



## Statement of Policy

# Supervisory measures and penalties in relation to financial holding companies

June 2021

Draft for consultation



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Statement of Policy

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## 1 Introduction

1.1 This Statement of Policy (SoP) sets out the Prudential Regulation Authority's (PRA) approach to exercising supervisory measures over and imposing penalties upon UK parent financial holding companies and UK parent mixed financial holding companies (holding companies) pursuant to Part 12B of the Financial Services and Markets Act 2000 (FSMA), covering the taking of measures, including directions;<sup>1</sup> the imposition of penalties;<sup>2</sup> and the amount of penalties.<sup>3</sup>

1.2 The Capital Requirements Directive V (CRD V) requirement for approval and supervision of holding companies has been transposed in the UK through The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (the SI).<sup>4</sup> The SI inserted a new Part 12B into FSMA, and those legislative provisions have applied from Tuesday 29 December 2020.

1.3 The SI requires that holding companies make an application to the PRA for approval, or an exemption from approval, before Monday 28 June 2021. Once approved, relevant holding companies will become responsible for ensuring their group meets consolidated prudential requirements and that they continue to meet the approval criteria.

1.4 Part 12B FSMA grants the PRA the power to take certain supervisory measures and impose penalties in certain circumstances on holding companies. In addition, it imposes a requirement on the PRA to prepare and issue a Statement of Policy with respect to taking supervisory measures, the imposition of penalties, and the amount of those penalties over holding companies.<sup>5</sup>

## 2 Imposition of supervisory measures under section 192T of FSMA

2.1 The PRA has a variety of formal powers available under FSMA which can be used in the course of supervision, if deemed necessary to reduce risks. These include powers by which the PRA can intervene directly in a firm's business by varying a firm's permission or imposing a requirement to prevent or curtail a firm from undertaking certain regulated activities, which may require a change to a firm's business model or future strategy.

2.2 In addition to powers over PRA-authorized firms, since 2012 the PRA has had a power of direction over certain unregulated parent holding companies (known as 'qualified parent undertakings').<sup>6</sup> The power of direction applies to both intermediate parent holding companies and ultimate parent holding companies, and allows the PRA to direct that the holding company take a specified action or refrain from taking a specified action.<sup>7</sup>

2.3 The power of direction over qualified parent undertakings has now been supplemented by the inclusion of a non-exhaustive list of measures in Part 12B FSMA that have been directly transposed from CRD V. The relevant provisions mandate that, where the PRA determines that the holding company approval conditions are not met, or have ceased to be met, appropriate measures must be taken by the PRA to:

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<sup>1</sup> s192T FSMA.

<sup>2</sup> s192Y FSMA.

<sup>3</sup> *Ibid.*

<sup>4</sup> Article 21a of CRD V.

<sup>5</sup> s192Z2 FSMA.

<sup>6</sup> s192C FSMA.

<sup>7</sup> For more information, please see Statement of Policy, April 2013: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-power-of-direction-over-qualifying-parent-undertakings>.

- (i) ensure the continuity and integrity of the consolidated or sub-consolidated supervision of the group; and
- (ii) to ensure that the group complies with consolidated prudential requirements under CRD, as transposed; PRA rules imposing consolidated or sub-consolidated requirements; and CRR, as onshored.<sup>8</sup>

2.4 The non-exhaustive list of supervisory measures that have been set out in Part 12B FSMA, as available to the PRA, includes the following:<sup>9</sup>

- (a) suspending the exercise by the company of voting rights attached to the shares of specified subsidiary institutions held by the company;
- (b) requiring the company to transfer its holdings in its subsidiary institutions to its shareholders;
- (c) designating another financial holding company, mixed financial holding company, or institution within the group as being responsible, for a period specified in the direction, for ensuring that the group complies with the requirements laid down in Directive 2013/36/EU of UK law, section 192V rules, and in the Capital Requirements Regulation on a consolidated or sub-consolidated basis;
- (d) restricting or prohibiting distributions or interest payments to shareholders;
- (e) requiring the company to divest from, or reduce its holdings in, institutions or financial institutions; and
- (f) requiring the company to submit a plan setting out how it proposes to correct any deficiencies in its compliance with the conditions in section 192R.

