While the Bank does not expect at this stage to make further changes to the directions published as part of this PS, the Bank will continue engaging with firms on the impact of their use of the transitional power. The FSMA SI includes a power to vary any transitional directions. If material issues emerge or the need for additional exceptions is identified, the Bank will communicate any alterations when the directions are finalised.

3.9 While the Bank does not plan at this stage to make further changes to the transitional directions, the specific transitional provisions, the list of exceptions identified, or the proposed duration of the transitional relief, the Bank invites firms and FMIs to contact the Bank where they think that further additional relief may be necessary, or where firms or FMIs consider that additional time may be needed beyond the 15 months provided by the directions.

3.10 The Bank will provide further detail, if necessary and ahead of exit day, on the possible use of the power by the Bank and PRA.

3.11 The proposed use of the transitional power does not affect the Bank's approach to the supervision of individual firms and FMIs. The Bank will continue to consider supervisory action in relation to individual firms or FMIs, as appropriate, in line with its statutory objectives. This includes, for example, requiring additional reporting.

## Section A Appendices: Transitional directions and guidance

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- A.1 PRA transitional direction instrument, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.2 PRA general guidance, available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.3 CRR guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.4 Solvency II guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.5 Securitisation Regulation guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.6 PRA Rulebook guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
- 
- A.7 Bank transitional direction instrument, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.8 Bank general guidance, available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.9 Resolution guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
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- A.10 FMI guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>

## Section B: Nationalising the Acquis

### Part 1: Feedback on responses to CP25/18 - the Bank's general approach and guidance on EU Guidelines and Recommendations

#### 1.A The Bank's general approach

1.1 This Part provides feedback to responses on the Bank's general approach to making changes to financial services legislation under the Act<sup>49</sup> and the Bank Statement of Policy (SoP) 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU' (Appendix B.1). It also addresses any cross-cutting issues relevant to all of the consultations that have arisen.

1.2 The majority of feedback to CP25/18 was on the Bank's proposed use of the transitional power. Feedback and responses on the use of the transitional power are covered in Section A of this PS.

1.3 Respondents broadly welcomed the Bank's overall NtA approach being consistent to that of HM Treasury. Some noted a preference for maintaining the existing preferential treatment relating to the EU. A respondent argued that there should be capital neutrality, rather than moving to third country treatment of EU exposures but also recognised that this is a change that is being made across HM Government legislation and welcomed the proposed use of transitional powers.

1.4 Respondents supported the Bank's decision not to amend Ss, SoPs and EU Guidelines pre-exit, but they argued that post exit, the Bank should consolidate these different materials so that firms do not need to keep referring to EU documents and future changes should be subject to consultation, including cost benefit analysis.

1.5 Respondents requested clarity on the Bank's approach to other EU materials such as ESA opinions and Q&As.

#### Ambulatory references

1.6 Some respondents asked why newly added references to retained direct EU legislation were not references to such legislation as amended from time to time ('ambulatory references'). It is sometimes appropriate to include ambulatory references in legislation. Doing so requires careful consideration and specific powers. Given the nature of the powers being used in this case, the Bank has taken the view that references should not be ambulatory. Therefore, newly added references to retained direct EU legislation will not be to such legislation as amended from time to time, as such provisions will not benefit from treatment under section 20(2) of the Interpretation Act.

#### Typographical errors in existing EU legislation

1.7 One respondent proposed that typographical errors in the BTS should be amended in line with corrections identified by ESA Q&As. Under the powers delegated by the Regulations the Bank is only empowered to fix deficiencies that arise as a result of the UK's withdrawal from the EU. Accordingly, the Bank has not corrected typographical errors in EU legislation that are unaffected by and unrelated to the UK's withdrawal.

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<sup>49</sup> Chapter 3 of CP25/18.

### **Consistency amendments**

1.8 Some respondents suggested other clarifications, which the Bank has acted on, for example, the Bank has replaced a reference to 'GBP' with a reference to 'sterling' and amended the format of references to EU legislation for consistency purposes.

## **1.B Statement of Policy on EU Guidelines and Recommendations**

1.9 Respondents generally supported the Bank's approach not to alter relevant EU materials such as Guidelines at this stage. However, a number of respondents noted that they would like to see consolidation of legal and policy materials post-exit to reduce confusion and the number of different documents that would have to be referred to on any particular topic. Respondents also requested clarity on the status of the Q&A documents produced by the ESAs, as these were not explicitly covered in the draft SoP.

1.10 The Bank has made an amendment to the SoP (Appendix B.1) to take account of the other non-legislative materials that the ESAs produce. The ESAs publish Q&As to facilitate common understanding of EU regulatory provisions. ESA Q&As have no binding force. The Bank considers that ESA Q&As may continue to be relevant and that the Bank may have regard to these as appropriate.

1.11 The Bank has also clarified that the SoP is also relevant to investment firms in scope of the UK resolution regime.

## Part 2: Feedback to responses to changes to the PRA Rulebook and PRA BTS<sup>50</sup>

### 2.A All PRA-regulated firms

#### i) PRA non-binding materials

2.1 Firms welcomed the PRA position not to make line-by-line amendments to all PRA non-binding material pre-exit. They did however request further information on whether and when such changes would be made post-exit. The PRA has made minor clarifications, but has not made any policy changes to the draft SS consulted on and will communicate its approach to any post-exit alternations in due course. The final SS1/19 'Non-binding PRA materials: The PRA's approach after the UK's withdrawal from the EU' can be found in Appendix B.4.

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

2.2 In Chapter 3 of CP26/18, the PRA proposed to introduce a new SS 'PRA approach to interpreting reporting and disclosure requirements after EU withdrawal'. The intention of the new SS was to allow firms to continue to use existing reporting and disclosure templates, and to provide clarity on how to interpret any EU-related references within reporting or disclosure templates or definitions. The PRA did not receive any objections to this approach or any feedback on the content of the draft SS. One response requested that in the longer term, the PRA should take steps to produce an authoritative consolidation of this material.

2.3 In Chapter 5 of CP32/18, the PRA proposed to amend the draft SS 'PRA approach to interpreting reporting and disclosure requirements after EU withdrawal' consulted on in CP26/18, so that the SS includes the approach the PRA would expect firms to take when completing regulatory transactions forms after the UK's withdrawal from the EU. The PRA did not receive any objections to this approach. One response requested that this solution is only used in the short term and these forms are eventually amended. The PRA will take this feedback into account.

2.4 The PRA therefore intends to introduce a new SS (SS2/19) in line with the proposal set out in CP26/18, as amended by the proposals set out in CP32/18. Amendments have also been made to reflect the approach to transitional arrangements, as set out in paragraph 2.20 of Section A of this PS. The final SS2/19 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU' can be found in Appendix B.5.

