



BANK OF ENGLAND

December 2018

UK withdrawal from the EU: Further changes to

- PRA Rulebook and Binding Technical Standards
- Resolution Binding Technical Standards

Bank of England Consultation Paper | PRA Consultation Paper CP32/18

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Responses are requested by Monday 21 January 2019.

Comments and enquiries

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1 Overview

1.1 The UK's withdrawal from the European Union (EU) requires changes to be made to UK legislation to ensure that it remains functional. The European Union (Withdrawal) Act 2018 (the 'Act') converts directly applicable EU law (eg EU Regulations) 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 from the EU – these processes are referred to as 'onshoring' or 'Nationalising the Acquis'¹ (NtA).²

1.2 This Consultation Paper (CP) contains two consultations to fix deficiencies arising from the UK's withdrawal from the EU and make consequential changes:

- Part 1 sets out the Prudential Regulation Authority's (PRA) proposals in relation to the PRA Rulebook and Binding Technical Standards (BTS) within the PRA's remit that will be retained, or 'onshored', in UK law.
- Part 2 sets out proposals by the Bank of England (Bank) acting as resolution authority in relation to two BTS under the Bank Resolution and Recovery Directive (BRRD).³

1.3 This CP is published as a part of the Bank's consultations on amending financial services legislation under the Act.⁴ The Bank and PRA are consulting on further changes in this CP to ensure an operable legal framework after the UK leaves the EU, and to reflect onshoring changes made by HM Treasury in the relevant draft Statutory Instruments (SIs) or relevant explanatory policy materials made available by HM Treasury since the publication of the Bank's and PRA's consultations in October 2018. This includes the 'Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019' draft SI⁵ published on Monday 17 December 2018, the 'Securitisation (Amendment) (EU Exit) Regulations 2019' draft SI⁶ published on Wednesday 19 December 2018 and the 'Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019: explanatory information'⁷ published on Wednesday 19 December 2018. The Bank and PRA continue to follow the approach set out in CP25/18 'The

¹ Acquis refers to the 'acquis communautaire'.

² 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>.

³ Directive 2014/59/EU.

⁴ The Bank consultation package published on 25 October 2018 comprises:

- a joint Bank and PRA CP25/18 on the overall approach, setting out the Bank's general approach to fixing deficiencies in rules and onshored BTS, and setting out its proposed expectations on how EU Guidelines and Recommendations should be interpreted: <http://www.bankofengland.co.uk/paper/2018/the-boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>;
- a PRA CP26/18 on changes to PRA rules and changes to onshored BTS within the PRA's remit: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>;
- a Bank CP on changes to Financial Market Infrastructure (FMI) rules and onshored BTS within the remit of the Bank as FMI supervisor: <http://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-changes-to-fmi-rules-and-onshored-binding-technical-standards>; and
- a Bank CP on changes to onshored BTS within the remit of the Bank as resolution authority: <http://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-boes-approach-to-resolution-sop-and-onshored-binding-technical-standards>.

⁵ <https://www.gov.uk/government/publications/draft-financial-services-contracts-transitional-and-saving-provision-eu-exit-regulations-2019>.

⁶ <https://www.gov.uk/government/publications/Draft-Securitisation-Amendment-EU-Exit-Regulations-2019>.

⁷ <https://www.gov.uk/government/publications/Draft-EU-Exit-legislation-relating-to-the-financial-services-framework-between-the-UK-and-Gibraltar>

Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018' (the 'NtA approach CP').⁸

1.4 The draft PRA Rulebook EU Exit Instrument contained in Appendix 2 shows all proposed changes to the Rulebook Parts affected by this CP, including those changes proposed in CP26/18 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards'⁹. The further changes being consulted on in this CP are highlighted in yellow in Appendix 2.

1.5 This CP is relevant to all firms authorised and regulated by the PRA (including those that expect to have a deemed permission under the 'temporary permissions regime' (TPR) or Financial Services Contracts Regime (FSCR),¹⁰ or that seek to apply for PRA authorisation in the future. It is also relevant to firms which are treated as exempt in relation to certain regulated activities under the FSCR.

Background

1.6 As set out in the NtA approach CP, HM Treasury has delegated powers, under the Act, to the financial services regulators (PRA, Bank, Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR)) through the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the 'Regulations'). This gives the regulators responsibility for fixing deficiencies in onshored BTS.¹¹ HM Treasury also intends to amend the Regulations to include relevant BTS adopted by the European Commission after the original SI was laid in Parliament. The delegated power can also be used by the regulators to make amendments within their respective rules. Therefore, the PRA and Bank intend to make 'EU Exit Instruments' to fix any deficiency in PRA rules, or in BTS in the PRA's or Bank's remit, arising from the UK's withdrawal from the EU.

1.7 As set out in the NtA approach CP, HM Treasury is responsible for addressing deficiencies in EU regulations that are onshored under the Act, apart from BTS. HM Treasury is also responsible for addressing deficiencies in primary and secondary UK financial services legislation that arise as a result of the UK's withdrawal from the EU. The changes proposed to the PRA Rulebook and BTS in this CP are consistent with changes that HM Treasury proposes to make to the relevant legislation, and should be read in conjunction with those changes.

1.8 This CP focuses on changes where the PRA and Bank propose to depart from the general approach described in Chapter 3 of the NtA approach CP (in particular, where the PRA and Bank propose to depart from the general principle of treating the EU and its Member States¹² as 'third countries'),¹³ or where the PRA and Bank consider that an explanation would be appropriate to make clear the rationale for the changes. This CP and the NtA approach CP should be read in conjunction.

1.9 The power delegated to the PRA and Bank under the Act can only be used to fix 'deficiencies' that arise as a result of the UK's withdrawal from the EU. Therefore the PRA and

⁸ See footnote 4.

⁹ See footnote 4.

¹⁰ As set out in the 'Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019' draft SI – see the Bank's Financial Services Contracts Regime webpage for more information: <https://www.bankofengland.co.uk/eu-withdrawal/financial-services-contracts-regime>.

¹¹ In addition to the power to address deficiencies, the Regulations also delegate to the regulators (PRA, Bank, FCA and PSR) an ongoing power to make and maintain BTS. These powers cannot be exercised until after the UK has left the EU.

¹² References in this CP to the EU and/or its Member States include, as appropriate, the European Economic Area (EEA) States of Norway, Iceland and Liechtenstein.

¹³ 'Third country' is defined in relation to each piece of EU legislation but is broadly any non-EEA jurisdiction. On exit those definitions will be altered to any non-UK jurisdiction.

Bank cannot use the power as the basis for policy changes unrelated to the UK's withdrawal from the EU.

1.10 The PRA is proposing to use the delegated power for the majority of changes proposed in Part 1 of this CP. However, the PRA is proposing to use its rule-making powers under the Financial Services and Markets Act 2000 (FSMA) in relation to certain aspects of rules concerning levies and administration fees in respect of the Financial Services Compensation Scheme (FSCS) (see Chapter 8).

1.11 The Bank is proposing to use the powers delegated under the Act for making the changes relating to the BRRD BTS proposed in Part 2 of this CP.

Approach to BTS changes

1.12 In this CP, the PRA and Bank are consulting on changes to additional onshored BTS that the PRA and Bank will be, or are expecting to be, responsible for (as set out in the Schedule to the Regulations). A list of the BTS expected to be in the PRA's remit being consulted on in Part 1 of this CP is included in Appendix 3 alongside the draft EU Exit Instrument. The proposed changes to BTS in the Bank's remit as resolution authority being consulted on in Part 2 of this CP are set out in the draft EU Exit Instrument in Appendix 4.

Joint PRA/FCA BTS

1.13 The responsibility for some onshored BTS is shared¹⁴ between the PRA and FCA ('joint BTS'). Where this is the case, the approach is that one regulator will take the lead in proposing amendments, in close consultation with the other relevant regulator, based on which regulator's remit and objectives are most relevant to the joint BTS. Of particular relevance for Part 1 of this CP are changes to Securitisation Regulation¹⁵ BTS proposed by PRA and Markets in Financial Instrument Directive¹⁶ (MiFID) BTS consulted on by the FCA in CP18/28 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation'.¹⁷

1.14 Under the Regulations, regulators have the option to retain the joint BTS as joint, or 'divide' them so that, for example, there is a PRA version of the onshored BTS for PRA-regulated firms and an FCA version for FCA-regulated firms. As previously set out in CP26/18, to avoid duplication, the detail of the proposed changes to the relevant joint BTS is included in the PRA's or FCA's consultation packages as described below.

- Part 1 of this CP includes proposed changes to the joint PRA/FCA BTS that relate to the Securitisation Regulation and existing securitisation regime. It also includes proposed changes to a joint PRA/FCA BTS relating to operational risk. The FCA has consulted on proposed changes to the joint PRA/FCA BTS that relate to MiFID in their CP18/28.
- Part 2 of this CP includes proposed changes to two BTS relating to the BRRD that are expected to be in the sole remit of the Bank as resolution authority.

Implementation

1.15 As set out in the NtA approach CP, the changes proposed in this CP would take effect at 11:00pm on Friday 29 March 2019 ('exit day')¹⁸ only in the event that there is no

¹⁴ As specified in the Schedule to the Regulations.

¹⁵ Regulation (EU) 2017/2402.

¹⁶ Directive 2014/65/EU.

¹⁷ October 2018: <https://www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation>.

¹⁸ As defined in the Act.

Implementation Period.¹⁹ If the Withdrawal Agreement between the UK and EU is ratified and the Implementation Period commences on exit day, the proposed changes would not take effect until after the end of the Implementation Period. Further modifications to the PRA Rulebook and onshored BTS may be required to reflect any arrangements made between the UK and EU as part of their future relationship.²⁰

1.16 HM Treasury has committed²¹ to give the financial services regulators a temporary transitional power to enable firms to adjust to changes made as a result of onshoring. As set out in the NtA approach CP, the Bank and PRA are considering exercising the temporary transitional power in a broad way, with limited exceptions,²² to delay the application of onshoring changes that will alter the regulatory standards that apply to firms, in the event that there is no Implementation Period.

Transferred functions

1.17 Certain functions currently carried out by the European Supervisory Authorities (ESAs) have been transferred, or are expected to be transferred, to the Bank and PRA. These are expected to include External Credit Assessment Institutions (ECAI) mapping and publication of Solvency II²³ technical information. The PRA and Bank are preparing to receive and perform these functions and will set out relevant information for firms, such as the location of data that will be required for the purposes of firms' prudential calculation.

Structure of the document

1.18 The rest of this CP is structured as follows:

Part 1: PRA Consultation

- Chapter 2 sets out proposals relating to the FSCR.
- Chapter 3 sets out proposals relating to Gibraltar and incoming Gibraltar firms.
- Chapter 4 sets out proposals relating to additional PRA Rulebook and BTS changes.
- Chapter 5 sets out proposals relating to regulatory transactions forms.
- Chapter 6 sets out further proposals relating to FSCS protection (including levies for inbound firms).
- Chapter 7 sets out the PRA's obligations under the Regulations (relevant to Chapters 2-5)
- Chapter 8 sets out the PRA's statutory obligations under FSMA (relevant to Chapter 6).

Part 2: Bank (as resolution authority) consultation

- Chapter 9 sets out proposals relating to additional BRRD BTS.

¹⁹ A Withdrawal Agreement was agreed between the UK and EU and endorsed by leaders on 25 November 2018: <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration-laid-before-parliament-following-political-agreement>. The Withdrawal Agreement provides for an implementation period (the 'Implementation Period').

²⁰ A political declaration on the future relationship between the UK and the EU was endorsed by leaders on 25 November 2018: <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>. This political declaration sets out the framework for the future relationship between the EU and UK.

²¹ '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>.

²² Exceptions to the use of the temporary transitional power as proposed by the Bank and PRA are set out in the NtA approach CP and CP26/18.

²³ Directive 2009/138/EC.

- Chapter 10 sets out the Bank's obligations under the Regulations (relevant to Chapter 9).

1.19 The appendices to this CP consist of:

Part 1 Appendices

- Appendix 1: Update to draft SS 'PRA approach to interpreting reporting and disclosure requirements after the UK's withdrawal from the EU'
- Appendix 2: Draft PRA Rulebook EU Exit Instrument
- Appendix 3: List of BTS in the PRA's remit and draft BTS EU Exit Instruments

Part 2 Appendix

- Appendix 4: List of BTS in the Bank's (resolution authority) remit and draft BTS EU Exit Instrument

Responses and next steps

1.20 This consultation closes on Monday 21 January 2019. The PRA and Bank invites feedback on the additional proposals set out in this consultation. Please address any comments or enquiries using the details provided in Chapter 8 (for proposals set out in Part 1) and Chapter 10 (for proposals set out in Part 2).

1.21 Responses to this CP will be shared with the FCA.

Part 1 PRA consultation - UK withdrawal from the EU: Further changes to PRA Rulebook and Binding Technical Standards

2 The Financial Services Contracts Regime (FSCR) This chapter covers the PRA's proposals on prudential rules relating to the Financial Services Contracts Regime (FSCR) that the Government published in draft on Monday 17 December 2018 and intends to make under the Act²⁴ subject to the final draft of the 'Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019' SI being approved by both Houses of Parliament.

2.2 The mechanisms established by the FSCR would act as a back-stop to the temporary permissions regime (TPR) to ensure that those EEA firms carrying out regulated activities in the UK via a passport immediately before exit day, that do not enter TPR, and those that exit TPR without UK authorisation in respect of some or all their regulated activities, are able to wind down their UK regulated activities in an orderly manner.

2.3 The draft FSCR SI establishes two mechanisms:

- (i) Supervised Run-off (SRO): The types of firms which may enter SRO include firms:
- with a UK branch (operating under a freedom of establishment (FoE) passport immediately before exit day) that did not enter TPR;
 - that entered TPR but exited it without a UK authorisation in respect of some or all their regulated activities (operating under an FoE or freedom of services (FoS) passport immediately before exit day); and
 - that held top-up permissions before the UK's exit from the EU and were operating under an FoE or FoS passport immediately before exit day and did not enter TPR.
- (ii) Contractual Run-off (CRO): Firms without a UK branch (operating under a FoS passport immediately before exit day) that do not hold a top-up permission and do not enter TPR, will automatically enter CRO.

2.4 The activities permitted under CRO and SRO will be limited to those required to service pre-existing contracts and to:

- reduce the financial risk of parties to pre-existing contracts and third parties affected by the performance of pre-existing contracts;
- transfer the property, rights or liabilities under a pre-existing contract; and
- comply with legal and regulatory requirements.

2.5 A condition of entry into FSCR is that a firm is regulated by its home state regulator and therefore we expect these firms to be supervised by their home regulators. If home state authorisation is cancelled, a firm will cease to be in the regime.

²⁴ <https://www.gov.uk/government/publications/draft-financial-services-contracts-transitional-and-saving-provision-eu-exit-regulations-2019>.

2.6 The FSCR SI allows firms to utilise SRO and CRO mechanisms for five years after entry into the regime (whether they enter on exit day, or whether they enter after having been in the TPR for a period of time). The exception to this five-year time limit is for contracts of insurance which will have a time limit of 15 years. The draft FSCR confers on HM Treasury the power to extend the length of the regime by statutory instrument if it considers it necessary to do so following the submission of a joint assessment by the regulators as to the effect of extending or not extending the regime.

Approach to firms in Supervised Run-off (SRO)

2.7 Entry into the SRO will occur automatically by operation of law where the statutory conditions are met and firms in SRO will have a 'deemed' Part 4A permission.

2.8 Firms in SRO will be subject to the same obligations and supervisory framework other Part 4A authorised firms. However, some of the rules that SRO firms will need to comply with will need to be amended to ensure that they are effective and operable.

2.9 EEA firms operating in the UK under an FoE or FoS passport that enter SRO will become, and be treated as, third country firms. Subject to the rule changes discussed below, the PRA expects firms in SRO with a branch in the UK to comply with the same rules that apply to other third country branches. For cross-border service providers in SRO without a UK 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. These include the Fundamental Rules, Auditors, Change in Control, Close Links, Fees, General Provisions, Information Gathering, Interpretation, Notifications and Use of Skilled Persons Parts, Senior Managers and Certification Regime (SM&CR) requirements, and FSCS rules in the PRA Rulebook, subject to the rule changes discussed below.

Approach for firms In Contractual Run-off (CRO)

2.10 The CRO grants firms within it a limited exemption to the general prohibition for the purposes of winding down UK regulated activities in an orderly manner. The scope of the exemption is set out above.

Rule changes for SRO firms to ensure operability after withdrawal

2.11 PRA Rulebook changes particularly relevant to the firms in SRO include:

- (i) adjustments to the definition of non-Directive insurer;
- (ii) application of SM&CR requirements;
- (iii) disclosure to retail clients;
- (iv) information requirements; and
- (v) FSCS (changes apply to both SRO and CRO firms).

Insurance undertakings – non-Directive insurers

2.12 As for firms which enter the TPR, the PRA does not consider PRA non-Directive insurer rules to be effective or easily operable for firms entering SRO since they are based on a Solvency I regime and the insurers in question are currently operating under a Solvency II

regime. The PRA therefore proposes to exclude SRO firms from the definition of non-Directive insurer.²⁵

Senior Managers and Certification Regime (SM&CR) requirements

2.13 In order to ensure appropriate and proportionate accountability, the PRA proposes to apply the SM&CR to firms in the SRO. In particular, the PRA proposes to apply a streamlined version of the SM&CR to firms in the SRO that will focus on the specific objective of an orderly run-off of the firm's UK regulated activities.

2.14 The PRA proposes that all firms in the SRO will be required to have at least one individual approved to perform the Head of Overseas Branch (Senior Management Function (SMF) 19) function in the Senior Management Functions 7/ Insurance – Senior Management Functions 6 Parts of the PRA Rulebook ('Provisional SMF19').

2.15 The PRA proposes that firms in the SRO will have a grace period of 12 weeks from their date of entry into the regime in which to obtain deemed (or full) approval for an SMF19. A deemed approval can last for up to 12 months. The PRA proposes to direct firms in the SRO to use a specific form for SMF approval applications. The form would be an adapted version of Short Form A. Using the information provided in this application, the PRA would decide whether to give a notice conferring deemed approval. The relevant individual would then need to undergo a full fit and proper assessment and obtain PRA approval and FCA consent to that assessment as an SMF within 12 months of receipt of notice of deemed approval.

2.16 The fit and proper assessment will focus on whether the relevant individual is fit and proper to deliver the objective of orderly run off of the firm's UK activities within SRO. Likewise, the usual Prescribed Responsibilities for third country branches, which apply in business-as-usual and will apply to firms in the TPR, will not apply to firms in SRO. Instead, the SMF19 at these firms will be subject to a standard, single responsibility to 'oversee the orderly run-off of the firm's UK-regulated activities'.

2.17 The PRA also proposes that the Certification Regime continue to apply to the extent that it currently does pursuant to FCA rules, ie to firms currently operating in the UK as a branch via an establishment passport but not to any other firms.

Disclosure to retail clients for firms

2.18 The PRA proposes that firms in SRO be required to include specific status disclosure wording in their communications with retail clients, both written and electronic, to indicate that they are in the regime.

2.19 The wording the PRA intends to use for dual-regulated SRO firms without a top-up permission is below. The wording for firms with a top-up permission will include text to reflect that top-up permission:

'Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. [For EEA services firms: The nature and extent of consumer

²⁵ The PRA consulted on a change to the definition of 'non-Directive insurer' in CP26/18, which would give effect to the policy intent to exclude SRO firms from the definition.

protections may differ from those for firms based in the UK.] Details of the Financial Services Contracts Regime, that allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the PRA's website'.

Information requirements

2.20 The PRA proposes that firms in SRO be required to provide the PRA with a run-off plan on entry into the SRO, which will describe the firm's plans to run-off its business before the mechanism expires. Firms will be required to provide regular (at least annual) updates on progress and any unexpected divergence from this plan.

2.21 This requirement will apply to banking firms operating under FoE and FoS passports as well as insurers operating under FoE and FoS passports.

Approach to FSCS protection for customers of firms in Supervised Run-off and Contractual Run-off

2.22 See Chapter 6.

Approach to use of temporary transitional power for incoming EEA branches

2.23 If there is no Implementation Period, EEA firms operating in the UK under the FoS or FoE passport that enter SRO will become, and be treated as, third country firms.

2.24 Firms entering the SRO may find it challenging to comply immediately after exit day with some requirements in PRA rules that will apply to them for the first time because of the UK's new position outside the EU (this would apply as well to firms that enter SRO from TPR). Therefore, at this stage, the PRA is considering the use of possible transitional relief in relation to certain aspects of the following third country branch requirements:

- Branch Solvency and Minimum Capital Requirements for insurance branches (but the PRA would expect firms to comply with branch security deposit requirements);
- PRA remuneration rules where they go beyond minimum CRD IV²⁶ requirements;
- 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
- certain composite rules for insurance branches.

2.25 The PRA welcomes comments on any particular aspects of the UK third country regime and any particular obligations in the PRA Rulebook which readers consider EEA firms entering SRO would find particularly challenging to comply with from exit day.

²⁶ Capital Requirements Directive (2013/36/EU) (CRD) and Capital Requirements Regulation (575/2013) (CRR) – jointly 'CRD IV'.

3 Gibraltar and incoming Gibraltar firms

3.1 This chapter covers the PRA's proposals on changes to the prudential rules on the treatment of Gibraltar firms for the purposes of the PRA Rulebook.

Background

3.2 HM Government has announced that Gibraltar-based financial services firms will continue to have access to the UK market on the basis of the current deemed passport rights until December 2020 should there be no Implementation Period. The FSMA Gibraltar Order,²⁷ which currently replicates EU passporting rights as between the UK and Gibraltar will be retained and any deficiencies in it fixed.²⁸ In the event that other EEA firms lose their passporting rights and enter either the TPR or FSCR, Gibraltar firms will be able to continue operating in the UK on the basis of their deemed passporting rights.

3.3 As a result of the end of passporting rights for EEA firms, many of the changes relating to the withdrawal of the UK from the EU involve amending Parts of the PRA Rulebook to reflect that 'references to passporting, or processes associated with passporting, are redundant'.²⁹ However, this will not be the case in relation to Gibraltar and Gibraltar firms continuing to operate in the UK on the basis of continued deemed passporting rights, where references to passporting and associated processes would need to be retained for the exclusive use of Gibraltar firms. This will impact on some material areas of policy, including the scope of FSCS coverage and the prudential treatment of UK firms' exposures to Gibraltar.

Approach to Gibraltar and incoming Gibraltar firms

3.4 The PRA is consulting on a draft rule which provides a 'horizontal fix' to save the existing treatment of Gibraltar and Gibraltar firms in the PRA Rulebook. The purpose of the horizontal fix would be to maintain status quo regulatory treatments in relation to Gibraltar, without having to undertake specific line-by-line amendments to reverse the effect of the deletion of otherwise redundant provisions, or alteration of relevant provisions, under the baseline scenario of moving to third country treatment.

3.5 This horizontal fix rule does not apply where a 'contrary intention' is evident. This 'contrary intention' should be construed in light of regulations made under the Act. This rule is not intended to apply where the application of a rule in the PRA Rulebook in relation to or in connection with Gibraltar would be contrary to the intention of regulations made under the Act or would have a result that is incompatible or inconsistent with the legislative scheme with which a rule is connected.

3.6 The horizontal fix does not apply to the Depositor Protection and Policyholder Protection Parts, which contain their own application provisions for Gibraltar-based firms.

Approach to FSCS protection for customers of Gibraltar firms and UK firms operating in Gibraltar

3.7 See Chapter 6.

²⁷ The Financial Services and Markets Act 2000 (Gibraltar) Order 2001.

²⁸ The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019: explanatory information <https://www.gov.uk/government/publications/Draft-EU-Exit-legislation-relating-to-the-financial-services-framework-between-the-UK-and-Gibraltar> .

²⁹ See CP26/18.

4 Further PRA Rulebook and PRA BTS changes

4.1 This chapter highlights additional proposed amendments to PRA rules and BTS that are expected to be in force on exit day.

Securitisation

4.2 The new EU securitisation framework, which applies from Tuesday 1 January 2019, consists of:

- (i) the Securitisation Regulation,³⁰ which outlines general requirements for all securitisation activity in the EU as well as the criteria and process for designating certain securitisations as ‘Simple, Transparent and Standardised’ (STS);
- (ii) amendments to Capital Requirements Regulation (CRR),³¹ which implement revisions to the Basel securitisation framework; and
- (iii) amendments to the Solvency II Delegated Regulation.³²

4.3 This new framework introduces STS securitisations with appropriate prudential incentives for firms to structure securitisations that are simpler, transparent and more comparable. The PRA published PS29/18 ‘Securitisation: The new EU framework and Significant Risk Transfer’³³ and updated Supervisory Statements relating to the new framework on Thursday 15 November 2018.

4.4 The Securitisation Regulations 2018,³⁴ which implement the new EU securitisation regime, designate the PRA as the competent authority for supervising the compliance of all PRA-authorized firms established in the UK with the obligations set out in Articles 6, 7, 8 and 9 of the Securitisation Regulation.

4.5 HM Treasury intends to make the changes relating to the UK’s withdrawal from the EU with an additional Securitisation SI under the Act.³⁵ The ‘Securitisation (Amendment) (EU Exit) Regulations 2019’ draft SI will cover changes to both the new and existing securitisation frameworks and is expected to transfer the relevant BTS mandates to the PRA and/or FCA.

4.6 The new EU securitisation framework mandates the ESAs to develop a number of BTS. Some of these BTS are of relevance to the PRA and are expected to be adopted before exit day. Of these, the BTS specifying the requirements relating to risk retention pursuant to Article 6(7) of the Securitisation Regulation³⁶ has been submitted in draft to the European Commission. The PRA expects to lead on making the changes relating to the UK’s withdrawal from the EU for this BTS, which will remain shared with the FCA. This CP proposes amendments based on the final draft BTS published by the European Banking Authority (EBA).

³⁰ EU/2017/2402.

³¹ EU/2017/2401.

³² Regulation (EU) 2015/35.

³³ <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/securitisation-the-new-eu-framework-and-significant-risk-transfer>.

³⁴ Laid in Parliament on Tuesday 4 December 2018: <http://www.legislation.gov.uk/ukSI/2018/1288/contents/made>.

³⁵ The ‘Securitisation (Amendment) (EU Exit) Regulations 2019’ draft SI was published on Wednesday 19 December 2018: <https://www.gov.uk/government/publications/Draft-Securitisation-Amendment-EU-Exit-Regulations-2019>

³⁶ <https://eba.europa.eu/documents/10180/2298183/Draft+RTS+on+risk+retention+%28EBA-RTS-2018-01%29.pdf/a77e1aad-5cf9-444f-9e7b-fa2d948df1d6>.

4.7 The draft BTS to specify homogeneity of exposures underlying an STS securitisation (Articles 20 and 24 of the Securitisation Regulation) has been submitted to the European Commission and is likely to be adopted before exit day. However, the FCA will make the relevant changes relating to the UK's withdrawal from the EU to this BTS in due course, as they have been designated as the competent authority for supervising the compliance of originators, sponsors and SSPEs with the STS framework.

4.8 The final draft BTS to specify transparency requirements for originators, sponsors and securitisation special purpose entities (SSPEs) (Article 7 of the Securitisation Regulation) has been submitted to the European Commission. In the event that this BTS is adopted and in force before exit day, the BTS is expected to remain joint with the FCA, with the FCA leading on the drafting of the changes relating to the UK's withdrawal from the EU.

4.9 In the event a BTS is not adopted and in force by exit day, or is adopted with significant changes by the European Commission compared to the published draft, the PRA will provide an update on the expected approach.

4.10 A selection of legacy BTS relating to the pre-January 2019 CRR will also continue to apply from Tuesday 1 January 2019 as one of the following transitional provisions under the new EU securitisation framework:

- Under the post-January 2019 CRR (as amended by the Regulation (EU) 2017/2401), securitisations in which the securities were issued before Tuesday 1 January 2019 shall continue to apply the pre-January 2019 CRR securitisation capital framework until Tuesday 31 December 2019. Therefore, the PRA is proposing to make changes to the following onshored BTS relating to the current CRR securitisation capital framework:
 - (i) BTS facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights (Regulation (EU) 602/2014); and
 - (ii) BTS mapping credit assessments of external credit assessment institutions for securitisation (Regulation (EU) 2016/1801)
- In respect of securitisations the securities of which were issued before Tuesday 1 January 2019 credit institutions or investment firms as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, shall continue to apply Article 405 pre-January 2019 CRR and Chapters I, II and III and Article 22 of the BTS specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk (Regulation (EU) 625/2014). Therefore, the PRA is proposing to make changes to that onshored BTS.

