

# Bank of England

## Prudential Regulation Authority

# Appendices to Remuneration: Ratio between fixed and variable components of total remuneration ('bonus cap')

Consultation Paper | CP15/22

December 2022

Draft for consultation



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# Contents

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<b>Contents</b>	<b>1</b>
<b>1: Draft PRA Rulebook Instrument</b>	<b>2</b>
<b>2: Draft FCA Handbook Instrument</b>	<b>7</b>
<b>3: Draft amendments Supervisory Statement 2/17: Remuneration</b>	<b>13</b>
<b>4: Annex XXXIII Table UK UKREMA of the Disclosure (CRR) - Pillar 3 Templates and Instructions Part of the PRA Rulebook</b>	<b>15</b>
<b>5: PRA statutory obligations</b>	<b>16</b>

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Draft for consultation

# 1: Draft PRA Rulebook Instrument

## PRA RULEBOOK: CRR FIRMS: REMUNERATION AND DISCLOSURE INSTRUMENT 2023

### 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 137H (General rules about remuneration);
  - (3) section 137T (General supplementary powers);
  - (4) section 192V (Rules imposing consolidated requirements); and
  - (5) section 192XA (Rules applying to holding companies).
- 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.
- D. In accordance with sections 144C(3) and 144E of the Act, the PRA consulted the Treasury about the likely effect of the rules on relevant equivalence decisions within the meaning of section 144C (4) of the Act.

### PRA Rulebook: CRR Firms: Remuneration and Disclosure Instrument 2023

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

Part	Annex
Remuneration	A
Disclosure (CRR)	B

### Commencement

- F. This instrument comes into force on [date].

### Citation

- G. This instrument may be cited as the PRA Rulebook: CRR Firms: Remuneration and Disclosure Instrument 2023.

### By order of the Prudential Regulation Committee

[DATE]

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Annex A

Amendments to the Remuneration Part

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

...

## 2 APPLICATION DATES AND TRANSITIONAL PROVISIONS

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...

2.2 A *firm* must apply 15.9(3) and 15.10 in relation to ~~remuneration~~ awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before, on or after 31 December 2013. [Deleted]

[Note: Art. 162(3) of the CRD]

[Note: CRD]

...

2.9 A firm must apply this Part in accordance with 2.1 to 2.4 as it applied under those rules as of [the day before the date of commencement] to ~~remuneration~~ awarded in respect of a performance year starting before [date of commencement].

## 3 MATERIAL RISK TAKERS

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...

3.1B For the purposes of 3.1(1)(c)(i):

(1) ...

(2) a *firm* must value variable *remuneration* that has been awarded but has not yet been paid as at the date of the award without taking into account ~~the application of the discount rate referred to in 15.13 or~~ reductions in pay-outs through clawback, malus or otherwise.

...

## 15 REMUNERATION STRUCTURES

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...

15.9 A *firm* must set an appropriate ratio between the fixed and variable components of total *remuneration* and ensure that:

(1) fixed and variable components of total *remuneration* are appropriately balanced; and

(2) the level of the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component; ~~and~~.

~~(3) subject to 15.10, the level of the variable component of total remuneration must not exceed 100% of the fixed component of total remuneration for each material risk taker. [deleted]~~

~~[Note: Arts. 94(1)(f) and 94(1)(g)(i) of the CRD]~~

~~[Note: CRD]~~

~~15.10 A firm may set a higher maximum level of the ratio between the fixed and variable components of remuneration provided:~~

~~(1) the overall level of the variable component does not exceed 200% of the fixed component of the total remuneration for each material risk taker; and~~

~~(2) is approved by the shareholders or owners or members of the firm in accordance with 15.11. [Deleted]~~

~~15.11 A firm must ensure that any approval by the shareholders or owners or members of the firm for the purposes of 15.10 is carried out in accordance with the following procedure:~~

~~(1) the firm must give reasonable notice to all shareholders or owners or members of the firm that the firm intends to seek approval of the proposed higher ratio;~~

~~(2) the firm must make a detailed recommendation to all shareholders or owners or members of the firm giving the reasons for, and the scope of, the approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base;~~

~~(3) the firm must, without delay, inform the PRA of the recommendation to its shareholders or owners or members, including the proposed higher ratio and the reasons therefor and must demonstrate to the PRA that the proposed higher ratio does not conflict with the firm's obligations under the CRR and provisions implementing the CRD, having regard in particular to the firm's own funds obligations;~~

