



BANK OF ENGLAND

December 2018

# UK withdrawal from the EU: Further changes to

- PRA Rulebook and Binding Technical Standards
- Resolution Binding Technical Standards

Bank of England Consultation Paper | PRA Consultation Paper CP32/18

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- Resolution Binding Technical Standards

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Responses are requested by Monday 21 January 2019.

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## 1 Overview

1.1 The UK's withdrawal from the European Union (EU) requires changes to be made to UK legislation to ensure that it remains functional. The European Union (Withdrawal) Act 2018 (the 'Act') converts directly applicable EU law (eg EU Regulations) into UK law and preserves domestic law that relates to EU membership (including domestic law that was introduced to implement EU Directives). This body of law is referred to as 'retained EU law'. The Act also provides Government ministers with powers to make changes to the law so that it continues to operate effectively after the UK's withdrawal from the EU – these processes are referred to as 'onshoring' or 'Nationalising the Acquis'<sup>1</sup> (NtA).<sup>2</sup>

1.2 This Consultation Paper (CP) contains two consultations to fix deficiencies arising from the UK's withdrawal from the EU and make consequential changes:

- Part 1 sets out the Prudential Regulation Authority's (PRA) proposals in relation to the PRA Rulebook and Binding Technical Standards (BTS) within the PRA's remit that will be retained, or 'onshored', in UK law.
- Part 2 sets out proposals by the Bank of England (Bank) acting as resolution authority in relation to two BTS under the Bank Resolution and Recovery Directive (BRRD).<sup>3</sup>

1.3 This CP is published as a part of the Bank's consultations on amending financial services legislation under the Act.<sup>4</sup> The Bank and PRA are consulting on further changes in this CP to ensure an operable legal framework after the UK leaves the EU, and to reflect onshoring changes made by HM Treasury in the relevant draft Statutory Instruments (SIs) or relevant explanatory policy materials made available by HM Treasury since the publication of the Bank's and PRA's consultations in October 2018. This includes the 'Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019' draft SI<sup>5</sup> published on Monday 17 December 2018, the 'Securitisation (Amendment) (EU Exit) Regulations 2019' draft SI<sup>6</sup> published on Wednesday 19 December 2018 and the 'Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019: explanatory information'<sup>7</sup> published on Wednesday 19 December 2018. The Bank and PRA continue to follow the approach set out in CP25/18 'The

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<sup>1</sup> Acquis refers to the 'acquis communautaire'.

<sup>2</sup> HM Treasury has set out its approach to onshoring EU financial services regulation in 'HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act', June 2018: <https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>.

<sup>3</sup> Directive 2014/59/EU.

<sup>4</sup> The Bank consultation package published on 25 October 2018 comprises:

- a joint Bank and PRA CP25/18 on the overall approach, setting out the Bank's general approach to fixing deficiencies in rules and onshored BTS, and setting out its proposed expectations on how EU Guidelines and Recommendations should be interpreted: <http://www.bankofengland.co.uk/paper/2018/the-boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>;
- a PRA CP26/18 on changes to PRA rules and changes to onshored BTS within the PRA's remit: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>;
- a Bank CP on changes to Financial Market Infrastructure (FMI) rules and onshored BTS within the remit of the Bank as FMI supervisor: <http://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-changes-to-fmi-rules-and-onshored-binding-technical-standards>; and
- a Bank CP on changes to onshored BTS within the remit of the Bank as resolution authority: <http://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-boes-approach-to-resolution-sop-and-onshored-binding-technical-standards>.

<sup>5</sup> <https://www.gov.uk/government/publications/draft-financial-services-contracts-transitional-and-saving-provision-eu-exit-regulations-2019>.

<sup>6</sup> <https://www.gov.uk/government/publications/Draft-Securitisation-Amendment-EU-Exit-Regulations-2019>.