4.11 The amendments proposed to the BTS listed in paragraph 4.10 are based on the versions currently in force and published in the Official Journal of the European Union.

Additional CRR BTS

4.12 This CP also proposes changes to a BTS (2018/959) on Advanced Measurement Approaches for operational risk under the CRR. This was adopted by the European Commission on Wednesday 14 March 2018 and entered into force on Friday 26 July 2018. This BTS is expected to be added to the Schedule of the Regulations and to be in the joint remit of the PRA and FCA. Following the approach set out in CP26/18, this BTS is expected to be split. Appendix 3 sets out the proposed changes that the PRA would make as the lead regulator for this BTS.

MiFID BTS

4.13 Three BTS under MiFID are to become shared responsibility between the FCA and PRA. Due to the nature of these BTS it is intended that they will remain joint with the FCA. Please see the FCA CP18/28³⁷ for an explanation of changes proposed to these BTS and the draft legal instruments.

Disclosure of a TPR firm's authorisation status (status disclosure)

4.14 In CP26/18 the PRA set out proposals on rules that would apply to firms in TPR if there is no Implementation Period following the UK's withdrawal from the EU. This CP covers an additional proposal on the disclosure of a TPR firm's authorisation status.

4.15 In line with the FCA's proposals contained in CP18/36 'Brexit: proposed changes to the Handbook and Binding Technical Standards – second consultation'³⁸ the PRA is proposing that firms in the TPR include specific disclosure in their letters (or electronic equivalents) to retail clients of their authorisation status in line with the current requirements of General Provisions 3. EEA branches must already make a status disclosure, and so they will need to change the existing wording to reflect the firm's status because of their entry into the TPR. For EEA services firms, the rules requiring status disclosure in letters (or electronic equivalents) to retail clients do not currently apply, so disclosure in all such letters (or electronic equivalents) will be a new requirement.

4.16 Disclosure requirements around a firm's authorisation status aim at providing consumers with information about the regulatory status of the firm they are dealing with and the consequent protections which are available to them. The change in disclosure correctly reflects that the firm no longer operates in the UK under passporting rights and that from exit day it gains a deemed temporary permission under Part 4A of FSMA to continue its business in the UK.

4.17 The wording the PRA intends to use for dual-regulated TPR firms is:

'Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. [For EEA services firms: The nature and extent of consumer protections may differ from those for firms based in the UK.] Details of the temporary permissions regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the PRA's website'.

4.18 In each case, the wording for firms with a top-up permission will include different text to reflect that top-up permission, explaining that firms are authorised by the FCA or PRA (as appropriate) and with deemed variation of permission.

³⁷ See footnote 17.

³⁸ November 2018: <https://www.fca.org.uk/publications/consultation-papers/cp18-36-brexit-proposed-changes-handbook-and-binding-technical-standards-second-consultation>.

5 Regulatory transactions forms

5.1 This chapter sets out the PRA's proposals on regulatory transactions forms in the PRA Rulebook, published on the PRA website, or available through the FCA's Connect system. This is relevant to all PRA-authorised firms, firms that have a qualifying holding, or which intend to acquire a qualifying holding in a PRA-authorised firm and firms that intend to apply for PRA authorisation.

5.2 Following the approach set out in CP26/18, in relation to reporting and disclosure requirements, the PRA does not propose to make line-by-line changes to regulatory transactions application and notification forms at this stage. Instead, the PRA proposes to amend the draft Supervisory Statement (SS) 'PRA approach to interpreting reporting and disclosure requirements after the UK's withdrawal from the EU' 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.

5.3 The draft SS sets out the PRA's expected interpretation of questions, notes or definitions related to the EU. The title and scoping statements of the draft SS are proposed to be changed to include regulatory transactions forms. The remaining content of the draft SS is unchanged as the draft SS consulted on in CP26/18 provides for the necessary interpretations in relation to these forms.

5.4 The PRA considers that this approach would provide clarity for firms on how they should complete regulatory transactions forms, without imposing additional implementation costs by making changes to templates on exit day. The proposed update to the draft SS is set out in Appendix 1.

6 FSCS protection for deposits and insurance (including levies for inbound firms)

6.1 The PRA is responsible for the rules that provide FSCS protection for depositors and policyholders. The FCA is responsible for the rules that determine FSCS protection for other areas, including in particular, investment provision, investment intermediation, insurance intermediation, debt management and home finance intermediation.³⁹

6.2 Chapter 8 of CP26/18 proposes a number of changes to PRA rules concerning the protection provided by the FSCS to depositors and insurance policyholders in light of the UK's withdrawal from the EU.

6.3 At the time of the October CP, the necessary SIs had not been published to allow the PRA to consult on changes in respect of FSCS protection relating to Gibraltar or the FSCR which includes the SRO and CRO mechanisms.⁴⁰ The FSCR SI and HMT explanatory information on the Gibraltar financial services SI have now been published and together form the basis for this consultation.

6.4 This chapter should be read alongside CP26/18 as these proposals add to and amend the FSCS-related proposals issued in consultations in October.⁴¹

6.5 This chapter is relevant to:

- depositors of deposit-takers and policyholders of insurers that operate cross-border between the UK and EEA and between the UK and Gibraltar;
- UK banks and building societies (including those operating in Gibraltar under an FOE passport), and EEA and Gibraltarian credit institutions that operate in the UK under an FOE passport;
- UK insurers (including those operating in the Gibraltar under a passport), EEA and Gibraltarian insurers that operate in the UK under a passport, and firms that have assumed responsibility for liabilities from the foregoing insurers (successors);
- the Society of Lloyd's; and
- the Financial Services Compensation Scheme Limited, as scheme manager.

6.6 As described in the NtA approach CP, if an Implementation Period is agreed with the EU, existing FSCS protection will continue during that period and the proposals in this chapter would not take effect.

Summary of Proposals

6.7 The proposals included in this chapter and the accompanying instrument are to:

³⁹ The FCA is consulting separately on its proposed changes to FSCS protection for these other areas.

⁴⁰ See Chapter 2 for further detail on the CRO and SRO mechanisms.

⁴¹ The PRA also published CP24/18 'Occasional Consultation Paper' (the 'OCP') on Monday 22 October 2018 which proposed minor changes to certain rules in the Depositor Protection and Policyholder Protection Parts of the PRA Rulebook. These changes include amendments to rules 2.2(4)(f) and 28.3 in the Depositor Protection Part, changes to which were also consulted on in CP 26/18. Accordingly, readers should also refer to the OCP.

- maintain the pre-exit scope of FSCS protection in respect of Gibraltar, subject to necessary modifications;
- establish the scope of FSCS protection for depositors and policyholders of firms in the SRO and CRO; and
- adjust the Management Expenses Levy Limit and Base Costs Part (MELL) to include CRO insurers.

6.8 The PRA does not propose to grant transitional relief under the temporary transitional power in respect of proposals in this chapter. This includes changes to the FSCS rules in the Depositor Protection, Dormant Account Schemes, Policyholder Protection and Management Expenses Levy Limit and Base Costs Parts of the PRA Rulebook (Appendix 2). Proposals in this chapter would apply immediately upon exit.

FSCS and Gibraltar

6.9 Pursuant to the Government's agreement with the Government of Gibraltar, the PRA is proposing to maintain the existing scope of FSCS protection after exit until a longer-term framework for market access is introduced. However, consistent with the treatment of UK firms proposed in CP26/18, new insurance policies issued after exit in respect of EEA risks would not be protected.

Deposit-takers

6.10 Pursuant to HM Treasury's public statement on its approach to Gibraltar under the European Union (Withdrawal) Act 2018, the PRA proposes that protection in relation to deposits held by UK establishments of firms with head offices in Gibraltar will be maintained as it was prior to exit. As stated, the Government of Gibraltar will amend its own legislation to preserve the current regulatory position so that these deposits will continue to be protected by the Gibraltarian deposit guarantee scheme.

6.11 Consistent with existing requirements in the Depositor Protection Part of the PRA Rulebook, the PRA would require these firms to notify customers of UK establishments that their depositor protection is provided by the Gibraltarian deposit guarantee scheme via posters and stickers in branch and online.

6.12 Also consistent with the existing scope of FSCS protection, the PRA proposes that FSCS protection would continue for eligible deposits held by Gibraltarian branches of UK incorporated firms with Part 4A permissions to accept deposits. PRA depositor protection rules would continue to apply to those outbound branches.

6.13 The PRA does not propose to retain the pay-out co-operation provisions that were in place pursuant to the EU Deposit Guarantee Schemes Directive, which would mean that the deposit guarantee scheme responsible for funding the pay-out would also administer it.

Insurance

6.14 The PRA proposes to maintain existing FSCS protection for insurance policies issued prior to exit day such that existing FSCS protected policies maintain protection until risks are run off, as long as the insurer remains a 'relevant person' under FSMA (including through the 'deemed passporting rights' provisions of the Gibraltar Order available to firms with a head office in Gibraltar).

6.15 The PRA proposes that for insurance policies issued after exit day by UK establishments of UK authorised insurers (including insurers with head offices in Gibraltar using the retained passporting provisions), FSCS protection would be available to policies in respect of Gibraltarian risks in addition to those of the UK, Channel Islands, and Isle of Man. For insurance policies issued after exit day by inbound Gibraltarian firms using a ‘freedom of services’ passport, FSCS protection would be available (as is the case prior to exit) to policies only in respect of UK risks.

6.16 Consistent with the existing scope of FSCS protection, FSCS protection would continue for policies issued in respect of UK and Gibraltarian risks by Gibraltarian establishments of UK insurers with Part 4A permission.

FSCS and the Financial Services Contracts Regime

6.17 As discussed in Chapter 2, the FSCR (as drafted) is designed to enable EEA firms that were previously passporting to run-off their regulated activities in the UK. Deposit-takers with an establishment in the UK and insurers that are in the FSCR would be members of the FSCS and would need to comply with the Depositor Protection Part and the Policyholder Protection Part of the PRA Rulebook, respectively.

Deposit-takers in the SRO

6.18 Deposit-takers with UK establishments within the SRO would have deemed Part 4A permissions to accept deposits and the PRA proposes that their depositors would be treated the same as deposit-takers in the TPR. All associated depositor protection rules would apply immediately upon entry into the SRO (eg Single Customer View (SCV) files to assist in cases of failure, consumer disclosure, and FSCS levies). Readers are referred to paragraphs 8.25 to 8.35 of CP26/18.

Deposit-takers in the CRO

6.19 Deposit-takers without UK establishments (ie former FoS firms) would not be members of the FSCS and the rules in the Depositor Protection Part would not apply. The PRA expects that home state deposit guarantee schemes would continue to protect deposits held by these deposit-takers (whether in the firm’s home state or in another EEA state).

Insurance policies issued before exit day

6.20 The PRA proposes to maintain existing FSCS protection for insurance policies issued prior to exit day such that existing FSCS protected policies maintain protection until risks are run-off, as long as the insurer remains a ‘relevant person’ under FSMA.

6.21 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 would be ‘authorised persons’ if they have a Part 4A permission, are a TPR or SRO insurer with a deemed Part 4A permission, or pursuant to the changes to FSMA proposed in the draft FSCR by being a firm in the CRO.

6.22 This proposal recognises that policyholders may have factored FSCS protection into their purchase decision and may struggle to replace existing policies with similar protection if there was a sudden cessation in FSCS protection on exit day.

6.23 EEA firms in SRO or CRO would be required to pay FSCS levies, just as they are currently required to do as passporting firms. Readers are referred to Chapter 8 ‘The PRA’s statutory obligations under FSMA’.

Insurance policies issued after exit day

6.24 To the extent policies are issued after exit day by SRO insurers with a UK establishment, protection would apply as it does for policyholders of insurers in the TPR, where policies in respect of risks situated in the UK, Channel Islands, Isle of Man (or Gibraltar – see above) would be eligible for protection.

6.25 To the extent policies are issued after exit day by or SRO or CRO insurers without an establishment in the UK, FSCS protection would extend to protect policies only in respect of risks situated in the UK.

Consequences of exiting the Financial Services Contracts Regime

6.26 The Government proposes in the draft FSCR that an SRO or CRO insurer would cease to be a 'relevant person' when the:

- firm's policies have been run-off or transferred;
- SRO or CRO regimes expire;
- EEA home state supervisor withdraws authorisation; or
- PRA removes a firm from the SRO or CRO.

If, for any of these reasons, a SRO or CRO insurer is not a 'relevant person' at the time the act or omission that gives rise to the claim occurs (or the policies have not been transferred to a 'relevant person'), FSCS protection would be lost. Existing FSCS protection would continue to be available for claims in relation to acts or omissions that arose before the loss of status.

6.27 Readers are referred to paragraphs 8.44-8.46 in CP26/18 in relation to transfers of insurance policies to successors.

FSCS Levies

6.28 All firms that have Part 4A permissions, deemed Part 4A permissions (under TPR or SRO), or are deemed to be authorised persons for the purposes of the FSCS provisions in FSMA under the CRO, would be subject to FSCS levies in respect of their eligible products. Readers are referred to the Chapter 8 for the PRA's statutory obligations in respect of the FSCS levies and administrative fees that would be imposed as a result of rule changes in this consultation as well as those arising from the proposals in CP26/18.

7 The PRA's obligations under the Regulations (relevant to Chapters 2-5)

7.1 HM Treasury has delegated a power, under Section 8 of the Act, to the PRA to make changes to PRA rules and relevant BTS. As such, similar restrictions that apply to the power in Section 8 of the Act also apply to the PRA's delegated power. Different constraints will exist in relation to the temporary transitional power as highlighted in Chapter 4 of the NtA approach CP.

7.2 In accordance with those restrictions, the PRA considers that all changes proposed to Rules and BTS in this CP are appropriate to prevent, remedy or mitigate any:

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

7.3 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.

7.4 The PRA also confirms that the proposed 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.

7.5 Changes proposed in Chapter 6 of this CP relating to FSCS levies are not proposed to be made under the Act. The PRA proposes to make these changes under its FSMA Rule-making power. See Chapter 8 for the consideration of the PRA's statutory obligations under FSMA in relation to these proposals.

Equality and diversity

7.6 The PRA has performed an assessment of the policy proposals and does not consider that the proposals give rise to equality and diversity implications.

8 The PRA's statutory obligations under FSMA (relevant to Chapter 6)

The PRA's statutory obligations

8.1 Generally, in carrying out its policy making functions, the PRA is required to comply with several legal obligations. As mentioned in Chapter 1, the PRA is proposing to use its FSMA powers in relation to certain aspects of the FSCS rules relating to FSCS levies and administrative fees. This is because the Act places restrictions on using the power to fix deficiencies in a way which imposes fees. The effect of the changes in status of firms entering TPR, SRO or CRO pursuant to the TPR or FSCR statutory instruments (as applicable) and, in some instances, related PRA rule changes, is that:

- (i) incoming EEA deposit takers in TPR or SRO which hold deposits at UK establishments will be brought in scope of FSCS levy (and administrative fee) provisions; and
- (ii) incoming EEA insurers (which are already subject to FSCS levy and administrative fee provisions) in TPR, SRO or CRO will change status within the authorisations framework, but continue to be subject to FSCS levy (and administrative fee) provisions.

8.2 The use of FSMA powers means the duty to have regard to certain regulatory principles apply to these aspects of the FSCS rules.

8.3 Before making rules under FSMA,⁴² it requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis (except as noted in the 'Cost benefit analysis' section below);
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,⁴³ insurance objective⁴⁴ (if applicable), and secondary competition objective;⁴⁵
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;⁴⁶ and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.⁴⁷

8.4 The Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury.⁴⁸

8.5 The PRA is also required by the Equality Act 2010⁴⁹ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

⁴² Section 138J of FSMA.

⁴³ Section 2B of FSMA.

⁴⁴ Section 2C of FSMA.

⁴⁵ Section 2H(1) of FSMA.

⁴⁶ Sections 2H(2) and 3B of FSMA.

⁴⁷ Section 138K of FSMA.

⁴⁸ Section 30B of the Bank of England Act 1998.

⁴⁹ Section 149.

Cost benefit analysis

8.6 As a result of falling within scope of the FSCS pursuant to Government statutory instruments and PRA rule changes proposed in CP26/18 and in this consultation, firms would be required to pay FSCS levies after the UK's withdrawal from the EU. The PRA is required to conduct a cost benefit analysis in respect of FSCS levies that will be imposed on these firms.⁵⁰ Proposals regarding administrative fees are exempt from FSMA's CBA requirement. The PRA has estimated costs and benefits where it is reasonably practicable to do so.

8.7 The FSCS delivers direct benefits to customers of deposit-takers and insurers through the payment of compensation to eligible claimants in the event of firm failure. This reduces customers' financial loss and increases confidence in authorised financial services firms. This may contribute towards the safety and soundness of firms and minimise the adverse effects that the failure of a firm could have on the stability of the UK financial system.

Management expenses levy

8.8 The FSCS' management expenses levy (representing the FSCS' annual operating budget) allows the FSCS to raise funds to cover its expenses so it can continue to operate and meet its objective of providing a compensation scheme that is efficient, fair, approachable and responsive.

8.9 The management expenses levy payable by a firm consists of a share of the base costs levy and a share of the specific costs levy. The distribution of the base costs levy amongst individual firms is based on a ratio of the amount of regulatory costs of the firm as a proportion of the total regulatory costs of all firms. The specific costs levy is allocated based on the business volumes of a firm relative to other firms in its class.

Compensation cost levies

8.10 The proposed legislative changes and PRA rules mean that the scope of FSCS protection would be expanded in some respects (eg including deposits held by UK branches of EEA deposit-takers) and narrowed in others (eg removal of protection for new insurance policies in respect of EEA risks, and removal of protection for deposits held by EEA branches of UK deposit-takers). The actual quantum of future FSCS compensation cost levies depends on three factors: (i) the probability of an event leading to compensation, ie the frequency of failure, (ii) the total contingent liability in failure, which reflects the proposed changes in scope, and (iii) the likely degree of recoveries available to the FSCS.

8.11 The distribution of levies amongst individual deposit-takers depends upon the PRA's risk-based levy methodology. The risk weighting for UK firms is calculated on a number of risk factors.⁵¹ The exact impact on individual firms will depend on their risk profiles based on regulatory data submitted, and will vary from year to year. The PRA rates all third country branches (which would include the new FSCS members resulting from these consultations and legislative changes) as average risk, for the purposes of the risk-based levy methodology. This is a pragmatic and proportionate approach since the PRA does not systematically collect prudential risk data from third country firms.

8.12 There is not a similar risk based methodology for distributing compensation cost levies amongst insurance firms instead it is based on the volume of business the firms conduct.

⁵⁰ For relevant levies, refer to the Depositor Protection, Policyholder Protection, Dormant Account Scheme and Management Expenses Levy Limit and Base Costs Parts of the PRA Rulebook.

⁵¹ PRA Statement of Policy, 'Calculating risk-based levies for the Financial Services Compensation Scheme deposits class,' February 2017. <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/calculating-risk-based-levies-for-the-financial-services-compensation-scheme-deposits-class>.

8.13 Levies are charged to firms and may be passed on to customers in the form of higher prices. Overall, the PRA considers that the benefits of imposing the FSCS levies outweigh the costs placed on industry, and indirectly passed on to customers, primarily because the provision of compensation in the event of a firm's failure helps ensure confidence in the financial system and increases financial stability.

Compatibility with the PRA's objectives

8.14 The proposals in Chapter 6 are intended to provide for, and fund, the protection to certain customers of deposit-takers and insurers in the event of failure. The new scope of FSCS protection and the associated levies on firms whose customers have protection would contribute to financial stability and the PRA's general objectives of promoting the safety and soundness of firms, and securing an appropriate degree of protection for policyholders.

8.15 The PRA has assessed whether the impact of its proposals on FSCS levies facilitates effective competition. The requirement for firms to pay levies in respect of their products that are FSCS protected should have position impacts on competition; as all firms would be treated similarly. The levies are generally applied to firms in proportion to their share of FSCS protected business within their funding class. Compensation costs levies on a firm will take into account the business volume of the firm levied, as well as the claims received in the relevant classes.

8.16 Depending on home Member State requirements, some UK branches of EEA deposit-takers may also be required to maintain membership of the deposit guarantee scheme in their home Member State. This would mean that these firms are required to pay management and compensation cost levies to both schemes on account of the same deposits. This double-counting was eliminated under the cooperative aspects under the EU Deposit Guarantee Schemes Directive (DGSD), which would fall away at exit.

8.17 Because the DGSD does not require home state schemes to protect outbound branches located in third countries, protection of deposits in UK establishments of EEA firms could vary depending upon the rules of the individual EEA home states. If there is no Implementation Period (during which the DGSD principles would continue), the PRA considers it important to ensure that deposits held by UK establishments are protected by the FSCS, the scope of which is under control of the UK government and regulators. The potential for dual membership (and associated costs) is consistent with the UK's existing treatment of third country branches.

Regulatory principles

8.18 In developing the proposals regarding the applicability of FSCS levies, the PRA has had regard to the regulatory principles. The principle most relevant to the proposals is that a burden or restriction which is imposed on a person, or the carrying on of an activity, should be proportionate to the benefits. The PRA's assessment of the fairness and proportionality of the FSCS levies can be found in the 'Cost benefit analysis' and 'Compatibility with the PRA's objectives' sections above.

Impact on mutuals

8.19 FSCS levies are levied on all authorised firms according to the volume of relevant financial services business they conduct. This includes mutual societies. The impact on mutual societies is not considered disproportionate to other types of firm.

HM Treasury recommendation letter

8.20 HM Treasury has made recommendations to the PRC about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.⁵²

8.21 The aspects of the Government's economic policy most relevant to the proposals in this chapter are: competition, better outcome for consumers, and competitiveness, which have been considered in the 'Compatibility with the PRA's objectives' and 'Regulatory principles' sections above. The PRA considers that an appropriately funded compensation scheme will enhance customers' trust in firms operating in the UK. This will help ensure that the UK remains an attractive domicile for internationally active financial institutions, and that London retains its position as a leading financial centre.

Equality and diversity

8.22 The PRA considers that the proposals' consequential impacts on FSCS levies do not give rise to equality and diversity implications.

Responses and next steps

8.23 This consultation closes on Monday 21 January 2019. The PRA invites feedback on the additional proposals set out in Part 1 of this CP. Please address any comments or enquiries to CP32_18@bankofengland.co.uk, or:

Nationalising the Acquis
Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

8.24 Responses to this CP will be shared with the FCA.

⁵² Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at <https://www.bankofengland.co.uk/about/people/prudential-regulation-committee>.

Part 2 Bank (resolution authority) consultation - UK withdrawal from the EU: Further changes to Resolution Binding Technical Standards

9 Proposals relating to additional BRRD BTS

9.1 This chapter highlights proposed amendments to additional Bank Recovery and Resolution Directive (BRRD) BTS allocated to the Bank, as resolution authority, which are expected to be in force on exit day.

Resolution planning

9.2 The Bank did not consult on amendments to Commission Implementing Regulation (EU) 2016/1066 (on provision of information for the purpose of resolution plans) in Bank CP 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards'.⁵³ This was because the EBA had proposed to repeal this BTS and replace it with an updated BTS. Commission Implementing Regulation (EU) 2018/1624 was adopted on 23 October 2018 and entered into force on 27 November 2018. This repeals BTS 2016/1066.

9.3 In this CP, the Bank proposes to make amendments to BTS 2018/1624 to fix deficiencies arising from the UK's withdrawal from the EU. These draft amendments are consistent with the principles and approach to fixing deficiencies set out in the NtA approach CP (CP25/18). These draft changes are set out in the draft EU Exit Instrument in Appendix 4.

9.4 The Bank does not plan to make line-by-line changes to the reporting templates in BTS 2018/1624 for exit day. Instead, consistent with the approach proposed by the PRA for reporting and disclosure requirements,⁵⁴ the Bank proposes to provide firms with guidance on how they 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 some minor changes to reflect the UK's withdrawal from the EU. The proposed guidance is shown in Table A and B below. Final guidance would be published on the Bank's website.

Table A: General approach to interpretation of EU-based references in BTS 2018/1624

This table sets out the various different types of EU-based references and a default approach to how these should be interpreted.

Type of reference	Default interpretation
Reference to EU regulation	This should be read as a reference to the nationalised version of the regulation.
Reference to EU directive	This should be read as a reference to the UK legislation; Prudential Regulation Authority (PRA) or Financial Conduct Authority (FCA) rules; or the UK, PRA or FCA processes that give effect to the directive, as amended on EU withdrawal. In some cases firms may also find it helpful to refer to the text of the EU directive as it stands on the date of UK withdrawal from the EU, to provide additional context.
Reference to EU technical standard	This should be read as a reference to the nationalised version of the technical standard.

⁵³ October 2018: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/uk-withdrawal-from-eu-boe-approach-to-resolution-sops-and-onshored-bts-split.pdf?la=en&hash=FC418612AD1CFE4E94AA52813CAC62E02C5CD954>.

⁵⁴ See Chapter 3 of CP26/18.

Stand-alone reference to the European Union or EU (i.e. not in relation to legislation); or the European Economic Area or EEA	This should be read as a reference to the UK, except where otherwise noted below.
Reference to Member State, Member States, home Member State or Union	This should be read as a reference to the UK, except where otherwise noted below.
Reference to third country	This should be read as a reference to a country or territory outside the United Kingdom.
Reference to a specific accounting standard as endorsed by the EU (e.g. International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS))	This should be read as a reference to the implementation of the corresponding accounting standard that is in place in the UK after exit day.
Reference to statistical definitions set out by European bodies outside of legislation (eg by the European Central Bank (ECB), Eurostat or European Commission), or to non-binding materials such as guidelines or Q&As produced by the European Banking Authority (EBA)	These should be read as a reference to the definitions or materials as they stand at the date of UK withdrawal from the EU. Example occurrences: References in CRR Financial Reporting (FINREP) templates and instructions to the Small and Medium-sized Enterprise (SME) definition set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. ⁵⁵

Table B: Approach to interpretation of specific EU-based references in BTS 2018/1624

This table considers specific cases where reporting requirements include EU-based references, and sets out an expected approach in each instance.

Reference	Template title	Legislative reference	Interpretation
Liabilities excluded from bail-in	Annex I, Z 02.00 - Liability Structure (LIAB), rows 0100 - 0200 Annex II, II.2.2 Instructions concerning specific positions, rows 0100 - 0200	Article 44 of Directive 2014/59/EU	References in Annexes I and II to liabilities excluded from bail-in under Article 44 of Directive 2014/59/EU should be read as the equivalent excluded liabilities in section 48B(8) of the Banking Act 2009.
Liabilities not excluded from bail-in	Annex I, Z 02.00 - Liability Structure (LIAB), rows 0300 – 0400 Annex II, II.2.2 Instructions concerning specific positions, rows 0300 - 0400	Article 108 of Directive 214/59/EU	References in Annexes I and II to liabilities not excluded from bail-in under Article 108 of Directive 214/59/EU should be read as referring to section 175 and Schedule 6 of the Insolvency Act 1986.

⁵⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>.

Senior non-preferred liabilities	Annex I, Z 02.00 - Liability Structure (LIAB), row 0365 Annex II, II.2.2 Instructions concerning specific positions, row 0365	Article 108 of Directive 2014/59/EU	The senior non-preferred liabilities should be read as referring to section 176AZA of the Insolvency Act 1986 as amended by the Banks and Building Societies (Priorities on Insolvency) Order 2018.
DGS / Deposit insurance (DIS)	Annex I, Z 02.00 - Liability Structure (LIAB), row 0200 Annex I, Z 06.00		References to DGS and Deposit insurance (DIS) should be read as the UK deposit guarantee scheme, the Financial Services Compensation Scheme (FSCS), as set out in the Depositor Protection part of the PRA Rulebook.
DGS liabilities	Annex II, II.2.2 Instructions concerning specific positions, row 0200	Article 44(2) point g (iv) of Directive 2014/59/EU	Reference to DGS liabilities under Article 44(2) point g (iv) of Directive 2014/59/EU should be read as FSCS liabilities pursuant to section 48B(8)(j) of the Banking Act 2009.
DGS	Annex II, II.6 Z 06.00 — Deposit insurance (DIS) , II.6.2 Instructions concerning specific positions, row 0030	Article 4(3) of Directive 2014/49/EU	Reference to DGS pursuant to Article 4(3) of Directive 2014/49/EU should be read as the UK deposit guarantee scheme, the FSCS, as defined in the Depositor Protection part of the PRA Rulebook.
Amount of covered deposits	Annex II, II.6 Z 06.00 — Deposit insurance (DIS) , II.6.2 Instructions concerning specific positions, row 0040	Articles 2(1)(5) and 6(2) of Directive 2014/49/EU	References to covered deposits as defined in Articles 2(1)(5) and 6(2) of Directive 2014/49/EU should be read as the amount of covered deposits as defined in the Depositor Protection part of the PRA Rulebook.
Institutional Protection Scheme	Annex II, Z 06.00 — Deposit insurance (DIS), II.6.2 Instructions concerning specific positions, row 0050	Article 113(7) of Regulation (EU) No 575/2013	Reference to an institutional protection scheme in row 0050 can be disregarded as there is no UK institutional protection scheme.
Additional protection under contractual scheme	Annex II, II.6 Z 06.00 — Deposit insurance (DIS), II.6.2 Instructions concerning specific positions, row 0060	Article 1(3)(a) of Directive 2014/49/EU	Reference to additional protection under a contractual scheme in row 0060 can be disregarded as there is no such scheme under the FSCS.

