

Appendix 1: Draft PRA transitional direction

Modifications to the near-final PRA transitional direction published in February 2019 are highlighted for the convenience of readers.

Direction made by the PRA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

(Note: There is PRA Guidance relating to this direction, both general and in relation to specific obligations)

1. This direction is made by the PRA under regulation 198 of the 2019 Regulations, the PRA, having consulted the Treasury, the Bank of England and the Financial Conduct Authority under regulation 202 of the 2019 Regulations, and being satisfied within the terms of regulation 200 of the 2019 Regulations.
2. This direction, which shall come into force on exit day, shall apply until 31 December 2020 unless otherwise stated in this direction or unless varied or revoked beforehand (without prejudice to any continuing effect in relation to earlier times).

Interpretation

3. (1) In this direction –

“the 2018 Act” means the EU (Withdrawal) Act 2018;

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

“the 2019 Regulations” means Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;

“CRA regulation” means Regulation (EC) No 1060/2009 (credit rating agencies);

“equivalence direction”, **“equivalence determination”** and **“exemption direction”** have the same meanings as in the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019;

“Exemption Order” means the Financial Services and Markets Act 2000 (Exemption) Order 2001;

“exit instrument” means an exit instrument within the meaning of the 2019 Regulations, which is in force on exit day;

“exit day” has the same meaning as in the 2018 Act;

“EU references” has the same meaning as in the 2018 Act;

“Financial Promotion Order” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001;

"Financial Services Compensation Scheme" means the scheme established under Part XV of FSMA for compensating persons in the cases specified in sections 213(1)(a) to 213(1)(b) of FSMA;

"FSMA" means the Financial Services and Markets Act 2000;

"Gibraltar", in the context of relevant obligations, has the same meaning as in rule 2.8 in the Interpretation Part of the PRA Rulebook;

"PRA" means the Prudential Regulation Authority;

"Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"relevant obligation" has the same meaning as in the 2019 Regulations;

"securitisation repository" has the same meaning as in Article 2(23) of EU Regulation 2017/2402.

- (2) Any reference in this direction to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the 2018 Act) is, unless the contrary intention appears, to be treated as a reference to that EU Regulation or EU tertiary legislation which forms part of UK law by virtue of the 2018 Act on exit day.

Application and Exceptions

4. This direction applies in relation to relevant obligations for which the PRA has responsibility for supervising or has other functions relating to a person's compliance with the relevant obligation.
5. (1) This direction shall not apply to a relevant obligation-
 - (a) relating to Part 15A of FSMA or to the Financial Services Compensation Scheme;
 - (b) to apply technical or other information published by the European Insurance and Occupational Pensions Authority (EIOPA), which by virtue of an exit instrument is, after exit day, published by the PRA;
 - (c) to which, subject to paragraph 17, a specific transitional or savings provision contained in:
 - (i) an exit instrument, or
 - (ii) another direction made by the PRA;applies or would apply if it were for the same period as this direction;
 - (d) in the Stay in Resolution Part of the PRA Rulebook;
 - (e) in relation to a securitisation repository;

- (f) which begins to apply in a person's case or applies in the person's case differently as a result of the operation of provisions relating to simple, transparent and standardised securitisations in the Securitisation (Amendment) EU Exit Regulations 2019;
- (g) in relation to a person for whom the Treasury has a power to make an exemption direction;
- (h) which begins to apply in a person's case or applies in the person's case differently as a result of the operation of an equivalence direction or equivalence determination;
- (i) in relation to which an equivalence direction or equivalence determination has been or could be made for the purposes of Regulation (EU) 600/2014;
- (j) in the CRA Regulation except as otherwise provided in paragraph 17;
- (k) in Commission Delegated Regulation (EU) 2017/589, Commission Delegated Regulation (EU) 2017/1945 and Commission Delegated Regulation (EU) 2017/1946;
- (l) in relation to a person to whom regulation 47 of the 2018 Regulations applies;
- (m) which begins to apply in a person's case or applies in the person's case differently as a result of amendments to the
 - (i) Regulated Activities Order;
 - (ii) Financial Promotion Order; or
 - (iii) Exemption Order.
- (n) which relates to the payment of fees;
- (o) relating to the definition of OTC derivative in Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

- (2) For the avoidance of doubt, if, and to the extent, there are any relevant obligations in Part VII and Schedule 12 of FSMA, the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 and the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001, this direction shall not apply to them.

