

Thursday 1 October 2020: this guidance document supports the draft Transitional Directions published as part of CP13/20 and is subject to further updates.

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GENERAL GUIDANCE ON THE PRA'S TRANSITIONAL DIRECTION

Introduction

1. **This document provides general guidance on the PRA's transitional direction.** *The PRA has also produced detailed guidance on its use of the transitional direction for the onshored Capital Requirements Regulation (CRR), Solvency II, the Securitisation Regulation and the PRA Rulebook.*¹
2. This guidance explains:
 - a. the general effect of the PRA's transitional direction, which is to generally delay onshoring changes which fall within the remit of the PRA until 31 March 2022;
 - b. how firms should interpret their regulatory obligations which applied immediately before the end of the transition period;
 - c. exceptions to the PRA's general approach; and
 - d. the PRA's specific approach to the use of the transitional power for former passporting firms, in particular firms in the temporary permissions regime (TPR) and Supervised Run-off Regime (SRO).
3. Firms should have regard to this guidance while the transitional relief granted under the direction is in effect. Firms should note that this guidance is non-binding in nature, that it may be amended from time-to-time, and that the direction should be followed in the case of any inconsistency with this guidance.
4. The direction will come into effect at the end of the transition period and will apply until Thursday 31 March 2022 unless the PRA decides to change this in future.
5. Any reference to an EU regulation, including to a Binding Technical Standard, is a reference to the UK version of that regulation, unless otherwise stated.

General delay of onshoring changes until 31 March 2022

6. **The general effect of the transitional direction is to delay the application to firms of all changes to regulatory requirements resulting from onshoring for 15 months after the end of the transition period, ie until Thursday 31 March 2022 (the TTP period).** This includes:
 - a. onshoring changes that the PRA is making to rules and Binding Technical Standards;
 - b. changes that HM Treasury is making to onshored EU regulations (such as onshored CRR); and

¹ These guidance documents were last published in February 2019. Updated versions to be published in due course.

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- c. changes that HM Treasury is making to existing domestic legislation that relates to EU membership (for example UK legislation that implemented an EU Directive).
7. The direction only applies to requirements which fall within the remit of the PRA. But covers both:
 - a. new and amended regulatory requirements that have changed as a result of onshoring; and
 - b. existing regulatory requirements that apply to a firm for the first time as a result of onshoring (even if those requirements have not themselves changed).
- 8. This means that during the TTP period firms should generally continue to comply with their regulatory obligations which applied immediately before the end of the transition period. This is unless the PRA has provided for an exception (see section below for more details).**
9. The transitional direction does not (unless expressly stated otherwise) allow optionality, making it mandatory for firms to continue to comply with the effect of the obligations that applied immediately before the end of the transition period where this is covered by the direction.
10. The use of the transitional power does not affect the PRA's approach to the supervision of individual firms. The PRA will continue to consider supervisory action in relation to individual firms in line with its statutory objectives.

How firms should interpret their regulatory obligations which applied immediately before the end of the transition period

- 11. The PRA's intention is that firms should, in substance, continue to do the same thing after the end of the transition period as before. But in order to achieve this, firms should take a common sense approach to interpreting regulatory obligations which applied immediately before the end of the transition period.**
12. For example:
 - a. if a requirement referred to the EU, it may need to be read as including the UK after the end of the transition period; or
 - b. other references requiring similar adaptation may be to governments, central banks, national competent authorities, other institutions of member states, and non-EEA third countries.
13. In particular, any obligation to provide information to an authority in a member state or the EU should be read as an obligation to provide it to the PRA instead (see paragraph 8 of the transitional direction). Any record keeping obligations in relation to the provision of such information should similarly be adapted.

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Exceptions to the PRA's general approach

14. The PRA has excepted certain requirements from the general approach described above (see paragraph 6 of the transitional direction). These are explained below.

15. **Interaction with other transitional arrangements.** The PRA's transitional direction does not apply where specific transitional provisions have been included in relation to the relevant issue in the underlying onshoring changes. For example:

a. **Credit Unions.** The PRA Rulebook is being amended to provide specific transitional arrangements for credit unions. This is so that credit unions can hold EEA investments entered into before the end of the transition period to maturity (maximum of 5 years). But any (non-UK) EEA investments made after the end of the transition period cannot have a maturity beyond Thursday 31 March 2022. These requirements are not covered by the transitional direction because they are covered by this specific provision.

b. **Bilateral Margining.** Given the complexity of the onshoring changes, the PRA has replicated the effect of the application of the general transitional power with specific amendments in the Binding Technical Standard on bilateral margining under EMIR. Firms can therefore continue to rely on existing operational and legal arrangements for compliance with this Binding Technical Standard.

c. **Gibraltar.** HM Treasury has already provided for specific transitional provisions in relation to Gibraltar and therefore these are not covered by the transitional direction.

16. **Financial Services Compensation Scheme, Contractual recognition of bail-in, Stay in Resolution.** *Please see the separate guidance note on transitional relief in relation to the PRA Rulebook.*²

17. **Securitisation.** Other specific exclusions relate to securitisation repositories and Simple, Transparent and Standardised securitisation. *These are explained in the PRA's separate guidance document on the Securitisation Regulation.*³

18. **Accounting and audit legislation.** References in PRA Rules and onshored legislation to International Accounting Standards (IAS) should be read as references to EU-adopted IAS during the TTP period unless and until a firm is required to move from EU-adopted IAS to UK-adopted IAS.

