



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP12/19

Strengthening individual accountability: Resolution assessments and reporting amendments

June 2019



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The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority. We may use your details to contact you to clarify any aspects of your response.

The consultation paper will explain if responses will be shared with other organisations (for example, the Financial Conduct Authority). If this is the case, the other organisation will also review the responses and may also contact you to clarify aspects of your response. We will retain all responses for the period that is relevant to supporting ongoing regulatory policy developments and reviews. However, all personal data will be redacted from the responses within five years of receipt. To find out more about how we deal with your personal data, your rights or to get in touch please visit bankofengland.co.uk/legal/privacy.

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Responses are requested by Wednesday 7 August 2019.

Please address any comments or enquiries to:

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1 Overview

1.1 In this Consultation Paper (CP), the Prudential Regulation Authority (PRA) sets out its proposal to amend the prescribed responsibility (PR) for recovery plans and resolution packs that forms part of the Senior Managers and Certification Regime (SM&CR) for strengthening individual accountability.¹ It also sets out consequential changes to Supervisory Statement (SS) 28/15 ‘Strengthening individual accountability in banking’² and the form ‘Senior Managers Regime: Statement of Responsibilities’ (‘SoR form’), together with other administrative changes to this form.³

1.2 The proposed amendment to the PR is relevant to those UK banks and building societies with £50 billion or more in retail deposits on an individual or consolidated basis at the date of their most recent annual accounts (‘in scope’ firms). It would result in the existing PR in respect of recovery plans and resolution packs being extended to include an equivalent responsibility for resolution assessments (conditional on the PRA introducing new rules in respect of such assessments).⁴

1.3 The proposed amendments to the SoR form are relevant to all PRA-regulated firms including credit unions and small non-Directive insurers. However, for firms that are not subject to any future PRA rules in regard to resolution assessments, there will be no change to the PRA’s requirements and expectations of them.

1.4 Drafts of the rule-making instrument and amendments to SS28/15 and the SoR form are included in the appendices.

Background

1.5 The SM&CR sets out a number of Senior Management Functions (SMF). Individuals holding such functions (Senior Managers) are required to be approved by the PRA and/or the Financial Conduct Authority (FCA). Each senior manager must have a SoR that clearly sets out the areas of the firm’s regulated activities for which they are responsible. In doing this, firms must allocate specific responsibilities set out in the PRA Rulebook, known as PRs, to its senior managers. All the proposed changes in this CP relate to the PRs.

1.6 In December 2018, the PRA issued CP31/18 ‘Resolution assessment and public disclosure by firms’.⁵ The rule changes proposed in CP31/18, applicable to UK banks and building societies with £50 billion or more in retail deposits on an individual or consolidated basis, require firms to: assess their preparations for resolution; submit a report of their assessment to the PRA; and publish a summary of this report. To support these proposed changes, the PRA noted in CP31/18 its intention to consult on changes to the SM&CR to incorporate the responsibility for carrying out resolution assessments and related obligations.

1.7 The PRA’s proposal in this CP to amend the PR for recovery plans and resolution packs gives effect to this intention. This proposed amendment and the consequential changes to SS28/15 and

¹ Allocation of Responsibilities Part of the Rulebook, Rule 4.1.(10):

<http://www.prarulebook.co.uk/rulebook/Content/Chapter/212518/15-05-2019>.

² July 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-banking-ss>.

³ Available at: <https://www.bankofengland.co.uk/prudential-regulation/authorisations/senior-managers-regime-approvals>.

⁴ The PRA set out its proposals in CP31/18 ‘Resolution assessment and public disclosure by firms’, December 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/resolution-assessment-and-public-disclosure-by-firms>.

⁵ Ibid. footnote 4.

the SoR form are, however, dependent on the PRA introducing new rules in respect of resolution assessments.