<sup>7</sup> <https://www.gov.uk/government/publications/Draft-EU-Exit-legislation-relating-to-the-financial-services-framework-between-the-UK-and-Gibraltar>

Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018' (the 'NtA approach CP').<sup>8</sup>

1.4 The draft PRA Rulebook EU Exit Instrument contained in Appendix 2 shows all proposed changes to the Rulebook Parts affected by this CP, including those changes proposed in CP26/18 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards'<sup>9</sup>. The further changes being consulted on in this CP are highlighted in yellow in Appendix 2.

1.5 This CP is relevant to all firms authorised and regulated by the PRA (including those that expect to have a deemed permission under the 'temporary permissions regime' (TPR) or Financial Services Contracts Regime (FSCR),<sup>10</sup> or that seek to apply for PRA authorisation in the future. It is also relevant to firms which are treated as exempt in relation to certain regulated activities under the FSCR.

## Background

1.6 As set out in the NtA approach CP, HM Treasury has delegated powers, under the Act, to the financial services regulators (PRA, Bank, Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR)) through the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the 'Regulations'). This gives the regulators responsibility for fixing deficiencies in onshored BTS.<sup>11</sup> HM Treasury also intends to amend the Regulations to include relevant BTS adopted by the European Commission after the original SI was laid in Parliament. The delegated power can also be used by the regulators to make amendments within their respective rules. Therefore, the PRA and Bank intend to make 'EU Exit Instruments' to fix any deficiency in PRA rules, or in BTS in the PRA's or Bank's remit, arising from the UK's withdrawal from the EU.

1.7 As set out in the NtA approach CP, HM Treasury is responsible for addressing deficiencies in EU regulations that are onshored under the Act, apart from BTS. HM Treasury is also responsible for addressing deficiencies in primary and secondary UK financial services legislation that arise as a result of the UK's withdrawal from the EU. The changes proposed to the PRA Rulebook and BTS in this CP are consistent with changes that HM Treasury proposes to make to the relevant legislation, and should be read in conjunction with those changes.

1.8 This CP focuses on changes where the PRA and Bank propose to depart from the general approach described in Chapter 3 of the NtA approach CP (in particular, where the PRA and Bank propose to depart from the general principle of treating the EU and its Member States<sup>12</sup> as 'third countries'),<sup>13</sup> or where the PRA and Bank consider that an explanation would be appropriate to make clear the rationale for the changes. This CP and the NtA approach CP should be read in conjunction.

1.9 The power delegated to the PRA and Bank under the Act can only be used to fix 'deficiencies' that arise as a result of the UK's withdrawal from the EU. Therefore the PRA and

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<sup>8</sup> See footnote 4.

<sup>9</sup> See footnote 4.

<sup>10</sup> As set out in the 'Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019' draft SI – see the Bank's Financial Services Contracts Regime webpage for more information: <https://www.bankofengland.co.uk/eu-withdrawal/financial-services-contracts-regime>.

<sup>11</sup> In addition to the power to address deficiencies, the Regulations also delegate to the regulators (PRA, Bank, FCA and PSR) an ongoing power to make and maintain BTS. These powers cannot be exercised until after the UK has left the EU.

<sup>12</sup> References in this CP to the EU and/or its Member States include, as appropriate, the European Economic Area (EEA) States of Norway, Iceland and Liechtenstein.

<sup>13</sup> 'Third country' is defined in relation to each piece of EU legislation but is broadly any non-EEA jurisdiction. On exit those definitions will be altered to any non-UK jurisdiction.

Bank cannot use the power as the basis for policy changes unrelated to the UK's withdrawal from the EU.

1.10 The PRA is proposing to use the delegated power for the majority of changes proposed in Part 1 of this CP. However, the PRA is proposing to use its rule-making powers under the Financial Services and Markets Act 2000 (FSMA) in relation to certain aspects of rules concerning levies and administration fees in respect of the Financial Services Compensation Scheme (FSCS) (see Chapter 8).

1.11 The Bank is proposing to use the powers delegated under the Act for making the changes relating to the BRRD BTS proposed in Part 2 of this CP.