#### iii) Other PRA Rulebook changes

2.5 **Change to 'common management' definition:** A change was introduced in the definition of 'Common Management' in the laid version of the Capital Requirements (Amendment) (EU Exit) Regulations 2018<sup>51</sup> (the 'CRR SI') (as compared to the published version consulted on). This definition is derived from a Member State discretion in the Accounting Directive<sup>52</sup>, which is not exercised in the UK in relation to company accounting and therefore does not feature in the UK Companies Act 2006. It is however relevant for regulatory consolidation and so has been introduced through the relevant sectoral SIs. The definition is also used in the PRA Rulebook and so the corresponding change has been made to align the PRA Rulebook

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<sup>50</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>51</sup> <http://www.legislation.gov.uk/ukxi/2018/1401/contents/made>.

<sup>52</sup> Article 22(7) of Directive 2013/34/EU.

definitions with the SIs (Appendix B.2). The definition in the CRR is cross-referred to in the Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019<sup>53</sup>, however a different change has been published in the 'Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019' draft SI<sup>54</sup> (the 'Solvency II SI'). Therefore, the PRA Rulebook will have different definitions for CRR and Financial Conglomerates Directive (FiCOD) derived parts compared to Solvency II derived parts.

#### iv) Other PRA BTS changes

**2.6 Securitisation draft BTS not yet adopted:** In CP32/18 the PRA consulted on a draft securitisation BTS that was expected to be adopted by the European Commission in January 2019. That has not happened and therefore the mandate to amend this BTS has not been included in the laid update to the Regulations<sup>55</sup>, which is currently undergoing the Parliamentary approval process. Therefore, the instrument amending this BTS that was consulted on in CP32/18 has not been included in the EU Exit Instruments appended to this PS (Appendix B.3). If the Commission adopts this BTS and it comes into force and applies before exit day, thus meeting the definition of retained EU law, the PRA will consider addressing any deficiencies using the PRA's ongoing BTS maintenance power or any additional amendment powers HM Treasury provides the PRA with post-exit.

## 2.B Changes relating to PRA-regulated banks, building societies and designated investment firms

#### i) Recovery and resolution

2.7 As well as comments relevant to the use of the transitional power covered in Section A, respondents provided other comments relating to recovery and resolution.

#### Recovery Plans Part of the PRA Rulebook

2.8 One respondent noted that firms are making a number of changes to their corporate structures, including moving business lines to EU authorised branches and subsidiaries. The respondent sought clarification as to the timescale within which the group recovery plan would need to be updated in such circumstances. The PRA notes that the Recovery Plans Part of the PRA Rulebook requires firms to ensure their group recovery plans are 'kept up to date, which includes ensuring that it is updated to reflect any change to the legal or organisational structure of the group, its business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan or group recovery plan'.<sup>56</sup>

2.9 The PRA notes that the one month timeframe the respondent referred to in its response relates to Rule 4.4 and Rule 4.5 of the Recovery Plans Part, this being the timeframe within which a firm must notify the PRA of any material change to its recovery plan. The PRA notes that firms should agree with their supervisor a timetable for updating their recovery plans, in order to ensure their recovery plan is useable and credible.

2.10 Though no respondent raised this point in response to the consultation, the PRA notes that where changes are made to a group structure, equivalent requirements to notify the PRA would apply in relation to firms' resolution packs, as set out in Rule 4.1 and Rule 4.3 of the Resolution Pack Part of the PRA Rulebook. For the avoidance of doubt, the PRA notes that

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<sup>53</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111178775>.

<sup>54</sup> <http://www.legislation.gov.uk/ukdsi/2019/978011117938/contents>.

<sup>55</sup> The Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019: <https://www.legislation.gov.uk/ukdsi/2019/9780111179475/contents>.

<sup>56</sup> Rule 4.2 of the Recovery Plans Part of the PRA Rulebook.



these rules are unaffected by the Bank's statement dated Friday 31 August 2018, which delayed resolution pack phase 1 submissions under SS19/13 'Resolution planning'<sup>57</sup> for certain firms until 2020.

2.11 A respondent noted that the reference to public financial support at supra-national level has been deleted from the proposed definition of 'extraordinary public financial support', which is used in the Notifications Part and Recovery Plans Part. The PRA has recognised this was deleted in error and has amended the definition by adding back '...or any other public financial support at supra-national level, which, if provided for at national level, would constitute State aid...'

2.12 As explained in CP26/18 paragraph 1.12, the PRA did not propose any changes to the PRA Rulebook that would follow from future Government SIs. As the State Aid (EU Exit) Regulations 2019<sup>58</sup> have since been laid, the PRA has amended the definition of 'State aid' by referring to Part 2 of the State Aid (EU Exit) Regulations 2019. This change is in line with the PRA's approach to amend deficiencies within its rules and does not constitute a policy change. The PRA has also moved the definition of 'State aid' from the Notifications Part and Recovery Plans Part to the Glossary of the PRA Rulebook.

2.13 The PRA has amended Rule 2.1 of the Recovery Plans Part, to enhance clarity that the requirement to produce an individual recovery plan is only relevant where the relevant firm is not subject to consolidated supervision in the UK.

#### Contractual Recognition of Bail-In rules

2.14 Respondents welcomed the proposal to change PRA rules on Contractual Recognition of Bail-In such that the requirement to include a contractual term (by which the creditor recognises that the liability may be written down or converted by the Bank as the UK resolution authority does not apply in respect of EEA law<sup>59</sup> governed liabilities that were created before exit day (unless they are materially amended)).

2.15 To enhance clarity, the PRA has amended Rule 2.2 in the Contractual Recognition of Bail-In Part of the PRA Rulebook. Rule 2.2 previously set out that in respect of a liability that is an additional tier 1 (AT1) or tier 2 (T2) instrument, firms must provide an independent legal opinion regarding the enforceability and effectiveness of the required contractual term. The PRA has made a minor amendment, to provide firms with certainty that this requirement will now only apply where the requirement to add the contractual term also applies. As such, Rule 2.2 does not require a legal opinion in respect of EEA law governed AT1 or T2 instruments that were issued before exit day (unless they are materially amended).

2.16 One respondent requested clarification as to why the definition of 'eligible deposit' in the Contractual Recognition of Bail-In Part was deleted. The definition 'eligible deposit' is now provided in the Glossary of the PRA Rulebook, and has the meaning given in the Depositor Protection Part. This change is in line with the PRA's approach to amend deficiencies within its rules and does not constitute a policy change.

#### PRA BRRD BTS

2.17 One respondent sought an explanation as to why the definition of 'recovery and resolution entity' had been added to Annex B of The Technical Standards (Bank Recovery and

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<sup>57</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/resolution-planning-ss>.

<sup>58</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111178768>.

<sup>59</sup> In this part, the reference to EEA law is as it would be after exit day and does not cover UK law.



Resolution Directive) (EU Exit) (No.2) Instrument which contains Part 2 PRA of EU Regulation 2016/1075 ('Annex B'). That definition tracks the definition of the entities referred to in point (b), (c) or (d) of Article 1(1) of the Bank Recovery and Resolution Directive (BRRD) as modified for the purposes of onshoring. The 'recovery and resolution entity' definition preserves the existing meaning of Article 1(1) and does not make any substantive changes. The definition is amended in respect of Article 44 of Annex B in relation to 'mixed activity holding companies' (MAHC) in order to preserve the scope of the PRA's Contractual Recognition of Bail-In rules in relation to such entities as before exit day. Therefore, for the purposes of Article 44, a MAHC shall not be a recovery and resolution entity unless that MAHC has at least one subsidiary which is an institution (which itself is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company).

