

Bank of England

Prudential Regulation Authority

Insurance Special Purpose Vehicles: Further updates to authorisation and supervision

Consultation Paper | CP10/22

July 2022



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Responses are requested by Tuesday 11 October 2022.

In light of current measures to help prevent the spread of COVID-19, please address any comments or enquiries by email to: CP10_22@bankofengland.co.uk.

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1. Overview

1.1 This Consultation Paper (CP) sets out some proposed changes in the Prudential Regulation Authority's (PRA) approach to authorising and supervising Insurance Special Purpose Vehicles (ISPVs).

1.2 The proposals in this CP would result in changes to the Supervisory Statement (SS) 8/17, 'Authorisation and supervision of insurance special purpose vehicles' (Appendix 1).

1.3 The CP is relevant to firms who wish to apply for, or have obtained authorisation as, an ISPV. It is also relevant to insurers and reinsurers seeking to use UK ISPVs as risk mitigation in accordance with the UK's onshored Solvency II framework.

1.4 Within the current framework of the UK's onshored Solvency II framework and the Risk Transformation Regulations 2017, this CP sets out some proposed changes to the PRA's approach in authorising and supervising ISPVs as follows:

- a. change to the legal opinion expectation for non-English law governed contracts;
- b. clarification on the number of Senior Management Function (SMF) holders needed for an ISPV;
- c. clarification of approach to multiple cedants ceding risk to a single cell via a single contract;
- d. clarification on the interpretation of 'quantifiable risk'; and
- e. clarification on the requirement for written policies submitted for 'standard' applications.¹

The PRA does not expect firms would incur additional costs as a result of the proposals.

1.5 The PRA considered the interaction between its primary and secondary objectives and the 'have regards', including using its resources in the most efficient and economic way; imposing a burden in a manner which is proportionate to the benefits expected to result from that burden; exercising its functions transparently; the desirability of sustainable growth in the economy of the UK in the medium or long term; and maintaining the competitiveness of the UK as a centre for the establishment of ISPVs. Overall, the PRA considers that the changes proposed in this CP would support the use of prudent risk-mitigation techniques, good governance, systems, and processes which would promote the safety and soundness of firms. This would advance the PRA's primary objective. The changes would also aid the

¹ More details on what a 'standard' application is available within the ISPV FAQs which can be accessed in the guidance documents at <https://www.bankofengland.co.uk/prudential-regulation/authorisations/insurance-special-purpose-vehicles>. Any application not considered 'standard' will be considered 'complex', by definition.

development of the UK ISPV regime, which in turn would enable market participants to make more informed decisions regarding their participation in the Insurance Linked Securities (ILS) market in the UK via the establishment of ISPVs. Such participation would also be likely to allow new ways of raising capital in the insurance market, all of which would advance the PRA's secondary objective.

1.6 The proposals in this CP relate to the PRA's approach to supervising the activities of ISPVs operating short tail, wholesale, general insurance structures in the UK. The PRA considers that the proposals, such as clarifying the number of SMF holders and the requirement for written policies in some cases, would not just promote the safety and soundness of firms (by supporting the use of prudent risk-mitigation techniques, good governance, systems, and processes in the running of ISPVs), they would also assist parties to better understand the PRA's approach and expectations in relation to the authorisation and supervision of ISPVs. The proposed updates would not create any additional requirements, and therefore, the PRA does not consider any additional costs would be imposed on firms.

1.7 While the FCA has been consulted prior to the publication of this CP, firms should be aware that the FCA has an independent role in authorising and supervising ISPVs. The FCA's current approach is set out in the [FCA Statement: Authorising and supervising Insurance Special Purpose Vehicles \(December 2017\)](#). Firms should note that the FCA has distinct regulatory aims from the PRA and it may, on occasion, seek more or less information from applicants than the PRA.

Background

1.8 In December 2017, HM Treasury's (HMT) Risk Transformation Regulations 2017 (RTR) were established. This allowed the creation and ongoing regulation of protected cell companies which could be used by ISPVs to undertake the newly introduced regulated activity of 'insurance risk transformation'. In addition to the RTR, the prudential standards which currently apply to ISPVs in the UK are set out in the onshored Solvency II Delegated Regulation and Implementing Regulation and the PRA Rulebook.