### *Approach to BTS changes*

1.12 In this CP, the PRA and Bank are consulting on changes to additional onshored BTS that the PRA and Bank will be, or are expecting to be, responsible for (as set out in the Schedule to the Regulations). A list of the BTS expected to be in the PRA's remit being consulted on in Part 1 of this CP is included in Appendix 3 alongside the draft EU Exit Instrument. The proposed changes to BTS in the Bank's remit as resolution authority being consulted on in Part 2 of this CP are set out in the draft EU Exit Instrument in Appendix 4.

### *Joint PRA/FCA BTS*

1.13 The responsibility for some onshored BTS is shared<sup>14</sup> between the PRA and FCA ('joint BTS'). Where this is the case, the approach is that one regulator will take the lead in proposing amendments, in close consultation with the other relevant regulator, based on which regulator's remit and objectives are most relevant to the joint BTS. Of particular relevance for Part 1 of this CP are changes to Securitisation Regulation<sup>15</sup> BTS proposed by PRA and Markets in Financial Instrument Directive<sup>16</sup> (MiFID) BTS consulted on by the FCA in CP18/28 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation'.<sup>17</sup>

1.14 Under the Regulations, regulators have the option to retain the joint BTS as joint, or 'divide' them so that, for example, there is a PRA version of the onshored BTS for PRA-regulated firms and an FCA version for FCA-regulated firms. As previously set out in CP26/18, to avoid duplication, the detail of the proposed changes to the relevant joint BTS is included in the PRA's or FCA's consultation packages as described below.

- Part 1 of this CP includes proposed changes to the joint PRA/FCA BTS that relate to the Securitisation Regulation and existing securitisation regime. It also includes proposed changes to a joint PRA/FCA BTS relating to operational risk. The FCA has consulted on proposed changes to the joint PRA/FCA BTS that relate to MiFID in their CP18/28.
- Part 2 of this CP includes proposed changes to two BTS relating to the BRRD that are expected to be in the sole remit of the Bank as resolution authority.

## **Implementation**

1.15 As set out in the NtA approach CP, the changes proposed in this CP would take effect at 11:00pm on Friday 29 March 2019 ('exit day')<sup>18</sup> only in the event that there is no

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<sup>14</sup> As specified in the Schedule to the Regulations.

<sup>15</sup> Regulation (EU) 2017/2402.

<sup>16</sup> Directive 2014/65/EU.

<sup>17</sup> October 2018: <https://www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation>.

<sup>18</sup> As defined in the Act.

Implementation Period.<sup>19</sup> If the Withdrawal Agreement between the UK and EU is ratified and the Implementation Period commences on exit day, the proposed changes would not take effect until after the end of the Implementation Period. Further modifications to the PRA Rulebook and onshored BTS may be required to reflect any arrangements made between the UK and EU as part of their future relationship.<sup>20</sup>

1.16 HM Treasury has committed<sup>21</sup> to give the financial services regulators a temporary transitional power to enable firms to adjust to changes made as a result of onshoring. As set out in the NtA approach CP, the Bank and PRA are considering exercising the temporary transitional power in a broad way, with limited exceptions,<sup>22</sup> to delay the application of onshoring changes that will alter the regulatory standards that apply to firms, in the event that there is no Implementation Period.

### Transferred functions

1.17 Certain functions currently carried out by the European Supervisory Authorities (ESAs) have been transferred, or are expected to be transferred, to the Bank and PRA. These are expected to include External Credit Assessment Institutions (ECAI) mapping and publication of Solvency II<sup>23</sup> technical information. The PRA and Bank are preparing to receive and perform these functions and will set out relevant information for firms, such as the location of data that will be required for the purposes of firms' prudential calculation.

### Structure of the document

1.18 The rest of this CP is structured as follows:

#### Part 1: PRA Consultation

- Chapter 2 sets out proposals relating to the FSCR.
- Chapter 3 sets out proposals relating to Gibraltar and incoming Gibraltar firms.
- Chapter 4 sets out proposals relating to additional PRA Rulebook and BTS changes.
- Chapter 5 sets out proposals relating to regulatory transactions forms.
- Chapter 6 sets out further proposals relating to FSCS protection (including levies for inbound firms).
- Chapter 7 sets out the PRA's obligations under the Regulations (relevant to Chapters 2-5)
- Chapter 8 sets out the PRA's statutory obligations under FSMA (relevant to Chapter 6).

