

Supervisory Statement | SS1/19

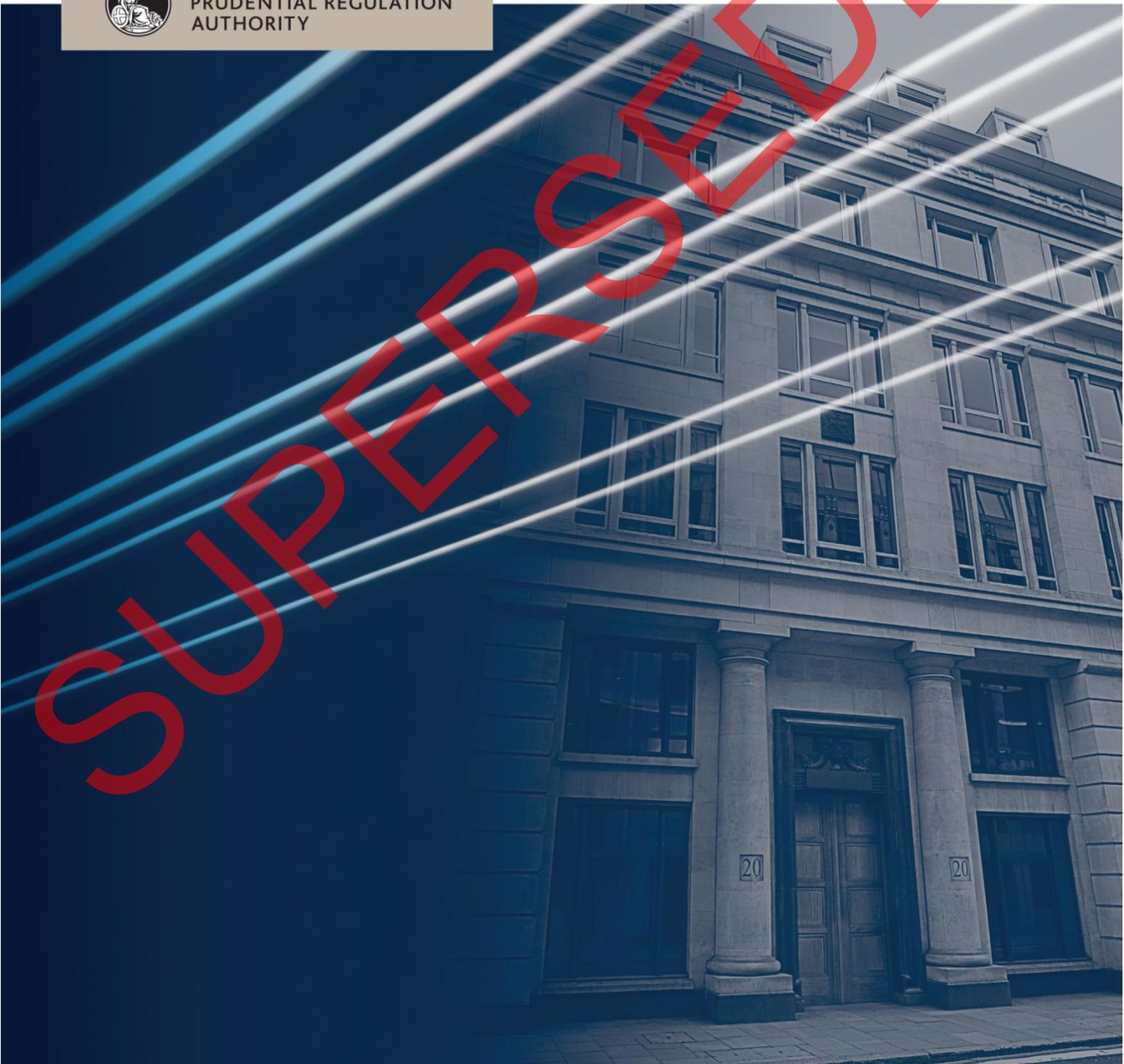
Non-binding PRA materials: The PRA's approach after the UK's withdrawal from the EU

April 2019

(Finalising February 2019)



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SUPERSEDED

1 Introduction

1.1 HM Treasury set out its intention to ensure that the UK continues to have a functioning financial services regulatory regime regardless of the outcome of negotiations with the EU.¹ This approach is to ensure that EU-derived laws and rules that are currently in place in the UK will continue to apply at the point of exit to the extent that they remain operable in a UK regime. Changes will only be made to those laws or rules that would otherwise not operate appropriately. This provides continuity and certainty for firms as the UK leaves the EU.