9.5 Should there not be an Implementation Period, the Bank is considering exercising the temporary transitional power (described in Chapter 4 of the NtA approach CP) to delay the application of onshoring changes that will alter the reporting templates in BTS 2018/1624. This means that firms would continue to submit the templates in BTS 2018/1624 on the same basis

as before exit day.⁵⁶ Firms should, however, bear in mind that changes to underlying regulatory requirements arising as a result of the UK's withdrawal from the EU may necessitate amendments to the information reported. Subject to transitional relief being granted, NtA changes would only come into effect at the end of the transitional period.

Simplified obligations

9.6 On 25 October 2018, the European Commission adopted a draft Delegated Regulation specifying the criteria under the BRRD for the competent authority and resolution authority to assess the impact of an institution's failure on financial markets, on other institutions and on funding conditions (C(2018)6901).⁵⁷ The final Delegated Regulation is expected to be adopted and enter into force before exit day.

9.7 Appendix 4 contains the draft EU Exit Instrument that provides the amendments to fix deficiencies arising from the UK's withdrawal from the EU in this BTS, should it be adopted and enter into force by exit day. These amendments are consistent with the principles and approach to fixing deficiencies set out in the NtA approach CP.

⁵⁶ Details of existing expectations are available on the Bank of England's website:
<https://www.bankofengland.co.uk/prudential-regulation/publication/2013/resolution-planning-ss>.

⁵⁷ <https://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-6901-F1-EN-MAIN-PART-1.PDF>.

10 The Bank's obligations under the Regulations

10.1 The Financial Regulators SI delegates power to make changes to relevant BTS under Section 8 of the Act to the Bank by HM Treasury. As such the restrictions that apply to the use of the power in Section 8 also apply to the Bank.⁵⁸

10.2 In accordance with those restrictions, the Bank considers that all changes proposed in this CP are appropriate to prevent, remedy or mitigate any:

- (i) failure of the relevant BTS to operate effectively, or
- (ii) other deficiency in the relevant BTS, arising from the UK's withdrawal from the EU.

10.3 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.

10.4 The Bank also confirms that the proposals 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 BTS.

Equality and diversity

10.5 The Bank does not consider that the proposals give rise to equality and diversity implications.

Next steps

10.6 The Bank invites feedback on the proposals set out in this paper by Monday 21 January 2019. Please provide those comments by email to the address below:

ResolutionBTS@bankofengland.co.uk

⁵⁸ The Bank expects HMT to introduce legislation giving it responsibility for making onshoring changes to these BTS in due course.

Alternatively you may provide comments by post to:

Resolution Directorate
Bank of England
Threadneedle Street
London
EC2R 8AH

Appendices

Part 1 – PRA Consultation

1 Update to draft Supervisory Statement – PRA approach to interpreting reporting and disclosure requirements after the UK’s withdrawal from the EU

2 Draft PRA Rulebook: EU Exit Instrument

3 Draft BTS EU Exit Instruments

Part 2 – Bank (resolution authority) Consultation

4 Draft BTS EU Exit Instrument

Appendix 1: Update to draft Supervisory Statement ‘PRA approach to interpreting reporting and disclosure requirements after the UK’s withdrawal from the EU’ as consulted on in CP26/18

This draft Supervisory Statement (SS) is being consulted on in CP26/18 ‘UK withdrawal from the EU: Further changes to PRA Rulebook and onshored BTS’.¹ This draft update proposes changes to the draft SS in CP26/18. For the purposes of the proposed changes in this CP, new text is shown as underlined and deleted text is shown as struck through.

Draft Supervisory Statement ‘PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK’s withdrawal from the EU’

1 Introduction

1.1 This supervisory statement (SS) sets out the approach the Prudential Regulation Authority (PRA) expects firms to take when interpreting EU-based references found in reporting and disclosure requirements and regulatory transactions forms after the UK’s withdrawal from the EU. The PRA has not made line-by-line changes to reporting or disclosure requirements, or regulatory transactions forms as a result of the UK’s withdrawal from the EU, as it would not have been proportionate to do so. Instead, the PRA expects firms to interpret EU references in those requirements in accordance with this SS.

1.2 Chapter 2 outlines a general approach on this issue, which is in line with the approach taken more widely when making changes to retained EU law under the European Union (Withdrawal) Act 2018.² Chapters 3, 4 and 5 detail an expected approach on certain more specific issues. In any instance where the approach set out in Chapters 3, 4 and 5 conflicts with the approach set out in Chapter 2, the approach set out in Chapters 3, 4 and 5 should take priority.

1.3 The appendix to this SS outlines which European Binding Technical Standards (BTS) and which parts of the PRA Rulebook are in scope of this guidance.

2 General approach

2.1 Table A sets out the various different types of EU-based references, and a default approach to how these should be interpreted.

¹ October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>.

² These processes are often known as onshoring or Nationalising the Acquis (NtA)

Table A: General approach to interpretation of EU-based references

Type of reference	Default interpretation
Reference to EU regulation	This should be read as a reference to the nationalised version of the regulation.
Reference to EU directive	This should be read as a reference to the UK legislation; PRA or Financial Conduct Authority (FCA) rules; or the UK, PRA or FCA processes that give effect to the directive, as amended on EU withdrawal. In some cases firms may also find it helpful to refer to the text of the EU directive as it stands on the date of UK withdrawal from the EU, to provide additional context.
Reference to EU technical standard	This should be read as a reference to the nationalised version of the technical standard.
Stand-alone reference to the European Union or EU (ie not in relation to legislation); or the European Economic Area or EEA	This should be read as a reference to the UK, except where otherwise noted below.
Reference to Member State, Member States or home Member State	This should be read as a reference to the UK, except where otherwise noted below.
Reference to third country	This should be read as a reference to a non-UK country.
Reference to Euros	Where Euro is given as an example of a currency, and the same treatment is applied to other currencies (eg US dollars), no change in interpretation is required. Any reference to a threshold set in Euros will continue to apply. In any other case, further details can be found in Chapters 3, 4 and 5 of this SS of how this should be interpreted.
Reference to definition based on Capital Requirements Regulation (575/2013) (CRR) or Solvency II requirements	In some cases, reporting definitions are written to mirror text in level one legislation (either in addition to, or instead of, including a direct reference to the legislation). Where this happens, institutions should also refer to the relevant nationalised legislation to ensure they are interpreting the reporting requirements properly. Where this differs to the text in the technical standard, the definition in the relevant nationalised legislation should take priority. Example occurrence: The CRR Common Reporting (COREP) templates on Liquidity Coverage Ratio (Annexes XXIV and XXV of ITS 680/2014) use definitions based on the definitions set out in the Liquidity Commission Delegated Regulation. In most cases, the article reference is provided, but in some cases this is implicit. Firms should ensure their reporting aligns to the nationalised version of the Liquidity Commission Delegated Regulation.
Reference to a specific accounting standard as endorsed by the EU (eg International Financial Reporting Standards (IFRS) 9)	This should be read as a reference to the implementation of the corresponding accounting standard that is in place in the UK after exit day.

Type of reference	Default interpretation
Reference to statistical definitions set out by European bodies outside of legislation (eg by the European Central Bank (ECB), Eurostat or European Commission), or to non-binding materials such as guidelines or Q&As produced by the European Banking Authority (EBA) or the European Insurance and Occupational Pensions Authority (EIOPA)	<p>These should be read as a reference to the definitions or materials as they stand at the date of UK withdrawal from the EU.</p> <p>Example occurrences:</p> <p>References in CRR Financial Reporting (FINREP) templates and instructions to statistical definitions set out in the ECB BSI regulation.³</p> <p>References in CRR FINREP templates and instructions to the Small and Medium-sized Enterprise (SME) definition set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.⁴</p> <p>References in CRR COREP instructions to the definition of ISO code 3166-1-alpha-2 set out in Eurostat’s ‘Balance of Payments Vademecum’.⁵</p>
References to lists or information produced by European bodies	<p>This should be read as a reference to the equivalent list or information produced by a UK body after EU withdrawal.</p> <p>Example occurrences:</p> <p>The CRR ITS on Disclosure for Own Funds (ITS 1423/2013) refers to the EBA list of capital instruments qualifying as Common Equity Tier (CET)1, as set out in CRR article 26(3). These references should be read as a reference to the corresponding list produced by the PRA.</p> <p>The CRR COREP instructions for C17.01 and C17.02 (Annexes I and II of ITS 680/2014) contain references to supervisory disclosures published on the EBA website, and the gross domestic product at market prices data published by Eurostat. These references should be read as a reference to the corresponding disclosure produced by the PRA,⁶ and the corresponding data published by the Office for National Statistics.</p> <p>The instructions for Solvency II templates S06.02, S08.01, S30.02, S30.04, S31.01 and S31.02 include a list of credit rating agencies as registered or certified by the European Securities and Markets Authority (ESMA). This should be read as a reference to the list of credit rating agencies as registered or certified within the UK.</p>
Reference to ‘freedom to provide services’	<p>On the basis that UK firms will no longer write business under the Freedom to Provide Services in the EU after exit:</p> <ul style="list-style-type: none"> • Any data relating to business performed through freedom to provide services will be a nil entry after EU withdrawal. <ul style="list-style-type: none"> ○ Example occurrences: S04.01 and S04.02 Solvency II templates. • Any references to the country where the freedom to provide services notification was made for the purposes of identifying the location where a contract is entered into should be disregarded. <ul style="list-style-type: none"> ○ Example occurrences: S05.02, S12.02 and S17.02 Solvency II templates.

3 <https://www.ecb.europa.eu/ecb/legal/pdf/02013r1071-20131127-en.pdf>.

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>.

5 <http://ec.europa.eu/eurostat/documents/39118/40189/BOP+Vademecum+-+December+2016/a5e89ad8-254b-485d-a9cd-521885c616e4>.

6 This can be found on the Regulatory reporting – banking sector page in the prudential regulation section of the Bank of England website: www.bankofengland.co.uk/prudential-regulation/regulatory-reporting/regulatory-reporting-banking-sector.

3 Approach to specific cases: Reporting and disclosure requirements based on the CRR

3.1 Table B considers specific cases where CRR reporting and disclosure requirements include EU-based references, and sets out an expected approach in each instance.

Table B: Approach to interpretation of specific EU-based references in reporting and disclosure requirements based on the CRR

Reference	Template title	Legislative reference	Interpretation
Geographical splits with different treatment of EU/EEA countries	CRR IP losses (C15)	ITS 680/2014; Annexes VI and VII	The current reporting requirements relating to geographical split continue to apply. In other words, reporting should consist of a total template, one template for each national market in the EU or UK to which the institution is exposed, and one template for aggregated data for all national markets outside the EU/UK.
Row and column labels referring to EU	Leverage ratio disclosures	ITS 2016/200, Annex I	Firms have an option to either retain the reference to the EU or remove this from the row labels.
Euro conversion rate	GSII indicator reporting	ITS 1030/2014, Annex	Firms should continue to include the Euro conversion rate within their disclosures.
Reference to Member State obligations	COREP C12.00, row 150 COREP C13.00, row 420	ITS 680/2014, Annexes I and II	The reference to ‘...Member States shall ensure that the competent authorities impose...’ should be read as ‘...the competent authority shall impose...’
Conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State	COREP C04.00, row 760, C06.02, column 440	ITS 680/2014, Annexes I and II	The reference to ‘...conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State...’ should be read as ‘...conservation buffer due to enhanced prudential measures...’
References to Capital Requirements Directive (2013/36/EU) (CRD) Article 140(4) within counter-cyclical capital buffer disclosure requirements	CCyB disclosures	ITS 2015/1555, Annexes I and II	References in Part II of Annex II to exposures ‘defined in accordance with Article 140(4)(a) of Directive 2013/36/EU’ shall be read as references to ‘all exposure classes (other than those referred to in points (a) to (f) of CRR Article 112) that are subject to the own funds requirements for credit risk under Part Three, Title II of that Regulation’. References in Part II of Annex II to exposures ‘defined in accordance with Article 140(4)(b) of Directive 2013/36/EU’ shall be read, where the exposure is held in the trading book, as references to ‘all exposure classes (other than those referred to in points (a) to (f) of CRR Article 112) that are subject to the own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation’. References in Part II of Annex II to exposures ‘defined in accordance with Article 140(4)(c) of Directive 2013/36/EU’ shall be read, where the exposure is a securitisation as references to ‘all exposure classes (other than those referred to in points (a) to (f) of CRR Article 112) that are subject to the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation’. References to relevant credit exposures defined

Reference	Template title	Legislative reference	Interpretation
			in accordance to Article 140(4) of Directive 2013/36/EU are to be read in line with the instructions above.
EU references contained within the definitions of benchmarking portfolios and corresponding reporting instructions	Benchmarking templates	2016/2070, all annexes	The definitions of the benchmarking portfolios should remain unchanged. For the avoidance of doubt, this means that any references to codes assigned by the EBA; to Euros; to Central European Time (CET); and to European OTC options should remain as they are.
Reference to joint decisions	Benchmarking template C105.01	2016/2070 Annexes III and IV	Firms should report whether a joint decision, made prior to the date of EU withdrawal, continues to apply in relation to the use of the IRB approach for exposures included in the benchmarking portfolios.

4 Approach to specific cases: Reporting and disclosure requirements based on Solvency II

4.1 Table C considers specific cases where Solvency II reporting and disclosure requirements include EU-based references, and sets out an expected approach in each instance.

Table C: Approach to interpretation of specific EU-based references in reporting and disclosure requirements based on Solvency II

Reference	Template title	Legislative reference	Interpretation
Geographical splits with different treatment of EU/EEA countries	S04.01, S04.02, S12.02, S17.02	ITS 2015/2450, Annexes I and II	The current reporting requirements relating to geographical split continue to apply. References to the EEA should be read as a reference to the EEA plus the UK, and references to non-EEA should be read as a reference to all non-EEA countries excluding the UK.
References to repealed legislation	S22.04, S22.05	ITS 2015/2450, Annexes I and II	Some Solvency II reporting and disclosure templates contain references to repealed legislation (Directive 2002/83/EC and Directive 2005/68/EC). Firms should continue to refer to this as at the date of last application.
References to repealed CRD legislation	S23.01	ITS 2015/2450, Annexes I, II and III ITS 2015/2452, Annexes I, II and III	References to 'credit institutions authorised in accordance with Directive 2006/48/EC' should be read as a reference to PRA-regulated credit institutions.
Method for allocating identifying code	Multiple templates	ITS 2015/2450, Annexes I, II and III	The instructions for assigning identifying codes distinguish between entities in the EEA and those outside the EEA. Firms should continue to use the same identifying codes as they have used previously.
Method for allocating code to be used for Issuer Country	S06.02, S06.03, S11.01	ITS 2015/2450, Annexes I, II and III	Firms should continue to use the code 'EU' for European Union Institutions.

5 Approach to specific cases: reporting and disclosure requirements set out in PRA Rulebook requirements

5.1 Table D considers specific cases where templates within the PRA Rulebook reporting and disclosure requirements include EU-based references, and sets out an expected approach in each instance.

5.2 The Appendix lists the PRA parts and subsections in scope of this guidance.

Table D: Approach to interpretation of specific EU-based references in reporting and disclosure requirements set out in PRA rules

Reference	Template title	Rulebook reference	Interpretation
Geographical splits with different treatment of EU/EEA countries	FSA016	CRR Firms; Regulatory Reporting Part	The reporting requirements for this template remain unchanged. Row 2 should report investments relating to UK and EEA countries, and row 3 should report investments related to all countries except the UK and EEA countries.
Row and column labels referring to EU	FSA083	CRR Firms; Reporting Leverage Ratio Part	No changes required to the current template; the references to 'EU' in the row and column labels should remain unchanged.
Reference to EEA branches	Branch Return	Non-CRR Firms; Incoming and Third Country Firms Part; Branch Return	The reporting requirement in row 9 of the Lending section remains unchanged.
Conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State	PRA101, PRA102, PRA103	CRR Firms; Regulatory Reporting Part; Capital +	The reference to '...conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State...' in the templates should be read as '...conservation buffer due to enhanced prudential measures...'

Appendix: Scope

The PRA expects firms to apply the approach set out in this SS to the Annexes of the following European Binding Technical Standards (as amended up until the date of UK withdrawal from the EU):

Firms	Title	Reference
CRR Firms	Supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 680/2014
CRR Firms	Disclosure of own funds requirements for institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 1423/2013
CRR Firms	Disclosure of the leverage ratio for institutions, according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 2016/200
CRR Firms	Uniform formats and date for the disclosure of the values used to identify global systemically important institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 1030/2014
CRR Firms	Disclosure of information in relation to the compliance of institutions with the requirement for a countercyclical capital buffer in accordance with Article 440	RTS 2015/1555
CRR Firms	Disclosure of encumbered and unencumbered assets	RTS 2017/2295
CRR Firms	Templates, definitions and IT-solutions to be used by institutions when reporting to the European Banking Authority and to competent authorities in accordance with Article 78(2) of Directive 2013/36/EU of the European Parliament and of the Council	ITS 2016/2070
SII Firms	Templates for the submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council	ITS 2015/2450
SII Firms	Procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council	ITS 2015/2452
SII SPVs	Procedures for supervisory approval to establish special purpose vehicles, for the co-operation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council	ITS 2015/462

The PRA expects firms to apply the approach set out in this SS to templates contained within the following parts, and sub-sections, of the PRA Rulebook:

Firms	Rulebook part	Sections
CRR Firms	Regulatory Reporting	All
CRR Firms	Reporting Leverage Ratio	All
CRR Firms	Reporting Pillar 2	All
Non-CRR Firms	Credit Unions	19 Regulatory Reporting for Credit Unions
Non-CRR Firms	Incoming Firms and Third Country Firms	3 Branch Return 4 Form
Non-SII Firms	Friendly Society – Reporting	All
Non-SII Firms	Insurance Company – Reporting	All
SII Firms	Reporting	All
SII Firms	Third Country Branches	9 Reporting
<u>Controllers</u>	<u>Change in Control</u>	<u>6 Forms</u>
<u>All firms</u>	<u>Senior Managers Regime – Applications and Notifications</u>	<u>8 Forms</u>
<u>ISPVs</u>	<u>Insurance Special Purpose Vehicles</u>	<u>6 Forms</u>
<u>All firms</u>	<u>Notifications</u>	<u>10 Forms</u>

Appendix 2: Draft PRA Rulebook: EU Exit Instrument

PRA RULEBOOK: (EU EXIT) INSTRUMENT [YEAR]

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), having carried out consultations pursuant to regulation 5 of the Regulations and with the approval of the Treasury to the following instrument, makes the instrument in exercise of the powers conferred by regulation 3 of the Regulations.
- B. In respect of matters falling with Section 213(b) and 213(4) of the Financial Services and Markets Act 2000 (“the Act”), the PRA makes the instrument in exercise of the following powers in the Act:
- [(1) section 137G (The PRA’s general rules)
 (2) section 137T (General supplementary powers)
 (3) section 213(1) (The compensation scheme); and
 (4) section 214 (General)]
- C. The PRA makes the instrument in the exercise of paragraph 31 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZB in respect of the matters falling within that paragraph.
- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act

Pre-conditions to making

- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.
- F. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of the proposed rules and had regard to representations made.

PRA Rulebook: EU (EXIT) INSTRUMENT [YEAR]

- G. The PRA makes the rules and directions in the Annexes to this instrument.

<i>Part</i>	<i>Annex</i>
Glossary	A
Interpretation	B
Allocation of Responsibilities	C
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Depositor Protection	E
Dormant Account Scheme	F
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Responsibilities	
Insurance – Certification	L
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Policyholder Protection	Q
Run-Off Operations	R
Senior Management Functions	S
Senior Managers Regime – Application and Notifications	T
Supervised Run-Off	U

Commencement

H. This instrument comes into force on *exit day*, as defined in European Union (Withdrawal) Act 2018.

Citation

I. This instrument may be cited as the PRA Rulebook: (EU Exit) Instrument [YEAR]

By order of the Prudential Regulation Committee

[DATE]

Annex A

Amendments to the Glossary

In this Annex new text is underlined.

- alternative investment fund** ~~has the meaning given in article 4(1)(a) of AIFMD~~ means a collective investment undertaking, including investment compartments thereof which:
- (a) raises capital from a number of investors, with the intention of investing it in accordance with a defined investment policy for the benefit of those investors; and
 - (b) does not require authorisation pursuant to article 5 of the UCITS Directive.
- alternative investment fund manager** ~~has the meaning given in article 4(1)(b) of AIFMD~~ means a legal person whose regular business is managing one or more alternative investment funds.
- ancillary own funds**
- (1) (in relation to a *UK Solvency II firm* and Lloyd's) has the meaning given in *Own Funds* 2.3 and are determined in accordance with *Own Funds* 2.3 to 2.7; or
 - (2) ~~(in relation to a *Solvency II undertaking* other than a *UK Solvency II firm*) means an *own funds* item referred to in Article 89 of the *Solvency II Directive*, determined in accordance with the applicable *Solvency II EEA implementing measures*; or~~
- ...
- ancillary services** means any of the services listed in Section B of Annex I to *MiFID II* listed in Part 3A of Schedule 2 to the *Regulated Activities Order*.
- ...
- approved credit institution** means a *credit institution* recognised or permitted under the law of ~~the UK an EEA State~~ to carry on any of the activities set out in Annex 1 to the *CRD*.
- ...
- approved financial institution** means any of the following:
- ...
 - (12) the *EU*; ~~and~~
 - (13) the European Atomic Energy Community; and
 - (14) the *Bank of England*.
- approved State** means any of the following:

(A1) the UK

- (1) an *EEA state*;
- (2) The United States of America;
- (3) Canada;
- (4) Japan; or
- (5) Australia,

other than when that country has rescheduled its external debt.

...

Article 12(1) relationship

~~means a relationship where undertakings are linked by a relationship within the meaning of Article 12(1) of Directive 83/349 EEC.~~

...

asset management company

~~means a management company within the meaning of Article 2(1)(b) of the UCITS Directive, as well as an undertaking with a Part 4A permission under Article 51ZA of the Regulated Activities Order (Managing a UCITS) or an undertaking, the registered office of which is not in an EEA State outside the UK and which would require authorisation in accordance with Article 6(1) of the UCITS Directive such permission if it had its registered office within an EEA State the UK.~~

...

bank

means:

- (1) a firm with a *Part 4A permission* to carry on the *regulated activity* of *accepting deposits* and is a *credit institution*, but is not a *credit union*, *friendly society* or a *building society*; ~~;~~
- (2) ~~an EEA bank.~~

basic own funds

...

- (2) ~~(in relation to a Solvency II undertaking other than a UK Solvency II firm) means an own funds item referred to in Article 88 of the Solvency II Directive, determined in accordance with the applicable Solvency II EEA implementing measures; or~~

...

branch

means

- (1) (in relation to a *credit institution*):

...

- (b) ~~for the purposes of the CRD and in accordance with Article 38 of the CRD, any number of places of business set up in the same EEA State by a credit institution with headquarters in another EEA State are to be regarded as a single branch.~~
- (2) (in relation to an *investment firm*) ~~has the meaning given in Article 4(1)(30) of MiFID II~~ means a place of business which:

 - (a) is not the firm's head office;
 - (b) is part of the firm;
 - (c) has no legal personality; and
 - (d) provides investment services and/or activities; and
 - (e) may also perform ancillary services for which the investment firm has permission under Part 4A of FSMA.
- (3) (in relation to an *insurance undertaking*) ~~any permanent presence of the insurance undertaking in the UK an EEA State other than that in which it has its head office is to be regarded as a single branch, whether that presence consists of a single office which, or two or more offices each of which:~~

...
- (4) (in relation to an *IDD insurance intermediary*):

...

 - (b) ~~for the purposes of the Insurance Distribution Directive, all the places of business set up in the same EEA State by an IMD insurance intermediary with headquarters in another EEA State are to be regarded as a single branch.~~
- (5) (in relation to an *IDD reinsurance intermediary*):

...

 - (b) ~~for the purposes of the Insurance Distribution Directive, all the places of business set up in the same EEA State by an IDD reinsurance intermediary with headquarters in another EEA State are to be regarded as a single branch.~~

certification function

means:

(1) for a *CRR firm*, a *credit union* and a *third country CRR firm* in relation to the activities of its establishment in the *UK* **or if it does not have an establishment in the UK its activities in the UK**, has the meaning given in Certification 2.2 – 2.4;

(2) for a *UK Solvency II firm*, the *Society*, a *managing agent*, a *third country branch undertaking* (other than a *Swiss general insurer*) and a *UK ISPV* has the meaning given in Insurance – Certification 2;

(3) for a *large non-directive insurer* and a *Swiss general insurer* has the meaning given in Large Non-Solvency II Firms – Certification 2; and

(4) for a *small non-directive insurer* has the meaning given in Non-solvency II Firms – Certification 2.

common management relationship

means a relationship between two or more undertakings which satisfies the following conditions –

- (a) the undertakings are not connected in the manner described in section 1162 and Schedule 7 of the Companies Act 2006; and
- (b) either –
 - (i) the undertakings are managed on a unified basis pursuant to a contract with one of them, or provisions in the undertakings' memorandum or articles of association; or
 - (ii) the administrative, management or supervisory bodies of those undertakings consist, for the major part, of the same persons in office during the financial year in respect of which it is being decided whether such a relationship exists.

...

Community co-insurance operation

~~means a co-insurance operation which relates to one or more risks classified under *general insurance business* classes 3 to 16 and which fulfils the conditions set out in Article 190(1)(a) to (f) of the *Solvency II Directive*.~~

competent authority

means

- a) the PRA, in respect of PRA-*authorised persons* within the meaning of section 2B(5) of FSMA;
- b) in relation to a MiFID investment firm the authority designated before *exit day* by each EEA State the

UK in accordance with Article 67 of *MiFID II*,³⁷ unless otherwise specified in *MiFID II*.

c) the FCA, in respect of any other person;

compensation funds means any *policyholder* compensation scheme in ~~any EEA State in~~ the UK.

- conduct standards**
- (1) for a UK Solvency II firm, the *Society*, a *managing agent* and a *UK ISPV*, means the standards of expected conduct specified in *Insurance – Conduct Standards 3*;
 - (2) for a *third country branch undertaking* (other than a ~~UK deposit insurer or a Swiss general insurer~~), means the standards of expected conduct specified in *Insurance - Conduct Standards 3.1 to 3.3* and, taking account only of matters relevant to the operations of the *third country branch*, *Insurance – Conduct Standards 3.4 to 3.8*;
 - (3) ~~for a UK deposit insurer, means the standards of expected conduct specified in Insurance – Conduct Standards 3.1 to 3.3 and, taking account only of matters relevant to the operations of the third country branch and all the third country undertaking EEA branches, Insurance – Conduct Standards 3.4 to 3.8;~~

...

consolidating supervisor means the *competent authority* responsible for the exercise of supervision on a *consolidated basis* of:

- (1) a UK parent institution, or
- (2) an institution controlled by a UK parent financial holding company or UK parent mixed financial holding company.