2.18 In response to feedback received to CP26/18, the PRA has made minor changes in Annex B, to improve clarity and drafting, to update references and to include a sentence (at Article 17(4)(c)) which was omitted in error from the consultation draft of Annex B. Given the specific transitional direction that will now apply to the Contractual Recognition of Bail-In Part, the PRA has updated the cross reference in Article 43(3) from Rule 2.1 of that Part to Chapter 2 of that Part, to ensure this Article is constructed consistently with the specific transitional direction (see Section A for further information on the transitional power).

#### **ii) Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP (bilateral margining)**

2.19 In CP26/18, the PRA set out its intention to retain a joint version of the bilateral margining BTS with the FCA. It also proposed to apply HM Treasury's general approach of treating EU Member States as third countries for the purpose of the BTS. The practical effect results in a number of changes to obligations under the BTS. Notably, it: amends the range of eligible collateral; limits the range of credit institutions where cash collected as initial margin can be maintained; limits the range of credit ratings to those issued by specific credit rating agencies; and aligns specific treatments of EU entities to those applied to third countries.

2.20 The PRA received five responses to this chapter, including three from industry associations.

2.21 Respondents were supportive of retaining the BTS joint with the FCA. Responses also acknowledged the rationale for following the Government's general approach to this BTS. Most responses raised the operational challenges associated with applying the changes, including the need to review, and potentially re-document, client legal agreements. Responses predominately focused on the need for transitional arrangements, rather than adverse prudential outcomes. Consequently, the PRA proposes to adopt the changes consulted on. In addition, readers are referred to the transitional provisions outlined in Section A.

2.22 In addition to the above, responses noted a number of other issues beyond the scope of what the PRA may address under its powers under the Act. Notably: i) the deletion of planned implementation phases in 2019 and 2020; ii) pending EU amendments to exempt certain FX trades; and iii) concerns around the three year timeline for intragroup exemption equivalence determinations. In particular, respondents requested guidance on issue (i) as a priority. CP26/18 noted that the effective deletion of the 2019 and 2020 implementation phases would be a legal consequence of the operation of the Act as these provisions will not be in force by 29 March 2019, and the Act only onshores laws that apply to firms on or before exit day. The PRA has been granted power to maintain BTS going forward and will consider using its maintenance powers in this case.

2.23 In addition, the concerns respondents raised about the timeline for intragroup exemptions equivalence determinations have been addressed in the 'Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019' (the 'EMIR SI')<sup>60</sup>, which provides a three year temporary regime for intragroup transactions between UK and EU/third country group entities to allow sufficient time for equivalence determinations to be made. The EMIR SI also provides the option for HM Treasury to extend the temporary regime if required.

### iii) Other PRA BTS changes

#### Liquidity BTS

2.24 Since the previous consultation, PRA has identified that Liquidity BTS 2017/1230<sup>61</sup> will become redundant post-exit (it is premised on EU-wide consolidated supervision and joint decision-making) and this BTS has therefore been deleted (Appendix B.3). Liquidity Coverage Ratio (LCR) Delegated Act Article 29(2), for which this BTS specifies additional criteria, has also been identified as obsolete by HM Treasury, which intends to delete Article 29(2) and the mandate for BTS 2017/1230 through a further amendment to the CRR SI, which is included in the 'Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019' draft SI. LCR Delegated Act Article 34(2), which is the other provision this BTS relates to, has already been deleted.

## 2.C Changes relating to PRA-regulated insurers

2.25 Overall the PRA does not propose to alter the rules and BTS relating to insurers from those consulted on (aside from minor technical amendments as described above).

2.26 **Reinsurance branches:** Some respondents asked for clarification on whether the requirement for the localisation of branch assets will apply to 'pure reinsurance branches'. Pure reinsurance branches are not required to localise assets in the UK to represent branch capital requirements under either the current or proposed rules.

2.27 **Location of branch assets:** The rules proposed in CP26/18 require a firm to hold assets to cover the branch Solvency Capital Requirement (SCR) in the UK. Two respondents proposed that the requirement for branch assets in the UK be limited to the branch Minimum Capital Requirement (MCR) and not be increased to the (usually higher) branch SCR. Respondents have argued that the outcome of Brexit negotiations has not been taken into account and that regulatory determinations should not result in (re)insurance firms incurring additional costs. Reducing the requirement to the branch MCR would be inconsistent with the general approach taken to NtA which treats EU firms as third country firms. The PRA does not think the localisation requirements are particularly burdensome and does not intend to restrict branch assets so they can only be used to cover UK risks. The assets should therefore be available for meeting EEA capital requirements as well.

## 2.D Changes relating to financial conglomerates

2.28 The PRA has made further clarification changes in the Financial Conglomerates Part of the PRA Rulebook (Appendix B.2) to those consulted on in CP32/18. The changes clarify that a PRA-regulated firm that is a member of an FCA-led financial conglomerate must continue to hold capital resources of such an amount and type that results in the capital resources of the

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<sup>60</sup> <http://www.legislation.gov.uk/uksi/2019/335/made>.

<sup>61</sup> Commission Delegated Regulation (EU) 2017/1230.

financial conglomerate being adequate and comply with the relevant rules on risk systems, risk concentration and intra-group transactions.

## **2.E Changes relating to credit unions**

### **Credit unions' exposures to EEA credit institutions**

2.29 Currently, credit unions can only place funds with EEA credit institutions on terms that the deposit or investment shall be repayable within at most twelve months (or, if certain requirements are met, five years) from the date on which that investment is made.

2.30 In CP26/18, the PRA set out its intention not to depart from the Government's general approach of treating the EEA as a third country in the context of credit unions' exposures to EEA credit institutions. This means that (after the transitional relief period) credit unions would no longer be permitted to place funds with non-UK EEA institutions. The PRA noted that all but one of the EEA providers that the PRA is aware credit unions have deposits with, have confirmed that they intend to apply for authorisation in the UK following exit from the EU. Therefore, it seemed likely that credit unions which have placed funds with these institutions will be able to keep them there (albeit funds may be transferred to a different entity of the same banking group). The PRA requested to be advised of any firm-specific impacts.

2.31 The PRA received eight responses on this chapter, including from two trade associations.

2.32 A number of respondents were concerned that they would be required to sell back EEA investments that mature after the end of the transitional period which could incur losses (including loss of interest) and requested an extension of the transitional period to allow for all non-UK EEA investments to come to maturity before they are required to be transferred. Respondents expressed doubts over the possibility that credit unions which have placed funds with EEA institutions that have applied for UK authorisation will be able to keep them there, as counterparties have been reluctant to give any concrete stance regarding their intentions post exit. It was also noted that some credit unions hold bond portfolios where the investor base will be a very small proportion of the owners of the bonds and therefore transferring to a different entity within the same banking group would not be possible. The PRA proposes to address these concerns by including a transitional provision which would allow credit unions' pre-exit EEA deposits to be held to maturity.

