

Policy Statement | PS15/19

Resolution assessment and public disclosure by firms

July 2019



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PRUDENTIAL REGULATION
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1 Overview

1.1 This Prudential Regulation Authority (PRA) Policy Statement (PS) provides feedback to responses to the PRA's Consultation Paper (CP) CP31/18 'Resolution assessment and public disclosure by firms' ('CP31/18').¹ CP31/18 was published as part of a joint package of proposals on the Resolvability Assessment Framework (RAF), together with the Bank of England's (Bank) consultation on 'The Bank of England's approach to assessing resolvability'.²

1.2 This PS also contains the PRA's final policy:

- the Resolution Assessment Part of the PRA Rulebook (the 'Rules') (Appendix 1), and
- Supervisory Statement (SS) 4/19 'Resolution assessment and public disclosure by firms' (Appendix 2).

1.3 This PS is relevant to UK banks and building societies with retail deposits equal to or greater than £50 billion on an individual or consolidated basis, as at the date of their most recent annual accounts ('in-scope firms').

Background

1.4 In CP31/18 the PRA proposed rules whereby an in-scope firm would be required to:

- carry out a realistic assessment of its preparations for resolution;
- include analysis of how it understands it would be resolved, any risks to its resolution and the steps it has taken or plans to take to remove or reduce those risks;
- submit a report of its assessment to the PRA ('report') by the second Friday in September 2020, and every two years thereafter; and
- publicly disclose a summary of its report ('public disclosure') by the last working day of May 2021, and every two years thereafter.

1.5 CP31/18 also included a draft supervisory statement setting out the PRA's expectations relating to those rules.

1.6 CP31/18 set out the PRA's intention to consult on changes to its Senior Manager and Certification Regime ('SM&CR'), to incorporate the responsibility for carrying out resolution assessments and related obligations into the existing prescribed responsibilities. The PRA published CP12/19 'Strengthening individual accountability: Resolution assessments and reporting amendments'³ on Friday 7 June 2019 to consult on this proposal. The consultation closes on Wednesday 7 August 2019.

1 PRA Consultation Paper 31/18 'Resolution assessment and public disclosure by firms', December 2018 <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/resolution-assessment-and-public-disclosure-by-firms>

2 Bank of England Consultation Paper 'The Bank of England's approach to assessing resolvability', December 2018 <https://www.bankofengland.co.uk/paper/2018/the-boes-approach-to-assessing-resolvability>.

3 PRA Consultation Paper 12/19 'Strengthening individual accountability: Resolution assessments and reporting amendments', June 2019 <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/strengthening-individual-accountability-resolution-assessments-and-reporting-amendments>.

Summary of responses

1.7 The Bank and the PRA received 18 responses to the consultation, including five from firms in scope of the rules.

1.8 Some respondents replied to the Bank and the PRA in a single response, others replied to the Bank and the PRA in separate responses. The PRA has worked with the Bank in considering all responses. Feedback concerning the Bank's proposals made in the Bank's consultation can be found in its Policy Statement, 'The Bank of England's approach to assessing resolvability'.⁴

1.9 A number of observations were made with regards to the proposed rules and expectations in CP31/18, including:

- Four respondents were supportive of the approach to assessment and reporting presented in the proposed rules, while two expressed concerns regarding the disclosure regime. Six respondents requested that the public disclosure requirement should not apply during the first RAF cycle in 2020-21.
- Six respondents raised concerns regarding the dates in the proposed rules, with regards to the first report submission date proposed in September.
- Two respondents asked for more prescription on the content required in the report.
- Four respondents asked for more prescription on the content of the public disclosure, and two raised concerns regarding the interaction between the content of public disclosures and the UK Listing Authority (UKLA) disclosure regime and Market Abuse Regulation (MAR).
- Two respondents said that an extension of the scope of the rules to smaller firms would not be proportionate. One respondent said the threshold for the rules was too high, and smaller firms should be brought into scope.
- Three respondents asked for clarification on the interaction between the proposed reporting and disclosure requirements and existing PRA requirements.
- Some respondents requested clarifications on: the interaction between firms, the PRA and the Bank; paragraph 7.2 of the proposed SS; and rule 3.2 of the proposed rules. One respondent commented on the cost benefit analysis: it was generally supportive of the approach but listed some costs that it believed should have also been included.