1.9 In November 2017, the PRA published a number of documents in relation to its approach to the authorisation and supervision of ISPVs, including expectations of firms set out in SS8/17, amendments to the Insurance Special Purpose Vehicles Part of the PRA Rulebook, and a number of application and notification forms. In May 2020, further updates regarding the PRA's expectations of firms was set out through updates to SS8/17 through PS13/20 'Insurance special purpose vehicles: Updates to authorisation and supervision'.

1.10 Since the launch of the regime, five years ago, additional experience has been gained by both the PRA and users of the UK ISPV regime since the RTR were introduced in 2017. The PRA has also received extensive informal industry feedback, particularly following its

publication of PS13/20. As a result of this experience and feedback, the PRA recently introduced an updated PRA authorisation process, where applications are classified as 'standard' or 'complex' during the pre-application process.

1.11 The PRA expects that straightforward applications which are in respect of short-tail, wholesale, general insurance risks will generally be classified as a 'standard' application and will be eligible for entry into a green channel with the PRA aiming to provide a decision on authorisation within four to six weeks of the application being made. The PRA is also developing a standardised Scope of Permission for 'standard' applications.

1.12 Any applications not classified as 'standard' (which may also include complex applications in respect of short-tail, wholesale, general insurance risks) will need to be assessed on a case-by-case basis according to its complexity and the PRA has not set any indicative timelines, beyond those contained in FSMA, for providing a decision on authorisation of such applications.

1.13 The PRA is now consulting on a broader set of changes within the parameters of the current regulatory framework which are designed to support the development of the UK ISPV regime. This, in turn, is likely to enable market participants making more informed decisions regarding their participation in the ILS market in the UK. Such participation is also likely to allow new ways of raising capital in the insurance market, while allowing the PRA to take a more proportionate, risk-based approach to market participants in a manner that does not increase safety and soundness concerns.

Summary of proposals

1.14 The policy proposals included in this CP are:

- a. change to the legal opinion expectation for non-English law governed contracts;
- b. clarification on the number of SMF holders needed for an ISPV;
- c. clarification of approach to multiple cedants ceding risk to a single cell via a single contract;
- d. clarification on the interpretation of 'quantifiable risk'; and
- e. clarification on the requirement for written policies submitted for 'standard' applications.

Implementation

1.15 The PRA proposes that the earliest implementation date for the changes resulting from this CP would be Wednesday 30 November 2022; or one week after the publication of the Policy Statement.

Responses and next steps

1.16 This consultation closes on Tuesday 11 October 2022. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP10_22@bankofengland.co.uk. Please indicate in your response if you believe any of the proposals in this consultation paper are likely to impact persons who share protected characteristics under the Equality Act 2010, and if so, please explain which groups and what the impact on such groups might be.

1.17 Unless otherwise stated, any remaining references to EU or EU-derived legislation refer to the version of that legislation which forms part of retained EU law.²

² For further information please see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

2. The PRA's proposals

2.1 The PRA proposes to make a number of changes to SS8/17 as below:

- a. change to the legal opinion expectation for non-English law governed contracts;
- b. clarification on the number of SMF holders needed for an ISPV;
- c. clarification of approach to multiple cedants ceding risk to a single cell via a single contract;
- d. clarification on the interpretation of 'quantifiable risk'; and
- e. clarification on the requirement for written policies submitted for 'standard' applications.

2.2 The PRA considers that these changes would provide clarity on the PRA's expectations in relation to the authorisation and supervision of ISPVs. It would also help the development of the UK ISPV regime, which in turn would enable market participants to make more informed decisions regarding their participation in the ILS market in the UK. Such participation would also be likely to allow new ways of raising capital in the insurance market, and would further promote effective competition.

Change to the legal opinion expectation for non-English law governed contracts

2.3 The PRA proposes to amend Chapter 3 of SS8/17 to set out its revised expectations on legal opinions for non-English law governed contracts.

2.4 ISPV applicants are currently expected, under SS8/17, to submit a legal opinion on the effectiveness and enforceability of any contractual arrangements that are not governed by English law.