2.33 Respondents also voiced concerns that if not all relevant EEA counterparties receive UK authorisation, the range of counterparties will narrow thereby having an adverse impact on counterparty diversification and potentially lower returns. Some noted concerns over potential exposure to increased credit risk due to reduced diversification.

2.34 The PRA is not departing from the Government's general approach of treating the EEA as a third country in this context. The PRA is implementing the rules as consulted with the addition of a transitional provision to allow credit unions' pre-exit investments to be held to maturity as mentioned in Section A. The PRA has also clarified that any EEA investments made post-exit cannot have a maturity that exceeds the duration of the transitional relief.

## **2.F Changes relating to FSCS protection**

### **Depositor protection**

2.35 In CP26/18 and CP32/18 the PRA set out its intention to change the scope of the UK's deposit guarantee scheme's (FSCS) protection to align with the UK's current treatment of third country firms.

2.36 This means that depositors with eligible deposits held by UK establishments of firms with Part 4A permission to accept deposits (or deemed Part 4A permission, in the case of TPR and SRO firms) will be protected by the FSCS.<sup>62</sup> Except in respect of Gibraltarian establishments of UK firms, deposits held outside of UK establishments (which may include deposits held by CRO firms) will not be protected by the FSCS.<sup>63</sup> After exit, deposits held by UK firms' branches in the EEA will not be protected by the FSCS, but may be protected by the relevant EEA State's deposit guarantee scheme depending upon the depositor protection regime in that EEA State.

2.37 To ensure depositors are correctly informed about the source and scope of depositor protection upon exit, and so the FSCS can facilitate a pay-out should firms fail, the PRA has set a number of customer disclosure and Single Customer View (SCV) requirements on firms effective from exit day. SS18/15 'Depositor and dormant account protection' has been updated to describe the PRA's expectations (Appendix B.6).

2.38 The PRA received seven responses to the FSCS depositor protection aspects of CP26/18 and CP32/18 from four different respondents. Respondents were in agreement with the proposed policy approach, but noted concerns with the lack of transitional relief for these proposed rules (see paragraph 2.35 to 2.38 of Section A).

2.39 The PRA has not made any significant policy changes in the near-final rules, but is making minor rule changes in the Depositor Protection Part to account for recent developments in the Government's Gibraltar SIs<sup>64</sup> and to include changes to a paragraph in Depositor Protection Annex II 'Content of compensation sticker and poster' that were omitted in error. SS18/15 will also be amended to highlight that information should be submitted to the FSCS in accordance with applicable data protection laws and to reflect the PRA's expectations in respect of rule changes regarding Gibraltar.

### Changes to the Depositor Protection Part and SS18/15 following consultation

2.40 The definition of Gibraltar-based credit institution has been amended to clarify that the concept only captures firms incorporated in Gibraltar.

2.41 Depositor Protection 13.2 has been amended to reflect revisions made in the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019<sup>65</sup> to the creditor hierarchy in respect of Gibraltar. DGS members will be required to mark deposits of natural persons and micro, small and medium sized enterprises made through branches that are not eligible for FSCS protection, but would have been eligible if they had been made through a UK establishment or a UK firm's Gibraltarian establishment.

2.42 Changes were proposed to Depositor Protection 2.2(4)(f) and 28.3 by PRA CP24/18 'Occasional Consultation Paper'<sup>66</sup> in addition to the changes proposed in CP26/18 and CP32/18. If the changes proposed in CP24/18 are made, the final rule instruments made in relation to the UK's withdrawal from the EU will incorporate the changes that were made in response to CP24/18. Since CP32/18, a further clarification has been made to ensure that deposits, the holder and any beneficial owner of which have had their identity verified in

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<sup>62</sup> Note: Deposits held by UK establishments of Gibraltarian-based credit institutions (making use of the passporting in the Gibraltar Order) will not be protected by the FSCS; their protection will remain the responsibility of Gibraltar.

<sup>63</sup> Eligible deposits held by UK firms' Gibraltarian establishments will continue to be FSCS protected.

<sup>64</sup> The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019: <http://www.legislation.gov.uk/ukdsi/2019/9780111179031>; and the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019: <https://www.legislation.gov.uk/ukdsi/2019/9780111180594/contents>.

<sup>65</sup> See footnote 64.

<sup>66</sup> October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>.

accordance with Gibraltarian money laundering requirements, are only eligible if the DGS members which hold such deposits are subject to Gibraltar money laundering requirements.

2.43 A paragraph in Depositor Protection Annex II, regarding the content of the compensation poster, was omitted in error from the draft instruments consulted on. The near-final instrument (Appendix B.2) includes identical changes to paragraph 2 (for firms that accept deposits under multiple brands or trading names) as were proposed in the consultations in paragraph 1 (firms that accept deposits under a single brand or trading name). This provides consistency throughout Annex II and follows through from the changes to Depositor Protection 23.5, which were consulted on.

2.44 Additional language has been added to SS18/15 to make it explicit that the PRA expects firms to comply with applicable data protection requirements when providing SCV and other data to the FSCS or PRA (eg Depositor Protection 12.1, 12.2, 14.2, 14.5, 15.2, 15.5). Firms are expected to factor data protection into their plans and systems to deliver information under the Depositor Protection Part.

2.45 SS18/15 has also been updated to reflect the PRA's expectations in respect of rule changes regarding Gibraltar.

2.46 Additional minor drafting amendments have also been made.

#### Consultation responses and PRA feedback

2.47 One respondent requested the PRA clarify in paragraph 13.11 of SS18/15 whether it is only new DGS members that are required to provide existing customers of UK establishments with FSCS-related information within two months of exit.

2.48 New Depositor Protection 17.3 applies to firms that are becoming DGS members immediately after exit day under the TPR or SRO. These firms are required to notify existing depositors of FSCS protection within two months of exit. The PRA confirms that existing DGS members do not need to comply with the specific notification requirements in new Depositor Protection 17.3. Depositor Protection 17.1 and 17.2 require all DGS members to provide existing depositors annual information sheets and eligibility statements on account statements, but have been amended to clarify these requirements are only in respect of deposits held in UK (and Gibraltar) establishments.

2.49 All depositors opening new accounts after exit in DGS members' UK establishments (and UK firms' Gibraltar establishments) must be provided the correct information before entering into a contract on deposit-taking.

2.50 Two respondents requested clarification of how FSCS protection would apply to depositors resident in the EEA if the deposits are held by DGS members' UK establishments.

2.51 Post-exit, a deposit will be protected by the FSCS if, provided it meets the other eligibility requirements, it is held by a UK establishment of a DGS member. Under existing Depositor Protection 2.2(2) and new Depositor Protection 1.3A, a deposit is held by a UK establishment if it is assigned by the firm to an account of that UK establishment. As a result, a depositor's address, residence or whether they may be domiciled outside the UK does not affect FSCS protection; the relevant fact is whether the deposit is held by the firm's UK establishment (or by a UK firm's Gibraltar establishment).