1.2 This supervisory statement (SS) elaborates on how firms should interpret existing non-binding PRA regulatory and supervisory materials in light of the UK's exit from the EU. This includes the PRA's existing approach documents, statements of policy (SoPs), and SSs – these are collectively referred to as the PRA's 'non-binding materials'.

1.3 This SS is relevant to all PRA-regulated firms operating, or intending to operate, in the UK. The PRA may issue further expectations in relation to this topic.

1.4 Setting out the PRA's approach to its non-binding materials after the UK's withdrawal from the EU helps provide certainty to firms. Except for SS18/15 'Depositor and dormant account protection', the PRA is not proposing to make line-by-line amendments to its non-binding materials at this stage to reflect the UK's withdrawal from the EU.

2 Supervisory expectations for firms on the UK's exit from the EU

2.1 Alongside PRA rules, the PRA also issues supervisory approach documents,² SoPs,³ and SSs.⁴

- The supervisory approach documents set out information on the PRA's supervisory practices including its approach to the supervision of different types of firms.
- SoPs are the formal documents in which the PRA details its policy on a particular matter. SoPs usually set out the PRA's approach to exercising powers conferred by the Financial Services and Markets Act 2000 ('FSMA'). They do not contain the PRA's expectations, which are set out in supervisory statements.
- Supervisory statements set flexible frameworks for firms, incorporating new and existing expectations. They focus on the PRA's expectations and are aimed at facilitating firm and supervisory judgement in determining whether they meet those expectations. They do not set absolute requirements – these are contained in rules.

2.2 In general, the PRA is not intending to make line-by-line amendments to non-binding materials ahead of the UK's withdrawal from the EU. However, firms should read and interpret these materials in light of the UK's withdrawal from the EU, as well as the amendments that have been made to related legislation under the European Union (Withdrawal) Act 2018 (the 'Act'). This includes changes to the PRA Rulebook and Binding Technical Standards, under the Act. In particular, firms should take into account the key changes to legislation outlined in

¹ <https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>.

² Available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/pras-approach-documents-2018>.

³ Available at: <https://www.bankofengland.co.uk/news/prudential-regulation?NewsTypes=65d34b0d42784c6bb1dd302c1ed63653&Taxonomies=7d299a7477874858849990ea23f885c0&Direction=Latest%27>.

⁴ Available at: <https://www.bankofengland.co.uk/news/prudential-regulation?NewsTypes=65d34b0d42784c6bb1dd302c1ed63653&Taxonomies=65a33f20fd5241d58bd01d5fb54bde8&Direction=Latest%27>.

Chapter 3 of this SS. For example, SSs that set out the PRA expectations for firms in relation to European joint decision processes would no longer be relevant under the assumption that the UK would no longer participate in these processes. Firms should also interpret these materials in light of the use of any relevant transitional relief.

3 Relevant legislative changes

3.1 There are various key changes being made to legislation that firms should consider when interpreting existing PRA non-binding materials. A non-exhaustive list of these changes is set out below.

- Passporting under EU financial services legislation will no longer be available after exit⁵. Therefore, any reference to EEA passporting, or processes associated with EEA passporting, are redundant.
- Functions carried on by EU authorities that exist solely to support the EU single market will be redundant and will therefore be deleted. Other roles and responsibilities that are currently being carried out by EU authorities are being reallocated to the most appropriate UK authority, to the extent that they remain relevant when the UK has left the EU. For example, HM Treasury is proposing to transfer to the PRA the European Insurance and Occupational Pensions Authority (EIOPA) function of declaring an 'Exceptional Adverse Situation'. Firms should interpret references to EU functions with reference to the new UK authority taking on that function.
- The treatment of EU firms and assets for the purposes of capital and liquidity requirements will, in most cases, be aligned with the treatment of third countries' firms and assets. Therefore, references to preferential treatment of EU assets are no longer relevant and firms should have reference to the third country treatment of those assets.
- Where capital or liquidity consolidation was only required at the EEA level previously, this will be required at the UK level after exit. (For insurance groups, firm-specific consolidation waivers remain available.) Therefore, firms should interpret any reference to the EEA consolidated group, to the UK consolidated group.

⁵ Gibraltarian firms will be able to continue passporting under the post-exit version of the Gibraltar Order.