



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Consultation Paper | CP18/20

# Bank Recovery and Resolution Directive II

October 2020



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Responses are requested by Monday 30 November 2020.

**In light of current measures to help prevent the spread of COVID-19, please address any comments or enquiries by email to: [CP18\\_20@bankofengland.co.uk](mailto:CP18_20@bankofengland.co.uk).**

Alternatively, 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 proposals relating to its Contractual Recognition of Bail-in (CROB) and Stay in Resolution (Stays) Rules. The purpose of the proposals is to support the UK's transposition of the Bank Recovery and Resolution Directive II (BRRD II), which amends the BRRD.<sup>1</sup> The UK is required to transpose the BRRD II amendments by Monday 28 December 2020.

1.2 HM Treasury's statutory instrument for BRRD II<sup>2</sup> (the SI) was laid in Parliament on Thursday 15 October 2020 in order to deliver the transposition of BRRD II. The SI will result in changes to primary legislation that will affect the existing PRA regime for CROB and Stays.

1.3 In order to ensure a faithful transposition of BRRD II most of the elements of the SI which are relevant to CROB and Stays will come into force on Monday 28 December 2020 but will subsequently cease to have effect from 11pm on Thursday 31 December 2020 (Implementation Period (IP) completion day). In this CP, the PRA refers to this process as 'sunsetting'.<sup>3</sup>

1.4 To support the sunsetting process, the PRA proposes to:<sup>4</sup>

- temporarily suspend part of the CROB Part<sup>5</sup> of the PRA Rulebook from Monday 28 December 2020;<sup>6</sup>
- reinstate the existing CROB Part, with minor amendments, to come into force immediately after IP completion day;
- amend the Stays Part of the PRA Rulebook from Monday 28 December 2020 until IP completion day; and
- reintroduce the existing Stays Part, immediately after IP completion day.

1.5 This CP is relevant to BRRD undertakings to which the CROB and Stays Parts apply (firms).

1.6 The PRA considers the proposals in this CP would have minimal impact on firms and that firms would not incur additional costs as a direct result of the proposals.

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<sup>1</sup> Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

<sup>2</sup> The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (referred to in this paper as 'BRRD II Statutory instrument' or 'SI') available at <https://www.legislation.gov.uk/ukdsi/2020/9780348213676/introduction>.

<sup>3</sup> To give effect to this process, HM Treasury intend to include sunset clauses in SI transposing BRRDII for Articles 33a, 55 and 69.

<sup>4</sup> The Proposals in this CP should be read in conjunction with the proposals for deficiency fixing currently under the draft Rules in Appendices 1 and 2 is the subject of a separate consultation in PRA CP13/20, 'UK withdrawal from the EU: Changes before the end of the transition period', which closes on Thursday 17 November 2020. The PRA may make changes to the Rules following that consultation.

<sup>5</sup> PRA CROB Part, 2.1 to 2.3 shall not apply from 28 December 2020 until IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.

<sup>6</sup> This results in the expectations set out in [Supervisory Statement \(SS\) 7/16 'The contractual recognition of bail-in: impracticability' to cease to apply](#) for the period during which the CROB Rules temporarily suspended.

## Background

### The UK Resolution Regime: CROB and Stays

1.7 The UK's resolution regime contributes to an efficient, competitive banking system which supports growth by allowing banks to fail, and their investors to be bailed in, in an orderly way. Disorderly bank failures are costly and can imperil financial stability by interrupting important services banks provide to their customers. An effective and robust resolution regime is needed to ensure risks to depositors, the financial system and public finances are minimised.

1.8 Firms are required to take the necessary steps to prepare for and identify the risks to successful resolution. This ensures that if they fail, they do so in an orderly way. Orderly resolution supports the PRA's statutory objective to promote safety and soundness. It also supports PRA Fundamental Rule 8, which states that 'a firm must prepare for resolution so, if the need arises, it can be resolved in an orderly manner with a minimum disruption of critical services'.