1.10 Feedback to these responses is set out in Chapter 2.

Changes to draft policy

1.11 Where the final rules differ from the draft in the CP in a way which is, in the opinion of the PRA, significant, the Financial Services and Markets Act 2000 (FSMA)⁵ requires the PRA to publish:

⁴ Bank of England Policy Statement 'The Bank of England's approach to assessing resolvability', July 2019: <https://www.bankofengland.co.uk/paper/2019/the-boes-approach-to-assessing-resolvability>.

⁵ Section 138J(5) and 138K(4).

- (a) details of the difference together with a cost benefit analysis; and
- (b) a statement setting out in the PRA's opinion whether or not the impact of the final rule on mutuals is significantly different to: the impact that the draft rule would have had on mutuals; or the impact that the final rule will have on other PRA-authorized firms.

1.12 The PRA has made the following changes, after consideration of responses to the consultation:

- The date by which firms are required to submit reports to the PRA has been changed to by the first Friday in October biennially.
- The date by which firms are required to publish their public disclosures has been changed to by the second Friday in June biennially.
- An amendment has been made by the PRA of its own volition to rule 1.3 to provide clarity in relation to the interpretation of that rule.
- The insertion of a table in the rules confirming the sources of the five externally defined terms in those rules.
- The PRA has provided additional information in the SS regarding the objectives of the information the PRA expects to be contained in firms' public disclosures.
- The PRA has provided further clarification in the SS on the content of firms' public disclosures for the first RAF cycle in 2020-21 ('first cycle disclosures') prior to 01 January 2022.

1.13 The PRA considers that the changes to the final rules are not significant and will not materially alter the cost benefit analysis presented in CP31/18. Changes to the report submission and firm public disclosure dates are minor amendments which take account of concerns raised by respondents on those dates. The change to rule 1.3 has been made to provide clarity of interpretation, and the addition of the table of externally defined terms has been made to be consistent with normal PRA practice regarding such terms. The PRA does not consider the changes to the rules to be significant, or that the impact of the rules on mutuals is significantly different from the impact of the rules on other PRA-authorized firms. The same analysis applies in respect of the changes to the SS.

Implementation

1.14 The new rules will take effect on 1 August 2019.

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

2 Feedback to responses

2.1 Before making rules, the PRA is required by FSMA to have regard to any representations made to it, and to publish an account, in general terms, of those representations and its response to them.⁶

2.2 The feedback has been structured below by theme:

- disclosure requirement;
- submission and disclosure dates;
- content of the report to the PRA;
- content of the public disclosure;
- extending the proposed requirements to other firms;
- interaction with other PRA requirements; and
- requests for clarifications and cost benefit analysis.

Disclosure requirement

2.3 In CP31/18 the PRA proposed that in-scope firms would publish their first public disclosures by the last working day in May 2021, and biennially thereafter.

2.4 Several respondents were supportive of the proposed approach to assessment and reporting, while two expressed concerns with regards to the disclosure regime. One respondent challenged whether there was any evidence that a disclosure regime enhances financial stability. Another warned against potential unintended consequences of public disclosures, such as creating uncertainty and lack of confidence from the market.

2.5 As explained in paragraphs 2.4 and 2.14 of CP31/18, the PRA considers that public disclosures will help advance the PRA's objective of safety and soundness, and the requirement to pursue that objective by seeking to prevent disorderly failure. Disclosures should increase financial stability because market participants and counterparties can anticipate that failing firms will be resolved in an orderly manner. Enhanced public accountability may increase incentives for firms to address any weaknesses identified in their preparations for resolvability. Orderly resolution should also improve the safety and soundness of firms by reducing the risk of contagion when a firm fails.

2.6 Having considered the responses, the PRA has decided to maintain the requirement to make public disclosures, but has changed the public disclosure date in the rules and the way the content of public disclosures is described in the SS. These changes are described in sections 'submission dates and disclosure dates' and 'content of the public disclosure' of this PS.

2.7 Several respondents suggested that the requirement to make public disclosures should not apply in the first RAF cycle. Respondents argued that:

⁶ Sections 138J(3); 2L and 138J(4) of FSMA.

- Disclosing ahead of 2022 may cause misunderstanding for the public and the market, as firms will be at different stages of their progress towards implementing policies applying for the first time from 2022. Some respondents argued that transparency is already achieved through minimum requirements for own funds and eligible liabilities (MREL) reporting.
- Some respondents said they will not have enough time to prepare for first cycle disclosures given existing timelines and resources mobilised to meet other resolvability policies.