Delay of operation of exit instruments

6. Where, as a result of the operation of an exit instrument, a relevant obligation-
 - (a) begins to apply in a person's case, the relevant obligation shall not apply to that case;
 - (b) applies in the person's case differently from how it would but for the exit instrument, the relevant obligation shall, subject to paragraph 7 below, apply to the person's case as it would have applied immediately before exit day.

7. The relevant obligation referred to in 6(b) shall be construed in a way so as to enable it to achieve the same result in the person's case as it would have immediately before exit day but in the context of the UK no longer being a member state, including any adaptations to EU references as may be necessary to achieve that effect.
8. Where the obligation is to provide information to an institution of the EU or a member state, the adaptation referred to in paragraph 7 shall include the adaptation that the information is to be provided to the PRA.

Savings for Audit Committee Transitional Provisions

9. This direction shall not prejudice or affect the references to the financial years in rules 4.1 – 4.4 (Transitional Provisions) of the Audit Committee Part of the PRA Rulebook.

Application to EEA firms

10. (1) This paragraph applies in relation to a person who immediately before exit day was authorised to carry on a regulated activity by virtue of section 31(1) (b) or (c) of FSMA.

(2) For the purposes of paragraph 6 but subject to paragraphs 10(3) and 11 below, a relevant obligation shall be treated as not beginning to apply in a person's case, nor applying in a person's case differently, as a result of the operation of an exit instrument, where it begins to apply or applies differently solely by virtue of the repeal of Schedule 3 and 4 of FSMA by the 2018 Regulations or solely by virtue of that repeal and of the application of regulations 8, 11, 28 or 34 of the 2018 Regulations (including, in the case of a person who does not have an establishment in the UK, where the obligation begins to apply also by virtue of it being expressly extended to that person's case from exit day).

(3) In respect of the Remuneration Part of the PRA Rulebook, the following provisions shall apply:
 - (a) Until the start of the performance period specified in subparagraph (b) the remuneration obligations referred to in subparagraph (c) shall apply to the person in substitution for rules 11.2 to 11.6, 13.1, 15.17, 15.18, 15.20(3) to (5), 15.22, 15.23, and 15A.1 to 15A.11 of the Remuneration Part of the PRA Rulebook.
 - (b) The performance period referred to in subparagraph (a) above is the first performance period starting at least 3 months after exit day.
 - (c) The obligations referred to in paragraph (a) are those set out in Article 94(1)(i), (j), (k), (m), (n) and (p) of the Capital Requirements Directive 2013/36/EU.

Application to firms with a temporary permission

11. (1) In relation to a person to whom regulation 8, 11, 28 or 34 of the 2018 Regulations applies this direction shall apply subject to the following provisions of this paragraph.

- (2) Notwithstanding paragraph 6 but subject to 11(7) below, this direction shall not apply to a relevant obligation which, as a result of the operation of an exit instrument, begins to apply solely to persons to which this paragraph applies.
- (3) Until 30 April 2020 obligations in the Third Country Branches Part of the PRA Rulebook relating to the reporting to the PRA of branch specific information shall not apply.
- (4) Until 31 December 2020 obligations in the Regulatory Reporting, Third Country Branches and Reporting Parts of the PRA Rulebook shall not apply insofar as the obligation relates to the calculation of the branch MCR or branch SCR and any requirement which is dependent upon such calculation, including any obligation to report information to the PRA in relation thereto.
- (5) Until 31 December 2020, where a person falls into Regulatory Activity Group 1 for the purposes of rule 6.1 of the Regulatory Reporting Part of the PRA Rulebook, rule 2.1 of that Part shall not apply to that person in respect of the Statement of profit or loss.
- (6) Until 31 December 2020 rule 11.1(1) of the Third Country Branches Part of the PRA Rulebook shall not apply in relation to chapter 4 of the Composites Part of the PRA Rulebook.
- (7) In respect of rule 3.2 of the General Provisions Part of the PRA Rulebook (Disclosure to Retail Clients) a person may choose to rely on this direction until 31 January 2020.