1.9 The PRA's existing CROB and Stays regimes reinforce the legal certainty and predictability of cross-border resolution. The CROB regime is designed to ensure the effectiveness of the bail-in tool<sup>7</sup> in a cross-border resolution, and to promote equal treatment between EU and third-country liability holders. The CROB regime requires firms to include contractual terms by which the relevant creditor or party to the contract recognises that the liability may be bailed in by the Bank of England as resolution authority. The Stays regime is intended to reduce the risk of contagion from a bank failure. It also supports orderly resolution by ensuring that resolution action taken against a firm would not immediately lead to the early termination of its financial contracts governed by third-country law.

### Transposition of BRRD II

1.10 HM Treasury has previously consulted on the UK's proposed approach to the transposition of BRRD II. In considering the transposition of BRRD II, HM Treasury has looked to build upon the UK's existing resolution regime. This is established in law through the Banking Act 2009,<sup>8</sup> the Financial Services (Banking Reform) Act 2013, and the UK's implementation of BRRD in 2014, in particular through the Bank Recovery and Resolution (No 2) Order 2014.<sup>9</sup> It is further transposed through the PRA CROB and Stays Rules.

1.11 The SI includes provisions transposing the following BRRD II Articles: amended Article 55, new Article 33a, amended Article 69, and new Article 71a. The transposition provisions interact with the existing PRA CROB and Stays Rules. These interactions are set out below

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<sup>7</sup> See Part 3 'Bail-in Stabilisation Option' of the Banking Reform Act 2013:

<http://www.legislation.gov.uk/ukpga/2013/33/contents/enacted>.

<sup>8</sup> The Banking Act 2009: <https://www.legislation.gov.uk/ukpga/2009/1/contents>.

<sup>9</sup> The Bank Recovery and Resolution Order 2014: <https://www.legislation.gov.uk/ukdsi/2014/978011123782/contents>.

- Article 55 (CROB).

1.12 BRRD II Article 55 introduces an exemption for cases in which it would be legally or otherwise impracticable for entities to include a contractual recognition clause within certain unsecured liabilities contracts.<sup>10</sup> This is similar to the Rule in PRA CROB 2.1A.

1.13 However, BRRD II also establishes a new procedural requirement for firms to submit a notification of impracticability to the resolution authority<sup>11</sup> (referred to in this CP as ‘the SI impracticability notification process’). The resolution authority must be notified of any impracticability decision made by an entity and must validate this decision. In the event that the resolution authority concludes that a decision to omit a contractual recognition clause on the basis of impracticability is not justified, it must request the inclusion of such a contractual term.

- New Article 33a (Pre-Resolution moratorium power).

1.15 The PRA Stays regime already recognises a broad scope of ‘in-resolution’ moratorium powers of the Bank,<sup>12</sup> but BRRD II introduces a new power to be exercised pre-resolution, as follows. Under Article 33a the resolution authority (following consultation with the competent authority) is given the power to suspend payment or delivery obligations regarding any contract to which a firm is a party, once the firm is deemed to be ‘failing or likely to fail’ but before that firm has entered into resolution. The BRRD II further provides for the resolution authority to apply the power to suspend payment obligations in respect of eligible deposits. Article 33a is relevant to the Stays Rule because the pre-resolution moratorium power will be introduced by the SI through an amendment to the definition of ‘crisis management measure’, which is cross-referenced in PRA Rules.

- Amendments to Article 69 (In-Resolution moratorium power).

1.14 BRRD II also makes amendments to Article 69 of BRRD to extend the scope of the resolution authority’s ‘in-resolution’ moratorium power to permit the suspension of eligible deposits. Existing ‘in-resolution’ powers have previously been transposed into UK law and are recognised under the PRA’s Stays regime.

- New Article 71a (Stays).

1.15 The PRA anticipated the new Article 71a in its original implementation of the BRRD.<sup>13</sup> The Banking Act 2009 gives the Bank of England as resolution authority (the Bank) the power to temporarily suspend or ‘stay’ termination and enforcement rights related to UK financial contracts. The PRA’s Stays Rules expand on these powers by requiring contractual recognition of stays in respect of termination rights in financial contracts governed by third-country law.

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<sup>10</sup> Article 55(2) BRRD II, as transposed by BRRD II SI provisions, available at <https://www.legislation.gov.uk/ukdsi/2020/9780348213676/introduction>.