...

control (in the *Solvency II Firms Sector* of the *PRA Rulebook*) means the relationship between a *parent undertaking* and a *subsidiary undertaking* where that relationship falls within (1) to ~~(7)~~ (6) of the definition of *parent undertaking*, or a similar relationship between any *person* and an *undertaking*.

coordinator ~~means, in relation to a financial conglomerate, the competent authority appointed as coordinator in accordance with Article 10(1) of the Financial Groups Directive has the meaning given in regulation 1(2) of The Financial Conglomerates Regulations.~~

...

covered bonds means a *debenture* that is issued by a *credit institution* which:

- (1) has its head office in the UK or an EEA State; and

	...
credit risk	means the risk of loss, or of adverse change, in the financial situation, resulting from fluctuations in the credit standing of issuers of <i>securities</i> , counterparties and any debtors to which a Solvency II undertaking <u>UK Solvency II firm</u> is exposed, in the form of <i>counterparty default risk</i> , or <i>spread risk</i> , or <i>market risk</i> concentrations.
CRD credit institution	means a <i>credit institution</i> that has its registered office (or, if it has no registered office, its head office) in <u>the UK</u> an EEA State , (excluding an institution to which the CRD does not apply under Article 2 of the CRD).
	...
cross border services	means: <ol style="list-style-type: none"> (1) (in relation to a UK firm) services provided within an EEA State other than the UK under the freedom to provide services; and (2) (in relation to an incoming EEA firm or an incoming Treaty firm) services provided within the UK under the freedom to provide services.
	...
<u>direct EU legislation</u>	has the meaning given in section 3(2) of the <u>European Union (Withdrawal) Act 2018</u> .
	...
EEA bank	means an incoming EEA firm that is a CRD credit institution.
EEA parent financial holding company	means a parent financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.
EEA parent institution	means a parent institution in an EEA State which is not a subsidiary of another institution authorised in an EEA State or of a financial holding company or mixed financial holding company set up in any EEA State.
EEA parent mixed financial holding company	means a parent mixed financial holding company in an EEA State which is not a subsidiary of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company set up in any EEA State.
	...
eligible own funds	means
	...

(7) ~~as to compliance with the EEA SCR, means the aggregate of the third country branch undertaking's:~~

(a) ~~Tier 1 own funds; and~~

(b) (i) ~~Tier 2 own funds; and~~

(ii) ~~Tier 3 own funds~~

~~that satisfy the limits in Own Funds 4.1, as if references to the "SCR" in those provisions were references to the EEA SCR; and the limits in the Solvency II Regulations~~

(8) ~~as to compliance with the EEA MCR, means the aggregate of the third country branch undertaking's:~~

(a) ~~Tier 1 own funds; and~~

(b) ~~Tier 2 basic own funds that satisfy the limits in Own Funds 4.2, as if references to the "MCR" in those provisions were references to the EEA MCR; and the limits in the Solvency II Regulations.~~

...

EU-derived domestic legislation

has the meaning given in section 2(2) of the European Union (Withdrawal) Act 2018.

EU directive

has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018.

EU instrument

has the meaning given in Part II of Schedule 1 to the European Communities Act 1972.

exit day

has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018.

...

Financial Conglomerates Regulations

means The Financial Conglomerates and Other Financial Groups Regulations 2004 (SI 2004/1862).

financial instruments

means the those instruments specified in Section C of Annex I to MiFID II Part 1 of Schedule 2 to the Regulated Activities Order, read with Part 2 of that Schedule.

...

group

(in the Solvency II Firms Sector of the PRA Rulebook) means a group of undertakings that:

- (1) consists of a *participating undertaking*, its *subsidiary undertakings* and the *undertakings* in which it holds a *participation*, as well as *undertakings* linked to each other by an ~~Article 12(1) relationship~~ a common management relationship; or

...

home Member State

has the meaning given in Article 4(1)(43) of the *CRR*.

incoming EEA firm

~~means an EEA firm which is exercising, or has exercised, its right to carry on a regulated activity in the UK in accordance with Schedule 3 of FSMA.~~

incoming firm

means an incoming firm within the meaning of section 193 of *FSMA*.

incoming Treaty firm

~~means a Treaty firm which is exercising, or has exercised, its right to carry on a regulated activity in the UK in accordance with Schedule 4 of FSMA.~~

...

insurance holding company

means a *parent undertaking*, other than a *Solvency II undertaking* UK Solvency II firm and a *mixed financial holding company*, the main business of which is to acquire and hold *participations* in *subsidiary undertakings* and which fulfils the following conditions:

- (1) its *subsidiary undertakings* are either exclusively or mainly ~~Solvency II undertakings~~ UK Solvency II firms, *third country insurance undertakings* or *third country reinsurance undertakings*; and
- (2) at least one of those *subsidiary undertakings* is a ~~Solvency II undertaking~~ UK Solvency II firm.

...

investment services and/or activities

~~means any of the services and activities listed in Section A of Annex I to MiFID Part 3 of Schedule 2 to the Regulated Activities Order,~~ insofar as they relate to any of the instruments listed in Part I of Schedule 2 to that Order.

...

intra-group transaction

~~has the meaning given in point (18) of Article 2 of the Financial Groups Directive.~~ means all transactions by which *regulated entities* within a *financial conglomerate* rely directly or indirectly on other *undertakings* within the same *group* or on any natural or legal person linked to the *undertakings* within that *group* by *close links*, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment.

...

key function

...

(2) ~~in relation to a *third country branch undertaking* means, in relation to the carrying on of a *regulated activity* by the *third country branch undertaking*, each of the following *functions* performed in relation to the operations effected by the *third country branch* or, for a *UK deposit insurer*, in relation to the operations effected by the *third country branch* and all the *third country undertaking EEA branches*:~~

(2) in relation to a *third country branch undertaking* means, in relation to the carrying on of a *regulated activity* by the *third country branch undertaking*, each of the following *functions* performed in relation to the operations effected by the *third country branch*

...

(g) any other *function* which is of specific importance to the sound and prudent management of the *third country branch* or, for a *UK deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*.

(3) in relation to a *third country insurance service provider* means, in relation to the carrying on of a *regulated activity* by the *third country insurance services provider* in the UK:

(a) the *risk-management function*;

(b) the *compliance function*;

(c) the *internal audit function*;

(d) the *actuarial function*;

(e) the *function* of effectively running the operations effected by the *third country insurance services provider*; and

(f) any other *function* which is of specific importance to the sound and prudent management of the *third country insurance services provider*

...

leading insurer

~~means (in relation to a *Community co-insurance operation*) a co-insurer that assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating~~

...

listed

~~means:~~

- (1) included in ~~an~~ the official list, or
- (2) *in respect of which facilities for dealing on a regulated market have been granted.*

matching adjustment

means the adjustment to the *relevant risk-free interest rate term structure* to calculate the *best estimate* of a *relevant portfolio of insurance or reinsurance obligations* in accordance with:

- (1) *Technical Provisions 6 and 7;*
- (2) the *Solvency II Regulations* adopted under Article 86(1)(h) - (i) of the *Solvency II Directive*; ~~and~~
- (3) where a reporting reference date falls before *exit day*, any the relevant technical information made by EIOPA under Article 77e(1)(b) of the *Solvency II Directive* and adopted in the *Solvency II Regulations* under Article 77e(2) of the *Solvency II Directive*; and-
- (4) where a reporting reference falls on or after *exit day*, the relevant technical information published by the PRA in accordance with regulation 4B(6) of the *Solvency 2 Regulations 2015*.

...

MiFID investment firm

~~means a firm to which MiFID applies~~ has the meaning given in paragraph 2.1A of MiFIR.

...

mixed financial holding company

~~(in the *Solvency II Firms Sector* of the PRA Rulebook) means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate~~ means a parent undertaking other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its head office in the UK, and other entities constitutes a financial conglomerate

...

MTF

~~has the meaning given in Article 4(1)(22) MiFID II.~~ means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with provisions implementing Title II of MiFID II;

...

mutual-type group

...

- (2) the establishment and dissolution of such relationships ~~for the purposes of Title III of the Solvency II Directive~~ are subject to prior approval by the ~~group supervisor, PRA,~~

where the *undertaking* exercising the centralised coordination shall be considered as the *parent undertaking*, and the other *undertakings* shall be considered as *subsidiary undertakings*.

...

non-directive firm

means in accordance with the Financial Services and Markets Act 2000 (Controllers)(Exemption) Order 2009 a *UK domestic firm* other than:

- (1) a *credit institution* authorised under provisions which implemented the Banking Consolidation Directive;
- (2) an *investment firm* authorised under provisions which implemented MiFID II;
- (3) a management company as defined in article 2(1)(b) of the European Parliament and Council Directive of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to *undertakings for collective investment in transferable securities (UCITS)* (No 2009/65/EC), 1 2, 3, 4, as amended (the *UCITS Directive*), authorised under provisions which implemented that directive;
- (4) a ~~Solvency II undertaking~~ UK Solvency II firm, the *Society* and *managing agents*.

...

non-directive insurer

means a *firm* with a *Part 4A permission to effect contracts of insurance* or *carry out contracts of insurance*, other than

- (1) a *UK Solvency II firm*; ~~and~~
- (2) a *third country branch undertaking*; or
- (3) where the firm has the permission by reason only of the operation of the EEA Passport Rights (Amendment etc., and Transitional Provisions) (EU Exit) Regulations 2018

non-UCITS retail scheme

means an *ICVC*, *authorised unit trust scheme*, or an *authorised contractual scheme* which is not a *collective investment scheme* falling within provisions implementing the UCITS Directive or a *qualified investor scheme*.

...

official list

means:

- (1) *the list maintained by the FCA in accordance with section 74(1) of FSMA for the purposes of Part VI of FSMA; and*
- (2) *any corresponding list maintained by a competent authority for listing in another EEA State.*

...

OTF

means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with provisions implementing Title II of MiFID II;

overseas regulator

means a regulator outside the United Kingdom.

own funds

...

- (2) *(in relation to a Solvency II undertaking other than a UK Solvency II firm) own funds determined in accordance with Solvency II EEA implementing measures; or*

...

parent undertaking

...

- (7) *(except as the Group Supervision Part of the PRA Rulebook applies to members of the Society or to the Society or managing agents in respect of members) it is incorporated in or formed under the law of another EEA State and is a parent undertaking within the meaning of any rule of law in that EEA State for purposes connected with implementation of the Council Directive of 13 June 1983 on consolidated accounts (No 83/349/EEC); or*
- (8) *where, in accordance with Article 212(2) of the Solvency II Directive, the opinion of the PRA, it effectively exercises a dominant influence over S;*

...

participating Solvency II undertaking

means a Solvency II undertaking that holds a participation in another undertaking.

participating UK Solvency II firm

means a UK Solvency II firm that holds a participation in another undertaking.

participation

...

- (2) *where, in accordance with Article 212(2) of the Solvency II Directive, the opinion of the PRA, an undertaking effectively exercises a significant influence over another undertaking.*

...

participating undertaking means an *undertaking* that holds a *participation* in another *undertaking* or an *undertaking* linked with another *undertaking* by ~~an~~ Article 12(1) relationship a common management relationship.

...

~~**passport activity** means an activity carried on by an *EEA firm* or by a *UK firm*, under an *EEA right*~~

policyholder either:

- (1) means, in respect of a *contract of insurance* where the *insurance undertaking* is a ~~*Solvency II undertaking*~~ *Solvency II firm*, a *policyholder* which includes a *beneficiary*;
- or

...

PRA senior management function

means

...

- ~~(5)~~ (in respect of a third country insurance service provider in relation to the carrying on by the firm of a regulated activity in the UK) any function specified in Insurance – Senior Management Functions 3 to 10.

rate term structure

means the relevant risk-free interest rate term structure, in accordance with:

- (1) *Technical Provisions* 5 and 8.3 to 8.4
- (2) the *Solvency II Regulations* adopted under Article 86 of the *Solvency II Directive*; and
- (3) where a reporting reference date falls:

before *exit day*, any the relevant technical information made by EIOPA under Article 77(e)(1)(a) of the *Solvency II Directive* and adopted in *Solvency II Regulations* under Article 77e(2) of the *Solvency II Directive*
- (4) where a reporting reference date falls:

on or after *exit day*, the relevant technical information made by the PRA in accordance with regulation (x) of the *Solvency II Regulations 2015*.

...

regulated institution means any of the following:

- (1) a ~~Solvency II undertaking~~ UK Solvency II firm, the Society, a managing agent or a third country branch undertaking; or

...

regulated market

means:

- (1) a ~~regulated market as defined in article 4(1)(21) of MiFID II~~ (as defined in Article 2(1)(13) of MiFIR);
- (2) a market situated outside the ~~EEA States~~ UK which is characterised by the fact that:

...

regulatory system

means the arrangements for regulating a *firm* or other *person* in or under *FSMA*, the Bank of England Act 1998, the Banking Act 2009, the Friendly Societies Act 1974, the Friendly Societies Act 1992, the Credit Unions Act 1979, including the *threshold conditions*, the *Fundamental Rules* and other rules, the *Statements of Principle*, codes and guidance given by the *PRA*, the *Bank of England* or the *FCA* and including any relevant ~~directly applicable~~ provisions of an ~~EU Directive or Regulation~~ including those specified under section 204A(2) of *FSMA*.

...

relevant insurance group undertaking

means, in relation to a *group* falling within *Group Supervision* 2.1(1) or 2.1(2), each ~~UK Solvency II undertaking~~ UK Solvency II firm within that *group*.

relevant insurer

~~means, in relation to a Community co-insurance operation, an insurer which is concerned in the operation but is not the leading insurer.~~

relevant risk-free interest rate term structure

means the *relevant risk-free interest rate term structure*, in accordance with:

- (1) *Technical Provisions* 5 and 8.3 to 8.4;
- (2) the *Solvency II Regulations* adopted under Article 86 of the *Solvency II Directive*; and
- (3) where a reporting reference date falls -
- (a) before exit day, any in accordance with the relevant technical information made by EIOPA under Article 77e(1)(a) of the Solvency II Directive and adopted in Solvency II Regulations under Article 77e(2) of the Solvency II Directive
- (b) on or after exit day, the relevant technical information made by the PRA in accordance with regulation 4B(6) of the Solvency II Regulations 2015.

...

retained direct EU legislation has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018.

retained EU law has the meaning given in section 6(7) of the European Union (Withdrawal) Act 2018.

...

risk concentration has the meaning given in point (18) of Article 2 of the *Financial Groups Directive* means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the regulated entities in a *financial conglomerate*, whether such exposures are caused by counterparty risk/*credit risk*, investment risk, insurance risk, *market risk*, other risks, or a combination or interaction of such risks

risk-mitigation techniques means all techniques which enable a *Solvency II undertaking UK Solvency II firm* to transfer part or all of its risks to another party.

...

section 59ZZA means (i) in relation to a *SRO firm*, section 59ZZA of FSMA as applied to such a firm by regulation 69 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulation 2018 and (ii) in all other cases, section 59ZZA of FSMA

section 59ZZA application means an application under section 60 of *FSMA* to the *PRA* made by an *authorised person* who could be given a notice under section 59ZZA of *FSMA* in relation to the *person* subject to the application.

...

significant deviation from relevant assumptions means a significant deviation from the assumptions underlying the ~~*matching adjustment*~~ or the ~~*volatility adjustment*~~ or the transitional measures referred to in Articles 308c and 308d of the *Solvency II Directive* means a significant deviation from the assumptions underlying the *matching adjustment*, the *volatility adjustment*, the *risk-free interest rate transitional measure* or the *transitional deduction*.

Solvency II EEA implementing measures means any measures implementing the *Solvency II Directive* in an *EEA State* other than the *UK*.

...

Solvency II special purpose vehicle means an *undertaking*, whether incorporated or not, other than a *Solvency II undertaking UK Solvency II firm*, which has received authorisation from the *PRA* in accordance with Article 211(1) or (3) of the *Solvency II Directive* and which:

...

Solvency II undertaking means:

- (1) ~~an undertaking authorised in accordance with Solvency II EEA implementing measures transposing Article 14 of the Solvency II Directive; or~~
- (2) ~~a UK Solvency II firm.~~

...

SRO firm means a firm to whom regulation 28 or 34 of Part 6 of the EEA Passport Rights (Amendment etc. and Transitional Provisions (EU Exit) Regulations 2018 applies.

SRO insurer means a SRO firm with permission to effect contracts of insurance or carry out contracts of insurance

...

supervisory authority means a national authority or the national authorities empowered by law or regulation of the UK ~~an EEA State~~ to supervise ~~Solvency II undertakings~~ UK Solvency II firms for the purposes of the provisions implementing the Solvency II Directive, including being the PRA and FCA.

...

third country means any country or territory or country other than the United Kingdom that is not an EEA State.

third country CRR firm means an overseas firm that

- (1) ~~is not an EEA firm;~~
- (2) has its head office outside the European Economic Area; and
- (3) would be a CRR firm if it had been a UK undertaking, had carried on all of its business in the UK and had obtained whatever authorisations for doing so as are required under FSMA.

third country firm means an overseas firm, ~~that is not an incoming firm.~~

...

third country insurance services provider means a third country insurance undertaking that has a permission to effect contracts of insurance or carry out contracts of insurance in the UK and does not have a permanent presence in the UK.

third country insurance undertaking means an undertaking that has its head office outside the EEA-UK and that would require authorisation as an insurance undertaking in accordance with provisions implementing Article 14 of the Solvency II Directive if its head office was situated in the EEA UK.

third country investment firm a firm which would be a MiFID investment firm if it had its head office in the EEA UK.

...

<i>third country reinsurance undertaking</i>	means an <i>undertaking</i> that has its head office outside the EEA <u>UK</u> and that would require authorisation as a <i>reinsurance undertaking</i> in accordance with <u>provisions implementing Article 14 of the Solvency II Directive</u> if its head office was situated in the EEA <u>UK</u> .
<i>third country undertaking EEA branch</i>	means a permanent presence of a <i>third country insurance undertaking</i> in an EEA State except the UK , which has received authorisation in accordance with Article 162 of the Solvency II Directive .
...	
<i>top-up permission</i>	means a Part 4A permission given to an incoming EEA firm or an incoming Treaty firm
...	
<u>TPR SMF application</u>	means an application under section 60 of FSMA to the PRA made by an <u>authorised person who could be given a notice under section 59ZZA of FSMA</u> in relation to the person subject to the application
UCITS	undertakings for collective investment in transferable securities that are established in accordance with the UCITS Directive. (1) <u>an undertaking –</u> (a) <u>with the sole object of collective investment in transferable securities or in other liquid financial instruments of capital raised from the public and which operate on the principle of risk-spreading; and</u> (b) <u>with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets (and for these purposes, action taken by the undertaking to ensure that the stock exchange value of its units does not significantly vary from their asset value is to be regarded as equivalent to such repurchase or redemption)</u> (2) <u>undertakings for collective investment in transferable securities that are established in the EEA in accordance with the UCITS Directive.</u>
<i>UK consolidation group</i>	means the <i>consolidation group</i> of a <i>firm</i> to which supervision on a <i>consolidated basis</i> by the PRA applies in accordance with Article 114 of CRD-Part 6 of the Capital Requirements Regulations .
<i>UK-deposit insurer</i>	means a third country branch undertaking that has made a deposit in the UK under Article 162(2)(e) of the Solvency II Directive in accordance with Article 167 of the Solvency II Directive .

UK firm

(1) has the meaning given in paragraph 10 of Schedule 3 to FSMA (EEA Passport Rights);

(2) in the Depositor Protection part and Policyholder Protection part, means an authorised person who: (i) has permission given under Part 4A of FSMA to carry on regulated activities that consist of or include one or more PRA-regulated activities; and (ii) is incorporated in the UK.

UK parent financial holding company

means a financial holding company which is not itself a subsidiary of an institution authorised in the UK, or of a financial holding company or mixed financial holding company set up in the UK.

UK parent institution

means an institution authorised in the UK which has an institution or financial institution as subsidiary or which holds a participation in such an institution or financial institution, and which is not itself a subsidiary of another institution authorised in the UK or of a financial holding company or mixed financial holding company set up in the UK.

UK parent mixed financial holding company

means a mixed financial holding company which is not itself a subsidiary of an institution authorised in the UK, or of a financial holding company or mixed financial holding company set up in the UK.

UK parent undertaking

means a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company.

volatility adjustment

means the adjustment to the relevant risk-free interest rate term structure to calculate the best estimate in accordance with:

(1) in accordance with the Solvency II Regulations adopted under Article 86(1)(j) of the Solvency II Directive; and

(a) where a reporting reference date falls before exit day, any in accordance with the relevant technical information made by EIOPA under Article 77e(1)(c) of the Solvency II Directive and adopted in Solvency II Regulations under Article 77e(2) of the Solvency II Directive; or

(b) where a reporting reference date falls on or after exit day, in accordance with the relevant technical information published by the PRA in accordance with regulation 4B(6) of the Solvency 2 Regulations 2015.

Annex B

Amendments to the Interpretation Part

In this Annex new text is underlined.

...

2 INTERPRETATIVE PROVISIONS

...

2.7 Unless the context otherwise requires, any reference in these rules-

- (1) to any provision of direct EU legislation, is a reference to it as it has effect as retained direct EU legislation on exit day;
- (2) to an EU directive is a reference to the directive as it had effect in EU law immediately before exit day;
- (3) to the implementation or transposition of provisions of an EU directive, is a reference to the provisions of EU-derived domestic legislation which were relied on before exit day for that implementation or transposition;
- (4) to an enactment which has been amended on or before exit day by regulations made under section 8 of the European Union (Withdrawal) Act 2018, is a reference to that enactment as so amended.

2.8

- (1) The PRA Rulebook shall, after *exit day*, be construed, unless the contrary intention appears, as conferring rights and imposing obligations in relation to or in connection with Gibraltar corresponding to those which existed immediately before *exit day*.
- (2) Accordingly, any provision of the PRA Rulebook which immediately before *exit day* applied in relation to or in connection with Gibraltar shall, with any necessary modification to give effect to that corresponding right or obligation, continue to apply after *exit day*; and any provision which did not so apply shall continue not to apply, unless provision indicating a contrary intention is made.
- (3) In this rule reference to Gibraltar includes, but is not limited to, rights or obligations conferred or imposed in relation to or in connection with *Gibraltar-based firms*, public institutions established, persons resident, body corporates incorporated in Gibraltar and activities of UK firms in Gibraltar.
- (4) This rule does not apply to the Depositor Protection and Policyholder Protection Parts (which contain their own application provisions for Gibraltar-based firms).
- (5) In this rule 'a *Gibraltar-based firm*' has the same meaning as in the *Financial Services and Markets Act (Gibraltar) Order 2001*.

Annex C

Amendments to the Allocation of Responsibilities Part

In this Annex new text is underlined.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*;
- (2) a *credit union*; or
- (3) a *third country CRR firm* in relation to:
 - (a) the activities of its establishment in the *UK*; or
 - (b) if it does not have an establishment in the *UK*, activities in the *UK*.

1.1A This Part does not apply to a *SRO firm*

...

6 PRESCRIBED RESPONSIBILITIES: ~~UK BRANCHES~~ THIRD COUNTRY CRR FIRMS

6.1 This chapter applies only to a *third country CRR firm* in relation to

- (i) the activities of its establishment in the *UK*; or
- (ii) if it does not have an establishment in the *UK*, its activities in the *UK*.

6.2 Each of the responsibilities set out in this rule is a *UK branch prescribed responsibility*:

- (4) responsibility for management of the *firm's* risk management processes in the *UK* , or, if the *firm* does not have an establishment in the *UK*, the application of the *firm's* risk management processes to its *UK* activities;

...

- (7) responsibility for management of the *firm's* systems and controls in the *UK* , or, if the *firm* does not have an establishment in the *UK* the application of the *firm's* systems and controls to its *UK* activities.

...

- (11) if the *firm* has an establishment in the *UK*, responsibility for the *firm's* performance of its obligations under Internal Governance of Third Country Branches 7.

Annex D

Amendments to the Certification Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (a) a *CRR firm*;
- (b) a *credit union*; or
- (c) a *third country CRR firm* in relation to: ~~the activities of its establishment in the UK.~~
 - (a) the activities of its establishment in the UK; or
 - (b) if it does not have an establishment in the UK its activities in the UK.

1.1A This Part does not apply to a *SRO firm*

...

1.3 This Part does not apply to a function performed by:

...

- (5A) a *person* in relation to whom a notice under *section 59ZZA* has been given to an authorised person.

....

Annex E

Amendments to the Depositor Protection Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

(6) an overseas firm, that if:

- (a) ~~is not an incoming firm; and~~ the firm has a Part 4A permission that includes accepting deposits; and
- (b) ~~has a Part 4A permission that includes accepting deposits~~ deposits are held by a UK establishment of the firm.

1.2 Chapter 23 and 20.2 applies apply to a UK branch of an incoming firm that is a credit institution. a Gibraltar-based credit institution.

1.3 This Part also applies to a firm which used to have a Part 4A permission to accept deposits but which has ceased to have a Part 4A permission to accept new deposits, or which is subject to a requirement not to accept new deposits, and which is not a member of a non-UK scheme the Gibraltar DGS.

1.3A For the purposes of this Part, a deposit is held by a UK establishment if it is assigned by the firm to an account of that UK establishment.

1.3B For the purposes of this Part, references to a Gibraltar establishment or branch (as applicable) of a UK firm, means an establishment or branch established pursuant to Gibraltar market access rights.

1.4 Unless otherwise stated, in this Part, the following definitions shall apply:

...

deposit

means:

- (1) a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:
 - (a) its existence can only be proven by a financial instrument ~~financial instrument as defined in MiFID II~~, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which ~~exists~~ existed in the UK, Gibraltar or a Member State of the EU on 2 July 2014;

...

DGS member

...

(5) an overseas firm ~~if that is not an incoming firm and~~

(a) the firm has a Part 4A permission that includes accepting deposits; and

(b) deposits are held by a UK establishment of the firm.

...

DGS EU Exit Regulations

means the Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018.

...

enterprise

means any entity engaged in economic activity, irrespective of its legal form and including, in particular, self-employed persons and family businesses engaged in craft or other activities and partnerships or associations regularly engaged in an economic activity.

EEA right

~~means the entitlement of a person to establish a branch or provide services in an EEA State other than that in which they have their relevant office in accordance with the Treaty as applied in the European Economic Area; and subject to the conditions of the CRR and CRD.~~

euro firm

~~means an incoming firm that is a credit institution of an EEA State that has adopted the euro or that does not convert into their national currency the amount referred to in Article 6(1) of the DGSD, pursuant to Article 6(5) DGSD.~~

...

exclusions list

means:

...

(2) from 1 January 2017 until exit day, a list in the form set out in Section B of Annex 3 to this Part; and

(3) from exit day, a list in the form set out in Section C of Annex 3 to this Part.

...

Gibraltar-based credit institution

means a *credit institution* authorised as such by the Gibraltar Financial Services Commission that has its head office in Gibraltar.

Gibraltar DGS

means the deposit guarantee scheme established in Gibraltar.

Gibraltar market access rights

means market access rights pursuant to which a *person* incorporated in the *UK* is entitled to establish a *branch* or provide services in Gibraltar.

...

~~home state scheme~~

~~means a scheme or arrangement (including the *deposit guarantee scheme*) for the payment of compensation in respect of *eligible deposits*, which was established in the *EEA State* which is, with regard to a particular *institution*, the *home Member State*.~~

~~host state scheme~~

~~means a scheme or arrangement (including the *deposit guarantee scheme*) for the payment of compensation in respect of *eligible deposits*, which was established in the *EEA State* which is, with regard to a particular *institution*, the *host Member State*.~~

...

incoming firm

means a *firm* which, immediately before *exit day*, was an incoming firm within the meaning of section 193 of *FSMA* as in force at that date.

...

mandatory contributions

means, at any time, the mandatory contributions described in Article 10(4) of the *DGSD* paid before that time by *credit institutions* to schemes of mandatory contributions established by the United Kingdom for the purposes of covering the costs related to systemic risk, failure and resolution of institutions, up to the *target level*, less any amounts of such mandatory contributions previously borrowed by the *FSCS* which have not been repaid.

micro, small and medium-sized enterprises-enterprise

means an *enterprise* the annual turnover of which does not exceed EUR 50 million ~~means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.~~

...

money laundering

has the meaning given in Article ~~1(3)~~ 4(2) of the *money laundering directive*.

money laundering directive

means Directive ~~2005/60/EC~~ 2015/849/EU.

...

non-UK scheme

means a scheme established pursuant to the *DGSD* in an *EEA State* ~~other than the UK~~

...

target level

means ~~the amount of available financial means which the deposit guarantee scheme is required to reach, which is 0.8% of the amount of covered deposits (excluding temporary high balances) of DGS members.~~

2 ELIGIBILITY

...