Further exceptions and modifications

- 12. Paragraphs 6 to 8 of this direction shall not apply in relation to the Contractual Recognition of Bail In Part of the PRA Rulebook, Commission Delegated Regulation (EU) 2016/1075, to references in relevant obligations to accounting standards and in relation to credit ratings agencies (to which specific provisions apply by virtue of paragraphs 13 to 17 below).
- 13. Relevant obligations specified in the paragraphs below shall apply with the modifications set out in those paragraphs.

Contractual Recognition of Bail In

- 14. In relation to the Contractual Recognition of Bail In Part of the PRA Rulebook the following obligations shall be met in substitution for the relevant obligations contained in Rule 2.1, 2.1B and 2.1C (with words or phrases having the same meaning as in rule 2 on exit day). All other provisions of rule 2, as on exit day, shall apply.
 - 2.1 Except in the circumstances described in 2.1A a BRRD undertaking must include in the contract governing a liability a term by which the creditor or party to the agreement creating the liability recognises that the liability may be subject to the exercise of a power by the Bank of England to make special bail-in provision or mandatory reduction provision and agrees to be bound by any reduction of the principal or outstanding amount due or by any conversion or cancellation effected by the exercise of that power, provided that such liability is:
 - (1) not an excluded liability;

- (2) not an excluded deposit;
 - (3) governed by the law of a third country other than an EEA state; and
 - (4) a liability of a type described in 2.3.
- 2.1B A BRRD undertaking must include in the contract governing a liability, other than phase two liability, a term by which the creditor or party to the agreement creating the liability recognises that the liability may be subject to the exercise of a power by the Bank of England to make special bail-in provision or mandatory reduction provision and agrees to be bound by any reduction of the principal or outstanding amount due or by any conversion or cancellation effected by the exercise of that power, provided that such liability is:
- (1) not an excluded liability;
 - (2) not an excluded deposit;
 - (3) governed by the law of an EEA state; and
 - (4) Issued or subject to a material amendment after exit day.
15. Relevant obligations contained in Articles 42 to 44 of Commission Delegated Regulation (EU) 2016/1075 shall be construed consistently with the Contractual Recognition of Bail In Part of the PRA Rulebook as modified above by this direction.

Accounting standards

16. References in relevant obligations to accounting standards adopted under Regulation (EU) 1606/2002 shall be construed as references to UK-adopted international accounting standards (as defined in section 474(1) of the Companies Act 2006) in relation to the relevant obligations of a person in so far as that person is required to prepare accounts in accordance with UK-adopted international accounting standards.

Credit Ratings Agencies

17. Relevant obligations in article 4 of the CRA Regulation relating to the eligibility of a credit rating to be used for regulatory purposes will not apply for a period of one year beginning with exit day where the credit rating was issued or endorsed by a credit rating agency established in the EU which is not part of a group in respect of which one of its undertakings-
- (a) is registered in the United Kingdom in accordance with the CRA Regulation;
or
 - (b) has made an advance application under regulation 24 of The Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019;

and the rating was issued or endorsed and not withdrawn immediately before exit day.

Savings

18. Nothing in this direction shall affect the application of a relevant obligation for the purposes of the PRA imposing a requirement on a person under or pursuant to that obligation.

19. This direction is without prejudice to any provision made by an exit instrument relating to the application of relevant obligations in respect of Gibraltar.

By order of the Prudential Regulation Committee

[DATE]