<sup>11</sup> Article 55(2)-(4) BRRD II: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.150.01.0296.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.150.01.0296.01.ENG)

<sup>12</sup> Transposed into UK law through sections 70A to 70D of the Banking Act 2009.

<sup>13</sup> The stay recognition requirement for contracts governed by third-country law was introduced into UK law as part of a wider EU package of reforms and was only introduced through BRRD II amendments. This was to address FSB guidance "Principles for Cross-border Effectiveness of Resolution Action" (the "FSB Principles").

1.16 Article 71a of BRRD II requires firms to include terms in financial contracts governed by third-country law that recognise the resolution authority's stays powers to suspend the firm's payment or delivery obligations, or to suspend a counterparty's termination or security enforcement rights imposed under the EU Member State resolution regime.

### Summary of proposals and implementation

1.17 The proposals included in this CP would:

- temporarily suspend part of the CROB Part of the PRA Rulebook with effect from Monday 28 December 2020 until IP completion day.
- reinstate the existing CROB Part, with minor amendments, to come into force immediately after IP completion day. The new Rules post IP completion day would be otherwise unchanged from the existing Rules. The amendment proposed in this CP, is a minor change to reflect the statutory reference to the Banking Act definition of 'excluded liability' in the Contractual Recognition Part of the PRA Rulebook. The reinstated CROB Rules would therefore be updated to account for the SI amendments.<sup>14</sup>
- amend the Stay in Resolution Part of the PRA Rulebook to reflect the temporary SI change to the definition of 'crisis management measure' in the Banking Act 2009, to come into force from Monday 28 December 2020 until IP completion day; and
- reintroduce the existing 'Stay in Resolution' Part, as it was before Monday 28 December 2020, to come into force immediately after IP completion day.

### Application of the BRRD II CROB notification regime for four days

1.18 The PRA has considered the need to provide firms with clarity on the implications of the SI impracticability notification process. It is possible that a firm could submit an impracticability notification to the Bank during the four days that the SI impracticability notification process will be in place (from Monday 28 December 2020 to IP completion day).

1.19 The PRA advises that any notifications submitted by a firm to the Bank under the SI impracticability notification process, between Monday 28 December 2020 and IP completion day, would automatically lapse on IP completion day if not acted upon by the Bank during that period.

### European Banking Authority (EBA) technical standards

1.20 The EBA is mandated to draft technical standards under Article 55 CROB and Article 71a Stays which may come into force before the end of the year. Such standards are subject to adoption by the European Commission, before they come into force, as directly applicable regulations. In the event that such standards come into force before IP completion day, they will form part of the on-shored acquis but will be automatically revoked on IP completion day pursuant to the BRRD II SI.

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<sup>14</sup> The amended draft CROB Rule instrument in Appendix 1 is the subject of a separate consultation in PRA CP13/20. The proposals in CP13/20 have not been finalised at the time of publication of this CP and CROB Rules could undergo other changes due to consultation feedback. The proposed new CROB Rules would further include a specific transitional provision.

## Application after the end of the EU Exit Transition Period

1.21 The proposals set out in this CP have been designed in the context of the UK's withdrawal from the European Union and entry into the Transition Period, during which time the UK remains subject to European law. The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework at the end of the Transition Period, including those arising once any new arrangements with the EU take effect.

1.22 The proposals in this CP should be read in conjunction with the proposals for deficiency fixing currently under consultation in PRA CP13/20, 'UK withdrawal from the EU: Changes before the end of the transition period', which closes on Thursday 17 November 2020.<sup>15</sup> The PRA may make changes to the CROB and Stays Rules following that consultation.

1.23 The PRA has assessed that the proposals would not need to be amended under the EU (Withdrawal) Act 2018. Please see PS5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018'<sup>16</sup> for further details on the PRA's (and the Bank's) approach to amending financial services legislation.

## Responses and next steps

1.24 This consultation closes on Monday 30 November 2020. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to [CP18\\_20@bankofengland.co.uk](mailto:CP18_20@bankofengland.co.uk).

## 2 Proposals

### Contractual Recognition of Bail-in

2.1 The SI impracticability notification process introduces additional procedural requirements and a requirement for a determination of impracticability to be made by the Bank as resolution authority.