1.8 The PRA also proposes to make minor amendments to the SoR form to correct minor discrepancies to ensure consistency between the wording of the PRs as they appear in the SoR form compared to the PRA Rulebook and the FCA Handbook.

Responses and next steps

1.9 The consultation closes on Wednesday 7 August 2019.

1.10 The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP12_19@bankofengland.co.uk.

1.11 The proposals set out in this CP have been designed in the context of the current UK and EU regulatory framework. The PRA has assessed that the proposals will not be affected in the event that the UK leaves the EU with no implementation period in place.

Implementation

1.12 The PRA intends to publish the final policy, rules, expectations, and SoR form in Q4 2019. As noted above, this is dependent on the PRA introducing new rules in respect of resolution assessments.

Amendment of MiFID supplementary form

1.13 Firms that are part of a group that contains a FCA solo-regulated firm should also be aware of the FCA's proposed changes to 'MIFID members of the management body and key function holders - Article 4 Information Form (SMR)'. The FCA is also proposing changes to the 'MiFID Article 4 APER Information Form'. Since the changes will affect solo-regulated firms the changes are not set out in this CP and firms should refer to the FCA's simultaneous Quarterly Consultation Paper.

2 Proposals

Amendments to prescribed responsibility

2.1 The PRA proposes amending Rule 4.1.(10) in the Allocation of Responsibilities Part of the Rulebook so that the senior manager who is assigned the PR for recovery plans and resolution packs would, for in scope firms, have an additional equivalent responsibility for resolution assessments. This amendment would be applicable only to firms with £50 billion or more in retail deposits on an individual or consolidated basis.

2.2 The PRA considers that allocating the responsibility helps to ensure that there is an appropriate level of senior oversight of the resolution assessment. This would give the PRA greater confidence that the assessment would be effective in identifying actions that facilitate an orderly resolution.

2.3 SS28/15 includes a reference to the PR for recovery plans and resolution packs. The PRA proposes to amend this reference to align it with wording in the PRA Rulebook. In this section, this PR is cited for illustrative purposes as part of a discussion regarding the level of clarity the PRA considers appropriate in a senior manager's SoR.

Amendment of SoR form

2.4 The PRA proposes a rule to make several minor amendments to the joint PRA/FCA SoR form, along with a change to reflect the amendment to the PR for recovery plans and resolution packs. The FCA is also consulting in parallel on the same changes to the SoR form in its Quarterly Consultation Paper.

2.5 The proposed changes described in the paragraphs above are set out in the appendices.

3 The PRA's statutory obligations

3.1 In carrying out its policy making functions, the PRA is required to comply with several legal obligations.

3.2 Before making any rules, the Financial Services and Markets Act 2000 (FSMA)⁶ requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;
- 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,⁷ insurance objective⁸ (if applicable), and secondary competition objective;⁹
- 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;¹⁰ and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.¹¹

3.3 The Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury.¹²

3.4 The PRA is also required by the Equality Act 2010¹³ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

Cost benefit analysis

3.5 This cost benefit analysis focuses on the incremental costs and benefits of the proposals made by the PRA in this CP. The cost estimates in this CP therefore exclude costs that have already been considered in CP31/18.

⁶ Section 138J of FSMA.

⁷ Section 2B of FSMA.

⁸ Section 2C of FSMA.

⁹ Section 2H(1) of FSMA.

¹⁰ Sections 2H(2) and 3B of FSMA.

¹¹ Section 138K of FSMA.

¹² Section 30B of the Bank of England Act 1998.

¹³ Section 149.

3.6 As regards the PR for recovery plans and resolution packs, the PRA has considered the costs of implementing its proposals by reference to those firms falling within the proposed scope, outlined in CP31/18, for preparing resolution assessments, while the benefits are considered from the point of view of the wider economy.