2.5 The PRA's approach concerning legal opinions for non-English law governed contracts would change so that such an opinion would not be generally expected, especially for 'standard' applications. However, it would remain at the PRA's discretion to request a legal opinion and this would be assessed on a case-by-case basis.

2.6 This would allow the PRA to focus its review of legal opinions to complex cases, which in turn would ensure that firms have considered the issues related to non-English law contracts for complex cases in greater detail. This would result in greater oversight by firms around contracts for the most complex cases, resulting in better governance. Further, since the PRA would retain the discretion to request for a legal opinion on a case-by-case basis, when it felt it was merited, the PRA does not consider that this proposal would have any impact on the safety and soundness of ISPVs.

The PRA considers that this proposal would improve transparency, allow its resources to be used in the most efficient and economic way, and also ensure that the burden placed on firms to provide a legal opinion would be proportionate to the benefits expected to result from it.

Clarification on the number of SMF holders needed for an ISPV

2.7 The PRA proposes to clarify that, for a ‘standard’ application, a single individual with the relevant skills and experience could hold or perform more than one of the three required SMF roles for an ISPV.

2.8 For ‘complex’ applications, the PRA considers that the three SMF roles may need to be held by separate individuals, but this would be assessed on a case-by-case basis.

2.9 This would allow standard ISPV structures to be managed by one individual with the right skills and experience; given their standard nature, the PRA does not consider that reducing the number of SMF holders, where they have the relevant skills and experience, would in any way impact the safety and soundness of these firms. For complex ISPV structures the applicant should demonstrate the right variety of SMFs with the appropriate skills and experience. This clarification would help in the firms having the right mix of SMFs proportionate to their complexity which would improve the governance of these firms and thereby advance their safety and soundness.

2.10 The PRA considers that this proposal would improve transparency, and would also ensure that the burden placed on firms to have the appropriate SMF holders would be proportionate to the benefits expected to result from it.

Clarification of approach to multiple cedants ceding risk to a single cell via a single contract

2.11 The PRA proposes to amend Chapter 3 of SS8/17 to clarify its expectations on more than one cedant within an insurance group ceding risk to a single cell. The PRA recognises that allowing only one insurance entity to cede to a single cell under a single contract may prevent insurance groups from entering into certain transactions, such as group aggregate covers or split stamp reinsurance arrangements, through an ISPV.

2.12 Insurance groups and their subsidiaries are typically strategically aligned with a shared set of group-wide governance arrangements, policies, and procedures. Within the Solvency II framework, insurance groups are required to demonstrate operational consistency, often with commonality of mind and management. Group Supervision 17.1(2) of the PRA Rulebook requires Solvency II firms to ensure that risk management and internal control systems and

reporting procedures are implemented consistently in all entities included in the scope of group supervision.

2.13 In light of the above, the PRA considers that allowing more than one insurance entity from a group to cede risks, subject to an aggregate limit, within a single contract to an ISPV (or a cell of an MISPV)³ may be appropriate, as long as the intention is to cede as a group and the multiple cedants within the group act like a single economic unit, with aligned interests in the single contract.

2.14 Where there is close alignment of interests between entities of the same group, the PRA does not consider that there is a strong prudential reason to not allow such transactions to be undertaken by an ISPV, subject to certain safeguards.

2.15 Therefore, the PRA proposes to clarify that multiple cedants can cede risk through a single contract to a single cell in limited circumstances, which are set out in Appendix 1.⁴

2.16 The PRA considers that this will allow firms to consider a wider range of risk mitigation techniques. This is likely to aid their risk management processes, such as allowing access to a greater variety of counterparties in their reinsurance programs and reducing concentration risk, which would, in turn, align with improving their safety and soundness.

2.17 The PRA considers that this proposal would improve transparency and help sustainable growth in the UK ILS market thereby helping the economy in the medium or long term.

Clarification on the interpretation of 'quantifiable risk'

2.18 The PRA proposes to amend Chapter 3 of SS8/17 to clarify its interpretation of the definition of quantifiable risk in relation to 'standard' applications.