2.2 The PRA has previously implemented its own impracticability notification process for phase two liabilities (unsecured liabilities in scope of the Contractual Recognition of Bail-in Part of the PRA Rulebook which are not debt instruments). The PRA's expectations regarding impracticability are set out in the corresponding SS7/16 'The contractual recognition of bail-in: impracticability'.<sup>17</sup> As noted in SS7/16, The PRA expects that firms make a reasoned assessment with regard to impracticability in relation to phase two liabilities. Firms should reach a view as to whether they are in compliance with PRA CROB Rules, and are expected to provide a legal opinion to the PRA on the enforceability and effectiveness of the contractual term if requested by the PRA.

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<sup>15</sup> September 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

<sup>16</sup> April 2019: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

<sup>17</sup> Supervisory Statement (SS) 7/16, June 2016: ['The contractual recognition of bail-in: impracticability'](#).



2.3 The BRRD II provisions go beyond the PRA's current approach under the existing CROB Rules and SS7/16. This would mean firms are subject to two separate sets of procedural requirements, should they wish to submit a notification of impracticability during the period that the BRRD II SI provisions are in force. In the absence of the proposed suspension of the CROB regime during the period from 28 December 2020 to IP completion day, these provisions would apply in parallel to but would not align with the PRA's regime, which designates the PRA as recipient of an impracticability notification.

2.4 In order to avoid two different impracticability notification regimes being in force at the same, the PRA proposes to suspend its CROB Rules with effect from Monday 28 December 2020. The proposal would provide firms with clarity as to which impracticability notification regime applies throughout those four days.

2.5 In this CP, the PRA further proposes that new CROB Rules would be made which would come into force immediately after IP completion day. This would reinstate the existing PRA CROB regime in line with the sunseting process set out in the SI. The new CROB Rules would reference the amended Banking Act definition of 'excluded liability' in the SI, as set out below.

2.6 A consequence of the proposal to suspend PRA CROB Rules on Monday 28 December 2020 is that SS7/16 would be treated as being in abeyance for these four days. The expectations set out in SS7/16 would apply to firms once the new CROB Rules take effect immediately after IP completion day.

2.7 PRA proposes that the reinstated CROB Rules would capture contracts currently in scope of the existing PRA CROB Part, as well as any contracts entered into or materially amended between Monday 28 December 2020 and IP completion Day, or thereafter.

#### Amended definition of 'excluded liability'

2.8 The SI will make amendments to the definition of 'excluded liability' in section 48B(8) of the Banking Act. 'Excluded liability' is a defined term in CROB 1.2. The proposed new CROB Rules would reflect the new Banking Act definition of 'excluded liabilities' from IP completion day, as the SI will not sunset the revised definition. The PRA does not consider that this will require any amendments to the substance of the CROB Rules.

### **Contractual Stays in financial contracts governed by third-country law**

#### Pre-resolution moratorium

2.9 The PRA proposes to amend Rule 1.4 in the Stay in Resolution (Stays) Part of the PRA Rulebook to reflect the temporary amendment to the definition of 'crisis management measure' in section 48Z Banking Act 2009 as set out in the SI. This change will take effect from Monday 28 December 2020 for four days. The PRA proposes to make a subsequent set of new Stays Rules that will take effect immediately after IP completion day, when the SI changes that definition are sunsetted. The new Stays Rules would allow for the Rules to revert back to the pre-BRRD II SI version.<sup>18</sup>

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<sup>18</sup> Subject to changes to the Rules post IP completion day, as reflected in draft instruments in the Appendix, which are a result of the consultation in PRA CP13/20. The proposals in CP13/20 have not been finalised at the time of publication of this CP.

2.10 The amendment to the Banking Act definition of ‘crisis management measure’ is a result of HM Treasury’s approach to the transposition of BRRD II’s new pre-resolution moratorium power as set out above. The existing PRA Stays regime does not provide for a pre-resolution moratorium power, but under the PRA Stays Rules, firms are required to recognise all suspension powers captured under section 48Z of the Banking Act 2009 as a ‘crisis management measure’.<sup>19</sup>

#### Amendments to the in-resolution moratorium

2.11 An additional consequence of the BRRD II SI is the expansion of the existing ‘in-resolution’ moratorium power to capture eligible deposits, which is established through BRRD II amendments to Article 69. This will be captured by the proposed amendments related to the definition of ‘crisis management measure’, as referenced in the Stays rule, which will be in effect for four days. The amendments to the in-resolution moratorium power introduced by the SI will then be sunsetted on IP completion day.

