

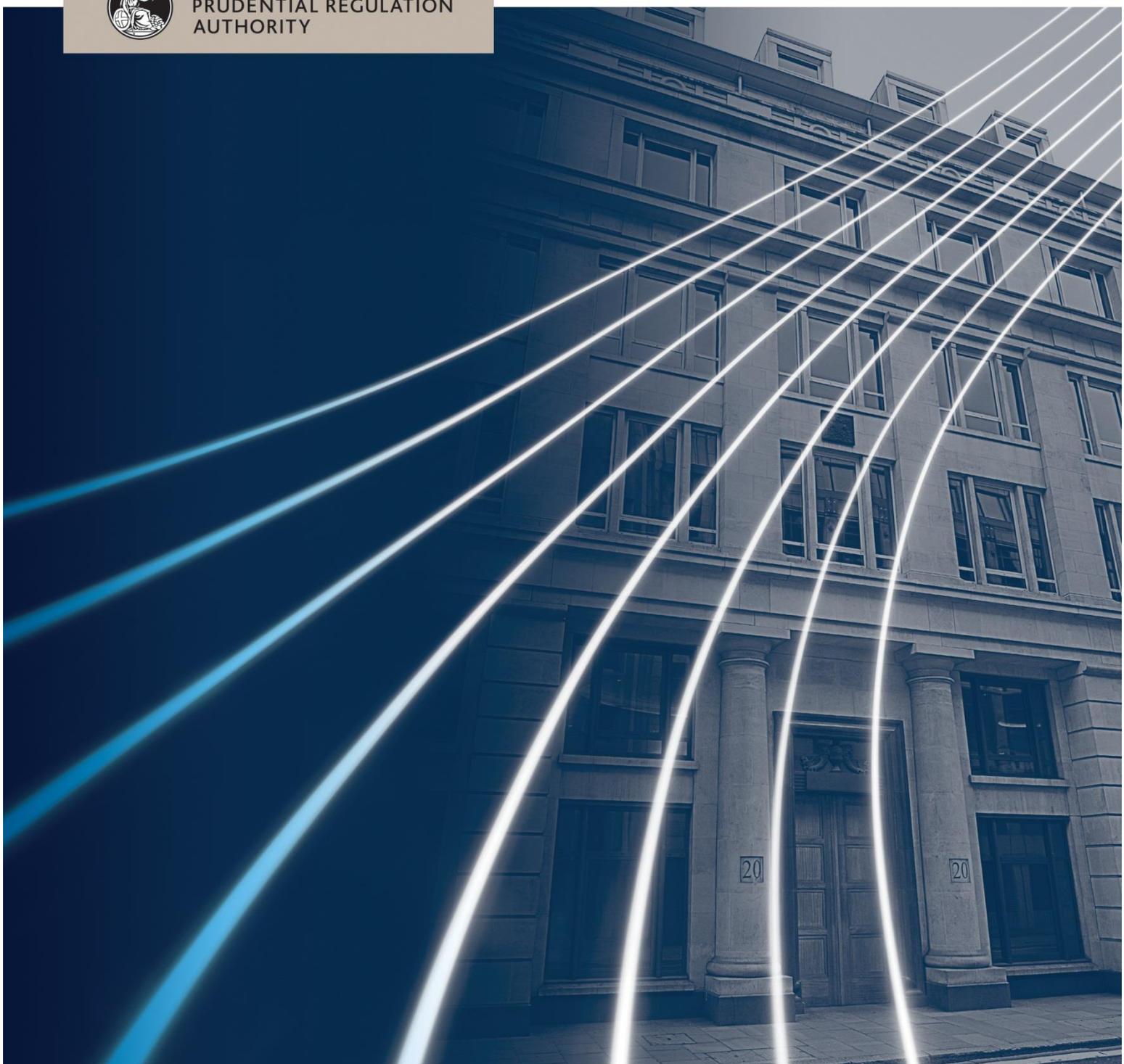
Policy Statement | PS6/19

Responses to CP24/18 Occasional Consultation Paper – Chapters 3-7

March 2019



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY





BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Policy Statement | PS6/19

Responses to CP24/18 Occasional Consultation Paper – Chapters 3-7

March 2019

Contents

1	Overview	1
2	Feedback to responses	2
	Appendices	5

1 Overview

1.1 This Prudential Regulation Authority (PRA) Policy Statement (PS) provides feedback to responses to Chapters 3 to 7 of Consultation Paper (CP) 24/18 ‘Occasional Consultation Paper’.¹ It also includes the final rules, and updated Supervisory Statement (SS) 1/16 ‘Written reports by external auditors to the PRA’, Statement of Policy (SoP) ‘The PRA’s approach to enforcement: Statutory statements of policy and procedure’, and SoP ‘Calculating risk-based levies for the Financial Services Compensation Scheme deposits class’.