~~(4) the firm must ensure that employees who have an interest in the proposed higher ratio are not allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the firm in respect of the approval sought; and~~

~~(5) the higher ratio is approved by:~~

~~(a) at least 66% of the shares or equivalent ownership rights represented, if at least 50% of the shares or equivalent ownership rights in the firm are represented; or~~

~~(b) at least 75% of the shares or equivalent ownership rights represented if less than 50% of the shares or equivalent ownership rights in the firm are represented. [Deleted]~~

~~[Note: Art. 94(1)(g)(ii) of the CRD]~~

~~[Note: CRD and CRR]~~

~~15.12 A firm must notify without delay the PRA of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio. [Deleted]~~

~~[Note: Art. 94(1)(g)(ii) of the CRD]~~

~~[Note: CRD]~~

~~15.13 A firm may apply a discount rate to a maximum of 25% of an employee's total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years. [Deleted]~~

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[Note: Art. 94(1)(g)(iii) of the *CRD* and EBA Guidelines on the applicable notional discount rate for variable remuneration]

[Note: *CRD*]

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Annex B

Amendments to the Disclosure (CRR) Part

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

...

**4 DISCLOSURE (PART EIGHT CRR)**

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...

**TITLE II TECHNICAL CRITERIA ON TRANSPARENCY AND DISCLOSURE**

...

**ARTICLE 450 DISCLOSURE OF REMUNERATION POLICY**

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1. ...

- (d) the ratios between fixed and variable *remuneration* set in accordance with rules 15.9 to 15.13 of the Remuneration Part of the *PRA* Rulebook;

...

**6 PILLAR 3 TEMPLATE AND INSTRUCTIONS**

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...

6.90 Annex XXXIII Table UK REMA can be found ~~here~~here.

...

Draft for consultation

## 2: Draft FCA Handbook Instrument

### SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS (REMUNERATION CODES) (No 9) INSTRUMENT 202X

#### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137A (The FCA’s general rules);
  - (2) section 137H (General rules about remuneration);
  - (3) section 137T (General supplementary powers); and
  - (4) section 138D (Action for damages).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

#### Commencement

- C. This instrument comes into force on [*date*].

#### Amendments to the Handbook

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

#### Notes

- E. In the Annex to this instrument, the “notes” (indicated by “**Note:**” and “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

#### Citation

- F. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Codes) (No 9) Instrument 202X.

By order of the Board  
[*date*]



**Annex**

**Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)**

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

**19D Dual-regulated firms Remuneration Code**

**19D.1 Application and purpose**

...

When?

19D.1.3 R (1) Except as set out in ~~(2) and (3)~~, a *firm* must apply the *remuneration* requirements in SYSC 19D.3 (Remuneration principles) in relation to:

...

(2) ~~A *firm* must apply the *remuneration* requirements in SYSC 19D.3.48R(3) (1:1 ratio of variable to fixed components) and SYSC 19D.3.49R (1:2 ratio of fixed to variable components) in relation to *remuneration* awarded for services provided or performance from the year 2014 onwards, whether due on the basis of contracts concluded before, on or after 31 December 2013.~~

~~[Note: article 162(3) of CRD] [deleted]~~

...

...

**19D.3 Remuneration principles**

...

Remuneration Principle 12(d): Remuneration structures - ratios between fixed and variable components of total remuneration

19D.3.48 R A *firm* must set an appropriate ratio between the fixed and variable components of total *remuneration* and ensure that:

(1) fixed and variable components of total *remuneration* are appropriately balanced; and

- (2) the level of the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component; and
- (3) subject to SYSC 19D.3.49R, the level of the variable component of total *remuneration* must not exceed 100% of the fixed component of total *remuneration* for each *dual-regulated firms Remuneration Code staff*. ~~[deleted]~~

[Note: article 94(1)(f) and 94(1)(g)(i) of the CRD]

19D.3.49 R A *firm* may set a higher maximum level of the ratio between the fixed and variable components of total *remuneration* provided:

- (1) the overall level of the variable component does not exceed 200% of the fixed component of the total *remuneration* for each *dual-regulated firms Remuneration Code staff*; and
- (2) is approved by the shareholders or owners or members of the *firm* in accordance with SYSC 19D.3.50R.