### Approach

2.5 The PRA's regulatory approach is based on forward-looking judgments, with supervisory measures and enforcement action directed at reducing or preventing current and potential future risks to the advancement of its statutory objectives, particularly risks to the stability of the financial system.<sup>10</sup>

2.6 In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>11</sup> The PRA is also required to have regard to certain regulatory principles.<sup>12</sup>

2.7 When considering the exercise of the supervisory measures listed above, the PRA will always aim to intervene and ensure that the relevant holding company takes the necessary action at the earliest possible stage to address the breach in question. However, the PRA will not hesitate to use formal powers where it considers them to be an appropriate means of achieving desired supervisory

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<sup>8</sup> s192T(1) FSMA.

<sup>9</sup> s192T(2) FSMA.

<sup>10</sup> See the SoP 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure', October 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.

<sup>11</sup> As set out in sections 2B and 2C FSMA.

<sup>12</sup> As set out in sections 2H and 3B FSMA.

outcomes. This means that, in certain cases, the PRA will choose to deploy formal powers at an early stage and not merely as a last resort.

2.8 As with the PRA's approach to resolving supervisory issues with PRA-authorized deposit takers, the PRA will always look to holding companies to co-operate with it in resolving supervisory issues.<sup>13</sup>

2.9 In all instances, the PRA's approach to the exercise of supervisory measures over holding companies will be guided by its statutory objectives. Furthermore, when considering the exercise of the relevant supervisory measures, the PRA attaches particular weight to its strategic goals.<sup>14</sup>

2.10 In keeping with the PRA's established approach to banking supervision, in all instances when the PRA considers whether and how to use formal powers, the particular facts and circumstances will be assessed on a case-by-case basis. In all cases, the PRA is likely to consider a number of factors in connection with the possible deployment of such powers, including, but not limited to:

- the confidence supervisors have that firms will respond appropriately to PRA requests without the formal exercise of statutory powers;
- the PRA's view of the firm's proximity to failure, as reflected in its position within the Proactive Intervention Framework;
- the likely impact, including systemic implications, of the firm's failure; and
- the need to observe applicable principles of public law, and in particular to ensure the use of powers is, in the circumstances, proportionate.

2.11 In addition, the PRA recognises the desirability of upholding and encouraging high standards of behaviour, with persons who are subject to the PRA's regulatory requirements and standards meeting and continuing to meet those requirements and standards. The PRA also recognises the desirability demonstrating the benefits of such behaviour.

### **3 Imposition of financial penalties under section 192Y of FSMA**

3.1 This chapter sets out the PRA's approach to the imposition and amount of financial penalties for breaches by a financial holding company or a mixed financial holding company.

3.2 The PRA is required by section 192Z2 of FSMA to prepare and issue an SoP with respect to:

- (i) the imposition of penalties under section 192Y of FSMA; and
- (ii) the amount of penalties under that section.

3.3 Section 192Y of FSMA empowers the PRA to impose a financial penalty (or issue a censure) on a company who is or has been a financial holding company or mixed financial holding company if the PRA is satisfied that that the company has contravened a requirement imposed by:

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<sup>13</sup> Paragraph 121, 'The PRA's approach to banking supervision'. Available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>.

<sup>14</sup> Each year the PRA is required by law to review, and if necessary revise, its strategy, and to publish a revised strategy in relation to its statutory objectives. This strategy is published annually in the PRA Business Plan. The latest version is available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-annual-report-and-business-plan>.

- (i) Part 12B of FSMA;
- (ii) section 192T of FSMA;
- (iii) section 192V rules; or
- (iv) Parts 3, 4, 6, 7, or 7A of the Capital Requirements Regulation.

3.4 The PRA may impose a penalty of such amount as it considers appropriate on:

- (i) the company; or
- (ii) any person who was knowingly concerned in the contravention.

3.5 Section 192Z2 of FSMA stipulates that the PRA's policy in determining what the amount of a financial penalty must include having regard to:

- (i) the seriousness of the contravention;
- (ii) the extent to which the contravention was deliberate or reckless; and
- (iii) whether the person on whom the penalty is to be imposed is an individual.

3.6 Section 192Y(3) of FSMA empowers the PRA to publish a statement censuring a person (a 'public censure') instead of imposing a penalty on that person.

### **Approach**

3.7 The SoP 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure' (the Enforcement SoP) sets out the PRA's policy on the imposition and amount of financial penalties under FSMA.<sup>15</sup>

3.8 The Enforcement SoP already encapsulates the factors referred to in paragraph 3.5 of this SoP, and so the PRA will apply its existing penalties policy in relation to the imposition of financial penalties under section 192Y of FSMA.

3.9 The PRA will also apply its existing policy on public censures, as set out in the Enforcement SoP.

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<sup>15</sup> Available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.