19. **Credit rating agencies.** The cumulative effect of the run-off period applied by the direction and the separate transitional provision in article 4(1A) of the CRA Regulation is that UK regulated entities may, for a period of one year beginning with the end of the transition period, use a credit rating for regulatory purposes if it was issued or endorsed by an EU credit rating agency before the end of the transition period and was not withdrawn immediately before the end of the transition period. For further guidance on

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this exception, firms should refer to the guidance issued by the FCA in Annex A to the FCA Transitional Direction.

20. **Technical information produced by EU authorities.** European authorities are currently responsible for the publication of various registers, lists and technical information. For example, the European Insurance and Occupational Pension Authority (EIOPA) is responsible for publishing technical information under Article 77e of the Solvency II Directive that insurers use for regulatory valuations. Where the PRA will be responsible for publishing that information after the end of the transition period, firms should use information published by the PRA after the end of the transition period, rather than continuing to rely on the EU information published by EIOPA.⁴
21. **Interaction with HM Treasury equivalence findings.** In certain areas, the use of the transitional power has the same effect as if the EU had been found equivalent by HM Treasury. The effect of the direction is to end the transitional relief if HM Treasury find the EU equivalent before Thursday 31 March 2022, but the requirements will remain the same for firms.
22. 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. The transitional direction will allow firms to continue to treat EU exposures, including sovereign exposures, preferentially until Thursday 31 March 2022. Therefore, firms would be able to 0% risk weight these exposures until this date either as a result of the EU being found equivalent by HM Treasury or as a result of the PRA's transitional direction. A positive equivalence finding would have to be made for firms to continue to 0% risk weight these exposures after Thursday 31 March 2022.
23. The Bank and PRA will at this time exempt all areas of 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 a finding of equivalence. *Further detail in relation to the corresponding requirements for CCPs is set out in the 'Bank's guidance on the use of the transitional direction as FMI competent authority'.⁵*
24. **Central bank exemptions.** The direction does not apply in relation to requirements where HM Treasury has the power to exempt central banks and other bodies from those requirements.

Former passporting firms

25. The direction contains specific provisions for former passporting firms. Requirements which apply to such firms for the first time (or apply to them differently) solely due to the repeal of EEA passporting (together, where relevant, with the introduction of TPR or SRO) are not generally covered by the direction.

⁴ Further details on the transfer of roles and responsibilities to the Bank and PRA can be found here: <https://www.bankofengland.co.uk/eu-withdrawal/transfer-of-roles-and-responsibilities-to-the-bank>

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26. This means that, broadly speaking, firms in TPR and SRO will, subject to the limited exceptions set out below, need to meet UK third-country requirements from the end of the transition period. 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. Such firms will benefit from the same transitional relief that has been granted to other existing third-country firms.

27. Furthermore, where new obligations apply only to firms in TPR or SRO they will apply from the end of the transition period. For example, the requirement for SRO firms to provide the PRA with a runoff plan will apply from the end of the transition period.

28. The transitional direction does not apply to firms in the Contractual Run-Off Regime.

29. **Areas where transitional relief is being granted.** Transitional relief is being provided in respect of the following areas:

- a. For former passporting firms, transitional relief is being provided in respect of the Remuneration Part of the PRA Rulebook from certain obligations that go beyond the minimum requirements of CRD IV, until the start of the first performance year that begins at least three months after the end of the transition period. For the remainder of the performance period during which the period ends former passporting firms are not required to apply requirements under the Remuneration Part of the PRA Rulebook to individuals who have been determined not to be Material Risk Takers in accordance with the Material Risk Takers Regulation⁶ or its successor. Furthermore, during the TTP period former passporting firms may comply with certain thresholds that from Friday 1 January 2021 are proposed to be expressed in sterling using the Euro thresholds that applied immediately before that date.⁷
- b. For insurance firms in the TPR and SRO the application of third country branch rules and reporting rules of the PRA Rulebook is modified in accordance with the principles set out in paragraph 11 of the direction.
- c. Essentially insurers in the TPR and SRO with UK branches will have 6 months before qualitative reporting obligations to the PRA on branch specific matters begin.
- d. Insurers in the TPR and SRO with UK branches will have 15 months to meet obligations to calculate the branch Minimum Capital Requirements or branch Solvency Capital Requirements and any obligations (including reporting obligations) which are dependent upon such calculations.
- e. Similarly, the provisions on branch notional minimum capital requirements for composite insurers in rule 11.1(1) of the Third Country Branches Part of the Composites Part of the PRA Rulebook are delayed for 15 months.

⁶ Commission Delegated Regulation 604/2014.

⁷ As proposed in draft rules included in Appendix 1 to CP12/20 and in Annex Y of the draft Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument 2020 (pdf) published as part of CP13/20.

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- f. Similarly a 6 months transitional period applies to rule 2.1 of the Regulatory Reporting Part of the PRA Rulebook in respect of the Statement of profit or loss for banks (falling within Regulatory Activity Group 1.)
- g. In relation to rule 3.2 of the General Provisions Part of the PRA Rulebook (Disclosure to Retail Clients), firms in the TPR or SRO may choose to use their existing disclosure wording until 31 March 2021 (i.e. three months after the end of the transition period).

30. A summary of areas where transitional relief is being provided to TPR and SRO firms is set out below.

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	Remuneration rules where they go beyond CRD IV requirements: <ul style="list-style-type: none"> - Deferrals - Clawbacks - Buyouts - Risk Adjustment - Personal Investment Strategies 	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
	Branch solvency and minimum capital requirements for insurance branches <ul style="list-style-type: none"> - Branch SCR and branch MCR calculations - Localisation and deposit of assets - Branch scheme of operations 	
	Solvency II quantitative reporting	

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	Solvency II qualitative reporting – Complete branch ORSA and branch RSR	
	Composites rules relating to calculation of notional minimum capital requirement	