2.2 The provisions in this rule determine whether a *deposit* is an *eligible deposit*:

- (1) A *deposit* is an *eligible deposit* only if it is held by:
 - (a) a UK establishment of a DGS member, or
 - (b) a branch of a DGS member established in another EEA State under an EEA Right Gibraltar pursuant to Gibraltar market access rights.
- (2) A *deposit* is held by a UK establishment or a branch if it is assigned by the firm to an account of that UK establishment or that branch. ~~[Deleted.]~~
- (3) A *deposit* is, subject to the other rules in this Chapter, an *eligible deposit* if it is held by a UK or Gibraltar establishment of a firm which:
 - (a) had a Part 4A permission to accept such *deposits* at the time the *deposit* was accepted but no longer has permission to accept *eligible deposits*, or is subject to a requirement preventing it from doing so; and
 - (b) is not now a member of a non-UK scheme the Gibraltar DGS which protects such *deposits*.
- (4) The following are not *eligible deposits*:

...

- (f) a *deposit* the holder and any beneficial owner (as defined in regulation 6 of the Money Laundering Regulations 2007) of which have not, at the *compensation date* had their identity verified in accordance with regulation 9 of the Money Laundering Regulations 2007 ~~for equivalent~~:
 - (1) Gibraltar requirements; or EEA
 - (2) European Economic Area requirements, provided that their identity was so verified prior to exit day.

3 CIRCUMSTANCES IN WHICH THE FSCS PAYS COMPENSATION IN RESPECT OF ELIGIBLE DEPOSITS

...

3.2 The FSCS must pay compensation in accordance with this Part in respect of an *eligible deposit* if it is satisfied that the *eligible deposit* is a *deposit* with either:

- (1) a DGS member which is *in default*; or
- (2) a firm which is *in default* and which:
 - (a) had a Part 4A permission to accept such *deposits* at the time the *deposit* was accepted but no longer has permission to accept *eligible deposits*, or is subject to a requirement preventing it from doing so; and

- (b) is not a member of ~~a non-UK scheme~~ the Gibraltar DGS which covers such deposits.

...

5 CALCULATING COMPENSATION

- 5.3 The limit provided for in 4.2 applies to the aggregate *eligible deposits* placed by a *depositor* with the same *credit institution*, irrespective of the number of accounts, the currency, or whether such *eligible deposits* are held by an establishment of a *DGS member* in the UK or Gibraltar ~~the location within the EEA.~~

...

6 PAYING COMPENSATION

...

- 6.2 The FSCS must pay any compensation to the *depositor*, with the following exceptions:
- (1) where the FSCS ~~is required to~~ may make payments on behalf of a *non-UK scheme* in accordance with the ~~deposit guarantee scheme regulations~~ *DGS EU Exit Regulations*;
 - (2) ~~where the FSCS must instruct a non-UK scheme to make payments on its behalf in accordance with 27.3; [deleted.]~~

...

- 6.9 In applying this Chapter to *deposits* held with a *branch* ~~outside the UK~~ of a *DGS member* in Gibraltar, the FSCS must interpret references to:
- (1) *persons* entitled as personal representatives, trustees, bare trustees, *operators of pension schemes* or *persons* carrying on the *regulated activity* of winding up *pension schemes*; or
 - (2) *persons* having a *joint account* or joint interest in a *deposit* or carrying on business in partnership,

as references to *persons* entitled, under the law of the ~~relevant country or territory~~ Gibraltar, in a capacity appearing to the FSCS to correspond as nearly as may be to that capacity.

7 FORM AND METHOD OF COMPENSATION

...

- 7.2 The FSCS may pay compensation in any form and by any method (or any combination of them) that it determines is appropriate including, without limitation:
- (1) by paying the compensation (on such terms as the FSCS considers appropriate) to a *DGS member* ~~or an incoming firm~~ a Gibraltar-based *credit institution* with an establishment in the UK which agrees to become liable to the *compensation recipient* in a like sum;
 - (2) by paying compensation directly into an existing deposit account of (or for the benefit of) the *compensation recipient*, with a *DGS member* ~~or an incoming firm~~ a Gibraltar-

based credit institution with an establishment in the UK (but before doing so the FSCS must take such steps as it considers appropriate to verify the existence of such an account and to give notice to the *depositor* of its intention to exercise this power);

...

8 CURRENCY OF COMPENSATION

...

8.2 ~~Subject to 8.3~~ The FSCS must make compensation payments in respect of *eligible deposits* in pounds sterling. Where the account in which the *eligible deposit* was held was maintained in a different currency, the FSCS must use the exchange rate applying on the *compensation date*.

8.3 ~~Where the FSCS is instructing a non-UK scheme to make a payment under 27.3, the FSCS must instruct the relevant non-UK scheme to make such payments in the currency of that host Member State [Deleted.]~~

9 TIME LIMITS

...

9.4 The FSCS may decide to defer the payment of compensation beyond the time period set out in 9.3 where:

...

(5) the amount to be repaid is deemed to be part of a *temporary high balance*, in which case 10.8 applies; or

(6) ~~the amount to be repaid is to be paid out by the host state scheme; or [deleted.]~~

...

...

12 SINGLE CUSTOMER VIEW REQUIREMENTS

...

12.9 A *firm* must ensure that each *single customer view* and *exclusions view* contains all the information set out in the table below.

...

39 Account branch jurisdiction.	If the account is held in a branch outside the United Kingdom, please state in which jurisdiction the account is held [if applicable].	ISO 3166-1 Alpha-3 or alternative code if ISO 3166-1 is unavailable
	<u>Eligible deposits must be held by UK or Gibraltar</u>	Maximum number of characters in field: 3

establishments. State "GBR" or "GIB", as applicable. N/A

40	BRRD Marking <u>Bank recovery and resolution marking</u>	Is the account marked under 13.2? [if applicable].	Value: Yes / No Maximum number of characters in field: 3
----	--	--	---

13 BRRD BANK RECOVERY AND RESOLUTION MARKING AND CONTINUITY OF ACCESS

...

13.2 A *firm* must mark accounts which hold:

...

- (2) *deposits* that would be *eligible deposits* from natural persons or *micro, small and medium-sized enterprises* if the *deposit* had not been made through a *branch* of the *firm* located outside the ~~EEA~~UK

...

...

16 FIRMS' DISCLOSURE OBLIGATIONS – INFORMATION AND EXCLUSIONS

...

16.2 A *firm* must:

...

- (3) before entering into a contract on *deposit-taking* with the intending *depositor* of deposits to be held by a UK or Gibraltar establishment of the firm:

...

each such intending *depositor*.

- (4) before entering into a contract on *deposit-taking*, inform each intending *depositor* of deposits to be held at a UK or Gibraltar establishment of the firm of the exclusions from *deposit guarantee scheme* protection that fall within 2.2(4)(b) and 2.2(4)(k), if applicable.

16.3 ~~Where the depositor holds eligible deposits through a UK establishment, the~~ The information sheet must be in English, or, if different, in the language that was agreed between the depositor and the firm when the account was opened. A firm which accepts eligible deposits through a branch established in another EEA State may provide the information sheet in the official language of that EEA State.

17 FIRMS' DISCLOSURE OBLIGATIONS – STATEMENTS OF ACCOUNT

17.1 A *firm* must:

- ...
- (2) include a reference to the *information sheet* and a reference to the *exclusions list* on a *depositor's* statement of account in respect of deposits held by a UK or Gibraltar establishment of the firm;
 - (3) at least annually:
 - (a) provide to the depositor of deposits held by a UK or Gibraltar establishment of the firm;
 - ...
 - (4) include the following information on a depositor's statement of account in respect of deposits held by a UK or Gibraltar establishment of the firm;
 - ...

17.3 A firm which was, immediately before exit day, a credit institution and an incoming firm, and which is a DGS member immediately after exit day, must, within two months after exit day:

- (a) provide to the depositor of deposits held by a UK establishment of the firm:
 - (i) the information sheet; and
 - (ii) the exclusions list; and
- (b) if applicable, inform the depositor of the exclusions from deposit guarantee scheme protection that fall within 2.2(4)(b) and 2.2(4)(k).

...

19 DISCLOSURE OF TRANSFER OF DEPOSITS

19.1 In the case of a merger, conversion of *subsidiaries* into *branches*, transfer or similar operations, a *firm* must:

- ...
- (2) give *depositors* a three month period following notification in accordance with (1), to withdraw or transfer to another *institution*, without incurring any penalty, such part of their *eligible deposits*, together with any accrued interest and other benefits, as exceed the coverage level pursuant to 4.2 (or, if applicable in the case of a *non-UK scheme*, other transposition of Article 6(1) of the *DGSD*) at the time of the operation.

20 DISCLOSURE OF WITHDRAWAL OR EXCLUSION FROM THE DEPOSIT GUARANTEE SCHEME

20.1 A *firm* must inform *depositors* within one month if it withdraws from or is excluded from the *deposit guarantee scheme* ~~or any non-UK scheme~~.

20.2 A Gibraltar-based credit institution with an establishment in the UK must inform depositors of that establishment within one month if it withdraws from or is excluded from the Gibraltar DGS.

20.3 A firm must inform *depositors of deposits* which:

- (1) immediately prior to *exit day*, were *eligible deposits*; and
- (2) on *exit day*, ceased to be *eligible deposits* by virtue of not being held at a **UK or Gibraltar** establishment,

that such *deposits* ceased to be *eligible deposits* on *exit day*; and must do so as soon as practicably possible after *exit day* and in any event within one month after *exit day*.

...

22 NOTIFICATION REQUIREMENTS ON TRANSFER TO A NON-UK SCHEME

22.1 If a firm which is a *DGS member* intends to transfer to become a member of a *non-UK scheme*, and cease to be a *DGS member*, it shall give at least six months' notice to the *FSCS* and the *PRA* of its intention to make such a transfer. During the six month period, the firm shall remain a *DGS member*. [Deleted.]

23 DEPOSIT COMPENSATION INFORMATION – BRANCHES AND WEBSITE

...

23.3 In this Chapter, references to “compensation leaflet” are:

- (1) in the case of a *DGS member*, references to the *FSCS*'s standard leaflet with respect to its protection of *deposits*; and
- (2) in the case of an *incoming firm* that it is a *credit institution* a *Gibraltar-based credit institution*, with an establishment in the *UK* references to a leaflet with respect to the protection of *deposits* by the *Gibraltar DGS* compensation scheme of its *home member state* where such a leaflet is provided electronically and in English by the *Gibraltar DGS* *home state scheme* or, where a leaflet is not available, a link to the *home state scheme*'s *Gibraltar DGS* website.

23.4 A firm that accepts *deposits* under a single brand or trading name must prominently display the compensation sticker and compensation poster in each *UK branch* (and, in the case of a *UK firm with a branch in Gibraltar*, each *Gibraltar branch*) in the following ways:

...

23.5 A firm that accepts *deposits* under multiple brands or trading names must prominently display the compensation sticker and compensation poster in each *UK branch* (and, in the case of a *UK firm with a branch in Gibraltar*, each *Gibraltar branch*) in the following ways:

...

23.10 A firm that accepts *eligible deposits* through a *branch* or *branches* established in other *EEA States* may provide the information required by this Chapter in the official language(s) of the *EEA State* (which may be either the compensation sticker, compensation poster or compensation leaflet in that language or the firm's own translation of that compensation sticker, compensation poster or compensation leaflet). [Deleted.]

24 DUTIES OF THE FSCS

...

24.10 The FSCS must correspond with a *depositor* in any one of:

- (1) English; or
- (2) ~~any other official Union language or~~ Welsh if that language is used by the *firm* which holds the *eligible deposit* when communicating with that *depositor*.

...

26 CONFIDENTIALITY, INFORMATION SHARING AND CO-OPERATION

...

26.2 The FSCS must exchange with ~~host state schemes (in relation to a DGS member),~~ information: [Deleted.]

- (1) relating to the ~~DGS member's~~ compliance with this Part;
- (2) necessary to prepare for a repayment of *depositors*, including markings made under Chapter 11;
- (3) ~~communicated to the FSCS by the PRA that the PRA has detected problems with a DGS member that are likely to give rise to the intervention of the deposit guarantee scheme.~~

26.3 The FSCS must have appropriate procedures in place to enable it to share information and communicate effectively with ~~non-UK schemes~~, the members of such schemes, and bodies outside the UK. The FSCS shall inform the PRA of any cooperation agreement it enters into with a ~~non-UK scheme~~. [Deleted.]

26.4 In order to facilitate effective co-operation, the FSCS shall have written co-operation agreements in place with ~~non-UK schemes~~. Such agreements shall take account of 26.1. [Deleted.]

27 PAYMENTS IN RESPECT OF UK BRANCHES OF INCOMING FIRMS AND EEA BRANCHES OF DGS MEMBERS

27.1 This Chapter applies only to the FSCS. [Deleted.]

27.2 Where the FSCS is required under the ~~deposit guarantee scheme regulations~~ to pay compensation on behalf of a ~~non-UK scheme~~, the FSCS must inform the ~~depositors~~ concerned that the relevant ~~credit institution is in default~~ and of their right to compensation on behalf of the ~~non-UK scheme~~. The FSCS may receive correspondence from those ~~depositors~~ on behalf of the ~~non-UK scheme~~. [Deleted.]

27.3 Where the FSCS is required, under this Part, to pay compensation to a ~~depositor~~ in respect of ~~deposits~~ held with a ~~branch~~ of a ~~DGS member~~ in an EEA state other than the UK, the FSCS must instruct the relevant ~~non-UK scheme~~ to make such payments on its behalf. The FSCS must provide the necessary funding prior to payout by the ~~non-UK scheme~~ and must compensate the ~~non-UK scheme~~ for costs incurred by the ~~non-UK~~

~~scheme with regard to acts done by the non-UK scheme in accordance with the instructions given by the FSCS. [Deleted.]~~

28 SUBROGATION

...

- 28.3 (1) The FSCS may determine that, if it is necessary or desirable in conjunction with the exercise of the FSCS's powers under 28.2, that the *compensation recipient* shall be treated as having irrevocably and unconditionally appointed the chairman of the FSCS for the time being to be their attorney and agent and on their behalf and in their name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the UK, Gibraltar ~~another EEA State~~ or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

...

30 RECOVERIES OF ELIGIBLE DEPOSITS: RETURN OF SURPLUS TO COMPENSATION RECIPIENT

- 30.1 If the FSCS, in relation to a *claim for eligible deposits*, makes recoveries from the *credit institution* or any third party in respect of that *eligible deposit*, it must:

- (1) retain from those recoveries a sum equal to the aggregate of:
- (a) the sum paid by the FSCS as compensation; and
 - ...
 - (b) ~~any amount paid or payable by a home state scheme to the compensation recipient, and [deleted.]~~

...

32 FUNDING – USE OF EXISTING MANDATORY CONTRIBUTIONS

...

- 32.2 If the PRA determines, in accordance with the *deposit guarantee scheme regulations*, that the FSCS is unable to raise a *DGS compensation costs levy* from *DGS members* to meet the liabilities of the *deposit guarantee scheme*, the FSCS may borrow an amount equal to the ~~amount of such mandatory contributions~~ in order to meet the liabilities of the deposit guarantee scheme.

- 32.3 The FSCS must impose a *DGS compensation costs levy* on *DGS members* sufficient to repay any amounts borrowed in accordance with 32.2 ~~equal to mandatory contributions borrowed in accordance with Article 10 (4) of the DGSD~~ within a reasonable time and in accordance with repayment deadlines under the applicable loan agreement and 34.3.

...

48 FUNDING – TRANSFER OF LEVIES

- 48.1 This Chapter applies only to the *FSCS*. ~~[Deleted.]~~
- 48.2 If a *firm* ceases to be a *DGS member* and joins a *non-UK scheme*, the *FSCS* must transfer the contributions paid by that *firm* to the *available financial means* of the *deposit guarantee scheme* during the 12 months preceding the end of the membership to the relevant *non-UK scheme*. ~~[Deleted.]~~
- 48.3 48.2 does not apply if the *firm* has been excluded from the *deposit guarantee scheme* pursuant to Article 4(5) of the *DGSD*. ~~[Deleted.]~~
- 48.4 If some of the activities of a *DGS member* are transferred to another *Member State* and become subject to a *non-UK scheme*, the contributions paid by that *firm* during the 12 months preceding the transfer shall be transferred to the relevant *non-UK scheme* in proportion to the amount of *covered deposits* transferred. ~~[Deleted.]~~

...

ANNEX I – INFORMATION SHEET (CHAPTER 16)

Currency of reimbursement: Pound sterling (GBP, £) or, for branches of UK banks operating in other EEA Member States, the currency of that State.

ANNEX II – CONTENT OF COMPENSATION STICKERS AND POSTERS (CHAPTER 23)

The compensation stickers must contain the following statements only:

UK banks

building societies

credit unions

Northern Ireland credit unions

An overseas firm, that if:

(a) is not an incoming firm the firm has a Part 4A permission that includes accepting deposits; and

(b) has a Part 4A permission that includes accepting deposits deposits are held by a UK establishment of the firm.

...

- (1) "Your eligible deposits with held by a UK/Gibraltar [delete as appropriate] establishment of [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit guarantee scheme. Any deposits you hold above the limit are unlikely to be covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk."

As an alternative, for *credit unions* or *Northern Ireland credit unions* that accept deposits under a single brand or trading name:

"Your eligible deposits are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit guarantee scheme. Any deposits you hold above the limit are unlikely to be covered. Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk."

Incoming firm that is a *credit institution* [] **UK branch of a Gibraltar-based credit institution**

-
- (2) "Your eligible deposits with [insert name of firm] are protected up to a total of [insert 100,000 euro or home state equivalent] [insert Gibraltar coverage limit including applicable currency] by the Gibraltar Deposit Guarantee Scheme [insert name of compensation scheme] the [insert home state of compensation scheme] deposit guarantee scheme and are not protected by the UK Financial Services Compensation Scheme. Any deposits you hold above the [insert 100,000 euro or home state equivalent] [insert Gibraltar coverage limit including applicable currency] limit are unlikely to be covered. Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme]."-[]

The compensation posters must contain the following statements only:

UK banks

building societies

credit unions

Northern Ireland credit unions

An overseas firm, that if:

(a) is not an incoming firm the firm has a Part 4A permission that includes accepting deposits; and

(b) has a Part 4A permission that includes accepting deposits deposits are held by a UK establishment of the firm.

...

-
- (1) Firms that accept deposits under a single brand or trading name

"Your eligible deposits with held by a UK/Gibraltar [delete as appropriate] establishment of [insert name of firm] are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit guarantee scheme. Any deposits you hold above the limit are unlikely to be covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk."

As an alternative, for credit unions or Northern Ireland credit unions that accept deposits under a

single brand or trading name: "Your eligible deposits are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit guarantee scheme. Any deposits you hold above the limit are unlikely to be covered.

Please ask/click here [delete as appropriate] for further information or visit www.fscs.org.uk."

~~Incoming firm that is a credit institution~~ [] UK branch of a Gibraltar-based credit institution

-
- (3) ~~Incoming firm that is a credit institution and~~ UK branch of a Gibraltar-based credit institution that accepts deposits under a single brand or trading name

"Your eligible deposits with [insert name of firm] are protected up to a total of [insert 100,000 euro or home state equivalent insert Gibraltarian coverage limit including applicable currency] by [insert name of compensation scheme] the [insert home state of compensation scheme] the Gibraltar deposit guarantee scheme and are not protected by the UK Financial Services Compensation Scheme. Any deposits you hold above the [insert 100,000 euro or home state equivalent insert Gibraltarian coverage limit including applicable currency] limit are unlikely to be covered. Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme]." []

-
- (4) ~~Incoming firm~~ UK branch of a Gibraltar-based credit institution that accepts deposits under multiple brands or trading names

"Your eligible deposits with [insert name of firm] are protected up to a total of [insert 100,000 euro or home state equivalent insert Gibraltarian coverage limit including applicable currency] by [insert name of compensation scheme] the [insert home state of compensation scheme] the Gibraltar deposit guarantee scheme and are not protected by the UK Financial Services Compensation Scheme. This limit is applied to the total of any deposits you have with the following: [insert names of brands as appropriate]. Any total deposits above the [insert 100,000 euro or home state equivalent insert Gibraltarian coverage limit including applicable currency] limit are unlikely to be covered. Please ask/click here [delete as appropriate] for further information or visit [insert website address of scheme]." []

...

ANNEX 3 – EXCLUSIONS LIST (CHAPTER 16)

Section C (from exit day)

A deposit is excluded from protection if:

- (1) The holder and any beneficial owner of the deposit have never been identified in accordance with money laundering requirements. For further information, contact your bank, bank building society or credit union.
- (2) The deposit arises out of transactions in connection with which there has been a criminal conviction for money laundering.
- (3) It is a deposit made by a depositor which is one of the following:
 - credit institution
 - financial institution
 - investment firm

- insurance undertaking
 - reinsurance undertaking
 - collective investment undertaking
 - pension or retirement fund¹
 - public authority, other than a small local authority.
- (4) It is a deposit of a credit union to which the credit union itself is entitled
- (5) It is a deposit which can only be proven by a financial instrument² unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which existed in the UK or a Member State on 2 July 2014)
- (6) It is a deposit of a collective investment scheme which qualifies as a small company.³
- (7) It is a deposit of an overseas financial services institution which qualifies as a small company.⁴
- (8) It is a deposit of certain regulated firms (investment firms, insurance undertakings and reinsurance undertakings) which qualify as a small business or a small company⁵ – refer to the FSCS for further information on this category
- (9) It is not held by an establishment of a bank, building society or credit union in the UK or, in the case of a bank or building society incorporated in the UK, it is not held by an establishment in Gibraltar.

For further information about exclusions, refer to the FSCS website at www.FSCS.org.uk

¹ Deposits by personal pension schemes, stakeholder pension schemes and occupational pension schemes of micro, small and medium sized enterprises are not excluded

² As listed in Part I of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

³ Under the Companies Act 1985 or Companies Act 2006

⁴ See footnote 3

⁵ See footnote 3

Annex F

Amendments to the Dormant Account Scheme Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

- (5) an overseas firm ~~that if:~~
- (a) ~~is not an incoming firm; and [deleted.]~~
 - (b) the firm has a Part 4A permission that includes accepting deposits and
 - (c) deposits are held by a UK establishment of the firm.

1.2 In this Part, the following definitions shall apply:

...

DAS member

means:

...

- (4) an overseas firm, if:
- (a) the firm ~~that is not an incoming firm and~~ has a part 4A permission that includes accepting deposits and
 - (b) deposits are held by a UK establishment of the firm.

...

Gibraltar-based credit institution

has the meaning given in the Depositor Protection Part.

...

7 FORM AND METHOD OF COMPENSATION

...

7.2 Subject to Chapter 6, the FSCS may pay compensation in any form and by any method (or any combination of them) that it determines is appropriate including, without limitation:

- (1) by paying the compensation (on such terms as the *FSCS* considers appropriate) to a firm with a *Part 4A* permission to accept deposits **or a Gibraltar-based credit institution with an establishment in the UK** ~~an incoming firm~~ or another dormant account fund operator which agrees to become liable to the claimant in a like sum;

...

12 SUBROGATION

...

- 12.4 (1) The *FSCS* may determine that, if it is necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under 12.3, that the claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be their attorney and agent and on their behalf and in their name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the UK, **Gibraltar** ~~another EEA State~~ or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

...

Annex G

Amendments to the External Audit Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATIONS AND DEFINITIONS

...

1.3 In this Part, the following definitions shall apply:

...

group supervisor

means the PRA in accordance with regulation 26 of The Solvency 2 Regulations 2015 ~~(in relation to a group) the authority designated as group supervisor in relation to that group, in accordance with Article 247 of the Solvency II Directive.~~

...

4 DUTIES ON THE EXTERNAL AUDITOR

...

4.2 Where the *relevant elements of the SFCR* in a *group SFCR* that:

- (1) pertains to an *undertaking* that is not a ~~Solvency II undertaking~~ UK Solvency II firm; and
- (2) information has been prepared in accordance with:
 - (a) *PRA* rules other than those implementing the *Solvency II Directive*; or
 - (b) ~~an EU instrument~~ UK law other than the *Solvency II Regulations*,

the external auditor shall state in the report under 4.1(2) that the information has been properly compiled in accordance with the relevant *PRA* rules and ~~EU instruments~~ UK law relating to that *undertaking* from information provided by *undertakings* in the *group* and the *relevant insurance group undertaking*.

...

Annex H

Amendments to the Financial Conglomerates Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *firm* except:

- (1) ~~an incoming EEA firm; [deleted.]~~
- (2) ~~an incoming Treaty firm; and [deleted.]~~

...

1.4 In this Part, the following definitions shall apply:

alternative investment fund manager

~~means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of the AIFMD or an undertaking which is outside the EEA and which would require authorisation in accordance with the AIFMD if it had its registered office within the EEA.~~

...

asset management company

~~means a management company within the meaning of Article 2(1)(b) of the UCITS Directive, as well as an undertaking the registered office of which is outside the EEA and which would require authorisation in accordance with Article 6(1) of the UCITS Directive if it had its registered office within the EEA.~~

...

competent authority

~~means any national authority of an EEA State which is empowered by law or regulation to supervise regulated entities, whether on an individual or group-wide basis.~~

...

consolidation group

means:

- (1) a conventional group; or
- (2) undertakings linked by an ~~Article 12(1) relationship~~ a common management relationship or an Article 18(6) relationship.

If a parent undertaking or subsidiary undertaking in a conventional group (the first person) has a consolidation ~~Article 12(1) relationship~~ common management relationship or an Article 18(6) relationship with another person (the second person), the second person, and any subsidiary undertaking of the second person, is also a member of the same consolidation group.

...

CRD full-scope firm

means an *investment firm* as defined in article 4(1)(2) of the *CRR* that is subject to the requirements imposed by virtue of MiFID, or which would be subject to ~~that Directive those requirements~~ if its head office were in the UK an EEA State, and that is not a *limited activity firm* or a *limited licence firm*.

...

~~*EEA insurer*~~

~~means an undertaking whose head office is in any EEA State except the UK and which has received authorisation in accordance with article 14 of the Solvency II Directive.~~

~~*EEA prudential sectoral legislation*~~

~~means, in relation to a financial sector, requirements applicable to persons in that financial sector in accordance with EEA legislation with respect to prudential supervision of regulated entities in that financial sector.~~

~~*EEA UK regulated entity*~~

~~means a regulated entity that is an EEA firm or a UK firm.~~

...

financial conglomerate notification

means a notification issued in respect of a financial conglomerate that has been identified as a financial conglomerate as contemplated by Article 4(2) of the Financial Groups Directive. [deleted.]

~~*Financial Conglomerates Regulations*~~

~~means The Financial Conglomerates and Other Financial Groups Regulations 2004 (SI 2004/1862)~~

...

insurance sector

means a sector composed of one or more of the following entities:

- (1) ~~a Solvency II undertaking~~ UK Solvency II firm;
- (2) *third country insurance undertaking* or a *third country reinsurance undertaking*;
- (3) an *insurance holding company*; and
- (4) in the relevant circumstances described in 5, an *asset management company* or an *alternative investment fund manager*.

...

investment firm

has the meaning given by Article 2(3) of the *Financial Groups Directive*

...

mixed financial holding company

~~has the meaning given in Article 2(15) of the *Financial Groups Directive* has the meaning given in regulation 1(2) of the *Financial Conglomerates Regulations*.~~

...

parent undertaking

has the meaning in Article 2(9) of the *Financial Groups Directive*.

participation

~~has the meaning given in article Article 2(11) of the *Financial Groups Directive* Article 4(1)(35) *CRR*.~~

...

regulated entity

means one of the following:

...

(2) ~~a *Solvency II undertaking*~~ UK Solvency II firm, a third country insurance undertaking, a third country reinsurance undertaking

...

whether or not it is incorporated in, or has its head office in, ~~an EEA State~~ the UK.

~~*relevant competent authorities*~~

~~in relation to a *financial conglomerate*, means those *competent authorities* which are, or which have been appointed as, *relevant competent authorities* in relation to that *financial conglomerate* under Article 2(17) of the *Financial Groups Directive*~~

...

sectoral rules

means, in relation to a *financial sector*, the following rules and requirements relating to the prudential supervision of *regulated entities* within that *financial sector*:

(1) ~~for the purposes of 2.8, *EEA prudential sectoral legislation* for that *financial sector* together with, as appropriate, the rules and requirements in (3);~~

(2) for the purpose of calculating *solo capital resources* and a *solo capital resources requirement*:

...