1.2 This PS is relevant to all PRA-authorised firms.

1.3 The appendices to this PS provide links to the final rules amending Parts of the PRA, Rulebook, final SSs and final SoPs, as set out in the table below:

CP24/18 Chapter	Rulebook Part/SS/SoP/Form	Appendix
3. Ring fencing – imposition of financial penalties under section 142S of FSMA	SoP ‘The PRA’s approach to enforcement: statutory statements of policy and procedure’	1
4. Written reports by external auditors to the PRA	Auditors Part	2
	SS1/16 ‘Written reports by external auditors to the PRA’	3
5. Depositor Protection Part – minor updates	Depositor Protection Part	4
6. Policyholder Protection Part – minor updates	Policyholder Protection Part	5
7. Reporting templates for calculating risk based levies to reflect the European Banking Authority’s (EBA) transition to FINREP taxonomy	SoP ‘Calculating risk-based levies for the Financial Services Compensation Scheme deposits class’	6

Summary of responses

1.4 The PRA received four responses to the CP. Three of these responses related to Chapter 4, the PRA’s feedback to these responses is set out in Chapter 2. One response supported all of the proposals put forward in CP24/18, and so does not require feedback.

Changes to draft policy

1.5 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)² requires the PRA to publish:

- (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-authorised firms.

1.6 Following consultation on Chapter 3 of CP24/18, the PRA has decided to exclude the following proposed addition at paragraph 5 of the SoP ‘The PRA’s approach to enforcement: statutory statements of policy and procedure: ‘The PRA may also, under section 142S(2) and (3) of the Act, impose on a QPU of a ring-fenced body a penalty or, alternatively, publish a public censure.’ This is because the PRA considers this additional wording to be superfluous

¹ (Page 2 of 2), October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>. Note: The PRA considered the response(s) received to Chapter 2 ‘Reporting – amendment to the Branch Return’ separately, and provided feedback in December 2018, available on page 1 of 2 of the link above.

² Section 138J(5) and 138K(4).

and potentially confusing where it was located. The exclusion of this wording therefore improves clarity and the PRA does not consider that this change is significant or will have a differential impact on mutual.

1.7 The PRA has also made some other minor adjustments to the final policy, details of which are set out in the relevant section of Chapter 2 of this PS. The PRA also does not consider that these changes are significant or will have a differential impact on mutuals.

Implementation

1.8 The implementation date for all policy changes set out in this PS is Thursday 7 March 2019.

1.9 For the proposals relating to Chapter 4 of CP24/18 this means the final policy should be applied to Audit related to periods ending on 31 December 2018 or later (the reports which would be due from April 2019).

1.10 The policy contained in this PS has been designed in the context of the current UK and EU regulatory framework. The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework, including changes arising once any new arrangements with the European Union take effect.

1.11 Readers should be aware that the near final rules appended to the policy statement PS5/19 ‘The Bank of England’s amendments to financial services legislation under the European Union (Withdrawal) Act 2018’³ also proposed changes to the Depositor Protection Part of the Rulebook that are expected to take effect if the UK leaves the EU on the 29 March 2019 with no implementation period in place. If final rule instruments are made in relation to the UK’s withdrawal from the EU, such final rule instruments will necessarily amend the rules in force at the relevant date. Therefore, any such final rule instruments will likely reflect the changes made by instrument available at Appendix 4 of this PS.

2 Feedback to responses

2.1 The PRA is required by FSMA to have regard to any representations made to the proposals in a consultation, to publish an account in general terms of those representations and its response to them, and to publish details of any significant differences in the rules as made.⁴

2.2 The PRA’s feedback to the responses and final policy decisions are set out below.

Chapter 3 of CP24/18: Ring fencing – imposition of financial penalties under section 142S of FSMA

2.3 The PRA proposed to update SoP ‘The PRA’s approach to enforcement: statutory statements of policy and procedure’ with respect to the imposition and amount of financial penalties for breaches by qualifying parent undertakings of ring-fenced bodies. The SoP on the imposition of financial penalties under FSMA already encapsulates the factors referred to in paragraph 3.5 and so the PRA proposed to apply its existing penalties policy as set out in the August 2018 SoP in relation to the imposition of financial penalties under section 142S of FSMA.

³ Available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>

⁴ Section 138J(4) and 138J(5) of FSMA.

2.4 The PRA received no responses to this chapter, and with the exception of excluding the proposed addition at paragraph 5 of the SoP (as set out in paragraph 1.6 of this PS), is making the amendments as consulted.