### Policyholder protection

2.52 In CP26/18 and CP32/18 the PRA proposed to maintain existing FSCS protection for insurance policies issued prior to exit day as long as the insurer remains a 'relevant person' under FSMA. Status as a 'relevant person' is achieved by a firm being an 'authorised person' under FSMA at the time of the act or omission giving rise to the claim. Firms will be 'authorised persons' if they have a Part 4A permission, are a TPR or SRO insurer with a deemed Part 4A permission, fall within the CRO or have the benefit of market access rights via the Gibraltar Order for Gibraltar-based firms. Insurers with FSCS protected contracts of insurance within these regimes will be required to pay FSCS levies.

2.53 Where an insurer transfers FSCS-protected insurance liabilities to an insurer without UK authorisation, FSCS protection will only be available for claims in respect of acts or omissions ('insured events') that arose before the transfer to the non-authorised successor.

2.54 Policies in respect of risks situated in the UK, Gibraltar, Channel Islands and Isle of Man issued by 'relevant persons' after exit may be FSCS protected, depending upon the location of the establishment through which the policy is issued.

2.55 The PRA received six responses to the FSCS insurance aspects of the CPs. Respondents were generally in agreement with the proposed policy approach but asked the PRA to clarify some aspects of the FSCS-related proposals.

2.56 The PRA is not making any changes to its proposals following consideration of the consultation responses.<sup>67</sup>

### Consultation responses and PRA feedback

2.57 In response to CP26/18, one respondent pointed out that policyholders of policies issued prior to Brexit by an EEA inbound-passporting insurer that does not enter the TPR would lose FSCS protection and asked for grandfathering of these types of policies.

2.58 The FSCR SI was introduced after CP26/18 was published. To reflect the FSCR, PRA CP32/18 discussed that policyholders of insurers that are placed into the SRO or CRO to run-off their business would retain their authorised person status for FSCS purposes. The PRA is adopting the proposals that were consulted on in CP32/18. Therefore, protected policies issued prior to exit will continue to be protected for as long as the firm remains a 'relevant person'. If a firm is no longer a 'relevant person' under FSMA through the available authorisation mechanisms, policyholders would lose FSCS protection for acts or omissions that occur post-exit or post-transfer.

2.59 Another respondent noted the policy proposals would result in a loss of FSCS protection for customers of inbound passporting firms that are not authorised post-exit and requested that FSCS protection be maintained for existing customers of offshore bond firms (including in respect of additional post-exit investments made into pre-exit day bonds). The respondent also requested that FSCS protection be extended to new policies issued by subsidiaries of UK insurers that are not authorised under Part 4A of FSMA.

2.60 The PRA does not propose to change the proposals that were consulted on in CP26/18 and CP32/18. Consistent with existing policy, policyholders of firms that are not 'relevant persons' will not have FSCS protection for acts or omissions arising after the loss of UK-

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<sup>67</sup> Note: PRA CP24/18 'Occasional Consultation Paper' also proposed minor typographical changes to the Policyholder Protection Part.



authorised status. Expanding the scope of FSCS protection to non-authorised subsidiaries of UK insurers would be a significant expansion of the scheme and not within the parameters set by FSMA nor within the scope of the PRA's delegated power to amend deficiencies in its rules as result of the UK's withdrawal from the EU.

2.61 One respondent noted CP26/18 used multiple phrases: 'written from', 'written by', 'issued by' and 'issued through' a UK establishment when describing the PRA's proposed policy approach. The respondent requested confirmation that the different phrases do not affect in the overall concept that post-exit the FSCS would only provide protection for risks situated in the UK.

2.62 Chapter 9 of the Policyholder Protection Part of the PRA Rulebook provides the key operative provisions in this regard. Among other things, FSCS protection will depend upon whether a policy was issued prior to or after exit, the location of the establishment through which the policy is issued, and the location of the risk or commitment.

2.63 Protected policies issued prior to exit will continue to be FSCS protected, even in respect of EEA risks, provided the insurer remains a 'relevant person' under FSMA.

2.64 Policies issued after exit, in respect of EEA risks, will not be protected regardless of the location of the establishment through which the policies are issued. Depending upon the location of the establishment through which the policy is issued and the type of authorisation status held by the issuing insurer, policies issued after exit in respect of UK, Channel Islands, Isle of Man and Gibraltar risks may be eligible for FSCS protection. For example, if issued through a UK establishment, policies in respect of UK, Channel Islands, Isle of Man and Gibraltar risks may be FSCS protected. If a TPR insurer in the process of setting up a UK establishment issues policies through an EEA establishment after exit, only UK risks will be FSCS protected.

2.65 One respondent asserted that the PRA's proposed policy creates a post-exit competitive advantage for insurers from the Channel Islands and Isle of Man as compared to non-authorised firms from the EEA and requested the PRA apply FSCS protection consistently.

2.66 The proposals do not change the Policyholder Protection Part in this regard. FSMA requires that insurers be 'relevant persons' in order for policies to be FSCS protected. As is currently the case, Channel Islands and Isle of Man insurers will be required to have a Part 4A permission for FSCS protection to apply.

2.67 One respondent requested clarification as to what would qualify as the re-issuance of a policy, given the fact that protection may differ depending upon the date the policy is issued.

2.68 The question of what will amount to a 'reissue' will depend on the terms of the policies and the facts of each case but, for example, the PRA would not generally expect minor and/or administrative changes to a policy to amount to a re-issuance for these purposes.

### **The PRA's obligations under FSMA**

2.69 The PRA intends to use its FSMA powers in relation to certain aspects of the FSCS rules relating to FSCS levies and administrative fees. There were no responses to those aspects of the consultation. Neither do the changes to the near-final instrument affect those aspects of the rules as they were consulted on in CP26/18 and CP32/18.



## 2.G Changes relating to firms in the temporary permissions regime (TPR) and Financial Services Contracts Regime (FSCR)

2.70 In CP26/18 the PRA proposed to make amendments to the PRA Rulebook in two specific areas relevant to firms entering the TPR: the definition of non-Directive insurer and those related to the applicability of the SM&CR to firms without a branch in the UK.

### Definition of non-Directive insurer

2.71 The PRA proposed to amend the definition of non-Directive insurer so that it did not capture insurers operating in the UK under a Freedom of Services (FOS) passport. The PRA considered that non-Directive insurer rules were not effective or easily operable for firms entering TPR and FSCR regimes since they are based on a Solvency I regime and the insurers in question are currently operating under a Solvency II regime. The PRA has not received feedback in this regard and consequently it will be amending the definition of non-Directive insurer as consulted on.

### Senior Managers and Certification Regime (SM&CR) requirements

2.72 In CP26/18, the PRA proposed to apply most of the PRA's requirements for third country branches under the SM&CR to firms in the TPR including:

- having individuals (deemed) approved by the PRA as *Head of Overseas Branch* (SMF19) and, if applicable, other PRA Senior Management Functions (SMFs) (eg *Chief Risk* (SMF4)); and
- allocating the PRA's Prescribed Responsibilities (PRs) for third country branches among their (deemed) SMFs and setting them out in their Statements of Responsibilities (SoRs).