[Note: article 94(1)(g)(ii) of CRD] ~~[deleted]~~

19D.3.50 R A *firm* must ensure that any approval by its shareholders or owners or members, for the purposes of SYSC 19D.3.49R, is carried out in accordance with the following procedure:

- (1) the *firm* must give reasonable notice to all its shareholders or owners or members of its intention to seek approval of the proposed higher ratio;
- (2) the *firm* must make a detailed recommendation to all its shareholders or owners or members that includes:
  - (a) the reasons for, and the scope of, the approval sought;
  - (b) the number of staff affected and their functions; and
  - (c) the expected impact on the requirement to maintain a sound capital base;
- (3) the *firm* must:

- (a) ~~without delay, inform the *FCA* of the recommendation to its shareholders or owners or members, including the proposed higher ratio and the reasons therefor; and~~
- (b) ~~demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the *UK* legislation that implemented the *CRD* and the *UK CRR*, having particular regard to the *firm's* own funds obligations;~~
- (4) ~~the *firm* must ensure that *employees* who have an interest in the proposed higher ratio are not allowed to exercise, directly or indirectly, any voting rights they may have as shareholders or owners or members of the *firm* in respect of the approval sought; and~~
- (5) ~~the higher ratio is approved by a majority of:~~
  - (a) ~~at least 66% of the shares or equivalent ownership rights represented, if at least 50% of the shares or equivalent ownership rights in the *firm* are represented; or~~
  - (b) ~~at least 75% of the shares or equivalent ownership rights represented, if less than 50% of the shares or equivalent ownership rights in the *firm* are represented.~~

~~[Note: article 94(1)(g)(ii) of the *CRD*] [deleted]~~

19D.3.51 R ~~A *firm* must notify the *FCA* without delay of the decisions taken by its shareholders or members or owners including any approved higher maximum ratio.~~

~~[Note: article 94(1)(g)(ii) of the *CRD*] [deleted]~~

19D.3.52 R ~~A *firm* may apply a discount rate to a maximum of 25% of an *employee's* total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.~~

~~[Note: article 94(1)(g)(iii) of the *CRD*]~~

~~[Note: on 27 March 2014, the *EBA* published “Guidelines on the applicable notional discount rate for variable remuneration”, 27 March 2014 (EBA/GL/2014/01).] [deleted]~~

...

After SYSC TP 11 (MIFIDPRU Remuneration Code transitional provision), insert the following new transitional provision. The text is all new and is not underlined.

**TP 12 Dual-regulated firms Remuneration Code transitional provision**

	Application	
12.1	R	<i>SYSC TP 12 applies to a firm subject to the dual-regulated firms Remuneration Code under SYSC 19D.1.1R to SYSC 19D.1.2R.</i>
	Duration of transitional	
12.2	R	<i>SYSC TP 12 applies to remuneration awarded in relation to a performance year starting before [Editor's note: insert the application date specified in paragraph C].</i>
12.3	G	<i>While the revocation of the rules on the limits to the variable component of total remuneration comes into force on [Editor's note: insert the application date specified in paragraph C], it only applies to remuneration awarded in relation to a performance year starting on or after [Editor's note: insert the application date specified in paragraph C]. This transitional provision addresses the position for remuneration awarded in relation to any performance year prior to the one to which the revocation of those rules first applies.</i>
	Transitional	
12.4	R	<i>A firm must apply the dual-regulated firms Remuneration Code in the form in which it stood on [Editor's note: insert date one day before the application date specified in paragraph C] to remuneration awarded in relation to a performance year starting before [Editor's note: insert the application date specified in paragraph C].</i>
12.5	G	(1) <i>The effect of the transitional provision in SYSC TP 12.4 is to preserve the application of the dual-regulated firms Remuneration Code for remuneration awarded in relation to any performance year prior to the one to which the revocation of the rules on the limits to the variable component of total remuneration first applies.</i>
		(2) <i>This means, for example, that remuneration paid to a dual-regulated firms Remuneration Code staff member of a dual-regulated firm in relation to a performance year starting before [Editor's note: insert the application date specified in paragraph C] would continue to be subject to the remuneration rules in SYSC 19D (Dual-regulated firms Remuneration</i>

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			Code) in the form in which it stood on [ <i>Editor's note: insert date one day before the application date specified in paragraph C</i> ].
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Draft for consultation

## 3: Draft amendments Supervisory Statement

### 2/17: Remuneration

Table D: Disclosure requirements<sup>1</sup> by proportionality level<sup>2</sup>