(b) ~~the rules and requirements in (3);~~ or

...

subsidiary undertaking

~~has the meaning given in Article 2(10) of the *Financial Groups Directive*.~~

~~*third country financial conglomerate*~~

~~a *financial conglomerate* that is of a type that falls under Article 5(3) of the *Financial Groups Directive* has the meaning given in regulation 7 of the *Financial Conglomerates and Other Financial Groups Regulations 2004*~~

~~*third country insurance undertaking*~~

~~means an *undertaking* that has its head office outside the *EEA* and that would require authorisation as an *insurance undertaking* in accordance with Article 14 of the *Solvency II Directive* if its head office was situated in the *EEA*.~~

~~*third country reinsurance undertaking*~~

~~means an *undertaking* that has its head office outside the *EEA* and that would require authorisation as a *reinsurance undertaking* in accordance with Article 14 of the *Solvency II Directive* if its head office were situated in the *EEA*.~~

...

~~*UK regulated EEA financial conglomerate*~~

~~means a *financial conglomerate* other than a *third country financial conglomerate* that satisfies one of the following conditions:~~

- ~~(1) 3.3 applies with respect to it; or~~
- ~~(2) a *firm* that is a *member* of that *financial conglomerate* is subject to obligations imposed through its *Part 4A permission* or section 55M of *FSMA* to ensure that the *financial conglomerate* meets levels of capital adequacy based on or stated to be based on Annex I of the *Financial Groups Directive*.~~

2 DEFINITION OF A FINANCIAL CONGLOMERATE

2.5 In respect of a *financial conglomerate* in relation to which a **PRA** *financial conglomerate notification* has been issued, the figures in Annex 1 are altered as follows:

- (1) the figure of 40% in the box titled Threshold Test 1 is replaced by 35%;
- (2) the figure of 10% in the box title Threshold Test 2 is replaced by 8%; and
- (3) the figure of six billion Euro in the box titled Threshold Test 3 is replaced by five billion Euro.

3 CAPITAL ADEQUACY

3.1 In this Chapter,

- (1) ~~3.2 applies where a *financial conglomerate notification* has been issued in respect of a *financial conglomerate* of which a *firm* is a *member*; and [deleted.]~~

...

3.2 ~~A firm must at all times have capital resources of such an amount and type that results in the capital resources of the financial conglomerate being adequate. [Deleted.]~~

3.4 (1) Subject to 3.5, the definitions of conglomerate capital resources and conglomerate capital resources requirement that apply for the purposes of 3.3 are the definitions from whichever of Part 1 or Part 2 of Annex 2 the firm has indicated to the PRA it will apply to the group or each part of the group.

(2) The firm must indicate to the PRA in advance which Part of Annex 2 it intends to apply to the group or each part of the group.

...

4 RISK CONCENTRATION AND INTRA-GROUP TRANSACTIONS

...

4.2 A firm that is a member of a ~~UK regulated~~ EEA financial conglomerate headed by a mixed financial holding company must ensure compliance with the sectoral rules, identified for these purposes in the table at 4.3, regarding risk concentration and intra-group transactions of the most important financial sector in that financial conglomerate with respect to that financial sector as a whole, including the mixed financial holding company.

...

5 ASSET MANAGEMENT COMPANIES AND ALTERNATIVE INVESTMENT FUND MANAGERS

5.1 A firm must treat an asset management company and an alternative investment fund manager that is a member of a financial conglomerate of which that firm is a member:

...

(2) In the case of a financial conglomerate for which the PRA is the coordinator, a firm must allocate an asset management company and an alternative investment fund manager:

(a) to the investment services sector where a decision to that effect has been made by ~~the undertaking in the financial conglomerate that is the group member referred to in Article 4(2) of the Financial Groups Directive~~ the relevant member referred to in regulation 2(4) of the **Financial Conglomerates Regulations**;

...

6 THIRD COUNTRY FINANCIAL CONGLOMERATE

6.1 This Chapter applies to a firm that is a member of a third country financial conglomerate ~~except:~~

(1) ~~an incoming EEA firm; or [deleted.]~~

(2) ~~an incoming Treaty firm; or [deleted.]~~

...

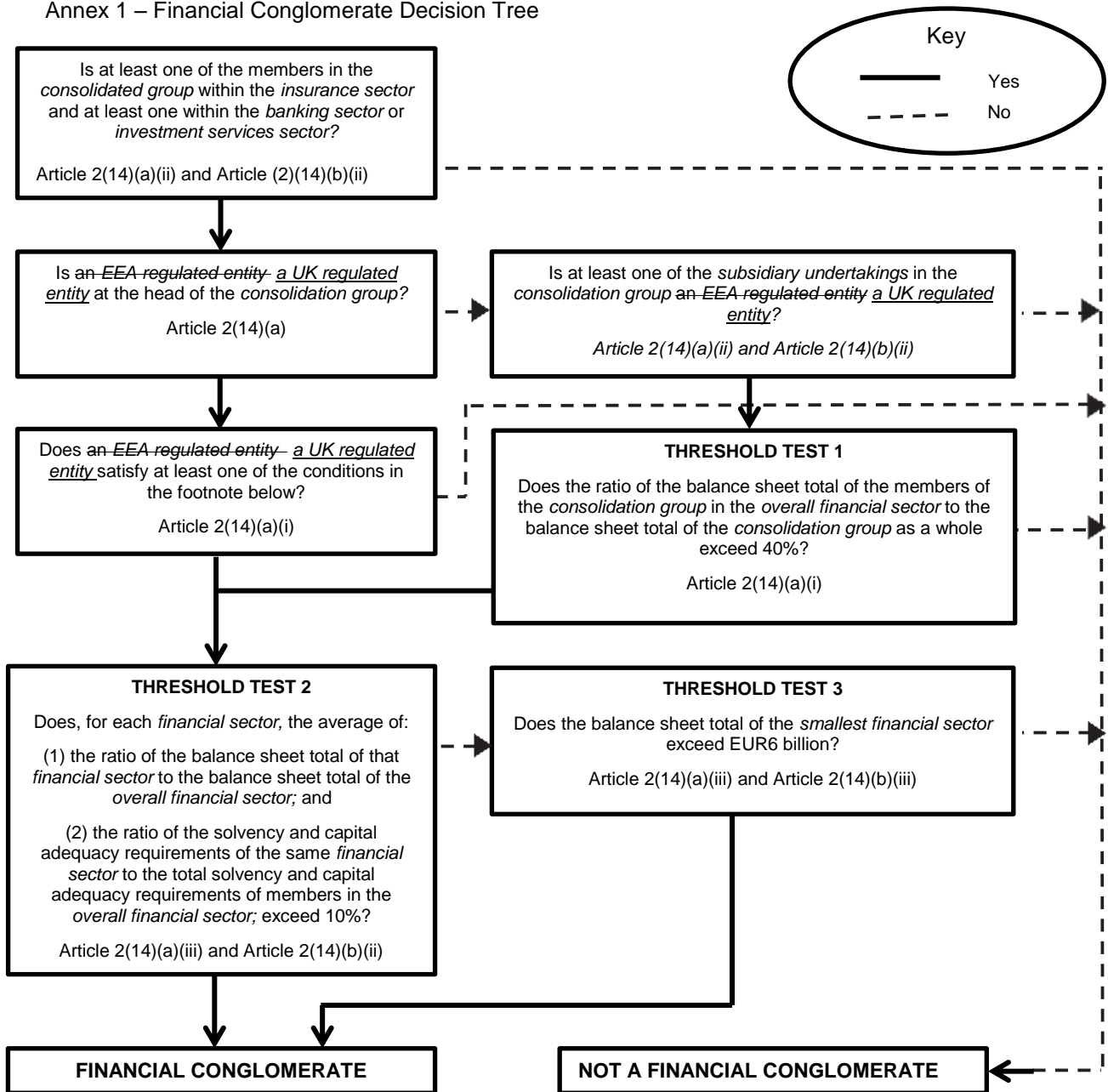
7 RISK SYSTEMS

7.1 This Chapter applies to a firm that is a member of a ~~UK-regulated EEA~~ financial conglomerate in respect of which a PRA financial conglomerate notification has been issued.

8 TRANSITIONALS

COLUMN A	COLUMN B	COLUMN C
Financial Conglomerates Directive	(PRA Handbook as at 31 December 2015)	Financial Conglomerates (PRA Rulebook)
Art 3.3 <u>Regulation 16 of the <i>Financial Conglomerates Regulations</i></u>	Rule 3.1.5 waiver	Rule 2.1 waiver
Art 3.3a <u>Regulation 17 of the <i>Financial Conglomerates Regulations</i></u>		
Art 3.5 <u>Regulation 19 of the <i>Financial Conglomerates Regulations</i></u>	Rule 3.1.11 waiver	Rule 2.7 waiver
Art 3.4(b) <u>Regulation 18(b) of the <i>Financial Conglomerates Regulations</i></u>		
Art 6(5) <u>Regulation 24 of the <i>Financial Conglomerates Regulations</i></u>	Rule 3.1.29 waiver	Rule 3.3 waiver

Annex 1 – Financial Conglomerate Decision Tree



Footnote: The conditions are that the ~~EEA regulated entity~~ UK regulated entity at the head of the consolidation group: (1) is a parent undertaking of a member of the consolidation group in the overall financial sector; (2) has a participation in a member of the consolidation group that is in the overall financial sector; or (3) has a consolidation ~~Article 12(1) relationship~~ common management relationship with a member of the consolidation group that is in the overall financial sector

Annex 2 – Capital Adequacy Calculations for Financial Conglomerates

...

3 Table

Types of financial conglomerate	<p>3.1 (1) This paragraph sets out how to determine the category of <i>financial conglomerate</i>.</p> <p>(2) If there is an EEA a <u>UK</u> regulated entity at the head of the <i>financial conglomerate</i>, then:</p> <p>(a) if that entity is in the <i>banking sector</i> or the <i>investment services sector</i>, the <i>financial conglomerate</i> is a <i>banking and investment services conglomerate</i>; or</p> <p>(b) if that entity is in the <i>insurance sector</i>, the <i>financial conglomerate</i> is an <i>insurance conglomerate</i>.</p> <p>(3) If (2) does not apply and the <i>most important financial sector</i> is the <i>banking and investment services sector</i>, it is a <i>banking and investment services conglomerate</i>.</p> <p>(4) If (2) and (3) do not apply, it is an <i>insurance conglomerate</i>.</p>
---------------------------------	--

...

5 Table Part 3: Principles applicable to all methods

...

Application of sectoral rules: general	<p>5.4 The following adjustments apply to the <i>applicable sectoral rules</i> as they are applied by the rules in this Annex.</p> <p>(1) If any of those rules would otherwise not apply to a situation in which they are applied by this Annex, those rules nevertheless still apply (and in particular, any of those rules that would otherwise have the effect of disapplying consolidated supervision do not apply).</p> <p>(2) If it would not otherwise have been included, an <i>ancillary insurance services undertaking</i> is included in the <i>insurance sector</i>.</p> <p>(3) The scope of those rules is amended so as to remove restrictions relating to where members of the <i>financial conglomerate</i> are incorporated or have their head office, so that the scope covers every member of the <i>financial conglomerate</i> that would have been included in the scope of those rules if those members had their head offices in <u>the UK</u> an EEA State.</p> <p>(4) For the purposes of Parts 1 to 2, those rules must be adjusted, if necessary, when calculating the capital resources, capital resources requirements or solvency requirements for a particular <i>financial sector</i> to exclude those for a member of another <i>financial sector</i>.</p> <p>(5) Any <i>waiver</i> granted to a member of the <i>financial conglomerate</i> under those rules does not apply for the purposes of this annex.</p>
--	--

...

6 Table: Part 4: Definitions used in this Annex

...

Solo capital resources	<p>6.4 (1) The <i>solo capital resources requirement</i> of an <i>undertaking</i> in the <i>insurance sector</i> is:</p>
------------------------	--

<p>requirement: insurance sector</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p>	<p>in respect of a <i>UK Solvency II firm</i>, the <i>SCR</i>;</p> <p>in respect of a <i>Solvency II undertaking</i> other than a <i>UK Solvency II firm</i>, the equivalent of the <i>SCR</i> as calculated in accordance with the <i>Solvency II EEA implementing measures</i> in the <i>EEA State</i> in which it has received authorisation in accordance with article 14 of the <i>Solvency II Directive</i>.; [deleted.]</p> <p>in respect of a <i>third country insurance undertaking</i> or <i>third country reinsurance undertaking</i> to which Group Supervision, 10.4(2) applies, the equivalent of the <i>SCR</i> as calculated in accordance with the applicable requirements in that <i>third country</i>;</p> <p>in respect of any <i>undertaking</i> which is not within (a) to (c), the capital resources requirement calculated according to the rules for the calculation of the solo capital resources requirement applicable to that <i>undertaking</i> for the purposes of the calculation referred to in Group Supervision and Chapter I of Title II of the <i>delegated acts</i> or, if no rules are applicable for that calculation under Group Supervision and Chapter I of Title II of the <i>delegated acts</i>, in accordance with the <i>SCR Rules</i>.</p>
<p>Solo capital resources requirement: EEA firms in the banking sector or investment services sector</p>	<p>6.5</p> <p>(1)</p> <p>(2)</p> <p>(3)</p>	<p>The solo capital resources requirement for an EEA regulated entity (other than a bank, building society, designated investment firm, IFPRU investment firm as defined in the FCA Handbook, BIPRU firm as defined in the FCA Handbook, an insurer or an EEA insurer) that is subject to the solo capital adequacy sectoral rules for its financial sector of the competent authority that authorised it is equal to the amount of capital it is obliged to hold under those sectoral rules provided that the following conditions are satisfied</p> <p>for the purposes of the banking sector and the investment services sector, those sectoral rules must correspond to the PRA sectoral rules identified in paragraph 6.2 as applying to that financial sector;</p> <p>the entity must be subject to those sectoral rules in (1); and</p> <p>paragraph 6.3 applies to the entity and those sectoral rules.</p>
<p>Solo capital resources requirement: non-EEA</p>	<p>6.6</p>	<p>The <i>solo capital resources requirement</i> for a <i>recognised third country credit institution</i> or a <i>recognised third country investment firm</i> is the amount of capital resources that it is obliged to hold</p>

~~firms non-UK firms~~
 subject to equivalent regimes in the banking sector or investment services sector

under the *sectoral rules* for its *financial sector* that apply to it in the state or territory in which it has its head office provided that:

- | | |
|-----|---|
| (1) | there is no reason for the <i>firm</i> applying the rules in this Annex to believe that the use of those <i>sectoral rules</i> would produce a lower figure than would be produced under paragraph 6.2; and |
| (2) | paragraph 6.3 applies to the entity and those <i>sectoral rules</i> . |

Annex 3 –Prudential Rules for Third Country Financial Conglomerates (6.2)

...

2 Table: PART 2: Adjustment of scope

2.1	The adjustments that must be carried out under this paragraph are that the scope of the rules referred to in Part 1 of this Annex, are amended:
(1)	to remove any provisions disapplying those rules for <i>third country financial conglomerates</i> ;
(2)	to remove all limitations relating to where a member of the <i>third country financial conglomerate</i> is incorporated or has its head office; and
(3)	so that the scope covers every member of the <i>third country financial conglomerate</i> that would have been included in the scope of those rules if those members had their head offices in, and were incorporated in, and an EEA State the UK.

Annex I

Amendments to the FSCS Management Expenses Levy Limit and Base Costs Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

CRO insurer

has the meaning given in the Policyholder Protection Part.

...

participant firm

(1) has the meaning given in paragraph A (2) of the *PRA Handbook* Glossary definition of 'participant firm' as at 29 February 2016 for the purposes of the *PRA's* rules and has the meaning given in the *FCA Handbook* for the purposes of the *FCA's* rules in FEES 1; and

(2) includes CRO insurers.

Annex J

Amendments to the General Provisions Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATIONS AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

~~incoming ECA provider~~

~~has the meaning given in the FCA Handbook.~~

...

SRO firm with a top-up permission

means a *firm* to which regulation 34 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 applies.

SRO firm without a top-up permission

means a *firm* to which regulation 28 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 applies.

~~State of the risk~~

~~means references to the EEA State in which a risk is situated in accordance with paragraphs 6(3) and 6(4) of Schedule 12 to FSMA.~~

TPR firm

means a *firm* to which regulation 8 or regulation 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 applies.

TPR firm with a top-up permission

means a *firm* to which regulation 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 applies.

TPR firm without a top-up permission

means a *firm* to which regulation 8 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 applies.

...

...

3 DISCLOSURE TO RETAIL CLIENTS

3.1 This Chapter

...

(2) does not apply to:

(a) ~~an incoming ECA provider when the firm is acting as such; [deleted.]~~

(b) ~~an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the UK; [deleted.]~~

(c) ~~an incoming firm not falling under (a) and (b), to the extent that the firm is subject to equivalent rules imposed by its home Member State; [deleted.]~~

...

(e) *general insurance business* if:

(i) ~~the State of the risk is an EEA State other than the UK; or [deleted.]~~

(ii) the State of the risk is outside the ~~EEA UK~~ and the *policyholder* is not in the UK when the *contract of insurance* is entered into;

...

(f) *long-term insurance business* if:

(i) ~~the policyholder's habitual residence is in an EEA State other than the UK; or [deleted.]~~

(ii) the *policyholder's habitual residence* is outside the ~~EEA UK~~ and the policyholder is not present in the UK when the *contract of insurance* is entered into; or

...

3.2 A *firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *retail client*, which a view to or in connection with the *firm* carrying on a *regulated activity*, includes the following disclosure:

...

(2) for an *overseas firm* **(which is not an incoming firm a TPR firm or a SRO firm)**, "[Authorised and regulated by [name of the overseas regulator of the *overseas firm* in the jurisdiction of that *overseas firm's* registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request."

(a) If the *overseas firm* ~~(which is not an incoming firm)~~ translates the name of the overseas regulator into English it must ensure that the State in which the regulator is based is clear;

(b) An *overseas firm* ~~(which is not an incoming firm)~~ is not required to disclose its applicable authorisation or regulation by the overseas regulator if it is not so authorised or regulated.

- (3) for an incoming firm without a top-up permission either: [deleted.]
- (a) “Authorised by [name of home Member State regulator]”; or [Deleted.]
 - (b) “Authorised by [name of home Member State regulator] and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our regulation by the Financial Conduct Authority and Prudential Regulation Authority are available from us on request”. [Deleted.]

If the incoming firm without a top-up permission: [Deleted.]

...

- (c) translates the name of the home Member State regulator into English it must ensure that the State in which the regulator is based is clear; [deleted.]
 - (d) indicates or implies to a customer that is regulated by the PRA or the FCA, it must make the disclosure in (b). [deleted.]
- (4) for an incoming firm with a top-up permission, “Authorised by [name of home Member State regulator] and the Prudential Regulation Authority and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our authorisation and regulation by the Prudential Regulation Authority, and regulation by the Financial Conduct Authority are available from us on request”; [deleted.]

If the incoming firm with a top-up permission translates the name of the home Member State regulator into English it must ensure that the State in which the regulator is based is clear. [Deleted.]

(4A) for an overseas firm that is a TPR firm without a top-up permission, “Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”

If the firm translates the name of the overseas regulator into English it must ensure that the State in which the regulator is based is clear.

(4B) for an overseas firm that is a TPR firm with a top-up permission, “Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”

If the firm translates the name of the overseas regulator into English it must ensure that the State in which the regulator is based is clear.

(4C) for an overseas firm that is an SRO firm without a top-up permission, “Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”

If the firm translates the name of the overseas regulator into English it must ensure that the State in which the regulator is based is clear.

(4D) for an overseas firm that is a SRO firm with a top-up permission, “Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”

If the firm translates the name of the overseas regulator into English it must ensure that the State in which the regulator is based is clear.

...

5 STATEMENTS ABOUT AUTHORISATION AND REGULATION BY THE PRA

5.1 This Chapter:

(1) subject to (2), applies to:

...

(b) activities carried on from an establishment maintained by the firm (or by its appointed representative) in the UK, provided that, in the case of the MiFID or equivalent third country business of the firm business of an incoming EEA firm, it only applies to business conducted within the territory of the UK;

...

(2) does not apply to:

(a) an incoming ECA provider when the firm is acting as such; [deleted.]

(b) an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the UK; [deleted.]

(c) an incoming a third country firm not falling under (a) or (b), to the extent that the firm is subject to equivalent rules imposed by its home Member State;

...

6 DISCLOSURE TO RETAIL CLIENTS ON ACTIVITIES FROM NON-UK ESTABLISHMENTS

6.1 This Chapter:

...

(2) does not apply to:

- (a) ~~an incoming ECA provider when the firm is acting as such; [deleted.]~~
- (b) ~~an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the UK; [deleted.]~~
- (c) ~~an incoming a third country firm not falling under (a) or (b), to the extent that the firm is subject to equivalent rules imposed by its home Member State;~~

...

7 INSURANCE AGAINST FINANCIAL PENALTIES

7.1 This Chapter applies to every *firm*, ~~but only with respect to business that can be regulated under section 137G of FSMA.~~

...

Annex K

Amendments to the Insurance - Allocation of Responsibilities Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATIONS AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

(4) a *third country branch undertaking* (other than a *Swiss general insurer*); ~~and~~

(4A) a *third country insurance services provider*, and

...

1.1A This Part does not apply to a *SRO firm*

1.2 In this Part, the following definitions shall apply:

...

prescribed responsibility

means

(1) for a *firm* (other than a *third country branch undertaking*, a *third country insurance services provider* or a *small run-off firm*) means the responsibilities in 3.1 and 3.3;

(2) for a *third country branch undertaking* (other than a ~~*UK deposit insurer*~~ or a *Swiss general insurer*) means the responsibilities set out in 3.1 and 3.3 to the extent only that they are relevant to the operations effected by its *third country branch*, save in relation to 3.1(4) which shall also take account of the operations of the *third country branch undertaking* to the same extent as is necessary to ensure compliance by the *third country branch undertaking* with Third Country Branches 13;

(3) ~~for a *UK deposit insurer*, means the responsibilities set out in 3.1 and 3.3 to the extent only that they are relevant to the operations effected by its *third country branch* and all its *third country undertaking EEA branches*, save in relation to 3.1(4) which shall also take account of the operations of the *third country branch undertaking* to the same extent as is necessary to ensure compliance by the *third country branch undertaking* with Third Country Branches 13; [deleted.]~~

third country insurance provider prescribed responsibility

means the responsibilities set out in 3B.2

...

2 ALLOCATION OF RESPONSIBILITIES

2.1 A firm (other than a *third country branch undertaking*, *third country insurance services provider*, a *small run-off firm* or a *UK ISPV*) must allocate each of the *prescribed responsibilities* set out in 3.1 (other than 3.1(10) and (11)) to one or more persons who, in relation to that firm, are approved under section 59 of *FSMA* by:

...

2.2 A firm (other than a *third country branch undertaking*, *third country insurance services provider*, a *small run-off firm* or a *UK ISPV*) must allocate each of the *prescribed responsibilities* set out in 3.1(10) and (11) and the *prescribed responsibility* set out in 3.3, if applicable, to one or more *non-executive directors* who perform:

...

2.3A A *third country insurance services provider* who has been given a notice under section 59ZZA must allocate each of the prescribed responsibilities set out in chapter 3B to one or more persons who are treated under that section as approved under section 59.

3B PRESCRIBED RESPONSIBILITIES: UK SERVICES PROVIDERS

3B.1 This Chapter applies only to a *third country insurance services provider*.

3B.2 Each of these responsibilities is a *third country insurance provider prescribed responsibility*:

- (1) responsibility for management of the application of the firm's risk management processes to its *UK activities*;
- (2) responsibility for the firm's compliance with the *UK regulatory system* applicable to the firm;
- (3) responsibility for the escalation of correspondence from the *PRA, FCA* and other regulators in respect of the firm to each of the *governing body* or the *management body* of the firm and, as appropriate, the *firm's parent undertaking* and the *ultimate parent undertaking* of the firm's group; and
- (4) responsibility for management of the application of the firm's systems and controls to its *UK activities*.

4 IDENTIFICATION OF KEY FUNCTIONS

4.1 A firm must identify:

- (1) each of the *functions* that the firm considers to be a *key function*; and
- (2) any such *key function* that amounts to effectively running the firm (or, for a *third country branch undertaking* other than a *Swiss general insurer*, effectively running the operations effected by the *third country branch*, ~~or, for a *UK deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*~~) or for a *third country insurance services provider*, effectively running the activities carried out in the *UK*.

...

5 RECORDS

5.1 A *firm* must have and maintain a *management responsibilities map*, which is a clear and coherent document or series of documents with the following details:

- (1) a list of the *key functions* identified by the *firm* in accordance with 4.1 highlighting those that amount to effectively running the *firm* (or, for a *third country branch undertaking* other than a *Swiss general insurer*, effectively running the operations effected by the *third country branch* ~~or, for a *UK deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*~~); or for a *third country insurance services provider*, effectively running the activities carried out by the *third country insurance services provider*, in the *UK*;
- (2) the names of the *persons* who effectively run the *firm* (or, for a *third country branch undertaking* other than a *Swiss general insurer*, effectively run the operations effected by the *third country branch* ~~or, for a *UK deposit insurer*, the operations effected by the *third country branch* and all the *third country undertaking EEA branches*~~) or who are responsible for other *key functions* listed pursuant to 5.1(1); or for a *third country insurance services provider*, effectively running the activities carried out by the *third country insurance services provider*, in the *UK*;

...

- (6) where a *firm* (other than a *third country branch undertaking* or *third country insurance services provider*) is a member of a *group*:

...

- (7) matters reserved to the *governing body* (including the terms of reference of its committees) and including, in the case of a *third country branch undertaking*, the equivalent body (or its committees) responsible for the management of the *third country branch undertaking's* business activities in the *UK* and in the case of a *third country insurance services provider*, the equivalent body (or its committees) responsible for the management of the *firm's* activities in the *UK*.

Annex L

Amendments to the Insurance – Certification Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATIONS AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

(4A) a third country insurance services provider in relation to the activities carried out in the UK that are subject to the regulatory system;

...

1.1A This Part does not apply to a SRO firm

...

1.3A For the purposes of this Part, large firm includes a third country insurance services provider which would be a large firm if the amounts specified in (a) and (b) of the Glossary definition are only those amounts relating to the activities carried out in the UK by the third country insurance services provider.

1.4 This Part does not apply to a function performed by:

(1) a PRA approved person;

(1A) a person in relation to whom a notice under section 59ZZA has been given to an authorised person

(2) a person who performs an FCA controlled function; or

(3) a non-executive director in relation to their non-executive director function.

Annex M

Amendments to the Insurance – Fitness & Propriety Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

(4) a *third country branch undertaking* (other than a *Swiss general insurer*); ~~and~~

(5) a UK ISPV; and

(6) a third country insurance services provider.

...

1.1A Any reference in this Part to assessing or deciding whether a *person* is a fit and proper *person*, shall, in relation to a *SRO firm*, be construed as a reference to assessing or deciding whether the *person* is fit and proper to perform the function of overseeing an orderly run-off of the *firm's regulated activities* in the *UK*.

...

4 DISCLOSURE AND REPLACEMENTS

4.1

(1) A *firm* (other than a *UK ISPV* or *third country insurance services provider*) shall notify the *PRA* of any changes to the identity of *key function holders* and shall provide the *PRA* with:

...

Annex N

Amendments to the Insurance – Senior Management Functions Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

- (4) a *third country branch undertaking* (other than a *Swiss general insurer*); ~~and~~
- (5) a *UK ISPV*, in accordance with 12; and
- (6) a *third country insurance services provider*.

...

2 GENERAL

2.3 A firm (other than a *third country branch undertaking*, a firm that does not have an establishment in the UK or a small run-off firm) must

...

6 HEAD OF THIRD COUNTRY BRANCH

6.1 This Chapter applies only to a *firm* that is a *third country branch undertaking* or a *third country insurance services provider* (other than a *Swiss general insurer*).

6.1A (1) 6.2, 6.3, 6.4 and 6.5 shall not apply to a *SRO firm*

(2) 6.6 and 6.7 apply only to a *SRO firm*

6.2 The *Head of Third Country Branch function* (SMF19) is the function of having responsibility for

- (1) the conduct of all activities of the *third country branch undertaking* that are subject to the *regulatory system*; or
- (2) the conduct of all activities of the *third country insurance services provider* that are subject to the *regulatory system*.

6.3 (1) A *third country branch undertaking* or a *third country insurance services provider* must have at least one *person* approved to perform the *Head of Third Country Branch function*.