2.73 The main exception was that the full fit and proper (F&P) assessment and approval of individuals seeking to perform PRA SMFs would be delayed until their firms' applications for Part 4A authorisation as a third country branch (if submitted) were considered. In the meantime, these individuals would undergo a basic F&P assessment and, subject to its outcome, be 'deemed' approved as their relevant PRA SMFs for as long as their firms remain in TPR.

2.74 CP26/18 also noted that compliance with the above PRA SM&CR requirements would not be a pre-condition of entry into the TPR and outlined two, non-mutually exclusive, routes for individuals to obtain deemed SMF approval namely submitting either:

- an application for Part 4A authorisation as a third country branch accompanied by full SMF application(s) before the date of the UK's departure from the EU (Route 1); and/or
- a streamlined 'Temporary Permissions Regime – Application for 'deemed approval' to perform a Senior Management Function TPR' (Route 2).

2.75 The PRA's proposals differed from the FCA's, which were set out in CP36/17.<sup>68</sup> The reason for this difference is that the FCA already imposes SM&CR requirements on EEA branches and proposed to continue applying them to firms in TPR until they obtain their Part 4A authorisation as third-country branches. Under existing FCA rules, EEA branches have to (where applicable):

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<sup>68</sup> See FCA CP18/29 'Temporary permissions regime for inbound firms and funds': <https://www.fca.org.uk/publication/consultation/cp18-29.pdf>.

- have individuals approved by the FCA as *Money Laundering Reporting* (SMF17) function and a 'catch-all' bespoke function known as the *EEA Branch Senior Manager* (SMF21);
- maintain a Management Responsibilities Map (MRM) and a SoR for SMF17s and SMF21s; and
- apply the Certification Regime, Conduct Rules and Regulatory Reference requirements to relevant staff in the UK branch.

2.76 Out of the 31 written responses to CP26/18, six commented on the PRA's proposals for applying the SM&CR to firms in the TPR. The two main issues raised in these responses were requests for:

- greater clarity and coordination on the interaction between the PRA's and FCA's respective proposals; and
- a request not to apply all the PRA PRs for third country branches to firms in TPR, as it may not be feasible or proportionate for SMFs in these firms to demonstrate compliance with all these PRs from the outset.

2.77 In response to the first point, on Monday 7 January 2019, the PRA published a note clarifying the interaction between the PRA's and FCA's proposals in this area.<sup>69</sup>

2.78 In response to the second point, the PRA accepts the comments made. Accordingly, the PRA will not apply all the PRs for third country branches to firms in TPR. Instead the following will apply:

- the existing PR for '*compliance with the UK regulatory system applicable to the firm*'. This will apply to all firms in the TPR but will not include compliance with any PRA requirements for which transitional relief has been granted until such relief expires; and
- for those firms which apply for Part 4A authorisation as a third country branch, 'and until such time as the application has been determined or withdrawn, a bespoke, new PR for managing the process of obtaining such permission (including providing the PRA with all the information and assistance that it may reasonably require in order to determine whether the requirements for authorisation have been met)'.

2.79 The bespoke, new PR will apply for the duration of the application process as a third country branch and until the firm:

- obtains such authorisation, when the full list of PRs for third-country branches will apply to the firm; or
- withdraws its application for, or fails to obtain authorisation as a third country branch is placed into SRO, in which case the proposed SM&CR requirements for firms in SRO will apply.

2.80 The PRA expects firms to allocate the bespoke, new PR to individuals with deemed approval as Head of Overseas Branch (SMF19) in firms in TPR. The PRA expects to use this PR

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<sup>69</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/application-of-smcr-to-firms-in-tp-clarification-of-pra-and-fca-proposals>.

to clarify accountability for firm-specific actions which firms may be asked to undertake during the transition to third country branch.

2.81 The new PR is designed to ensure that the firm actively and efficiently participates in the permission process, to allow the PRA to make a fully informed decision. A firm's failure to obtain Part 4A authorisation will not in itself indicate that the SMF to whom the new PR is allocated has failed to discharge his or her responsibility effectively. Where appropriate, this will be considered on a case-by-case basis taking all relevant factors into consideration.

### **Financial Services Contracts Regime (FSCR)**

2.82 In response to CP26/18 several respondents requested information on the regime that would apply to EEA firms with run-off portfolios and how this regime would interact with the TPR.

2.83 CP32/18 outlined proposals on the FSCR which provided information on the mechanisms established by the FSCR that act as a backstop to the TPR and allow those EEA firms that carry out regulated activities in the UK via a passport immediately before exit day, that do not enter the TPR, and those that exit the TPR without UK authorisation in respect of some or all their regulated activities, to be able to wind down their UK regulated activities in an orderly manner.

2.84 The PRA received one response relating to the FSCR following CP32/18. The respondent requested clarification on how the PRA was intending to use its power to move firms from CRO into SRO, under what criteria and how much notice firms would receive. Also further clarification was sought on what steps would the PRA take to ensure that firms were aware that they were in the regime, when they needed to comply with PRA rules and where firms enter SRO directly or through the TPR that there be alignment in transitional relief and amendments to third country rules so as to ensure a smooth transition.

2.85 On the first point, the PRA notes that Regulation 55 of the FSCR SI sets out the conditions that the PRA needs to consider before it can direct a CRO firm to enter SRO. In the case and at the point where the PRA considers that such conditions are met and that it would be appropriate to move a firm from CRO into SRO, the PRA will maintain an open and continuous supervisory dialogue with the firm in question.

2.86 On the second point, the PRA notes that firms in SRO with a branch in the UK will be required to comply with the same rules as would apply to other third country firms from exit day, when they lose their passporting rights and in the absence of an Implementation Period. For cross border service providers in SRO without a branch, a more limited set of rules will apply. These will include rules that could apply, as currently written, to a PRA authorised third country firm without a UK branch. The PRA confirms that firms in SRO, just as firms in TPR will benefit from general transitional relief and from transitional relief in four areas of third country branch requirements as set out in Table A in Section A of this PS.

2.87 Firms will enter SRO directly by operation of the law or via TPR as set out in the FSCR SI. The PRA will provide further information on the operationalisation of the FSCR regime on its website and via direct communication with firms in question.

2.88 The respondent also suggested that firms in SRO be subject to a more limited supervisory regime and set of rules than those applying to Part 4A authorised firms or TPR firms as SRO firms would be running off their business and would not be seeking UK authorisation.

2.89 In response, the PRA considers that its approach to supervision is a proportional approach and that firms in SRO firms will have a limited set of permissions so as to allow for an orderly wind-down only. As such the PRA does not consider that it needs to modify its proposals on the supervision of SRO firms.

2.90 Finally, the respondent asked for greater clarity on the rules that would apply to firms in SRO that prior to exit operated in the UK under an FOS passport. In this regard, the PRA confirms that a more limited set of rules would apply to firms in SRO without a UK establishment from exit day. These include the Fundamental Rules, Auditors, Change in Control, Close Links, Fees, General Provisions, Information Gathering, Notification and Use of Skilled Persons Parts of the PRA Rulebook, and the relevant SM&CR rules.