3.7 As outlined in CP31/18, the PRA considers that its proposals in respect of resolution assessments contribute to the overall benefit of having a credible resolution regime, estimated at between £6.1 billion and £18.3 billion per annum.¹⁴

3.8 As regards the PRA's proposals in this CP, the benefits arise because assigning a specific PR will help ensure there is an appropriate level of senior oversight in the development of resolution assessments. As a result, there would be greater confidence in the assessment and in the likelihood that it would identify actions that facilitate an orderly resolution.

3.9 The PRA estimates that the costs of the proposals in this CP will be a one-off cost of approximately £3,200 and a yearly cost of around £60,000 across the relevant firms. This is proportionate when considered alongside the costs of resolution assessments and related disclosure set out in CP31/18 as falling in the range £3.8 million to £6.3 million per annum.

3.10 The PRA expects the total costs to be driven by the costs of:

- reviewing the allocation of the PR;
- amending the SoRs for the relevant senior managers; and
- additional resource directed to resolution assessments as a consequence of these being linked explicitly to a PR.

3.11 For firms in scope, reviewing the allocation of the PR might account in total for 60 minutes of senior executive time per firm, involving the CEO and those assigned the PR. Drawing on the calculations in CP31/18 this cost is estimated against an hourly rate for individuals earning £1 million per annum. The administrative costs of amending the SoRs per firm are estimated as involving 60 minutes of time for a staff member earning £95,000 per annum. This would suggest total one-off costs of approximately £3,200 across all firms.¹⁵

3.12 The PRA expects that giving explicit responsibility for resolution assessments to a senior manager will collectively cost firms around £60,000 per annum. This is based on the estimate that each senior manager assigned an amended PR that covers resolution assessments will spend an extra 20 hours on work related to resolution assessments, and earns £1 million per annum. These costs are additional to the board and committee costs included in cost benefit analysis in CP31/18, and to the costs currently incurred as a consequence of a senior manager holding the existing PR for recovery plans and resolution packs.

¹⁴ The Bank estimated that the annual gross benefits of credible resolution are likely to be between 0.3% and 0.9% of annual GDP, or £6.1 billion to £18.3 billion in 2017 based on the approach set out in from Brooke et al. (2015), 'Measuring the macroeconomic costs and benefits of higher UK bank capital requirements', available at: <https://www.bankofengland.co.uk/financial-stability-paper/2015/measuring-the-macroeconomic-costs-and-benefits-of-higher-uk-bank-capital-requirements>.

¹⁵ Following CP31/18, an hourly rate based on a 9.7 hour working day for CEOs is assumed, see Porter and Nohria (2018), 'How CEOs managed their time', Harvard Business Review, available at: <https://hbr.org/2018/07/the-leaders-calendar#how-ceos-manage-time>. To ensure a conservative estimate, a 7 hour working day is assumed for staff other than the CEO, and the holder and the PR.

3.13 The changes proposed for the SoR form are intended to improve the clarity of the form, and to make it easier to cross-reference to the PRA Rulebook and the FCA Handbook. The costs for firms should be minimal.

Compatibility with the PRA's objectives

3.14 The PRA's proposal to amend the PR for recovery plans and resolution packs by adding the responsibility for resolution assessments supports the PRA's general objective of promoting the safety and soundness of firms by ensuring there is an appropriate level of senior oversight in the development of resolution assessments. The PRA considers that this would minimise the adverse effect that the failure of one of the firms that it regulates could be expected to have on the stability of the UK financial system.

3.15 The proposed changes to the SoR form provides clarification and increases consistency between the form and corresponding PRA and FCA rules. This will promote the ongoing safety and soundness of firms by ensuring that individuals are assessed consistently, and avoids the possible costs of firms needing to contact the PRA or FCA for clarification or re-submitting information that may result from the inconsistency in the current form.

3.16 The PRA does not believe that the proposed changes would have an impact on competition. In particular, the proposals would not raise barriers to entry in the retail banking and building society sector, and, as presently proposed, they would only apply to firms with retail deposits equal to or greater than £50 billion, and the incremental cost increase of the proposal would not be material.