- (2) If a vacancy arises in respect of the *Head of Third Country Branch function*, a *third country branch undertaking* or a *third country insurance services provider* must ensure that it appoints a *person* to fill that vacancy as soon as possible.

- 6.4 A *third country branch undertaking* or a *third country insurance services provider* that transacts *with-profits insurance business* must have at least one *person* approved to perform the *With-Profits Actuary function* (SMF20a).
- 6.5 A *third country branch undertaking* or a *third country insurance services provider* is not required to have any *person(s)* approved to perform any of the other *PRA senior management functions*.
- 6.6 A *SRO firm* must ensure that at least one *person* performs the *Head of Overseas Branch Function* on its behalf and if a vacancy arises in respect of that function it must ensure that it appoints a *person* to fill the vacancy as soon as possible
- 6.7 For the purposes of 6.6 the *Head of Overseas Branch Function* (SMF 19) is the function of having responsibility to oversee the orderly run-off of the *firm's regulated activities* in the *UK*

13 COMBINATION OF PRA SENIOR MANAGEMENT FUNCTIONS

- 13.1 This Chapter does not apply to a *third country branch undertaking* or to a *firm* that does not have an establishment in the *UK*.

Annex O

Amendments to the Insurance – Senior Managers Regime – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

...

(4) a *third country branch undertaking* (other than a *Swiss general insurer*); ~~and~~

(5) a *UK ISPV*; ~~and~~

(6) a *third country insurance services provider*.

1.2 In this Part, the following definitions shall apply:

...

current approved person approval

means

(1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):

(a) by the *PRA* for the performance of a *PRA senior management function*; or

(b) by the *FCA* for the performance of an *FCA designated senior management function* or a *significant influence function*;

but excludes a notice given under section 59ZZA of *FSMA* treating a person as approved for those purposes;

...

1.3 In this Part, *PRA approved person* also includes a *person* in relation to whom a *notice under section 59ZZA* has been given to an *authorised person*.

...

2A SECTION 59ZZA APPLICATION

2A.1 (1) In the case of a **section 59ZZA** application, the following directions shall have effect in substitution for any directions relating to the provision of information, documents, *statement of responsibilities* and form of application which would otherwise apply on the making of an application under section 60 of *FSMA*.

(2) The *PRA* directs that the application must contain the information and be accompanied by such documents as are set out in the form approved by the *PRA* for the purposes of this direction; except that where the application is in respect of a

person who holds a current approved persons approval, Form E may be used in accordance with 2.3 instead.

- (3) The PRA directs that the application must be accompanied by a statement of responsibilities in accordance with Insurance - Allocation of Responsibilities 5.4, containing such information as is set out in the form approved by the PRA for the purposes of this direction; except that where a Form E is used pursuant to (2) above, the application must provide a statement of responsibilities specified in 2.7.
- (4) A function performed by a person in relation to whom a notice under section 59ZZA of FSMA could be given, shall not (otherwise than for the purposes of making an application under section 60 of FSMA), be treated as a controlled function until the earliest of -
- (a) 12 weeks beginning on the day on which exit day occurs
 - (b) the giving of the notice under section 59ZZA, or
 - (c) the notification by the PRA of its decision to grant or refuse the application.
- (5) In this Chapter statement of responsibilities form means for a firm making a TPR SMF application the form to be completed by a firm containing:
- (a) the information referred to in Insurance – Allocation of Responsibilities 5.1(3);
 - (b) in respect of 2A.3, the information required by section 60(2A) of FSMA; and
 - (c) in respect of Insurance – Allocation of Responsibilities 5.5, the information required by section 60(2A) of FSMA.

...

2B SRO FIRMS

2B.1 2A.1 shall apply to a SRO firm as if

- (1) the reference in 2A.1 (2) and (3) to the forms approved by the PRA were references to the forms approved for the purposes of an application made by a SRO firm and
- (2) the reference in 2A.1 (4)(a) to 12 weeks beginning on the day on which exit day occurs were a reference to 12 weeks beginning on the day the firm became a SRO firm.

6 PROCEDURE FOR MAKING APPLICATIONS AND NOTIFICATIONS

- 6.1 The PRA directs that save as required by 6.1A or 6.2, a firm must make any applications, notifications or submissions required by this Part by submitting the form specified using the ONA system.
- 6.1A The PRA directs that a firm making a section 59ZZA application must make that application by submitting the information, documents, statement of responsibilities and forms required by 2A in the manner set out in Notifications 7.

Annex P

In this Annex, the text is all new and is not underlined.

Part

INSURANCE – SUPERVISED RUN OFF

Chapter content

1. APPLICATION AND DEFINITIONS
2. PROVISION OF RUN-OFF PLAN
3. CONTENT OF SCHEME OF OPERATIONS
4. NOTIFICATIONS AND ANNUAL UPDATES
5. THIRD COUNTRY BRANCHES

1 APPLICATION AND DEFINITIONS

1.1 This Part applies to *SRO insurers*.

1.2 In this Part, the following definitions shall apply:

end date

means the end of the relevant period determined in accordance with regulation [41] of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

material transaction

means a transaction (when aggregated with any similar transactions) in which:

(1) the price actually paid or received for the transfer of assets or liabilities or the performance of services; or

(2) the price which would have been paid or received had that transaction been negotiated at arm's length between unconnected parties;

exceeds:

(a) in the case of a *firm* which carries on *long-term insurance business*, but not *general insurance business*, the sum of €20,000 and 5% of the *firm's* liabilities arising from its *long-term insurance business*, excluding *linked long-term liabilities* and net of *reinsurance ceded*; or

(b) in the case of a *firm* which carries on *general insurance business*, but not *long-term insurance business*, the sum of €20,000 and 5% of the *firm's* liabilities arising from its *general insurance business*, net of *reinsurance ceded*; or

(c) in the case of a *firm* which carries on both *long-term insurance business* and *general insurance business*:

(i) where the transaction is in connection with the *firm's long-term insurance business*, the sum of €20,000 and 5% of the *firm's liabilities* arising from its *long-term insurance business*, excluding *linked long-term liabilities* and net of *reinsurance ceded*; and

(ii) in all other cases, the sum of €20,000 and 5% of the *firm's liabilities* arising from its *general insurance business*, net of *reinsurance ceded*.

and

(d) a reference to the "*firm's liabilities*" is to be interpreted as a reference only to the liabilities relevant to the operations effected by the *third country branch*.

scheme of operations

means a scheme which:

(1) describes the nature of the risks which the *insurer* is underwriting, or intends to underwrite, and the guiding principles which it intends to follow in reinsuring or covering those risks; and

(2) contains the information required under 3.1.

2 PROVISION OF RUN-OFF PLAN

2.1 A *firm* must, within 28 days of the date on which the *firm* becomes an *SRO firm*, submit a run-off plan to the *PRA* including:

(1) a *scheme of operations*, in accordance with 3; and

(2) an explanation of how, or to what extent:

(a) all *liabilities to policyholders* will be met in full as they fall due; and

(b) the *firm* will have ceased *effecting contracts of insurance* and *carrying out contracts of insurance* by the *end date*.

3 CONTENT OF SCHEME OF OPERATIONS

3.1 In accordance with 3.2, a *scheme of operations* must:

(1) describe the *firm's* run-off strategy;

(2) include a description of the business underwritten by the *firm*;

(3) in the case of *third country branch undertakings*, include financial projections (including appropriate scenarios and stress-tests) as follows:

(a) a forecast summary profit and loss account in accordance with 3.3;

(b) a forecast summary balance sheet in accordance with 3.4; and

- (c) forecast *MCR* and *SCR* at the end of each financial year or part financial year;
- (4) as at the end of each financial year which falls (in whole or part) within the period to which the *scheme of operations* relates:
 - (a) in the case of *third country branch undertakings*, identify any *material transactions* proposed to be entered into or carried out with, or in respect of, any associate or any other person with whom the *firm* has *close links*; and
 - (b) describe the assumptions which underlie those forecasts and the reasons for adopting those assumptions; and
- (5) cover the run-off period until all *liabilities to policyholders* will be met in full or otherwise transferred.

3.2 The information required by 3.1 must:

- (1) in the case of *third country branch undertakings*, reflect the nature and content of the rules relating to *eligible own funds* applicable to a *firm*;
- (2) where a *firm* carries on both *long-term insurance business* and *general insurance business*, be separated for *long-term insurance business* and *general insurance business*; and
- (3) in the case of *third country branch undertakings*, take account only of matters relevant to the operations effected by the *third country branch*.

3.3 The forecast summary profit and loss account referred to in 3.1(3)(a) must contain the following information:

- (1) *premiums* and *claims* (gross and net of *reinsurance*) analysed by accounting *class* of *insurance business*;
- (2) investment return;
- (3) expenses;
- (4) other charges and income;
- (5) taxation; and
- (6) dividends paid and accrued.

3.4 The forecast summary balance sheet referred to in 3.1(3)(b) must contain the following information:

- (1) investments analysed by type;
- (2) assets held to cover *linked long-term liabilities*;
- (3) other assets and liabilities separately identifying cash at bank and in hand;
- (4) capital and reserves analysed into called up share capital or equivalent funds, share premium account, revaluation reserve, other reserves and profit and loss account;
- (5) subordinated liabilities;

- (6) the fund for future appropriations;
- (7) *technical provisions* gross and net of *reinsurance* analysed by accounting class of *insurance business* and separately identifying the provision for *linked long-term liabilities*, *unearned premiums*, unexpired risks and equalisation; and
- (8) other liabilities and credits.

4 NOTIFICATIONS AND ANNUAL UPDATES

4.1 A firm must:

- (1) notify the *PRA* at least 28 days before entering into or carrying out any *material transaction* with, or in respect of, an associate or any other *person* with whom the *firm* has *close links*, unless that transaction is in accordance with a *scheme of operations* which has been submitted to the *PRA*;
- (2) notify the *PRA* promptly of any matter which has happened or is likely to happen and which represents a significant departure from the *scheme of operations* and either:
 - (a) explain the nature of the departure and the reasons for it and in the case of *third country branch undertakings*, provide revised forecast financial information in 3.1(3) in the *scheme of operations* for its remaining term; or
 - (b) include an amended *scheme of operations* and explain the amendments and the reasons for them.

4.2 A firm must, at least annually, update the *PRA* in writing on progress against, or deviation from, the *firm's* run-off plan submitted in accordance with 2.

5 THIRD COUNTRY BRANCHES

5.1 This Chapter applies to *third country branch undertakings*.

5.2 In this Part, reference to “*SCR*”, “*MCR*” and “*technical provisions*” is to be interpreted in accordance with Third Country Branches 10.2(1) to (3).

Annex Q

Amendments to the Policyholder Protection Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.1A For the purposes of Chapter 21 and Annex 2, references to “firm” includes *CRO insurers*.

1.2 In this Part, the following definitions shall apply:

...

CRO insurer

a person to whom [Regulation 47 of the EEA Passport Exit Regulations] applies in respect of the activities of effecting contracts of insurance or carrying out contracts of insurance.

...

EEA Passport Exit Regulations

means the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

...

money laundering

has the meaning given in Article 1(2) of the Money Laundering Directive 2015/849/EU. ~~means any act which:~~

- ~~(1) constitutes an offence under section 18 (Money laundering) of the Terrorism Act 2000;~~
- ~~(2) constitutes an offence under section 327 (Concealing etc), section 328 (Arrangements) or section 329 (Acquisition, use and possession) of the Proceeds of Crime Act 2002;~~
- ~~(3) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (2)~~
- ~~(4) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (2); or~~
- ~~(5) would constitute an offence specified in paragraph (2), (3), or (4) if done in the United Kingdom.~~

...

occupational pension fund management business

...

- (2) (other than in connection with a *personal pension scheme*) *pension fund management* written as linked long-term business, for an *occupational pension scheme* or for an institution falling within ~~in~~ referred to in article 2) of the Council Directive of 3 June 2003 on the activities and supervision of institutions for occupation retirement provision (No 2003/43/EC), but only to the extent that:

...

participant firm

means:

(1) a firm which is an *insurer*, or a *member* (except 21, 22.6 - 22.8 and Annex 2 in respect of a *member*); or

(2) a *CRO insurer*.

...

TPR insurer

means in relation to a *contract of insurance*, a *person* to whom Regulation [8 or 11] of the EEA Passport Rights Exit Regulations applied, at the time at which the *contract of insurance* was issued,

...

9 PROTECTED CLAIMS

...

9.2 A *protected contract of insurance* is:

(A1) (if issued on or after *exit day*) a *contract of insurance* within 9.2A;

(1) (if issued after 1 December 2001 and before *exit day*) a *contract of insurance* within 9.3; or

(2) (if issued before 1 December 2001) a *contract of insurance* within 9.6.

9.2A A *contract of insurance* issued on or after *exit day* which:

(1) relates to a protected risk or commitment as described in 9.2B;

(2) was issued by a *relevant person* (whether or not there is now a *successor* in respect of that *relevant person*) through an establishment in:

(a) the UK; or

(b) (in relation only to a *TPR insurer*, a *SRO insurer* or a *CRO insurer* that (in each case) has no establishment in the UK) an EEA State; or

(c) the Channel Islands or the Isle of Man; or

(d) Gibraltar.

(3) is a *contract of long-term insurance* or a *relevant general insurance contract*;

(4) is not a *reinsurance contract*, and

(5) if it is a *contract of insurance* entered into by a *member*, was entered into on or after 1 January 2004

is a protected contract of insurance

9.2B A risk or commitment is a protected risk or commitment for the purpose of 9.2A if:

- (1) in the case of a *contract of insurance* issued through an establishment in the UK falling within 9.2A(2)(a), or the Channel Islands or the Isle of Man, it is situated in the UK, Gibraltar, the Channel Islands or the Isle of Man;
- (2) in the case of a *contract of insurance* falling within 9.2A(2)(b) issued by a TPR insurer in the circumstances set out in 9.2A(2)(b) through an establishment in an EEA state, it is situated in the UK;
- (3) in the case of a *contract of insurance* falling within 9.2A(2)(c), it is situated in the UK, the Channel Islands or the Isle of Man;
- (4) in the case of a *contract of insurance* falling within 9.2A(2)(d) where the relevant person is a UK firm, it is situated in the UK or Gibraltar;
- (5) in the case of a *contract of insurance* falling within 9.2A(2)(d) where the relevant person is incorporated in Gibraltar, it is situated in the UK; or
- (6) in the case of a *contract of insurance* falling within 9.2A(2)(d) where the relevant person is a TPR insurer, SRO insurer or CRO insurer, it is situated in the UK.

9.3 A *contract of insurance* issued after 1 December 2001 and before *exit day* which:

- (1) relates to a protected risk or commitment as described in 9.4
- (2) was issued by a *relevant person* (whether or not there is now a *successor* in respect of that *relevant person*) through an establishment in:
 - ...
 - (b) ~~another~~ an EEA State other than the UK; ~~or~~
 - (c) the Channel Islands or the Isle of Man; or
 - (d) Gibraltar.
 - ...

9.4 A risk or commitment is a protected risk or commitment for the purpose of 9.3 if:

- (1) in the case of a *contract of insurance* falling within 9.3(2)(a), it is situated in the UK, Gibraltar, an EEA State, the Channel Islands or the Isle of Man;
- (2) in the case of a *contract of insurance* where the *relevant person* was, at the time of issue, a UK firm within the meaning of paragraph 10 of Schedule 3 of FSMA (as in force immediately before *exit day*) is a UK firm issuing and issued that a *contract of insurance* through an establishment falling within 9.3(2)(b), it is situated in the UK, Gibraltar or an EEA State;
- (3) in the case of a *contract of insurance* where the *relevant person* was not, at the time of issue, a UK firm within the meaning of paragraph 10 of Schedule 3 of FSMA (as in force immediately before *exit day*) is a firm which is not a UK firm issuing a and issued that *contract of insurance* through an establishment falling within 9.3(2)(b) or 9.3(2)(d), it is situated in the UK; or

...

9.5 For the purposes of 9.2B, 9 and 9.6, the situation of a risk or commitment is determined as follows:

...

...

10 RELEVANT PERSONS IN DEFAULT

...

10.4 The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists, and the *relevant person* is the subject of one or more of the following proceedings in the *UK* (or of equivalent or similar proceedings in another jurisdiction):

...

- (2) a determination by the *relevant person's* ~~*Home State regulator*~~ regulator or ~~other~~ *competent authority* that the *relevant person* appears unable to meet claims against it and has no early prospect of being able to do so;

....

11 SUCCESSORS IN DEFAULT

...

11.4 The *FSCS* may determine a *successor* to be *in default* if it is satisfied that a *protected claim* exists, and the *successor* is the subject of one or more of the following proceedings in the *UK* (or of equivalent or similar proceedings in another jurisdiction):

...

- (2) where relevant, a determination by the *successor's* ~~*Home State regulator*~~ regulator or ~~other~~ *competent authority* that the *successor* appears unable to meet *claims* against it and has no early prospect of being able to do so;

...

...

12 ASSIGNMENT (AUTOMATIC, ELECTRONIC AND IN WRITING)

...

12.9 (1) The FSCS may determine that:

...

that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the FSCS for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the UK, another EEA State Gibraltar or any other state or country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

...

...

ANNEX 2: METHODOLOGY FOR CALCULATION OF A PARTICIPANT FIRM'S LEVY SHARE

Insurance Class B1	General Insurance Provision
Firms with permission for:	...
Tariff base	<p>Insurance Class B1: Relevant net premium income and eligible liabilities.</p> <p>Relevant net premium income is calculated in accordance with the method applicable to the <i>firm</i> for calculating 'gross written premium for fees purposes' in Fees 1.2 and Fees 3.4 (2) (c) with the following adjustments:</p> <p>...</p> <p>(2) If an <i>incoming EEA firm</i> does not report relevant net premium income in the way contemplated in this table, the <i>participant firm's</i> relevant net premium income is calculated in the same way as they would be for a <i>UK firm</i>.</p> <p>Eligible liabilities are calculated in accordance with the method applicable to the <i>firm</i> for calculating 'best estimate liabilities for fees purposes' in Fees 1.2 and Fees 3.4 (2) (c) with the following adjustments.</p> <p>...</p> <p>(3) If an <i>incoming EEA firm</i> does not report liabilities in the way contemplated by this table, the <i>participant firm's</i> liabilities are calculated in the same way as they would be for a <i>UK firm</i>.</p> <p>...</p>

Insurance Class C1	Life and Pensions Provision
Firms with permission for:	...
Tariff base	<p>Insurance Class C1: Relevant net premium income and eligible liabilities.</p> <p>Relevant net premium income is calculated in accordance with the method applicable to the <i>firm</i> for calculating 'gross written premium for fees purposes' in Fees 1.2 and Fees 3.4 (3) (c) with the following adjustments:</p> <p>...</p> <p>(5) If an <i>incoming EEA firm</i> does not report relevant net premium income in the way contemplated in this table, the <i>participant firm's</i> relevant premium income is calculated in the same way as they would be for a <i>UK firm</i>.</p> <p>Eligible liabilities are calculated in accordance with the method applicable to the <i>firm</i> for calculating 'best estimate liabilities for fee purposes' as defined in Fees 1.2 and Fees 3.4 (3) (c) with the following adjustments.</p> <p>...</p> <p>(3) If an <i>incoming EEA firm</i> does not report liabilities in the way contemplated by this table, the <i>participant firm's</i> liabilities are calculated in the same way as they would be for a <i>UK firm</i>.</p> <p>...</p>

Annex R

Amendments to the Run-off Operations Part

In this Annex new text is underlined.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to:

- (1) a *UK Solvency II* firm; and
- (2) in accordance with 5, *third country branch undertakings* except:
 - (a) *Swiss general insurers*; and
 - (b) *SRO insurers*.

Annex S

Amendments to the Senior Management Functions Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *firm* that is :

- (1) a *CRR firm*;
- (2) a *credit union*; or
- (3) a *third country CRR firm* in relation to); ~~the activities of its establishment in the UK.~~
 - (a) the activities of its establishment in the UK; or
 - (b) if it does not have an establishment in the UK, its activities in the UK.

...

7 UK BRANCH OF OVERSEAS FIRM

7.1 This Chapter applies only to a *third country CRR firm* in relation to); ~~the activities of its establishment in the UK.~~

- (a) the activities of its establishment in the UK; or
- (b) if it does not have an establishment in the UK, its activities in the UK.

7.1A (1) 7.2 and 7.3(1) do not apply to a *third country CRR firm* that is a *SRO firm*

(2) 7.4 and 7.5 apply only to a *SRO firm*

7.2 The *Head of Overseas Branch Function* (SMF 19) is the function of having responsibility alone or jointly with others for; ~~the conduct of all activities of the UK establishment of a third country firm which are subject to the UK regulatory system.~~

- (i) the conduct of all activities of the UK establishment of a *third country firm* which are subject to the UK regulatory system; or
- (ii) where the firm does not have an establishment in the UK, the conduct of all activities which are subject to the UK regulatory system.

...

7.4 A *SRO firm* must ensure that at least one *person* performs the *Head of Overseas Branch function* on its behalf

7.5 For the purposes of 7.4, the *Head of Overseas Branch Function* (SMF 19) is the function of having responsibility to oversee the orderly run-off of the *firm's regulated activities* in the UK.

Annex T

Amendments to the Senior Managers Regime – Application and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to every *firm* that is:

- (1) a *CRR firm*;
- (2) a *credit union*; or
- (3) a *third country CRR firm* in relation to: ~~the activities of its establishment in the UK.~~
 - (a) the activities of its establishment in the UK; or
 - (b) if it does not have an establishment in the UK, its activities in the UK

1.2 In this Part, the following definitions shall apply:

current approved person approval

means

- (1) an approval granted to a *person* under section 59 of *FSMA* (Approval for particular arrangements):
 - (a) by the *PRA* for the performance of a *PRA senior management function*; or
 - (b) by the *FCA* for the performance for the performance of an *FCA designated senior management function* or a *significant influence function*;

but excludes a notice given under section 59ZZA of *FSMA* treating a *person* as approved for those purposes.

...

1.3 In this Part, *PRA approved person* also includes a *person in relation to whom a notice under section 59ZZA* has been given to an authorised person.

2A **SECTION 59ZZA** APPLICATION

- 2A.1 (1) In the case of a *section 59ZZA application*, the following directions shall have effect in substitution for any directions relating to the provision of information, documents, statement of responsibilities and the form of application that would otherwise apply on the making of an application under section 60 of *FSMA*.

- (2) The PRA directs that the application must contain the information and be accompanied by such documents as are set out in the form approved by the PRA for the purposes of this direction; except that where the application is in respect of a person who holds a current approved persons approval, Form E may be used in accordance with 2.3 instead.
- (3) The PRA directs that the application must be accompanied by a statement of responsibilities in accordance with *Allocation of Responsibilities 2.1*, containing such information as is set out in the form approved by the PRA for the purposes of this direction; except that where Form E is used pursuant to (2) above, the application must provide a statement of responsibilities in the form specified in 2.7(2).
- (4) A function performed by a person in relation to whom a notice under section 59ZZA of FSMA could be given, shall not (otherwise than for the purposes of making an application under section 60 of FSMA), be treated as a controlled function until the earliest of -
- (a) 12 weeks beginning on the day on which exit day occurs
 - (b) the giving of the notice under section 59ZZA of FSMA, or
 - (c) the notification by the PRA of its decision to grant or refuse the application.

2B SRO FIRMS

2B.1 2A.1 shall apply to a SRO firm as if

- (1) the reference in 2A.1(2) and (3) to the forms approved by the PRA were references to the forms approved for the purposes of an application made by a SRO firm and
- (2) as if the reference in 2A.1(4)(a) to 12 weeks beginning on the day on which exit day occurs were a reference to 12 weeks beginning on the day the firm became a SRO firm

7 PROCEDURE FOR MAKING APPLICATIONS AND NOTIFICATIONS

- 7.1 (1) The PRA directs that:
- (aa) a firm making a section 59ZZA application must do so by submitting the information, documents, statement of responsibilities and forms required by 2A in the manner set out in Notifications 7;

Annex U

In this Annex, the text is all new and is not underlined.

Part

SUPERVISED RUN-OFF

Chapter content

1. APPLICATION AND DEFINITIONS
2. PROVISION OF RUN-OFF PLAN
3. CONTENT OF RUN-OFF PLAN
4. NOTIFICATIONS AND ANNUAL UPDATES

1 APPLICATION AND DEFINITIONS

1.1 This Part applies to *SRO firms*, except *SRO insurers*.

1.2 In this Part, the following definitions shall apply:

end date

means the end of the relevant period determined in accordance with regulation [41] of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

2 PROVISION OF RUN-OFF PLAN

2.1 A *firm* must, within 28 days of the date on which the *firm* becomes an *SRO firm*, submit a run-off plan, in accordance with 3, to the *PRA*.

3 CONTENT OF RUN-OFF PLAN

3.1 A *firm's* run-off plan must:

- (1) describe the *firm's* run-off strategy;
- (2) include a description of the business of the *firm*;
- (3) include an explanation of how, or to what extent, the *firm* will have ceased *accepting deposits* by the *end date*; and
- (4) cover the run-off period until all *deposits*, including any interest or premium payable, will be paid, repaid or returned to *depositors* or otherwise transferred.

4 NOTIFICATIONS AND ANNUAL UPDATES

4.1 A *firm* must notify the *PRA* promptly of any matter which has happened or is likely to happen and which represents a significant departure from the run-off plan and either:

- (1) explain the nature of the departure and the reasons for it; or

(2) include an amended run-off plan and explain the amendments and the reasons for them.

4.2 A *firm* must, at least annually, update the *PRA* in writing on progress against, or deviation from, its run-off plan submitted in accordance with 2.

Appendix 3 relating to Part 1: Draft BTS EU Exit Instruments

Draft BTS EU (Exit) Instruments for the **CRR Binding Technical Standards (BTS)**:

- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No. 1) INSTRUMENT [YEAR]

Draft BTS EU Exit Instrument for the **Securitisation Regulation Binding Technical Standards (BTS)**:

- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SECURITISATION) (EU EXIT) INSTRUMENT [YEAR]

FCA Consultation on changes to joint **MiFID Binding Technical Standards (BTS)**:

- FCA CP18/28 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation'¹.

¹ October 2018: <https://www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation>.

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': New text is underlined.

**EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT)
(No. 1) INSTRUMENT [YEAR]**

Powers exercised

- A. The Prudential Regulatory Authority (the “PRA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the “Regulations”), having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulations 3 and 4 of the Regulations.

Pre-conditions to making

- B. The PRA and the FCA are the appropriate regulators for the Capital Requirements EU Regulations.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the Capital Requirements EU Regulations and considers that (a) Condition A is satisfied and (b) the modifications to the Capital Requirements EU Regulations can most appropriately be made by using the procedure set out in regulation 4 of the Regulations.
- D. The PRA has consulted the FCA on a division of responsibility and on the modifications contained in Annexes A to P to this instrument in accordance with regulations 3 and 5 of the Regulations.
- E. [A draft of] this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- F. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
 - (b) “the Capital Requirements EU Regulations” means the EU Regulations specified in Part 4 of the Schedule to the Regulations under the headings “Capital Requirements Directive” and “Capital Requirements Regulation”;
 - (c) “exit day” has the meaning given in the Act;
 - (d) “the FCA” means the Financial Conduct Authority; and
 - (e) “Condition A” means the condition defined in regulation 4(2) of the Regulations;

Division

- G. Each Capital Requirements EU Regulation, as it has effect in domestic law by virtue of section 3 of the Act, is divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively.
- H. Immediately before Article 1 in Part 1 (FCA) in those regulations is inserted:

“Article A1

This Part of the Regulation applies to persons regulated solely by the FCA.”

- I. Immediately before Article 1 in Part 2 (PRA) is inserted:
“Article A1

This Part of the Regulation applies to PRA-authorized persons (within the meaning of section 2B(5) of the Financial Services and Markets Act 2000).”

Modifications to Part 2 (PRA)

- J. In each of the specified Capital Requirements EU Regulations listed in Part 4 under the heading “Capital Requirements Regulation”, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”.
- K. Additionally, the PRA makes the modifications in the Annex listed in column (2) below to the corresponding Capital Requirements EU Regulation (or part thereof) listed in column (1) below.