	Proportionality level		
	One	Two	Three
Art. 450(1)(a) CRR ('information concerning the decision-making process used for determining the remuneration policy, including if applicable, information about the composition and the mandate of a remuneration committee, the external consultant whose services have been used for the determination of the remuneration policy and the role of the relevant stakeholders').	✓	✓	✓
Art. 450(1)(b) CRR ('information on link between pay and performance').	✓	✓	✓
Art. 450(1)(c) CRR ('the most important design characteristics of the remuneration system, including, information on the criteria used for performance measurement and risk adjustment, deferral policy and vesting criteria').	✓	✓	X
Art. 450(1)(d) CRR ('the ratios between fixed and variable remuneration set in accordance with Article 94(1)(g) of the CRD').	✓	✓	X
Art. 450(1)(e) CRR ('information on the performance criteria on which the entitlement to shares, options or variable components of remuneration is based').	✓	X	X
Art. 450(1)(f) CRR ('the main parameters and rationale for any variable component scheme and any other non-cash benefits').	✓	X	X
Art. 450(1)(g) CRR ('aggregate quantitative information on remuneration, broken down by business area').	✓	✓	✓
Art. 450(1)(h) CRR ('aggregate quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the firm...').	✓	✓	✓
...indicating the following:			
Art. 450 (1)(h)(i) CRR ('the amounts of remuneration for the financial year, split into fixed and variable remuneration, and the number of beneficiaries').	✓	✓	X
Art. 450 (1)(h)(ii) CRR ('the amounts and forms of variable remuneration, split into cash, shares and share-linked instruments and other types').	✓	X	X
Art. 450 (1)(h)(iii) CRR ('the amounts of outstanding deferred remuneration, split into vested and unvested portions').	✓	X	X
Art. 450 (1)(h)(iv) CRR ('the amounts of deferred remuneration awarded during the financial year, paid out and reduced through performance adjustments').	✓	X	X
Art. 450 (1)(h)(v) CRR ('new sign-on and severance payments made during the financial year, and the number of beneficiaries of such payments').	✓	X	X
Art. 450 (1)(h)(vi) CRR ('the amounts of severance payments awarded during the financial year, number of beneficiaries, and highest such award to a single person').	✓	X	X

<sup>1</sup> As written in Article 450 of Chapter 4 of the Disclosure (CRR) Part.

<sup>2</sup> All references to Article 450 CRR are now Article 450 of Chapter 4 of the Disclosure (CRR) Part.

Art. 450 (1)(i) CRR ('the number of individuals being remunerated €1 million or more per financial year, for remuneration') between €1 million and €5 million broken down into pay bands of €500 000 and for remuneration of €5 million and above broken down into pay bands of €1 million').	✓	X	X
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...

### 3 Material risk takers (MRTS)

#### ~~Determining the fixed component of total remuneration for the fixed to variable ratio~~

3.16 [deleted] The PRA expects firms to calculate the fixed component of remuneration with reference to the actual amount of fixed remuneration the employee is awarded in a given performance period. In the case of MRTs who join a firm part way through the performance year, the fixed component may be determined by an annualised rate which treats the amount of fixed remuneration awarded at the end of the year as having been awarded across the entire performance period. This approach may also be applied to MRTs joining a firm part way through the performance year who receive a guaranteed variable remuneration award, provided the guaranteed variable remuneration award is included within the variable remuneration component of the fixed to variable ratio for the performance period in which it is awarded.

...

### 5 Other elements of remuneration

...

#### Remuneration structures

...

#### Specific award structures: guaranteed variable remuneration, buy-outs and retention awards

##### *Guaranteed variable remuneration*

5.32 [deleted] Under paragraph 140-141 of the EBA Guidelines, firms are permitted to exclude guaranteed variable remuneration such as sign on bonuses from the calculation of the ratio between fixed and variable remuneration, where this is awarded in the context of hiring new staff. These provisions also permit firms to disapply malus, clawback, and deferral rules from such awards.

5.33 [deleted] The PRA, however, considers that all guaranteed variable remuneration (including 'lost opportunity' awards) continue to be subject to the general rules for variable remuneration awarded by the firm including deferral, malus and clawback. These awards should also be included in the variable component of the fixed to variable ratio for the relevant performance period in which the award is made. The guidance in paragraph 3.16 can be used to calculate the fixed to variable ratio when a 'lost opportunity' award is given to an MRT joining part way through the year.