Regulatory principles

3.17 In developing the proposals in this CP, the PRA has had regard to the regulatory principles. Four principles are of relevance:

- The principle that a burden or restriction should be proportionate to the benefits. As outlined in the cost-benefit analysis above, the proposals in this CP have been made with consideration to their cost relative to benefits.
- The principle relating to the responsibilities of the senior management of persons subject to requirements imposed by or under the FSMA. The purpose of the rule changes outlined above is to strengthen senior management responsibility by creating a PR that would, where relevant, cover resolution assessments.
- The principle requiring firms to publish information as a means of contributing to the advancement of the regulator's objectives. It is likely that the PR holder will contribute to the internal governance leading to the firm's public disclosure under the proposals in CP31/18.
- The principle of the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons. An amendment to the PR would be applicable only to those banks that undertake resolution assessments as a result of a PRA requirement to do so.

Impact on mutuals

3.18 The amended PR will apply to both mutuals and non-mutuals. The holder will need to take account of the structure, size, and complexity of their firm's business model regardless of the corporate status of their firm. Overall the PRA considers that the impact on mutuals would not differ from the impact on other firms.

HM Treasury recommendation letter

3.19 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.¹⁶

3.20 The aspect of the Government's economic policy most relevant to the proposals in this CP is competitiveness. The PRA believes that these proposals would not negatively impact UK competitiveness, and may enhance competitiveness as a more effective and transparent approach to firms' preparations for resolution may provide markets with better information on firms' resolvability.

Equality and diversity

3.21 The PRA considers that the proposals do not give rise to equality and diversity implications.

16 Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at: <http://www.bankofengland.co.uk/about/Pages/people/prapeople.aspx>.

Appendices

Appendix 1: Draft allocation of Responsibilities and Notifications Instrument

Appendix 2: Draft amendment to SS28/15 'Strengthening individual accountability in banking'

Appendix 3: Draft amendments to 'Senior Managers Regime: Statement of Responsibilities' form

Appendix 1: Draft allocation of Responsibilities and Notifications Instrument

PRA RULEBOOK: CRR FIRMS: NON CRR FIRMS: SOLVENCY II FIRMS: NON SOLVENCY II FIRMS: ALLOCATION OF RESPONSIBILITIES AND NOTIFICATIONS INSTRUMENT 2019

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) Section 59 (Approval for particular arrangements);
 - (2) Section 60 (Applications for Approval);
 - (3) Section 61 (Determination of Applications);
 - (4) Section 137G (The PRA’s general rules); and
 - (5) Section 137T (General supplementary powers).
- B. 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

- C. 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 proposed rules and had regard to representations made.

PRA RULEBOOK: CRR FIRMS: NON CRR FIRMS: SOLVENCY II FIRMS: NON SOLVENCY II FIRMS: ALLOCATION OF RESPONSIBILITIES AND NOTIFICATIONS INSTRUMENT 2019

- D. The PRA makes the rules in the Annex to this instrument.

Part	Annex
Allocation of Responsibilities	A
Senior Managers Regime – Applications and Notifications	B
Insurance – Senior Managers Regime – Applications and Notifications	C
Large Non-Solvency II Firms – Senior Managers Regime – Applications and Notifications	D
Non-Solvency II Firms – Senior Managers Regime – Applications and Notifications	E

Commencement

- E. This instrument comes into force on [DATE].

Citation

- F. This instrument may be cited as the PRA RULEBOOK: CRR FIRMS: NON CRR FIRMS: SOLVENCY II FIRMS: NON SOLVENCY II FIRMS: ALLOCATION OF RESPONSIBILITIES AND NOTIFICATIONS INSTRUMENT 2019

By order of the Prudential Regulation Committee

[DATE]

Annex A

Amendments to the Allocation of Responsibilities Part

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

...