#### Part 2: Bank (as resolution authority) consultation

- Chapter 9 sets out proposals relating to additional BRRD BTS.

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<sup>19</sup> A Withdrawal Agreement was agreed between the UK and EU and endorsed by leaders on 25 November 2018: <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration-laid-before-parliament-following-political-agreement>. The Withdrawal Agreement provides for an implementation period (the 'Implementation Period').

<sup>20</sup> A political declaration on the future relationship between the UK and the EU was endorsed by leaders on 25 November 2018: <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>. This political declaration sets out the framework for the future relationship between the EU and UK.

<sup>21</sup> 'HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act', June 2018: <https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>.

<sup>22</sup> Exceptions to the use of the temporary transitional power as proposed by the Bank and PRA are set out in the NtA approach CP and CP26/18.

<sup>23</sup> Directive 2009/138/EC.

- Chapter 10 sets out the Bank's obligations under the Regulations (relevant to Chapter 9).

1.19 The appendices to this CP consist of:

#### *Part 1 Appendices*

- Appendix 1: Update to draft SS 'PRA approach to interpreting reporting and disclosure requirements after the UK's withdrawal from the EU'
- Appendix 2: Draft PRA Rulebook EU Exit Instrument
- Appendix 3: List of BTS in the PRA's remit and draft BTS EU Exit Instruments

#### *Part 2 Appendix*

- Appendix 4: List of BTS in the Bank's (resolution authority) remit and draft BTS EU Exit Instrument

### **Responses and next steps**

1.20 This consultation closes on Monday 21 January 2019. The PRA and Bank invites feedback on the additional proposals set out in this consultation. Please address any comments or enquiries using the details provided in Chapter 8 (for proposals set out in Part 1) and Chapter 10 (for proposals set out in Part 2).

1.21 Responses to this CP will be shared with the FCA.



## Part 1 PRA consultation - UK withdrawal from the EU: Further changes to PRA Rulebook and Binding Technical Standards

**2 The Financial Services Contracts Regime (FSCR)** This chapter covers the PRA's proposals on prudential rules relating to the Financial Services Contracts Regime (FSCR) that the Government published in draft on Monday 17 December 2018 and intends to make under the Act<sup>24</sup> subject to the final draft of the 'Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019' SI being approved by both Houses of Parliament.

2.2 The mechanisms established by the FSCR would act as a back-stop to the temporary permissions regime (TPR) to ensure that those EEA firms carrying out regulated activities in the UK via a passport immediately before exit day, that do not enter TPR, and those that exit TPR without UK authorisation in respect of some or all their regulated activities, are able to wind down their UK regulated activities in an orderly manner.

2.3 The draft FSCR SI establishes two mechanisms:

- (i) Supervised Run-off (SRO): The types of firms which may enter SRO include firms:
- with a UK branch (operating under a freedom of establishment (FoE) passport immediately before exit day) that did not enter TPR;
  - that entered TPR but exited it without a UK authorisation in respect of some or all their regulated activities (operating under an FoE or freedom of services (FoS) passport immediately before exit day); and
  - that held top-up permissions before the UK's exit from the EU and were operating under an FoE or FoS passport immediately before exit day and did not enter TPR.
- (ii) Contractual Run-off (CRO): Firms without a UK branch (operating under a FoS passport immediately before exit day) that do not hold a top-up permission and do not enter TPR, will automatically enter CRO.

2.4 The activities permitted under CRO and SRO will be limited to those required to service pre-existing contracts and to:

- reduce the financial risk of parties to pre-existing contracts and third parties affected by the performance of pre-existing contracts;
- transfer the property, rights or liabilities under a pre-existing contract; and
- comply with legal and regulatory requirements.

2.5 A condition of entry into FSCR is that a firm is regulated by its home state regulator and therefore we expect these firms to be supervised by their home regulators. If home state authorisation is cancelled, a firm will cease to be in the regime.

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<sup>24</sup> <https://www.gov.uk/government/publications/draft-financial-services-contracts-transitional-and-saving-provision-eu-exit-regulations-2019>.