2.8 The PRA considers that first cycle disclosures should support public confidence in the stability of the financial system, as market participants, counterparties, and the public will be able to hold firms to account for the steps they are taking or plan to take ahead of 2022 and to understand firms' progress and commitment to resolvability in subsequent RAF cycles. First cycle disclosures may also incentivise firms to address any weaknesses identified in their preparations for resolvability in advance of their first cycle disclosures in 2021.

2.9 The PRA recognises firms' concerns that first cycle disclosures may vary from firm to firm. The PRA expects that, in their first cycle disclosures, firms will focus on their progress towards meeting the resolvability outcomes⁷ and their plans to address gaps in achieving their resolvability outcomes, rather than demonstrate they can meet the resolvability outcomes in full. The PRA has therefore amended SS4/19⁸ to clarify that, when referring to the management governance and communication, funding in resolution, continuity of access to financial market infrastructure, and restructuring objectives, it expects firms' first cycle disclosures to be more focused on outstanding steps rather than the capabilities, resources and arrangements in place. This is because firms will have had less time to achieve these objectives. The PRA and the Bank will engage with firms on this topic in the lead up to the publication of firms' first cycle disclosures.

2.10 Regarding respondents' comment that they would need extra resources to comply with the rules, the PRA notes that firms are already required to prepare for resolution under PRA Fundamental Rule 8. Firms should therefore be able to assess their preparations for resolution, regardless of the implementation dates of other resolvability policies. The PRA's cost benefit analysis took into account the need for additional resources (in terms of staff) in CP31/18. The PRA considers the cost of these extra resources proportional to the benefits from having a resolvability assessment framework.

2.11 In the light of the above the PRA has decided to maintain the requirement to make public disclosures in the first RAF cycle.

Submission and disclosure dates

2.12 Some respondents argued that a submission date in September would in practice require firms to undertake internal governance in July, due to board meetings not being held in August. This would give firms less time to prepare their reports.

2.13 To give firms more flexibility, the PRA has decided to move the submission date of firms' reports from by the second Friday in September to by the first Friday in October, so that firms can undertake board-level governance later than July. This will give firms more time to prepare their reports.

⁷ The resolvability outcomes are described in paragraph 2.3 of CP31/18 and Chapter 3 of the Bank's Statement of Policy 'The Bank of England's approach to assessing resolvability' available at <https://www.bankofengland.co.uk/paper/2019/the-boes-approach-to-assessing-resolvability>.

⁸ See paragraphs 4.7-4.9 of SS4/19.

2.14 One firm in scope will be in a closed period⁹ during the period preceding the date for public disclosures initially proposed in the rules. To ensure that all in-scope firms can comply with Rule 4.1 of the Resolution Assessment Part of the PRA Rulebook, and to facilitate same-day disclosures for all firms, the public disclosure date in Rule 4.1 has been amended to be the second Friday in June. The PRA does not expect this to have a negative impact on other in-scope firms, as it will give firms more time to prepare for their public disclosures, and it does not coincide with other firms' closed periods.

2.15 Respondents also raised concerns around the length of time between the report submission and the public disclosure publication, which they argued might necessitate a considerable amount of updating of the publication disclosure during that time.

2.16 The PRA has maintained the length of time between the submission date and the public disclosure date to allow for sufficient time for engagement between in-scope firms, the PRA and the Bank, particularly during the first RAF cycle in 2020-21.

2.17 In-scope firms should note that the dates in the rules are the latest possible dates by which a firm must submit its report to the PRA and publish a public disclosure. The PRA expects to coordinate with the Bank and firms on an individual basis, prior to the deadlines in the rules, on a suitable date for submission and disclosure. It is possible that, in future RAF cycles, the dates in the Rules could be modified to reduce the period between report submissions and public disclosures.

Content of the report to the PRA

2.18 Paragraphs 3.3-3.6 of the draft SS set out the PRA's expectations on firms' reports, including the topics that should be included and the expected length of the report (around 250 pages).

2.19 Two respondents asked for more prescription on the expected content of the reports to avoid firms producing divergent documents.

2.20 The PRA does not intend to provide further detail regarding the content of reports, beyond the list of topics given in paragraph 3.3 of SS4/19. The expectations are purposely broad, to ensure that firms do not treat their reports as a regulatory compliance exercise,¹⁰ firms are encouraged to think comprehensively about their resolution, and each report is specific to each firm's characteristics.