2.19 The concept of 'quantifiable risks' is understood under Solvency II to mean all risks that can be quantified, and firms will need to consider the quantifiable risks relevant to their proposed arrangements. However, in relation to 'standard' applications (as set out in section 1.4), the PRA generally expects quantifiable risks to capture, at the least, insurance risk, market risk, operational risk, and asset risk which may exist in the ISPV.

2.20 The PRA considers that this will make it easier for ISPVs to assess their quantifiable risks relevant to their arrangements. A better understanding of their risks is likely to allow

3 MISPV means a multi-arrangement special purpose vehicle which assumes risks under more than one separate contractual arrangement from one or more insurance or reinsurance undertakings.

4 The PRA is of the view that such arrangements are more commonly used in the general insurance market and as such shall expect that these are made use of only in the case of GI short tail business. However, the PRA would request firms, as part of the response to the consultation, to comment on whether this was reasonable.

them to make more informed risk management decisions, which in turn is likely to improve their safety and soundness.

2.21 The PRA considers that this proposal would improve transparency and would allow its resources to be used in the most efficient and economic way.

Clarification on the requirement for written policies submitted for 'standard' applications

2.22 The PRA proposes that for 'standard' applications, applicants would no longer be expected to submit the full suite of written policies in relation to the system of governance, which a firm has to maintain as per Article 324(2)(a) of the delegated regulations, to the PRA.

2.23 For applications deemed 'standard', applicants may submit a summary description of the written policies in place for the ISPV, which is proportionate to the systems of governance requirements of the ISPV. For applications deemed 'complex', the PRA could request applicants to submit a sample of their written policies on a case-by-case basis.

2.24 Given the nature of a 'standard' application, the PRA considers that a review of the summary description of the written policies in relation to the system of governance would not impact the safety and soundness of these firms, especially as the PRA would retain the right to ask for detailed policies, if deemed necessary.

2.25 The PRA considers that this proposal would introduce a more risk based and proportionate approach, ensuring that the burden placed on firms would be proportionate to the expected benefits, and ensure the PRA would be using its resources in an efficient and economic way. It would also improve transparency by clarifying what applicants are expected to share with the PRA.

PRA objectives analysis

2.26 The PRA considers its proposals would provide clarity on the PRA's expectations in relation to the authorisation and supervision of ISPVs. By providing the information outlined in the proposals, the PRA is seeking to support the use of prudent risk-mitigation techniques, good governance, systems, and processes in the running of ISPVs, which would advance the safety and soundness of such firms. The use of such risk mitigation techniques and improvement in governance, systems, and processes are likely to improve the degree of protection for cedants, in their capacity as policyholders, while ceding their risk to ISPVs.

2.27 The PRA has assessed whether the proposals facilitate effective competition. The PRA considers its proposals would help foster a better understanding of its expectations in relation to the authorisation and supervision of ISPVs, consistent with Solvency II requirements. This would help the development of the UK ISPV regime, which in turn will enable market participants to make more informed decisions regarding their participation in the ILS market in the UK. Such participation is also likely to allow new ways of raising capital in the Insurance market, and would further promote effective competition.

Cost benefit analysis (CBA)

2.28 The PRA considers its proposals would provide clarity concerning its expectations in relation to the supervision and authorisation of ISPVs. The proposals would update the PRA's expectation for legal opinions on the effectiveness and enforceability of contractual arrangements under the relevant foreign law in all cases, reducing the frequency with which they would be expected. The PRA's proposals would clarify that multiple cedants can cede risk through a single contract to an ISPV or single cell of an MISPV in limited circumstances, and clarify that one individual can hold more than one SMF role in an IPSV when an application has been deemed 'standard'. The PRA considers that its proposals would also clarify how the PRA would assess quantifiable risk, and how the written policies required by the ISPV's system of governance would need to be shared with the PRA in certain cases, such as for 'standard' applications.

Costs

2.29 The proposed updates do not create any additional requirements, and hence the PRA does not consider any additional costs to firms of meeting the proposals. The PRA considers its proposals would provide further clarity in many areas of the ISPV supervisory regime, to make it clearer and more transparent for firms concerning its expectations. For example, the PRA considers that its proposals would clarify that the individual written policies related to the ISPV's systems of governance would not need to be submitted as part of any 'standard' application, on the basis that a summary description of the policies in place is provided. The PRA considers that making this clearer would be helpful for potential applicants and is likely to reduce costs eg, by no longer requiring that written policies be submitted in all cases.