2.6 The FSCR SI allows firms to utilise SRO and CRO mechanisms for five years after entry into the regime (whether they enter on exit day, or whether they enter after having been in the TPR for a period of time). The exception to this five-year time limit is for contracts of insurance which will have a time limit of 15 years. The draft FSCR confers on HM Treasury the power to extend the length of the regime by statutory instrument if it considers it necessary to do so following the submission of a joint assessment by the regulators as to the effect of extending or not extending the regime.

### **Approach to firms in Supervised Run-off (SRO)**

2.7 Entry into the SRO will occur automatically by operation of law where the statutory conditions are met and firms in SRO will have a 'deemed' Part 4A permission.

2.8 Firms in SRO will be subject to the same obligations and supervisory framework other Part 4A authorised firms. However, some of the rules that SRO firms will need to comply with will need to be amended to ensure that they are effective and operable.

2.9 EEA firms operating in the UK under an FoE or FoS passport that enter SRO will become, and be treated as, third country firms. Subject to the rule changes discussed below, the PRA expects firms in SRO with a branch in the UK to comply with the same rules that apply to other third country branches. For cross-border service providers in SRO without a UK branch, a more limited set of rules will apply. These will include rules that could apply, as currently written, to a PRA-authorized third country firm without a UK branch. These include the Fundamental Rules, Auditors, Change in Control, Close Links, Fees, General Provisions, Information Gathering, Interpretation, Notifications and Use of Skilled Persons Parts, Senior Managers and Certification Regime (SM&CR) requirements, and FSCS rules in the PRA Rulebook, subject to the rule changes discussed below.

### **Approach for firms In Contractual Run-off (CRO)**

2.10 The CRO grants firms within it a limited exemption to the general prohibition for the purposes of winding down UK regulated activities in an orderly manner. The scope of the exemption is set out above.

### **Rule changes for SRO firms to ensure operability after withdrawal**

2.11 PRA Rulebook changes particularly relevant to the firms in SRO include:

- (i) adjustments to the definition of non-Directive insurer;
- (ii) application of SM&CR requirements;
- (iii) disclosure to retail clients;
- (iv) information requirements; and
- (v) FSCS (changes apply to both SRO and CRO firms).

### **Insurance undertakings – non-Directive insurers**

2.12 As for firms which enter the TPR, the PRA does not consider PRA non-Directive insurer rules to be effective or easily operable for firms entering SRO since they are based on a Solvency I regime and the insurers in question are currently operating under a Solvency II

regime. The PRA therefore proposes to exclude SRO firms from the definition of non-Directive insurer.<sup>25</sup>

### **Senior Managers and Certification Regime (SM&CR) requirements**

2.13 In order to ensure appropriate and proportionate accountability, the PRA proposes to apply the SM&CR to firms in the SRO. In particular, the PRA proposes to apply a streamlined version of the SM&CR to firms in the SRO that will focus on the specific objective of an orderly run-off of the firm's UK regulated activities.

2.14 The PRA proposes that all firms in the SRO will be required to have at least one individual approved to perform the Head of Overseas Branch (Senior Management Function (SMF) 19) function in the Senior Management Functions 7/ Insurance – Senior Management Functions 6 Parts of the PRA Rulebook ('Provisional SMF19').

2.15 The PRA proposes that firms in the SRO will have a grace period of 12 weeks from their date of entry into the regime in which to obtain deemed (or full) approval for an SMF19. A deemed approval can last for up to 12 months. The PRA proposes to direct firms in the SRO to use a specific form for SMF approval applications. The form would be an adapted version of Short Form A. Using the information provided in this application, the PRA would decide whether to give a notice conferring deemed approval. The relevant individual would then need to undergo a full fit and proper assessment and obtain PRA approval and FCA consent to that assessment as an SMF within 12 months of receipt of notice of deemed approval.