4 PRESCRIBED RESPONSIBILITIES

4.1 Each of the responsibilities set out in this rule is a *prescribed responsibility*:

...

(10) responsibility for developing and maintaining the *firm's recovery plan*, ~~and resolution pack~~ and, where relevant, resolution assessment, and for overseeing the internal processes regarding their governance (PR R);

...

Annex B

Amendments to Senior Managers Regime – Applications and Notifications Part

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

...

2 APPLICATION TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

...

2.7 ...

(2) A *statement of responsibilities* must be in the form set out here ~~here~~.

...

Annex C

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

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

...

7 Forms

7.1 ...

(7) The *statement of responsibilities form* may be found here ~~here~~.

...

Annex D

Amendments to Large Non-Solvency II Firms – Senior Managers Regime – Applications and Notifications Part

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

...

7 Forms

7.1 ...

(7) The *statement of responsibilities form* may be found here ~~here~~.

Annex E

Amendments to Non-Solvency II Firms – Senior Managers Regime – Applications and Notifications Part

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

...

7 Forms

7.1 ...

(7) The *statement of responsibilities form* may be found here ~~here~~.

Appendix 2: Draft amendment to SS28/15 'Strengthening individual accountability in banking'

In this appendix, underlining indicates new text and striking through indicates deleted text.

2 The Senior Managers Regime...

Statements of Responsibilities

...

Clarity and level of detail

2.48 Firms should include free text in SoRs to clarify and elaborate on the responsibilities of Senior Managers.

2.48A However, free text in a Senior Manager's SoR must not unduly complicate, dilute or undermine the clarity of the individual's responsibilities.

2.48B The aim of this text should be to clarify, describe and develop the responsibilities of the relevant individual by, for instance:

- if a responsibility is shared, explaining how it applies to the different individuals sharing it in practice; and
- breaking down certain responsibilities into key component tasks. While the PRA does not expect firms to list every task relating to every responsibility, some description of the tasks is expected, particularly for certain Prescribed Responsibilities, which sometimes provide a high-level description of an area likely to comprise multiple underlying key deliverables.
- For example, the PR 'for developing and maintaining the firm's recovery plan, ~~and~~ resolution pack and, where relevant, resolution assessment, and for overseeing the internal processes regarding their governance²²' in Rule 4.1(10) of the Allocation of Responsibilities part of the Rulebook will include a range of tasks under the Recovery Plan, ~~and~~ Resolution Pack and Resolution Assessment parts of the Rulebook which firms are expected to reflect in the SoR of the SMF(s) to whom this responsibility is allocated, such as:
 - presenting the recovery plan to the management body for approval before submitting it to the PRA; ~~and~~
 - ensuring the PRA is notified of any material changes made to the resolution pack promptly and, in any event, within one month of making any such change; and-
 - (where relevant) ensuring the resolution assessment is presented to the management body for approval before submitting it to the PRA.

...

FCA/PRA/Dual PR	Ref	Prescribed Responsibility (PR)	Large CRR firms ³	Small CRR firms	Third country CRR firms	Credit unions	Solvency II firms and Large NDFs	Small NDFs & Small run off firms ⁴	Third Country branches of insurers	UK ISPVs	Swiss General Insurers	Is this PR shared between senior managers
...												
Dual	J2	Responsibility for providing for and oversight of the internal audit function, where this function is outsourced to an external third-party provided by a non-significant firms.					<input checked="" type="checkbox"/> ⁵					<input type="checkbox"/>
...												
PRA	R	Responsibility for developing and maintaining the <i>firm's recovery plan</i> , and resolution pack and, where relevant, <u>resolution assessment</u> , and for overseeing the internal processes regarding their governance	<input checked="" type="checkbox"/>									<input type="checkbox"/>
...												
Dual	FF	Responsibility for the <i>firm's</i> compliance with the <i>UK regulatory system applicable to the firm</i>			<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>

⁵ Applies to Large NDFs and not Solvency II firm