#### Stays in Resolution

2.12 PRA Stays Rules require recognition of the Bank’s stay power in respect of termination rights in financial contracts governed by third-country law.

2.13 BRRD II Article 71a requires firms to include, in any financial contract which they enter into and which is governed by third-country law (that is, the law of a jurisdiction outside the EEA), terms by which the parties recognise that the financial contract may be subject to the Bank as resolution authority, exercising its powers to suspend or restrict obligations.

2.14 HM Treasury are intending to transpose the new Article 71a by including the new pre-resolution moratorium power within the definition of ‘crisis management measure’ as set out above. The PRA does not consider amendments to the existing PRA approach to Stays to be required as a result of the transposition of Article 71a.

### 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. Before making any rules, the Financial Services and Markets Act 2000 (FSMA)<sup>20</sup> requires the PRA to publish a draft of the proposed rules accompanied by:

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<sup>19</sup> Section 48Z ensures that a crisis prevention measure or crisis management measure (such as the application of the bail-in tool) will not trigger any default event provision in any contract to which an institution under resolution, its subsidiaries, or a member of the same group is a party, provided the firm continues to meet its substantive obligations in the contract (such as payment and delivery obligations).

<sup>20</sup> Section 138J of FSMA.

- 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,<sup>21</sup> insurance objective<sup>22</sup> (if applicable), and secondary competition objective;<sup>23</sup>
- 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;<sup>24</sup> and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.<sup>25</sup>

3.2 The Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury.<sup>26</sup>

3.3 The PRA is also required by the Equality Act 2010<sup>27</sup> 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

3.4 This section sets out the analysis of the costs and benefits of making the proposed Rule changes outlined in this CP.

3.5 The PRA considers that substantive Rule changes would be costly to firms, if HM Treasury decided to transpose the entirety of BRRD II requirements beyond the IP completion day. The PRA takes the view that these proposals will not require firms in scope of the Contractual Recognition of Bail-in and Stays in Resolution Parts of the PRA Rulebook to incur any additional costs. The proposals seek to maintain the existing PRA regime in the long term and are designed so firms will not be required to adhere to new notification processes for CROB or repaper their existing contracts under Stays.

3.6 The PRA considers that the benefits of temporarily suspending part of the PRA CROB Rules, effectively reinstating the existing PRA CROB Regime and reintroducing existing the Stays Rules will outweigh the costs of any alternative approach to implementing HM Treasury's SI. This approach will ensure that the requirements which apply prior to Monday 28 December 2020 under the existing rules, will be maintained, with only minor amendments to the PRA CROB Rules.

### Compatibility with the PRA's objectives

3.7 The PRA considers that the proposals in this CP advance its general objective to promote the safety and soundness of the firms it regulates. The proposals in this CP ensure the continuity of the

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21 Section 2B of FSMA.

22 Section 2C of FSMA.

23 Section 2H(1) of FSMA.

24 Sections 2H(2) and 3B of FSMA.

25 Section 138K of FSMA.

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

27 Section 149.

existing PRA regime in the long term and aim to avoid imposing an undue administrative burden on firms by requiring them to implement new requirements.

3.8 In relation to the PRA CROB regime, HMT's SI seeks to put in place a new impracticability notification process for four days, which the PRA does not expect will cause any disruption to firms or the market. The proposed temporary change to PRA Stays Rules will not require any action from firms, which have previously implemented Contractual Stay requirements as set out in the existing PRA Rules.

3.9 The PRA has assessed whether the proposals set out in this CP facilitate effective competition and has not identified any risks to the PRA's secondary competition objective.

3.10 Overall, the proposals in this CP would keep the PRA regime intact by maintaining the substance of the existing PRA rules after IP completion day. As a result, the PRA's proposals do not require firms to take any additional steps to implement changes. However, in the event that an impact does arise, all firms would be impacted in the same manner. A small competitive advantage may therefore apply only to domestic firms with no international presence and no contracts governed by third-country law.