Chapter 4 of CP24/18: Written reports by external auditors to the PRA

2.5 The PRA proposed to clarify how its policy on written reports by external auditors to the PRA applies in group situations. These changes were proposed in light of the implementation of ring-fencing in the UK and to make clear the original intent of the policy's scope. The proposals made amendments to Chapter 8 of the Auditors Part of the PRA Rulebook (Auditors 8) and SS1/16 'Written reports by external auditors to the PRA'.

2.6 The PRA received three responses to the consultation. The responses supported the clarity provided by the proposed amendments, and the PRA is making the amendments as consulted.

2.7 Some comments received referred to a need for clarity between the PRA and the external auditor around certain practical matters in relation to the requirements for particular firms, such as the particular financial statements audit to which a question relates, or the timing where different audits within a group operate to different timetables. The PRA notes that such matters would be expected to be discussed as part of the scoping stage of the process described in paragraph 2.3 of SS1/16.

2.8 Two responses made points in relation to the broader operation of the policy on written reports by external auditors to the PRA. The PRA notes that PS1/16 states that the policy will be formally reviewed no later than after five years of receiving written reports. The issues raised by respondents will be considered as part of that review.

Chapter 5 of CP24/18: Depositor Protection Part – minor updates

2.9 The PRA proposed to update the references to money laundering regulations in the Depositor Protection Part of the PRA Rulebook. The proposal would ensure that those depositors verified under the Money Laundering Regulations 2007 will continue to be eligible for depositor protection.

2.10 The PRA also proposed to amend out-of-date references to the Data Protection Act (1998) in Depositor Protection 26.1. The proposal was intended to ensure the rules refer to the most up to date Data Protection Act (DPA) legislation, maintaining the integrity of the Rulebook and ensuring the FSCS complies with the correct DPA legislation.

2.11 The PRA received no responses to the consultation, and with the exception of two minor amendments, is making the amendments as consulted. The first clarifies that the relevant section of FSMA is section 138G(2) (Rule-making instruments) as opposed to section 138(G)(2) (Rule-making instruments) as drafted in CP24/18. The second clarifies that Rule 2.2(4)(f)(iii) applies 'in each case'. The words 'in each case' were not included in the proposed instrument as drafted in CP24/18.

Chapter 6 of CP24/18: Policyholder Protection Part – minor updates

2.12 The PRA proposed to amend the Policyholder Protection Part of the PRA Rulebook to correct old references to a deleted rule (Rule 21.42) with new references to Rule 21.42A. The PRA also proposed to correct a typographical error regarding references to Fees 3.4(2)(c).

2.13 The PRA received no responses to the consultation, and with the exception of one minor amendment to ensure the rule instrument references the year 2019, as opposed to 2018, is making the amendments as consulted.

Chapter 7 of CP24/18: Reporting templates for calculating risk based levies to reflect the European Banking Authority's (EBA) transition to FINREP taxonomy

2.14 The PRA proposed to amend SoP 'Calculating the risk based levies for the Financial Services Compensation Scheme deposit class'. From Tuesday 1 January 2018, the reporting fields for FSA001, FSA002 and FSA015 changed due to the transition to the EBA's reporting taxonomy for FINREP.⁵ These changes are necessary and consequential following the changes to, or discontinuation of, the reporting templates.

2.15 The PRA received no responses to the consultation, and is making the amendments as consulted.

⁵ An error was detected in paragraph 7.4 of CP 24/18, which stated that reporting fields for FSA001, FSA002 and FSA015 were changing on 1 January 2019. In fact the reporting fields changed on 1 January 2018.

Appendices

- 1 Statement of Policy ‘The PRA’s approach to enforcement: statutory statements of policy and procedure’, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>

- 2 PRA RULEBOOK: WRITTEN REPORTS BY AUDITORS TO THE PRA INSTRUMENT 2019, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>

- 3 SS1/16 ‘Written reports by external auditors to the PRA’, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/written-reports-by-external-auditors-to-the-pra-ss>

- 4 PRA RULEBOOK: CRR FIRMS, NON CRR FIRMS, NON AUTHORISED PERSONS: DEPOSITOR PROTECTION (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2019, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>

- 5 PRA RULEBOOK: SOLVENCY II FIRMS, NON-SOLVENCY II FIRMS, NON-AUTHORISED PERSONS: POLICYHOLDER PROTECTION (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2019, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>

- 6 Statement of Policy ‘Calculating risk-based levies for the Financial Services Compensation Scheme deposits class’, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/calculating-risk-based-levies-for-the-financial-services-compensation-scheme-deposits-class>