Benefits

2.30 The PRA considers its proposals would assist firms to better understand the PRA's expectations in relation to the authorisation and supervision of ISPVs, consistent with Solvency II requirements. The PRA considers that these proposals should help applicants and prospective applicants when using, or contemplating to use the UK ISPV regime. By providing more clarity on the PRA's approach and elaborating on its expectations of ISPVs, the PRA considers its proposals would help ensure that the firms will better understand what is expected by the PRA when they make an application under the regime. This is likely to improve the quality of applications made to the PRA and make it easier for the PRA to deal with such applications. All of this would help to make the ISPV authorisation and supervision process more efficient and reduce the resources needed for both the applicant applying and the PRA assessing the application.

'Have regards' analysis

2.31 In developing these proposals, the PRA has had regard to the FSMA regulatory principles, the aspects of the Government's economic policy set out in the HMT Recommendations letter from 2021 and the supplementary Recommendations letter sent April 2022 the following factors, to which the PRA is required to have regard, were significant in the PRA's analysis of the proposal:

- a. **The need to use the PRA's resources in the most efficient and economic way:** The PRA considers that its proposals introduce changes to its expectations for ISPV applications, in order to take a more proportionate and risk-based approach. The PRA considers the proposals would therefore enable its resources to be used in the most efficient way, by focusing on the mandatory authorisation requirements.
- b. **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 considers that setting out clear expectations, such as for standard applications, would allow both the PRA and the applicant to take a more proportionate and risk-based approach to these types of applications.
- c. **The desirability of sustainable growth in the economy of the UK in the medium or long term:** The proposals would be likely to aid the UK ILS market to attract more applicants in the medium to long term as an alternative to other jurisdictions, contributing to sustainable growth in the economy.
- d. **The principle that the PRA should exercise its functions transparently:** The PRA considers that its proposals would improve the clarity of its expectations in SS8/17.
- e. **Competitiveness:** The PRA considers that financial services are international in their nature. In developing the proposals, the PRA has considered the commercial considerations necessary for the establishment of ISPVs in the UK. The proposals would provide clarity and transparency to firms, which would aid applicants to better

understand the requirements which must be met in order to be authorised as a UK ISPV. The PRA considers this would promote better quality applications, and therefore a more efficient and effective review, which should ultimately result in greater chance of a successful approval.

- f. **Growth:** The PRA considers that the UK financial services sector is an important contributor to sustainable economic growth. The proposals would encourage trade in the type of financial services ISPVs provide and aid growth in the sector.

2.32 The PRA has had regard to other factors as required. Where analysis has not been provided against a 'have regard' for this set of proposals, it is because the PRA considers that 'have regard' to not be a significant factor for this set of proposals.

Impact on mutuals

2.33 The PRA considers that the impact of the proposed rule changes on mutuals is expected to be no different from the impact on other firms.

Equality and diversity

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

Appendices

1. Draft amendments to Supervisory Statement 8/17 'Authorisation and supervision of insurance special purpose vehicle'
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2. PRA statutory obligations

Draft amendments to Supervisory Statement 8/17 'Authorisation and supervision of insurance special purpose vehicles'

Change to the legal opinion expectation for non-English law governed contracts

...

2.12A Where contractual arrangements are material to the conditions for authorisation - in particular where contractual provisions are relied upon to meet Articles 319, 320 and 321 of the Delegated Regulation - and those arrangements are subject to foreign law, the PRA ~~may request~~ ~~will expect~~ a legal opinion on the effectiveness and enforceability of those arrangements under the relevant foreign law. In such circumstances the PRA ~~may request~~ ~~would also expect~~ an English law opinion confirming that the operation of English-law would not undermine the effect of the transaction and/or arrangements under the applicable foreign law. In general, where the arrangements are subject to foreign law but the application is otherwise classified as standard, the PRA would not expect the applicant to provide such a legal opinion.

...

Clarification on the number of SMF holders needed for an ISPV

...