3.11 The PRA have also considered whether the sunset process could give rise to a regulatory arbitrage opportunity or a risk that firms use the four day window from Monday 28 December 2020 to IP completion day to gain some competitive advantage. The PRA have not identified any such risks to competition.

### **Regulatory principles**

3.12 In developing the proposals in this CP, the PRA has had regard to the regulatory principles. Of these, three principles are of particular relevance:

3.13 The principle that the PRA should use its resources in the most efficient and economical way. The amount of time and resources the PRA would need to supervise firms or to assess compliance against the proposals in this CP is reduced by the fact that the proposals would result in the reinstatement of the existing PRA CROB Rules, subject to a minor amendment, and the reintroduction of the Stays regime from IP completion day. Firms and PRA supervisors are already familiar with the existing PRA CROB and Stays regimes, as they have been in place since 2015.

3.14 The principle that a burden which is imposed on a person should be proportionate to the benefits expected to result from that burden. The PRA does not consider that firms would incur any costs or additional burden resulting from the changes to PRA CROB and Stays Rules. In relation to the proposed approach for CROB Rules, the PRA considers it unlikely that BRRD firms will enter into liability contracts which may be subject to the SI impracticability notification process from Monday 28 December to IP completion day. In the event that a firm does enter into such a financial contract, the new CROB Rules would apply to these contracts and firms would be expected to notify the PRA after IP completion day.

3.15 The principle that the PRA should exercise its functions transparently. The proposal to suspend part of the existing PRA CROB Part and hold the PRA SS 7/16 in abeyance, between Monday 28 December and IP Completion day, provides clarity to firms on the PRA's expectations, including

which requirements apply during the four days that the relevant CROB notification provisions in HMT's SI are in place.

### **Impact on mutuals**

3.11 The PRA considers that the impact of the proposed rule changes on mutuals would be no different compared to other firms. Any potential impact would be smaller on mutuals compared to non-mutuals, given their reliance on domestic deposit funding and lack of third-country governed contracts in the scope of the CROB and Stays Parts of the PRA Rulebook.

### **HM Treasury recommendation letter**

3.16 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.<sup>28</sup> The PRA considers the aspects of the Government's economic policy most relevant to the proposals in this CP are:

(i) Competition;

(ii) Transparency.

3.17 Recommendations (i) and (ii) have been considered in the 'compatibility with the PRA's objectives' and 'regulatory principles' sections above.

### **Equality and diversity**

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

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28 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>.

## Appendices

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<b>1</b>	<b>Appendix 1 : Draft amendments to Contractual Recognition of Bail-in Part of the PRA Rulebook</b>	<b>12</b>
<b>2</b>	<b>Appendix 2: Draft amendments to Stay in Resolution Part of the PRA Rulebook</b>	<b>15</b>

## 1 Appendix 1 : Draft amendments to Contractual Recognition of Bail-in Part of the PRA Rulebook

### PRA RULEBOOK: CRR FIRMS AND NON-AUTHORISED PERSONS: CONTRACTUAL RECOGNITION OF BAIL-IN AMENDMENT INSTRUMENT 2020

#### 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 137G (The PRA’s general rules);
  - (2) section 137T (General supplementary powers); and
  - (3) section 192JB (Rules requiring parent undertakings to facilitate resolution).
- B. The PRA exercises the following powers in the Act to make those terms in the Glossary that are used in this instrument in rules applicable to qualifying parent undertakings:
- (1) section 137T (General supplementary powers); and
  - (2) section 192JB (Rules requiring parent undertakings to facilitate resolution).
- C. 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

- D. 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 and Non-Authorised Persons: Contractual Recognition of Bail-In Amendment Instrument 2020

- E. The PRA makes the rules in the Annexes to this instrument.

Part	Annex
Contractual Recognition of Bail In	A
Contractual Recognition of Bail In	B

#### Commencement

- F. In this instrument, Annex A comes into force on 28 December 2020.
- G. In this instrument, Annex B comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.

#### Citation

- H. This instrument may be cited as the PRA Rulebook: CRR Firms and Non-Authorised Persons: Contractual Recognition of Bail-In Amendment Instrument 2020.