2.21 One respondent asked whether proportionality will be considered regarding the expectation on the length of the report.

2.22 The PRA expects reports to be typically 250 pages long, but anticipates this to vary depending on the complexity of the firm.¹¹ Firms should include an appropriate level of detail in their reports so that the PRA can understand firms' preparations for resolution.

Content of the public disclosure

2.23 A number of respondents asked for more guidance on the content of the public disclosure. They said that more prescription would avoid public disclosures being inconsistent between firms, with some firms disclosing more information than others, potentially making them more vulnerable to investor scrutiny.

⁹ The closed period is the time period between the completion of a listed company's financial results and the announcing of these results to the public.

¹⁰ Paragraph 3.6 of SS4/19.

¹¹ Paragraph 3.7 of SS4/19.

2.24 To address firms' responses, the PRA has provided additional information in paragraph 4.4 of SS4/19 regarding the objectives of the information the PRA expects to be contained in firms' public disclosures. This will help guide firms regarding the content of their public disclosures. The PRA and the Bank also intend to engage with firms regarding their public disclosures during the RAF cycle.

2.25 Two respondents requested that mutuals should not be required to include demutualisation plans in their public disclosures, if demutualisation is part of their resolution plan.

2.26 Public disclosures should include 'details of the firm's understanding of its resolution strategy'.¹² This may include demutualisation in the case of a mutual. For the purpose of transparency, the possibility of demutualisation should be explained in a firm's public disclosure, if the firm understands that it is part of its preferred resolution strategy.

2.27 Two respondents raised concerns about market-sensitive information being divulged in the public disclosures, and their interaction with UKLA disclosure regime and MAR.

2.28 The Bank and the PRA intend to address firms' concerns on interaction between public disclosures and the UKLA disclosure regime and MAR through engagement with firms. This will include concerns around divulging market sensitive information in public disclosures, and market sensitive information being shared by the Bank or the PRA with firms during the RAF cycle. Readers should refer to the Bank's Policy Statement 'The Bank of England's approach to assessing resolvability', including comments about how the Bank will approach making a public statement.

2.29 One respondent said that disclosing certain information, such as progress on obtaining resolution-proof contracts, might prevent firms from negotiating contracts in the future. The PRA considers such risk will be mitigated by firms' ability to choose to 'exclude information from the public disclosure on the grounds that it is proprietary or confidential'.¹³

Extending the proposed requirements to other firms

2.30 Paragraph 1.4 of the draft SS explained that the PRA, in consultation with the Bank, may consider whether and how to apply some or all of the requirements in the rules to one or more Bank-led bail-in or partial-transfer resolution strategy firms, where it is desirable to do so to advance the PRA's general objectives.

2.31 Two respondents argued that it would not be proportionate to extend the PRA requirements to firms with retail deposits below the £50 billion threshold, while one respondent said the threshold for the PRA rules was too high and smaller firms should be brought into scope.

2.32 The PRA has noted the concerns raised about proportionality. Consistent with the position expressed in paragraph 1.10 of CP31/18, the PRA may consider, at a later date, whether and how to extend the application of some or parts of the rules to other firms, in a proportionate way. The PRA would consult with the affected firm or firms before reaching a decision.

Interaction with other PRA requirements

2.33 Two respondents suggested that firms should be temporarily released from the requirement to review and update recovery plans in 2020. They also suggested that the PRA should make recovery planning more 'light touch' when it coincides with report submission years, so that recovery planning staff can be re-deployed on the reporting and disclosure tasks.

¹² Paragraph 4.4 of SS4/19.

¹³ Paragraph 4.6 of SS4/19.

2.34 The PRA considers recovery planning integral to a firm's ability to prepare for periods of financial stress, to stabilise its financial position and recover from financial losses. Recovery planning is important and distinct from resolution: firms are required to review their recovery plans annually under the Recovery Plans Part of the PRA Rulebook and to keep those up to date.¹⁴ The PRA does not intend to change the recovery planning requirements, but does take note of potential crossovers between the RAF and other policy areas where efficiency gains could be made.