...

#### Retention awards

5.39 Retention awards shall form part of variable remuneration. ~~for the purpose of the ratio between fixed and variable components of total remuneration under Remuneration 15.10.~~ Firms should notify the PRA and provide justification when a retention award is offered to an MRT. In such cases, the PRA will consider whether the award is appropriate.

#### ~~Procedure to increase permitted ratio between fixed and variable components of total remuneration~~

- 5.40 [deleted] In circumstances where firms choose to increase the permitted ratio of fixed to variable remuneration, the PRA considers all percentage thresholds referred to in Remuneration 15.11(5) should be calculated by reference to the shares or other ownership rights in the firm. This, in turn, should be taken to mean the voting rights capable of being cast on the relevant resolution, and which attach to the shares or ownership rights.
- 5.41 [deleted] The 75% threshold which applies when fewer than 50% of shares are represented in the vote, and the 66% threshold which applies when at least 50% of shares are represented, are percentages of the share or ownership voting rights represented, and not of the firm's whole issued share capital or ownership rights.
- 5.42 [deleted] The concept of shares or ownership rights being 'represented' is not clearly defined for these purposes in UK law and may depend on the legal nature of the firm in question.
- (i) In order to be clear what proportion of the share/ownership rights is 'represented' as required by Remuneration 15.11(5), the PRA expects a poll vote to take place at the relevant shareholder meeting, even if the outcome of such a vote may appear obvious from a show of hands and/or any proxies received.
- (ii) The PRA has not ascribed a specific meaning to the word 'represented'. The PRA expects firms to consider what will constitute being represented for the purpose of this vote, within the range of meanings that the word 'represented' could reasonably carry.
- (iii) The PRA expects firms to make clear to shareholders how each voting decision (voting for or against, sending a proxy, abstaining, attending but not voting etc.) will be treated for the purpose of being represented.
- (iv) It is prudent to proceed on the basis that the meaning of being 'represented' is the same for the threshold test (ie the 50% test) as for the majority test (ie the 66% or 75% test), even if other interpretations are possible.
- 5.43 [deleted] In line with Remuneration 15.11(4), staff who are directly concerned by the higher maximum levels of variable remuneration are not permitted to exercise any voting rights they may have. Accordingly, their voting rights should be disregarded when calculating the percentages.

## 4: Annex XXXIII Table UK UKREMA of the Disclosure (CRR) - Pillar 3 Templates and Instructions Part of the PRA Rulebook

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[separate attachment - <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2022/december/cp1522app2.doc>]



## 5: PRA statutory obligations

The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.

- *For rules instruments and UK Technical Standards Instruments:* Purpose of the policy proposals (FSMA s138J(2)(b)).
- *For rules instruments and UK Technical Standards Instruments:* Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- *For rules instruments and UK Technical Standards Instruments:* Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letters (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22)
- Have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat (Natural Environment and Rural Communities Act 2006, s40).
- *For rules instruments and UK Technical Standards Instruments:* Consultation of the FCA (FSMA s138J(1)(a)).
- *For UK Technical Standards Instruments only:* FSMA s138J(1)(a) is replaced with: consultation of the FCA and/or Bank, where that Regulator has an interest in the technical standards (FSMA s138P(4) and (5)).
- *For UK Technical Standards Instruments only:* notice given to HMT of the consultation on the UKTS ('best efforts' basis).
- *For CRR rules only:* subject to certain exceptions, have regard to:
  - relevant standards recommended by the Basel Committee on Banking Supervision from time to time
  - the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be based or to carry on activities. For these purposes, the PRA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active credit institutions and investment firms are most likely to choose to be based or carry on activities

- 
- the likely effect of the rules on the ability of CRR firms to continue to provide finance to businesses and consumers in the United Kingdom on a sustainable basis in the medium and long term
  - the target in [section 1](#) of the Climate Change Act 2008 (carbon target for 2050)
  - (s144C (1) & (2) FSMA – exceptions in s144E FSMA).
  - *For CRR rules only* – explanation of the ways in which having regard to the matters specified above has affected the proposed rules (s144D FSMA).
  - *For CRR rules only* – publication of a summary of the proposed CRR rules.
  - *For CRR rules only* – consideration and consultation with the Treasury about the likely effect of the rules on relevant equivalence decisions (s144C (3) & (4) FSMA)

Draft for consultation