2.91 Based on the responses received the PRA does not propose to make changes to the policy or to the rules with respect to FSCR. As such the PRA will:

- (i) Amend the definition of non-Directive insurer so as to exclude SRO firms from this definition
- (ii) Require firms in SRO to include specific disclosure wording in their communication with retail clients, both written and electronic, to indicate that they are in the regime. This requirement will benefit from a three month transitional relief as outlined in Table A in Section A of this PS.
- (iii) Require firms in SRO (both those operating banking and insurance firms operating under an FOE or FOS passport prior to exit) to provide the PRA with a run off plan on entry into the SRO. This plan needs to describe the firm's plans to run off its business before the mechanism expires and the firm needs to provide the PRA with regular updates on progress and any unexpected divergence from this plan.
- (iv) Require firms in SRO to have at least one individual approved to perform the Head of Overseas Branch function (Senior Management Function (SMF)19) in the Senior Management Functions 7 / Insurance Senior Management Functions 6 Parts of the PRA Rulebook. Firms in SRO should obtain deemed (or full) approval for an SMF 19 within 12 weeks of entry into the regime.

## Part 3: Feedback to responses to changes to Resolution BTS

### 3.A Introduction

3.1 This Part provides feedback to the two CPs<sup>70</sup> issued by the Bank in its capacity as the UK's resolution authority to fix deficiencies arising from the UK's withdrawal from the EU. The consultations proposed how the Bank would onshore the Bank Recovery and Resolution Directive (BRRD) BTS for which the Bank is responsible<sup>71</sup> and proposed guidance for interpreting existing Bank Statements of Policy on resolution.

3.2 In total, two responses were received in relation to the first consultation paper, and three responses were received in relation to the second. The responses were generally supportive of the Bank's proposed approach. The Bank's approach remains as set out in the consultations and no significant changes have been made to The Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019 other than the deletion of the onshored version of the Simplified Obligations Binding Technical Standard as the BRRD BTS on Simplified Obligations has not yet entered into force (Appendix B.7).

3.3 The remainder of this Part sets out a summary of policy and responds to specific feedback.

### 3.B Summary of policy

#### Interpreting existing Bank of England Statements of Policy on Resolution

3.4 The Bank will retain its proposal not to update the three resolution Statements of Policy at the point the UK leaves the EU to reflect the changes made by the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018. References to EU legislation and concepts in existing Statements of Policy should be interpreted as proposed in section two of the October consultation.<sup>72</sup> The Bank will update the Statements of Policy and the Bank's approach to resolution documents in future to reflect the UK's position outside the EU; in the meantime, the published versions of these documents will be updated to include a statement explaining this.

#### Material amendments to BRRD BTS allocated to the Bank

3.5 The Bank will retain the approach of using EU Exit instruments to only fix deficiencies in the BRRD BTS arising from EU withdrawal. As explained in the consultations, the Bank does not consider any of the fixes to be material.

#### Deleted BTS

3.6 The Bank will retain the proposal to delete a number of BRRD BTS where the requirements set in these BTS will no longer be applicable after EU withdrawal – for example, the Bank will no longer be required to transmit information to the EBA.

<sup>70</sup> 'The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards': <https://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-boes-approach-to-resolution-sop-and-onshored-binding-technical-standards> and Part 2 of 'UK withdrawal from the EU: Further changes to: - PRA Rulebook and Binding Technical Standards - Resolution Binding Technical Standards': <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-further-changes-to-pra-rulebook-bts-and-resolution-bts>. The CPs were open from 25 October 2018 to 2 January 2019 and from 20 December 2018 to 21 January 2019, respectively.

<sup>71</sup> These are the BTS delegated to the Bank in Part 3 of the Schedule to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

<sup>72</sup> The three Statements of Policy are: 'The Bank of England's power to direct institutions to address impediments to resolvability', 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL) within groups, and further issues', and 'The Bank of England's policy on valuations capabilities to support resolvability'.

3.7 The following BTS have therefore been deleted:

- Articles 50 to 109 of Commission Delegated Regulation (EU) 2016/1075 (regarding the organisation of resolution colleges and taking of joint decisions on group resolution planning, resolvability assessments, removal of impediments to resolution, setting of MREL and taking resolution);
- Commission Delegated Regulation (EU) 2016/962 (specifying uniform formats, templates and definitions for identifying and transmitting information regarding the application of simplified obligations for certain institutions to the EBA); and
- Commission Implementing Regulation (EU) 2018/308 (specifying uniform formats, templates and definitions for identifying and transmitting information on MREL to the EBA).

### Interpretation of the BTS

3.8 The Bank will leave unchanged BRRD BTS where certain concepts, while not identical, have a pre-existing and clear counterpart in UK law. For example, certain BRRD BTS refer to 'ex ante' and 'ex post' valuations; these are and should continue to be read as references to the pre-resolution and full valuations under the Banking Act 2009.

### References to resolution financing

3.9 The Bank will remove references to 'resolution financing arrangements' in Commission Delegated Regulation (EU) 2016/1450 (on the methodology for setting a minimum requirement for own funds and eligible liabilities) (MREL), replacing this term with a cross-reference to the UK legislation that contains the relevant UK provisions concerning resolution financing. This reflects the UK's arrangements for resolution financing, under which the Bank is entitled to an amount raised by the bank levy in order to support the exercise of the resolution powers, providing the relevant safeguards have been met.

### Resolution planning

3.10 The Bank will not make line-by-line changes to the resolution planning templates in BTS 2018/1624 for exit day. Instead, the Bank has published guidance explaining how firms should interpret EU-based references for the purpose of BTS 2018/1624. The effect of this approach is to retain the current reporting definitions but with certain changes to reflect the UK's withdrawal from the EU. Final guidance is published on the Bank's website.<sup>73</sup> Firms should refer to this guidance when submitting resolution planning templates following the expiration of the temporary transition period.

3.11 An explanation of how the temporary transitional power interacts with the resolution planning templates is set out in paragraph 2.21 of Section A of this PS.

## 3.C Specific feedback on consultation

### MREL eligibility

3.12 One respondent requested that the proposed temporary transitional relief from the PRA Contractual Recognition of Bail-in rule for existing EEA law governed liabilities be mirrored by transitional relief for such instruments to remain MREL eligible. The respondent argued firms should either be permitted to count EEA law governed instruments which do not include

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<sup>73</sup> Available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

contractual recognition of bail-in terms to meet their MREL requirements or be provided with longer MREL transition deadlines.

3.13 On the question of MREL eligibility of existing EEA law governed own funds<sup>74</sup> and eligible liabilities<sup>75</sup> which do not contain contractual recognition of bail-in clauses, the Bank clarifies the following:

- Consistent with paragraph 5.10 of the Bank's MREL Statement of Policy,<sup>76</sup> **existing non-CET1 own funds instruments<sup>77</sup> governed by EEA-law may continue to count towards MREL if they do not include a contractual recognition of bail-in term.**<sup>78</sup> Firms should, however, consider whether having EEA-law governed non-CET1 own funds instruments that do not include contractual recognition of bail-in terms could create difficulties for resolution. The Bank may direct a firm to renegotiate non-CET1 own funds instruments to include a contractual recognition of bail-in term to ensure a UK conversion/write down would be effective.
- Consistent with paragraph 5.8 of the Bank's MREL Statement of Policy, **other EEA law governed eligible liabilities may only count towards MREL if they include a contractual recognition of bail-in term.**

3.14 The deadline for firms to meet their end-state MREL is 2022. Prior to this, the Bank requires firms to meet interim MREs to ensure they build up their MREL resources steadily over time. The Bank is not altering this framework in light of UK withdrawal from the EU.