**By order of the Prudential Regulation Committee**  
[DATE]

## Annex A

### Amendments to the Contractual Recognition of Bail-In Part

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

#### 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to a *BRRD undertaking* which is:

- (1) a *CRR firm*;
- (2) a *financial holding company*;
- (3) a *mixed financial holding company*; or
- (4) a *mixed activity holding company* which has at least one *subsidiary* which is an *institution* which is not the *subsidiary* of a *financial holding company* which is also a *subsidiary* of the *mixed activity holding company*.

1.1A In this Part, 2.1 to 2.3 shall not apply from 28 December 2020 until *IP completion day*.

1.2 In this Part, the following definitions shall apply:

...

*IP completion day*

has the meaning given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.

...



## Annex B

### Amendments to the Contractual Recognition of Bail-In Part

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

#### 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to a *BRRD undertaking* which is:

- (1) a *CRR firm*;
- (2) a *financial holding company*;
- (3) a *mixed financial holding company*; or
- (4) a *mixed activity holding company* which has at least one *subsidiary* which is an *institution* which is not the *subsidiary* of a *financial holding company* which is also a *subsidiary* of the *mixed activity holding company*.

1.1A ~~In this Part, 2.1 to 2.3 shall not apply from 28 December 2020 until IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020. [Deleted.]~~

1.2 In this Part, the following definitions shall apply:

...

~~*excluded liability*~~

~~means any *liability* listed in section 48B(8) of the Banking Act 2009 except, in respect of *liabilities* created after 31 July 2016, a *liability* shall not be regarded as secured for the purposes of section 48(B)(8)(b) of the Banking Act 2009 if, at the time at which it is created, it is not a *fully secured liability*.~~

*excluded liability*

means any *liability* listed in section 48B(8) of the Banking Act 2009 except, in respect of *liabilities* created after 31 July 2016, a *liability* shall not be regarded as secured for the purposes of section 48(B)(8)(b) of the Banking Act 2009 if, at the time at which it is created, it is not a *fully secured liability*.

...

~~*IP completion day*~~

~~has the meaning given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.~~

...

## 2 Appendix 2: Draft amendments to Stays in Resolution Part of the PRA Rulebook

### PRA RULEBOOK: CRR FIRMS AND NON-AUTHORISED PERSONS: STAY IN RESOLUTION AMENDMENT INSTRUMENT 2020

#### Powers exercised

- I. 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”):
- (3) section 137G (The PRA’s general rules);
  - (4) section 137T (General supplementary powers); and
  - (5) section 192JB (Rules requiring parent undertakings to facilitate resolution).
- J. The PRA exercises the following powers in the Act to make those terms in the Glossary that are used in this instrument in rules applicable to qualifying parent undertakings:
- (6) section 137T (General supplementary powers); and
  - (7) section 192JB (Rules requiring parent undertakings to facilitate resolution).
- K. 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

- L. 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: CRR Firms and Non-Authorised Persons: Stay in Resolution Amendment Instrument 2020

- M. The PRA makes the rules in the Annexes to this instrument.

Part	Annex
Stay In Resolution	Annex A
Stay In Resolution	Annex B

#### Commencement

- N. The Rules in Annex A come into force on 28 December 2020.
- O. The Rules in Annex B come into force immediately after IP Completion Day as defined in the European (Withdrawal Agreement) Act 2020.

#### Citation

- P. This instrument may be cited as the PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay in Resolution Amendment Instrument 2020.

#### By order of the Prudential Regulation Committee

[DATE]

## Annex A

### Amendments to the Stay In Resolution Part

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

#### 1 APPLICATION AND DEFINITIONS

---

...

1.4 In this Part, the following definitions shall apply:

~~*crisis management measure*~~

~~has the meaning given in section 48Z(1) of the Banking Act 2009.~~

*crisis management measure*

has the meaning given in section 48Z(1) of the Banking Act 2009.

...

## Annex B

### Amendments to the Stay In Resolution Part

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

#### APPLICATIONS AND DEFINITIONS

---

...

1.4 In this Part, the following definitions shall apply:

~~*crisis management measure*~~

~~has the meaning given in section 48Z(1) of the Banking Act 2009.~~

*crisis management measure*

has the meaning given in section 48Z(1) of the Banking Act 2009.

...