2.16 The fit and proper assessment will focus on whether the relevant individual is fit and proper to deliver the objective of orderly run off of the firm's UK activities within SRO. Likewise, the usual Prescribed Responsibilities for third country branches, which apply in business-as-usual and will apply to firms in the TPR, will not apply to firms in SRO. Instead, the SMF19 at these firms will be subject to a standard, single responsibility to 'oversee the orderly run-off of the firm's UK-regulated activities'.

2.17 The PRA also proposes that the Certification Regime continue to apply to the extent that it currently does pursuant to FCA rules, ie to firms currently operating in the UK as a branch via an establishment passport but not to any other firms.

### **Disclosure to retail clients for firms**

2.18 The PRA proposes that firms in SRO be required to include specific status disclosure wording in their communications with retail clients, both written and electronic, to indicate that they are in the regime.

2.19 The wording the PRA intends to use for dual-regulated SRO firms without a top-up permission is below. The wording for firms with a top-up permission will include text to reflect that top-up permission:

'Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. [For EEA services firms: The nature and extent of consumer

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<sup>25</sup> The PRA consulted on a change to the definition of 'non-Directive insurer' in CP26/18, which would give effect to the policy intent to exclude SRO firms from the definition.

protections may differ from those for firms based in the UK.] Details of the Financial Services Contracts Regime, that allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the PRA's website'.

### **Information requirements**

2.20 The PRA proposes that firms in SRO be required to provide the PRA with a run-off plan on entry into the SRO, which will describe the firm's plans to run-off its business before the mechanism expires. Firms will be required to provide regular (at least annual) updates on progress and any unexpected divergence from this plan.

2.21 This requirement will apply to banking firms operating under FoE and FoS passports as well as insurers operating under FoE and FoS passports.

### **Approach to FSCS protection for customers of firms in Supervised Run-off and Contractual Run-off**

2.22 See Chapter 6.

### **Approach to use of temporary transitional power for incoming EEA branches**

2.23 If there is no Implementation Period, EEA firms operating in the UK under the FoS or FoE passport that enter SRO will become, and be treated as, third country firms.

2.24 Firms entering the SRO may find it challenging to comply immediately after exit day with some requirements in PRA rules that will apply to them for the first time because of the UK's new position outside the EU (this would apply as well to firms that enter SRO from TPR). Therefore, at this stage, the PRA is considering the use of possible transitional relief in relation to certain aspects of the following third country branch requirements:

- Branch Solvency and Minimum Capital Requirements for insurance branches (but the PRA would expect firms to comply with branch security deposit requirements);
- PRA remuneration rules where they go beyond minimum CRD IV<sup>26</sup> requirements;
- certain reporting obligations where they involve the segregation of branch data and the reporting and review of this data where this is not already required; and
- certain composite rules for insurance branches.

2.25 The PRA welcomes comments on any particular aspects of the UK third country regime and any particular obligations in the PRA Rulebook which readers consider EEA firms entering SRO would find particularly challenging to comply with from exit day.

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<sup>26</sup> Capital Requirements Directive (2013/36/EU) (CRD) and Capital Requirements Regulation (575/2013) (CRR) – jointly 'CRD IV'.

### 3 Gibraltar and incoming Gibraltar firms

3.1 This chapter covers the PRA's proposals on changes to the prudential rules on the treatment of Gibraltar firms for the purposes of the PRA Rulebook.

#### Background

3.2 HM Government has announced that Gibraltar-based financial services firms will continue to have access to the UK market on the basis of the current deemed passport rights until December 2020 should there be no Implementation Period. The FSMA Gibraltar Order,<sup>27</sup> which currently replicates EU passporting rights as between the UK and Gibraltar will be retained and any deficiencies in it fixed.<sup>28</sup> In the event that other EEA firms lose their passporting rights and enter either the TPR or FSCR, Gibraltar firms will be able to continue operating in the UK on the basis of their deemed passporting rights.

3.3 As a result of the end of passporting rights for EEA firms, many of the changes relating to the withdrawal of the UK from the EU involve amending Parts of the PRA Rulebook to reflect that 'references to passporting, or processes associated with passporting, are redundant'.<sup>29</sup> However, this will not be the case in relation to Gibraltar and Gibraltar firms continuing to operate in the UK on the basis of continued deemed passporting rights, where references to passporting and associated processes would need to be retained for the exclusive use of Gibraltar firms. This will impact on some material areas of policy, including the scope of FSCS coverage and the prudential treatment of UK firms' exposures to Gibraltar.