2.35 One respondent asked if the reports required under the RAF, the data submissions under the European Banking Authority's (EBA) Implementing Technical Standards (ITS) on resolution reporting, and resolution pack submissions (under SS19/13 'Resolution Planning')¹⁵ could be streamlined. The PRA notes that firms are required to comply with the EBA ITS under Commission Implementing Regulation (EU) 2018/1624,¹⁶ and to submit resolution packs under the Resolution Pack Part of the PRA Rulebook.¹⁷

2.36 The PRA does expect some amount of cross-reference to other individual policies and submissions in firms' reports because of the nature of the report. However the PRA does not expect firms to duplicate in their reports any material already submitted, but instead to cross-refer to it.¹⁸ Readers should also refer to Chapter 7 of the Bank Statement of Policy 'The Bank of England's approach to assessing resolvability'¹⁹ for the Bank's policy on this issue.

2.37 One firm asked for further detail on the timing of the operational continuity in resolution (OCIR) review. The Bank set out in its consultation on 'The Bank of England's approach to assessing resolvability' that most or all functions may need to continue in order to facilitate the continuity of critical functions, and that other business lines may need to continue to enable post-bail in restructuring. The PRA committed to reviewing its OCIR policy in light of the Bank's thinking. The PRA's review of its OCIR policy is ongoing. If any changes are proposed as a result of the review, firms will be informed in due course.

Requests for clarifications and cost benefit analysis

2.38 Respondents requested clarifications on individual points, including:

- The interaction between the Bank, the PRA and firms during RAF cycles: the Bank and the PRA intend to engage with industry throughout the RAF cycles, including through the usual supervisory engagement channels between the PRA and firms and between firms and the Bank as resolution authority.
- Circumstances under which a firm's report or disclosure date would be moved: the PRA does not intend to specify the circumstances in which it would seek to alter the dates in the rules, as the reasons may be varied. They could include for example a shift in the dates of the Annual Cyclical Scenario stress test, or a reduction in the length of time between report submission and public disclosure dates in the Rules.

¹⁴ Specifically articles 4.2 and 4.3 of the Recovery Plans Part of the PRA Rulebook which implement article 5.2 of the Banking Recovery and Resolution Directive.

¹⁵ PRA Supervisory Statement 19/13 'Resolution planning', June 2018 (updating January 2015) <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/resolution-planning-ss>.
¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1624&from=EN>.

¹⁷ In October 2017 the EBA consulted on changes to the ITS on information for resolution planning. The Bank and PRA recognised that the ITS requirements could lead to duplicative reporting and have delayed resolution pack submissions under SS19/13 for relevant firms until 2020. During this period, resolution planning information can still be requested from firms under SS19/13 Phase 2 requirements and MREL reporting continues.

¹⁸ Paragraph 3.10 of SS4/19.

¹⁹ <https://www.bankofengland.co.uk/paper/2019/the-boes-approach-to-assessing-resolvability>.

- How the PRA envisages to engage with the Bank and firms in relation to updates to the report of ‘material changes’: the report to the PRA should be updated when there are any material changes, as specified by Rule 3.2 and paragraph 4.5 of SS4/19, and firms should send their updated reports to the PRA. The public disclosure is a snapshot in time of a firm’s progress towards resolvability. Rule 3.2 does not require the public disclosure to be kept updated in-between RAF cycles.

2.39 One respondent commented on the cost-benefit analysis. They agreed with the approach to estimating costs and benefits, and suggested additional internal costs: the cost of involving other entities in a group, and the cost of using other staff and specialisms in the firm. They thought it was unreasonable for the cost benefit analysis to exclude the cost of using external consultants.

2.40 As explained in CP31/18, the PRA’s cost benefit analysis is indicative and made with estimates based on reasonable and plausible assumptions. The PRA has not revised its cost benefit analysis, as:

- The PRA agrees that costs will be higher for more complex entities or groups, and this is why cost estimates were given as ranges in the CP.
- The PRA took into account costs relating to a variety of roles (such as lawyers, analysts and subject matter experts for example) in its cost estimates, as it aggregated ‘a variety of different roles’ in its full-time equivalent estimates.²⁰
- Firms are not required to use third parties or external consultancy services to fulfil their obligations under the Rules. Firms can comply using in-house staff and any external hiring of consultants should not significantly duplicate the costs of undertaking the work in-house.
- Including these additional costs would not change the overall balance of the benefits compared to the costs.

²⁰ See paragraph 3.11 of CP31/18.

Appendices

- 1 PRA RULEBOOK: CRR FIRMS: RESOLUTION ASSESSMENT INSTRUMENT 2019, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/resolution-assessment-and-public-disclosure-by-firms>.

- 2 SS4/19 'Resolution assessment and public disclosure by firms', available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/resolution-assessment-and-public-disclosure-by-firms-ss>.