### Resolution planning under BTS 2018/1624

#### Interpretative guidance

3.15 Respondents supported the proposal not to make line-by-line changes to the resolution planning templates under BTS 2018/1624 at this stage and instead to publish interpretative guidance for firms. Two respondents asked that the Bank clearly signpost interpretive guidance when published, to ensure obligations on firms were as clear as possible. As noted in paragraph 3.10 of Section B of this PS, the final interpretive guidance is published on the Bank website.<sup>79</sup>

### Scope of the EU Exit instrument (CCP and investment firms)

3.16 Two respondents asked for clarification as to the scope of application of the BRRD BTS, including in relation to central counterparties. For the avoidance of doubt, the Bank has not amended the scope of the BRRD BTS. As such the onshored BRRD BTS will continue to apply to credit institutions and certain investment firms, but not to central counterparties.

### Other responses received

3.17 Feedback to responses on resolution related aspects of the PRA rules (for example, contractual recognition of bail-in, stay in resolution and recovery plans and resolution packs) are set out in Part 2.B of Section B of this PS. Feedback to responses on the interaction of the

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<sup>74</sup> Essentially instruments issued by firms to meet the requirements for Additional Tier 1 and Tier 2 capital under the CRR.

<sup>75</sup> Essentially liabilities and capital instruments that do not qualify as CET, AT1 or T2 instruments but may count towards MREL.

<sup>76</sup> The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL), available at: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>.

<sup>77</sup> As defined in Article 4.1(118) CRR.

<sup>78</sup> Non-CET1 own funds instruments governed by EEA law must comply with the Contractual Recognition of Bail-in Part of the PRA Rulebook if they are issued or materially amended after exit day. Further information is available in paragraphs 2.14 – 2.16 of this document.

<sup>79</sup> Available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.



transitional power with BRRD BTS (for example, the resolution planning templates) is set out in Section A of this PS.

## **Part 4: Feedback to Bank Consultation Paper 'UK withdrawal from the EU: Changes to FMI rules and onshored Binding Technical Standards'**

4.1 This Part provides feedback to responses to the consultation 'UK withdrawal from the EU: Changes to FMI rules and onshored Binding Technical Standards' ('the FMI CP'). The FMI CP set out the Bank's proposals to fix deficiencies arising from the UK's withdrawal from the EU in its capacity as competent authority for FMIs. The below summarises the feedback received and provides responses to a number of specific points.

4.2 The appendices to this Part of the PS set out the near-final EU Exit Instruments (see Appendix B.8 and B.9), and the SS on non-binding materials (see Appendix B.10) that were consulted on.

### **i) Overall feedback and Bank response**

4.3 The Bank received four responses to the FMI CP, all from FMIs. Generally, respondents were supportive of the Bank's approach to onshoring FMI rules and FMI-related BTS. No respondents commented on the proposed changes to FMI rules or the draft supervisory statement on non-binding materials. The Bank has not made any material policy changes in the EU Exit Instruments because of feedback received.

4.4 Several comments suggested clarifications, corrections and minor drafting changes to the EU Exit instruments. The Bank has also made certain changes to the EMIR No. 2 Exit Instrument to reflect discussions with the FCA.

4.5 Some comments have been addressed in Part 1 of Section B of this PS as they relate to the overarching Bank approach. However, the Bank has not made changes in response to all such general feedback. Some suggested changes are not in scope of the Bank's powers to make amendments under the Regulations; for example making corrections to errors in EU legislation that are unrelated to the UK's withdrawal from the EU. The Bank chose not to incorporate proposed changes that: i) were not necessary for the purposes of onshoring; or ii) would be inconsistent with HMT's onshoring Statutory Instruments.

4.6 The remainder of this part provides further detail on specific points raised in the feedback in order to explain the Bank's approach.

### **ii) Specific Feedback**

#### **Definition of 'OTC derivative'**

4.7 One respondent asked whether the Bank planned to amend the scope of the definition of 'OTC derivative' in onshored EMIR to ensure that derivatives traded on EU regulated markets are not considered OTC derivatives for the purposes of onshored EMIR. Any such amendments are out of scope of the Bank's amending powers under the Act (this point is also addressed in Section A and Appendix A.2).

#### **Arrangements for the deposit of financial instruments and maintaining cash**

4.8 As discussed in CP25/18, the Bank's use of the delegated power is subject to similar constraints that apply to HM Treasury's power to amend deficiencies under the Act. One respondent asked whether proposed modifications to BTS (EU) No. 153/2013 relating to highly secured arrangements for the deposit of financial instruments or maintaining cash represented a departure from the current policy position. Consistent with the approach taken by Government, and the scope of the delegated power, the Bank is not making amendments unrelated to the UK's withdrawal from the EU. Therefore, the changes do not reflect any change in Bank policy, except to reflect the UK's withdrawal from the EU.

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

### **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. Different constraints will exist in relation to the transitional power and are described in Section A of this PS.

5.2 In accordance with the restrictions under the Regulations, the Bank and PRA consider that all changes made to Rules and BTS in this PS are appropriate to prevent, remedy or mitigate any:

- (a) failure of the relevant Bank or PRA rules or BTS to operate effectively; or
- (b) other deficiency in the relevant Bank or PRA rules or BTS, arising from the UK's withdrawal from the EU.

5.3 The types of changes that fall within the scope of 'deficiency' are listed in Section 8(2) of the Act. This list is exhaustive, ie all amendments must address deficiencies of these types or make consequential, supplementary, transitory or transitional provision in connection with them.

5.4 The Bank and PRA also confirms that the near-final Rule and BTS changes made under the Act do not:

- (a) impose or increase taxation or fees;
- (b) make retrospective provision;
- (c) create a criminal offence which is capable of leading to imprisonment of more than two years;
- (d) establish a public authority;
- (e) implement the Article 50 Withdrawal Agreement;
- (f) result in the transfer of a function of an EU authority to a UK authority;
- (g) confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or
- (h) amend any legislation other than the relevant PRA rules or BTS.

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

5.5 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. 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.

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

5.6 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. The near-final EU Exit Instruments attached to this PS have been submitted to HM Treasury for approval. The Rule and BTS changes will be made final once Ministerial approval has been received.

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

5.7 The Bank and PRA have performed an assessment of the policy in this PS and do not consider that the policy gives rise to equality and diversity implications.

## 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/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
- B.3** PRA Binding Technical Standards (EU Exit) Instruments, available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
- 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-reqs-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) Instruments, available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>

### 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/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
- B.9** Bank (as FMI competent authority) Binding Technical Standards (EU Exit) Instruments, available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>
- 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>