(1)	(2)
Part 2 (PRA) of Commission Delegated Regulation (EU) 527/2014	A
Part 2 (PRA) of Commission Delegated Regulation (EU) 604/2014	B
Part 2 (PRA) of Commission Delegated Regulation (EU) 1152/2014	C
Part 2 (PRA) of Commission Implementing Regulation (EU) 2016/2070	D
Part 2 (PRA) of Commission Delegated Regulation (EU) 2017/180	E
Part 2 (PRA) of Commission Delegated Regulation 2014/241	F
Part 2 (PRA) of Commission Delegated Regulation 2014/523	G
Part 2 (PRA) of Commission Delegated Regulation 2014/525	H
Part 2 (PRA) of Commission Delegated Regulation 2014/529	I
Part 2 (PRA) of Commission Delegated Regulation 2014/680	J
Part 2 (PRA) of Commission Implementing Regulation 1030/2014	K
Part 2 (PRA) of Commission Delegated Regulation 2014/1187	L
Part 2 (PRA) of Commission Delegated Regulation 2015/1555	M
Part 2 (PRA) of Commission Delegated Regulation 2015/1556	N

Part 2 (PRA) of Commission Delegated Regulation 2018/171	O
Part 2 (PRA) of Commission Delegated Regulation 2018/728	P
<u>Part 2 (PRA) of Commission Delegated Regulation 602/2014</u>	<u>Q</u>
<u>Part 2 (PRA) of Commission Delegated Regulation 625/2014</u>	<u>R</u>
<u>Part 2 (PRA) of Commission Delegated Regulation 206/1801</u>	<u>S</u>
<u>Part 2 (PRA) of Commission Delegated Regulation 2018/959</u>	<u>I</u>

Commencement

L. This instrument comes into force on exit day.

Citation

M. This instrument may be cited as the Technical Standards (Capital Requirements) (EU Exit) (No.1) Instrument [YEAR].

By order of the Prudential Regulation Committee

[DATE]

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': There are no updates to Annexes A to P of the Appendix to that CP.

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.

Annex Q

ADDITIONAL RISK WEIGHTS

MODIFICATIONS TO PART 2 (PRA) OF EU REGULATION 602/2014

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Part 2 (PRA) of EU Regulation No 602/2014 means Commission Delegated Regulation (EU) No 602/2014 of 4 June 2014 laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights according to Regulation (EU) No 575/2013 of the European Parliament and of the Council as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

Article 1A

Definitions

In this Regulation, references to “Regulation (EU) No 575/2013” are to be read as references to Regulation (EU) No 575/2013 in the version applicable on 31 December 2018, together with any amendments made to such provisions by the Capital Requirements (Amendment) (EU Exit) Regulations 2018.

Article 1

General considerations

When assessing whether institutions have failed to meet the requirements set out in Articles 405, 406 or 409 of Regulation (EU) No 575/2013, in any material respect for reasons of negligence or of omission, for securitisation positions issued on or after 1 January 2011 and before 1 January 2014, competent authorities may take into account whether those institutions complied continuously between the date of issuance and 31 December 2013 with the requirements specified in those elements of the Capital Requirements Directive (Handbook Amendments) Instrument 2010 (FSA 2010/29) which implemented Article 122a of Directive 2006/48/EC of the European Parliament and of the Council and in the Guidelines to Article 122a of Directive 2006/48/EC of the Committee of European Banking Supervisors dated 31 December 2010.

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.

Annex R

REQUIREMENTS RELATING TO EXPOSURES TO TRANSFERRED CREDIT RISK

MODIFICATIONS TO PART 2 (PRA) OF EU REGULATION 625/2014

- 1.3 In this Annex new text is underlined and deleted text is struck through.
- 1.4 Part 2 (PRA) of EU Regulation 625/2014 means Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

Article 1A

Definitions

In this Regulation:

- (1) In this Regulation, references to “Regulation (EU) No 575/2013” are to be read as references to Regulation (EU) No 575/2013 in the version applicable on 31 December 2018, together with any amendments made to such provisions by the Capital Requirements (Amendment) (EU Exit) Regulations 2018; and
- (2) a reference to a provision of a sourcebook is to a sourcebook in the FCA Handbook of Rules and Guidance made by the FCA under FSMA as amended by rule-making instruments made before 31 December 2018 under FSMA.

...

Article 4

Fulfilment of the retention requirement through a synthetic or contingent form of retention

...

2. Where an entity other than a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 acts as a retainer through a synthetic or contingent form of retention, the interest retained on a synthetic or contingent basis shall be fully collateralised in cash and held on a segregated basis as ‘clients’ funds as referred to in rule 7.12.1R of the Client Assets sourcebook~~Article 13(8) of Directive 2004/39/EC of the European Parliament and of the Council (1).~~

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.

Annex S

MAPPING CREDIT ASSESSMENTS OF EXTERNAL CREDIT ASSESSMENT INSTITUTIONS FOR SECURITISATION

MODIFICATIONS TO PART 2 (PRA) OF EU REGULATION 2016/1801

- 1.5 In this Annex new text is underlined and deleted text is struck through.
- 1.6 Part 2 (PRA) of EU Regulation 2016/1801 means Commission Delegated Regulation (EU) No 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

Article 1

Mapping tables under the standardised approach

The correspondence of the rating categories of each ECAI for securitisation positions subject to the standardised approach with the credit quality steps under the standardised approach set out in Table 1 of Article 251 of Regulation (EU) No 575/2013 (in the version applicable on 31 December 2018, together with any amendments made to such provision by the Capital Requirements (Amendment) (EU Exit) Regulations 2018).

Article 2

Mapping tables under the ratings-based method

The correspondence of the rating categories of each ECAI for securitisation positions subject to the IRB approach with the credit quality steps set out in Table 4 of Article 261(1) of Regulation (EU) No 575/2013 (in the version applicable on 31 December 2018, together with any amendments made to such provision by the Capital Requirements (Amendment) (EU Exit) Regulations 2018) is that set out in Annex II to this Regulation.

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.

Annex T

OPERATIONAL RISK

MODIFICATIONS TO PART 2 (PRA) OF REGULATION (EU) 2018/959

- 1.7 In this Annex new text is underlined and deleted text is struck through.
- 1.8 Part 2 (PRA) of EU Regulation No 2018/959 means Commission Delegated Regulation (EU) No 2018/959 of 14 March 2018 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk, according to Regulation (EU) No 575/2013 of the European Parliament and of the Council as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

Article 2

Definitions

For the purposes of this Delegated Act, the following definitions shall apply:

...

- (15) 'model risk' means the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;
- (16) a reference to a provision of the PRA rulebook is to the rules made by the PRA under FSMA as amended by rule-making instruments made before exit day under FSMA or EU Exit Instruments made at any time under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- (17) a reference to a provision of a sourcebook is to a sourcebook in the FCA Handbook of Rules and Guidance made by the FCA under FSMA as amended by rule-making instruments made before exit day under FSMA or EU Exit Instruments made at any time under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

...

Article 4

Operational risk events related to model risk

Competent authorities shall confirm the following when assessing that an institution identifies, collects and treats data on operational risk events and losses that are related to model risk, ~~as defined in point (11) of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013,~~ for the purposes of both management of operational risk and calculation of the AMA own funds requirement:

...

Article 8

Independent operational risk management function

1. Competent authorities shall assess the independence of the operational risk management function from the institution's business units by confirming at least the following:

...

(d) that the head of the operational risk management function meets at least the following requirements:

...

(v) allocation of a budget for the operational risk management function by the head of risk management referred to in ~~the fourth subparagraph of Article 76(5) of Directive 2013/36/EU~~ rule 3.5 of the Risk Control Part of the PRA Rulebook and rule 7.1.22 of the FCA Senior Management Arrangements, Systems and Controls Sourcebook or a member of the management body in a supervisory capacity and not by a business unit or executive function.

...

Article 11

Use of the AMA

...

(c) that the operational risk measurement system is used also for the purposes of the institution's internal capital adequacy assessment process referred to in ~~Article 73 of Directive 2013/36/EU~~ rules 3.1(1) and 3.4 of the Internal Capital Adequacy Assessment Part of the PRA Rulebook and rules 2.2.7R, 2.2.12R and 2.2.13R of the FCA Prudential Sourcebook for Investment Firms.

...

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SECURITISATION) (EU EXIT) INSTRUMENT [YEAR]

Powers exercised

- A. The Prudential Regulatory Authority (the “PRA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the “Regulations”), with the consent of the FCA (“the FCA”) having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulations 3 of the Regulations.

Pre-conditions to making

- B. The PRA and the FCA are the appropriate regulators for the Securitisation EU Regulations.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the Securitisation EU Regulation.
- D. The FCA has been consulted on the modifications contained in the Annex to this instrument in accordance with regulation 5 of the Regulations and has consented to the modifications contained in the Annex to this instrument in accordance with regulation 3(2) of the Regulations.
- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- F. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
 - (b) “the Securitisation EU Regulation” means Commission Delegated Regulation [●]¹, which regulation is specified in [Part 4 of the Schedule to the Regulations under the heading “Securitisation Regulation”]; and
 - (c) “exit day” has the meaning given in the Act.

Modifications

- G. The PRA makes the modifications in the Annex below to the Securitisation EU Regulation.

Commencement

- H. This instrument comes into force on exit day.

Citation

- I. This instrument may be cited as the Technical Standards (Securitisation) (EU Exit) Instrument [YEAR].

By order of the Prudential Regulation Committee

[DATE]

¹<https://eba.europa.eu/documents/10180/2298183/Draft+RTS+on+risk+retention+%28EBA-RTS-2018-01%29.pdf/a77e1aad-5cf9-444f-9e7b-fa2d948df1d6>

Annex

DRAFT: REQUIREMENTS FOR RISK RETENTION

MODIFICATIONS TO EU REGULATION [●]

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 EU Regulation [●] means Commission Delegated Regulation (EU) No [●] of [●]² specifying the requirements for originators, sponsors and original lenders relating to risk retention pursuant to Article 6(7) of Regulation (EU) 2017/2402 as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

Article 4

Fulfilment of the retention requirement through a synthetic or contingent form of retention

...

2. Where an entity other than a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 acts as a retainer through a synthetic or contingent form of retention, the interest retained on a synthetic or contingent basis shall be fully collateralised in cash and held on a segregated basis as client funds as referred to in rule 7.12.1R of the Client Assets sourcebook in the FCA Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA as the Client Assets sourcebook has effect on exit day 16(9) of Directive 2014/65/EU of the European Parliament and of the Council(8).

...

Article 14

Retention on a consolidated basis

A mixed financial holding company ~~established in the Union within the meaning of Directive 2002/87/EC~~, a UK parent institution or a financial holding company established in the ~~Union~~United Kingdom satisfying, in accordance with Article 6(4) of Regulation (EU) 2017/2402, the retention requirement on the basis of its consolidated situation shall, in the case the retainer is no longer included in the scope of supervision on a consolidated basis, ensure that one or more of the remaining entities included in the scope of supervision on a consolidated basis assumes exposure to the securitisation so as to ensure the ongoing fulfilment of the requirement. In this paragraph—

- (a) ‘credit institution’, ‘financial holding company’, ‘financial institution’, institution, ‘investment firm’, subsidiary and ‘UK parent institution’ have the meaning given in Article 4(1) of Regulation (EU) No 575/2013; and

²<https://eba.europa.eu/documents/10180/2298183/Draft+RTS+on+risk+retention+%28EBA-RTS-2018-01%29.pdf/a77e1aad-5cf9-444f-9e7b-fa2d948df1d6>

(b) ‘mixed financial holding company’ has the meaning given in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004.

...

Article 16

Assets transferred to the SSPE

...

2. For the purpose of Article 6(2) of Regulation (EU) 2017/2402, and where no communication to investors or potential investors has taken place, as referred to in recital No 11 of ~~that~~ Regulation (EU) 2017/2402 (as Regulation 2017/2402 has effect immediately before exit day), the assessment of the intent of the originator shall take into account the actions the originator has taken to comply with that Article. These shall include any policies and procedures that the originator has put in place and applies internally in order to ensure that the securitised assets would reasonably have been expected not to lead to higher losses than the losses on comparable assets held on its balance sheet.

Article 17

Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

List of BTS in the PRA Consultation

BTS being amended – Joint BTS		Instrument
Joint PRA/FCA BTS the PRA is leading on which are being split	<p style="text-align: center;"><u>CRR</u></p> <p>602/2014 – BTS for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights</p> <p>625/2014 – BTS specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk</p> <p>2016/1801 – BTS on mapping of credit assessments of external credit assessment institutions for securitisation</p> <p>2018/959 – BTS of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk</p>	EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No. 1) INSTRUMENT [YEAR]
Joint PRA/FCA BTS the FCA is leading on which are not being split	<p style="text-align: center;"><u>MiFID</u></p> <p>2017/589 – BTS specifying the organisational requirements of investment firms engaged in algorithmic trading</p> <p>2017/1945 – BTS with regard to notifications by and to applicant and authorised investment firms</p> <p>2017/1946 – BTS for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm</p>	FCA CP18/28
Joint PRA/FCA BTS the PRA is leading on which are not being split	<p style="text-align: center;"><u>Securitisation Regulation</u></p> <p>Draft BTS specifying the requirements for originators, sponsors and original lenders relating to risk retention</p>	EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SECURITISATION) (EU EXIT) INSTRUMENT [YEAR]

Appendix 4 relating to Part 2: Draft BTS EU Exit Instrument and list of BTS in the Bank (resolution authority) Consultation

Draft BTS EU Exit Instrument for the **BRRD Binding Technical Standards (BTS)**:

- Draft update to EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RESOLUTION AND RECOVERY) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT [YEAR]

2018/1624 – procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms.

Draft BTS – specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions.¹

¹ <https://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-6901-F1-EN-MAIN-PART-1.PDF>.

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards': New text is underlined and deleted text is struck through.

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RESOLUTION AND RECOVERY) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT [YEAR]

Powers exercised

The Bank of England (“the Bank”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

Pre-conditions to making

The Bank is the appropriate regulator for the specified EU Regulations specified in Part 3 of the Schedule to the Regulations.

The Bank has consulted the Prudential Regulation Authority (“the PRA”) and the Financial Conduct Authority (“the FCA”) in accordance with regulation 5 of the Regulations.

A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

In this instrument –

- (a) “the Act” means the European Union (Withdrawal) Act 2018;
- (b) “exit day” has the meaning given in the Act;
- (c) “specified EU Regulations” has the meaning given in regulation 2(l) of the Regulations.
- (d) “the Bank Recovery and Resolution BTS” means the specified EU Regulations made under Directive 2014/59/EU and listed in Part 3 of the Schedule to the Regulations that are not listed in Annex J , as they form part of domestic law by virtue of section 3 of the Act;

The Bank makes the modifications specified in Annex A to each of the Bank Recovery and Resolution BTS.

The Bank makes the modifications contained in the Annex listed in column (2) below to the corresponding specified EU Regulation (or part thereof) listed in column (1) below.

(1)	(2)
Articles 22 to 32 and 37 to 41 of Commission Delegated Regulation 2016/1075	B
Commission Delegated Regulation 2016/1400	C
Commission Delegated Regulation 2016/1401	D
Commission Delegated Regulation 2016/1450	E
Commission Delegated Regulation 2016/1712	F
Commission Delegated Regulation 2017/344	G
Commission Delegated Regulation 2017/345	H
<u>Commission Delegated Regulation 2018/1624</u>	I
<u>Commission Delegated Regulation [XXXX/XXXX]</u>	J

Deletions

The specified EU Regulations listed in Annex ~~L~~K are deleted.

Commencement

This instrument comes into force on exit day.

Citation

This instrument may be cited as the Technical Standards (Bank Resolution and Recovery) (Amendment etc.) (EU Exit) (No. 1) Instrument [YEAR].

By order of the Bank of England

[DATE]

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards': Annex I and J are new additions to the Appendix of that CP.

Annex I

Resolution Planning

MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2018/1624

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Regulation 2018/1624 of 23 October 2018 laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 1

Subject matter

This Regulation lays down implementing technical standards specifying procedures and a minimum set of standard templates for the submission to resolution authorities of information necessary to draw up and implement individual resolution plans and group resolution plans, in accordance with Articles 37(3A) and 40(4A) of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 11 of Directive 2014/59/EU, and group resolution plans in accordance Article 13 of that Directive.~~

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'resolution entity' means either of the following:
- (a) an entity established in the United Kingdom Union, which is identified by the resolution authority in accordance with Article 12 of Directive 2014/59/EU Article 40 of and Schedule 2 to the Bank Recovery and Resolution (No 2) Order 2014 as an entity in respect of which the resolution plan provides for resolution action; or
 - (b) an institution that is not part of a group subject to consolidated supervision pursuant to Part 6 of the Capital Requirements Regulations 2013 ~~Articles 111 and 112 of Directive 2013/36/EU of the European Parliament and of the Council (4)~~, in respect of which the resolution plan drawn pursuant to Article 37 of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 10 of Directive 2014/59/EU~~ provides for resolution action;
- (2) 'resolution group' means ~~either~~ of the following:
- (a) a resolution entity and its subsidiaries that are not:
 - (i) resolution entities themselves; or
 - (ii) subsidiaries of other resolution entities; or

(iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries;

~~(b) credit institutions permanently affiliated to a central body, the central body and any institution under the control of the central body when one of those entities is a resolution entity;~~

...

Article 3

Provision of core information for the purpose of individual and group resolution plans

1. Institutions and, in the case of groups, ~~Union~~ UK parent undertakings, shall submit to resolution authorities either directly or through the competent authority, the information specified in the templates set out in Annex I in accordance with the level of consolidation of information, frequency and format set out respectively in Articles 4, 5 and 6, and following the instructions set out in Annex II.

2. Where a resolution authority ~~or, in the case of groups, a group level resolution authority,~~ applies simplified obligations in accordance with ~~Article 4 of Directive 2014/59/EU Articles 7 and 8 of the Bank Recovery and Resolution (No 2) Order 2014,~~ it shall inform the institutions or ~~Union~~ UK parent undertakings concerned which information is not required to be included in the submission of information referred to in paragraph 1 of this Article. It shall identify that information by reference to the templates set out in Annex I.

Article 4

Level of consolidation of information

...

2. In the case of groups, ~~Union~~ UK parent undertakings shall submit the information referred to in Article 3(1) in accordance with the following specifications:

(a) the information specified in template Z 01.00 of Annex I in relation to the following:

...

(ii) group institutions which exceed 0,5 % of the total risk exposure amount or 0,5 % of the total Common Equity Tier 1 of the group on the basis of the consolidated situation of the ~~Union~~ UK parent undertaking;

...

(b) the information specified in templates Z 02.00 and Z 03.00 of Annex I:

(i) at the level of the ~~Union~~ UK parent undertaking or, where different, at the level of each resolution entity on an individual basis;

(ii) at the level of each group institution that is a relevant legal entity and does not fall within the scope of point (i), on an individual basis, except in those cases when the resolution authority has fully waived the application of the individual minimum requirement for own funds and eligible liabilities pursuant to ~~Article 45(11) or (12) of~~

~~Directive 2014/59/EU~~ Article 147 of the Bank Recovery and Resolution (No 2) Order 2014 to that institution;

(iii) at the level of the ~~Union~~ UK parent undertaking on a consolidated basis or, where different, at the level of each resolution entity on the basis of the consolidated situation of the resolution group;

...

(d) the information specified in templates Z 05.01 and Z 05.02 of Annex I:

(i) at the level of the ~~Union~~ UK parent undertaking or, where different, at the level of each resolution entity on an individual basis;

(ii) at the level of the ~~Union~~ UK parent undertaking on a consolidated basis or, where different, at the level of each resolution entity on the basis of the consolidated situation of the resolution group;

(e) the information specified in template Z 06.00 of Annex I at the level of the ~~Union~~ UK parent undertaking on a consolidated basis, in relation to all credit institutions which are relevant legal entities;

(f) the information specified in template Z 07.01 of Annex I, ~~separately for each Member State in which the group operates~~ the UK;

...

Article 6

Format for the submission of information

1. Institutions or, in the case of groups ~~Union~~ UK parent undertakings, shall submit the information referred to in Article 3(1) in the data exchange formats and representations specified by resolution authorities, and shall respect the data point definitions included in the single data point model referred to in Annex III and the validation rules referred to in Annex IV, as well as the following specifications:

...

2. The data submitted by institutions or, in the case of groups by ~~Union~~ UK parent undertakings, shall be associated with the following information:

...

Article 7

Provision of additional information for the purpose of individual or group resolution plans

1. Where a resolution authority or a group-level resolution authority, considers information not covered by any template set out in Annex I to be necessary for the purposes of drawing up and implementing resolution plans, or where the format in which additional information is provided by the competent authority pursuant to Article 8(2) is not suitable for the purposes of drawing up or implementing resolution plans, the

resolution authority shall request such information from the institution or the ~~Union~~ UK parent undertaking.

2. For the purposes of the request pursuant to paragraph 1, the resolution authority shall:

...

(b) specify, taking into account the volume and complexity of the required information, the appropriate timeframe within which the institution or, in the case of groups the ~~Union~~ UK parent undertaking, shall provide the information to the resolution authority;

(c) specify the format to be used by institutions or, in the case of groups, by ~~Union~~ UK parent undertakings in order to provide the information to the resolution authority;

(d) specify whether the information has to be completed on an individual or group level basis and whether its scope is local, ~~Union-wide~~ or global;

...

Article 8

Cooperation between competent and resolution authorities

...

3. In the case referred to in paragraph 2, resolution authorities shall ensure that institutions or, in the cases of groups ~~Union~~ UK parent undertakings, are informed of the information which is required to be included in the submission of information pursuant to Article 3(1). They shall identify that information by reference to the templates set out in Annex I.

Annex J

Simplified Obligations

MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION [XXXX/XXXX]

- 1.3 In this Annex new text is underlined and deleted text is struck through.
- 1.4 Regulation [XXXX/XXXX] of 25 October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 1

Quantitative assessment for credit institutions

...

6. Where the total assets of a credit institution do not exceed 0,02% of the total assets of all credit institutions authorised and, where relevant data are available, of branches established in the ~~Member State, including Union branches~~ United Kingdom, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that credit institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, unless that would not be justified on the basis of Article 2.

7. Where a credit institution has been identified as a G-SII or an O-SII under regulations 21 and 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 ~~Article 131(1) of Directive 2013/36/EU~~ or classified as Category 1 on the basis of the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 5 of this Article, establish that the failure of that credit institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions. The relevant indicator values for those institutions shall, in any event, still be taken into account for determining the aggregate amount referred to in point 2 of Annex I, and for determining the total assets of all credit institutions authorised in the ~~Member State~~ United Kingdom for the purpose of paragraph 6.

Article 2

Qualitative assessment for credit institutions

1. Where, pursuant to Article 1, a credit institution is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions, competent and resolution authorities shall assess the impact of that credit institution's failure on financial markets, other institutions

or funding conditions on a regular basis and at least every two years and having regard to, at least, all of the following qualitative considerations:

- (a) the extent to which the credit institution performs critical functions in ~~one or more Member States~~ the United Kingdom;
- (b) whether the credit institution's covered deposits would exceed the mandatory contributions available ~~financial means of the relevant to the UK~~ deposit guarantee scheme and the deposit guarantee scheme's capacity to raise extraordinary *ex post* contributions, as referred to in the Depositor Protection Part of the PRA Rulebook Article 10 of Directive 2014/49/EU of the European Parliament and of the Council⁷;

...

- ~~(d) whether the credit institution that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;~~
- ~~(e) whether the credit institution is affiliated to a central body, as referred to in Article 10 of Regulation (EU) No 575/2013, and the mutualisation of losses among affiliated institutions would constitute a substantive impediment to normal insolvency proceedings.~~

...

4. In this Article, "mandatory contributions" has the meaning given in rules made by the PRA under the Financial Services & Markets Act 2000.

Article 3

Quantitative assessment for investment firms

...

5. Where an investment firm has been identified as a G-SII or an O-SII in accordance with regulations 21 and 29 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 Article 131(1) of Directive 2013/36/EU or has been classified as Category 1 on the basis of the guidelines on common procedures and methodologies for SREP issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 4 of this Article, establish that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

Article 4

Qualitative assessment for investment firms

1. Where an investment firm is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions and funding conditions pursuant to Article 3, competent and resolution authorities shall assess the impact of that investment firm's failure on financial markets, other institutions or funding conditions on a regular basis and at least every two years and having regard to, at least, all of the following qualitative considerations:

(a) the extent to which the investment firm performs critical functions in ~~one or more Member States~~ the United Kingdom;

....

~~(c) whether an investment firm that is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, provides critical functions to other IPS members, including clearing, treasury or other services;~~

...

(e) the extent to which money and financial instruments held by the investment firm on its clients' behalf would not be fully protected by ~~an investor compensation scheme~~ section 5.5 of the Compensation Sourcebook of the FCA Handbook as referred to in Directive 97/9/EC of the European Parliament and of the Council⁸;

Article 5

Institutions belonging to groups

1. For an institution that is part of a group, the assessments referred to in Articles 1 to 4 shall be made at the level of the parent undertaking in the United Kingdom ~~Member State where the institution has been authorised~~.

2. By way derogation from paragraph 1, for an institution that is part of a group subject to consolidated supervision pursuant to Part 6 of the Capital Requirements Regulations 2013 ~~Articles 111 and 112 of Directive 2013/36/EU~~, the assessments referred to in Articles 1 to 4 of this Regulation shall be made at the following levels:

(a) the level of the UK ~~Union~~ parent undertaking;

(b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

3. Institutions that are part of a group subject to consolidated supervision pursuant to ~~Articles 111 and 112 of Directive 2013/36/EU~~ Part 6 of the Capital Requirements Regulations 2013 shall be regarded as institutions the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, where any of the following apply at any of the levels referred to in points (a) and (b) of paragraph 2 of this Article:

...

4. Paragraphs 2 and 3 shall not apply to institutions that are subject to a recovery plan as referred to in ~~Articles 8(2)(b) of Directive 2014/59/EU~~ sub-paragraph (d) of the definition of “relevant matters” in Article 16(2)(d) of the Bank Recovery and Resolution (No 2) Order 2014.

5. Competent and resolution authorities shall coordinate the assessments referred to in this Article ~~and exchange all necessary information within the framework of supervisory and resolution colleges.~~

Article 6

Assessment of promotional banks

Competent and resolution authorities may regard promotional banks, ~~as defined in Article 3(27) of Commission Delegated Regulation (EU) No 2015/63⁹~~ meaning any undertaking or entity set up by the United Kingdom’s a Member State, central or regional government, which grants promotional loans on a non-competitive, not for profit basis in order to promote that government’s public policy objectives, provided that that government has an obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or that at least 90 % of its original funding or the promotional loan it grants is directly or indirectly guaranteed by the United Kingdom’s Member State’s central or regional government, as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without applying paragraphs 2 and 7 of Article 1 and Article 5(3), where the qualitative considerations of Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the UK Union-parent undertaking;
- (b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

Article 7

Assessment of credit institutions subject to an orderly winding-up process

Competent and resolution authorities may regard credit institutions that are subject to an orderly winding-up process as institutions the failure of which is not likely to have a significant negative effect on financial markets, other institutions or funding conditions, without the application of paragraphs 2 and 7 of Article 1 and Article 5(3), where the qualitative considerations of Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the UK Union-parent undertaking;

(b) the level of each parent undertaking in the United Kingdom ~~a Member State~~ or, where there is no parent undertaking in the United Kingdom ~~a Member State~~, the level of each stand-alone subsidiary of the group in the United Kingdom ~~a Member State~~.

Article 8

Assessment by competent and resolution authorities ~~from the same Member State~~

Taking into account different purposes of recovery and resolution planning, competent and resolution authorities ~~from the same Member State~~ may reach different conclusions with regard to the application of Articles 1 to 4, 6 and 7, in which case they shall regularly assess whether those different conclusions remain justified.

Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards': New text is underlined and deleted text is struck through.

Annex I-K

Deletions

911 DELETIONS OF SPECIFIED EU REGULATIONS

- ~~9.4~~ 11.1 The following Articles and specified EU Regulations, as they form part of domestic law by virtue of section 3 of the Act, are deleted:
- ~~9.4.4~~ 11.1.1 Articles 50 to 109 of Regulation 2016/1075.
- ~~9.4.2~~ 11.1.2 Commission Implementing Regulation (EU) 2016/962 of 16 June 2016 laying down implementing technical standards with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to Directive 2014/59/EU of the European Parliament and of the Council.
- ~~9.4.3~~ 11.1.3 Commission Implementing Regulation (EU) 2018/308 of 1 March 2018 laying down implementing technical standards for Directive 2014/59/EU of the European Parliament and of the Council with regard to formats, templates and definitions for the identification and transmission of information by resolution authorities for the purposes of informing the European Banking Authority of the minimum requirement for own funds and eligible liabilities.