3.3 The PRA considers that each of these roles is important for the ongoing safety and soundness of the ISPV but, depending on its assessment of the particular case, an individual with the relevant skills and experience may be able to perform more than one of these roles. It is also acknowledged that provided there are no conflicts of interest, a SMF role or individual deemed to be effectively running the ISPV could be held by a suitably senior employee or director of a third party such as an outsourced service provider.

3.3A In general, for standard applications, one individual may hold more than one SMF role. For 'complex' applications, the PRA considers that the three SMF roles may need to be held by separate individuals. However, this would always be assessed on a case-by-case basis.

...

Clarification of approach to multiple cedants ceding risk to a single cell via a single contract

...

3.29 A stand-alone ISPV may only take on a single contract for risk transfer from a single cedant. This follows from Article 2 of the Implementing Regulation, which defines an MISPV. It may not take on a contract for risk transfer from multiple cedants, nor can it take on more than one contract for risk transfer from one cedant. Similarly, in line with Regulation 43(5) of the RTR, a single cell of a PCC may only take on a single contract for risk transfer from a single cedant.

3.29A However, if an otherwise standard application proposes the inclusion of multiple cedants which:

(i) are part of the same insurance group (as per Solvency II) or are group undertakings of each other (as defined in Companies Act 2006) or are Lloyd's syndicates managed by the same managing agency with a shared economic interest;⁵

⁵ For example, syndicates managed on a 'turnkey basis' by a managing agency would not be considered to have a shared economic interest with the other syndicates managed by the same managing agency.

(ii) transfer risk via the same contract to a single cell (either an ISPV or a specific cell within an MISPV) with aligned economic interests (in particular, that no one cedant has preferential terms over another, especially in the receipt of claims from the ISPV). The contractual arrangements should set out how claims would be apportioned between the different cedants, including if there are sub limits per cedant within the contract, up to a pre-defined, fully paid up limit to the value of the AMRE. However, the contractual arrangements should not allow for the claims of one cedant to be subordinated to that of another cedant;

(iii) transfer risks which are short tail, wholesale, general insurance in nature; and

(iv) are able to demonstrate that the inclusion of multiple cedants within the proposed arrangement does not undermine effective risk transfer, subordination of investor rights to all ceding parties, or fully funded requirements. Specifically, the presence of multiple cedants should never result in a situation where the cell of the ISPV would be required to pay claims beyond the AMRE of the ISPV or that cell,

then the PRA may, at its discretion, accept that they should be treated as a single cedant ceding risk via a single contract to an ISPV or single cell, in which case the PRA may include such arrangements in the Scope of Permission granted to the ISPV or MISPV.

....

Clarification on the interpretation of 'quantifiable risk'

...

3.32 In the case of risk transfers that include non-indemnity triggers, the PRA expects applicants to include specific details of the structure of the trigger, eg any pay-out factors, geographic weightings, exposures vectors, relative experience ratios, or regular portfolio resets. In line with Annex 1 of the Implementing Regulation, where basis risk exists, applicants must submit a basis risk analysis as part of their application.

Solvency Requirements

3.33 Under the current requirements, the PRA's assessment of the solvency of the ISPV requires it to take into consideration the quantifiable risks of the special purpose vehicle.⁶

3.34 The PRA's assessment of quantifiable risk for standard applications would consider, at the least, insurance risk, market risk, operational risk and asset risk which may exist in the ISPV. If requested by the PRA, an ISPV is expected to comment on these risks as a minimum, even if, in its consideration, this risk is considered to be de minimis. Notwithstanding the expectation that ISPVs consider these aforementioned risks at the minimum, the PRA expects that they would consider all relevant risks in assessing the quantifiable risk of the ISPV.

...

Clarification on the requirement for written policies submitted for standard applications

...

System of Governance requirements

3.35 As per article 324 (2)(a) of the CDR, an ISPV is required to have policies in a number of areas related to its system of governance. For standard applications the PRA does not expect firms to submit the full suite of written policies in place. Instead, the PRA would expect at the least a summary description of the written policies in place that are proportionate to the uses and systems of governance requirements of the ISPV. For multi-arrangement ISPVs, or where the application is deemed 'complex', the PRA may request to see the policies (or a sample thereof) on a case-by-case basis.

...

⁶ CDR Article 326 (2)

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

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- 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)
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