#### Approach to Gibraltar and incoming Gibraltar firms

3.4 The PRA is consulting on a draft rule which provides a 'horizontal fix' to save the existing treatment of Gibraltar and Gibraltar firms in the PRA Rulebook. The purpose of the horizontal fix would be to maintain status quo regulatory treatments in relation to Gibraltar, without having to undertake specific line-by-line amendments to reverse the effect of the deletion of otherwise redundant provisions, or alteration of relevant provisions, under the baseline scenario of moving to third country treatment.

3.5 This horizontal fix rule does not apply where a 'contrary intention' is evident. This 'contrary intention' should be construed in light of regulations made under the Act. This rule is not intended to apply where the application of a rule in the PRA Rulebook in relation to or in connection with Gibraltar would be contrary to the intention of regulations made under the Act or would have a result that is incompatible or inconsistent with the legislative scheme with which a rule is connected.

3.6 The horizontal fix does not apply to the Depositor Protection and Policyholder Protection Parts, which contain their own application provisions for Gibraltar-based firms.

#### Approach to FSCS protection for customers of Gibraltar firms and UK firms operating in Gibraltar

3.7 See Chapter 6.

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<sup>27</sup> The Financial Services and Markets Act 2000 (Gibraltar) Order 2001.

<sup>28</sup> The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019: explanatory information <https://www.gov.uk/government/publications/Draft-EU-Exit-legislation-relating-to-the-financial-services-framework-between-the-UK-and-Gibraltar>.

<sup>29</sup> See CP26/18.

## 4 Further PRA Rulebook and PRA BTS changes

4.1 This chapter highlights additional proposed amendments to PRA rules and BTS that are expected to be in force on exit day.

### Securitisation

4.2 The new EU securitisation framework, which applies from Tuesday 1 January 2019, consists of:

- (i) the Securitisation Regulation,<sup>30</sup> which outlines general requirements for all securitisation activity in the EU as well as the criteria and process for designating certain securitisations as 'Simple, Transparent and Standardised' (STS);
- (ii) amendments to Capital Requirements Regulation (CRR),<sup>31</sup> which implement revisions to the Basel securitisation framework; and
- (iii) amendments to the Solvency II Delegated Regulation.<sup>32</sup>

4.3 This new framework introduces STS securitisations with appropriate prudential incentives for firms to structure securitisations that are simpler, transparent and more comparable. The PRA published PS29/18 'Securitisation: The new EU framework and Significant Risk Transfer'<sup>33</sup> and updated Supervisory Statements relating to the new framework on Thursday 15 November 2018.

4.4 The Securitisation Regulations 2018,<sup>34</sup> which implement the new EU securitisation regime, designate the PRA as the competent authority for supervising the compliance of all PRA-authorized firms established in the UK with the obligations set out in Articles 6, 7, 8 and 9 of the Securitisation Regulation.

4.5 HM Treasury intends to make the changes relating to the UK's withdrawal from the EU with an additional Securitisation SI under the Act.<sup>35</sup> The 'Securitisation (Amendment) (EU Exit) Regulations 2019' draft SI will cover changes to both the new and existing securitisation frameworks and is expected to transfer the relevant BTS mandates to the PRA and/or FCA.

4.6 The new EU securitisation framework mandates the ESAs to develop a number of BTS. Some of these BTS are of relevance to the PRA and are expected to be adopted before exit day. Of these, the BTS specifying the requirements relating to risk retention pursuant to Article 6(7) of the Securitisation Regulation<sup>36</sup> has been submitted in draft to the European Commission. The PRA expects to lead on making the changes relating to the UK's withdrawal from the EU for this BTS, which will remain shared with the FCA. This CP proposes amendments based on the final draft BTS published by the European Banking Authority (EBA).

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<sup>30</sup> EU/2017/2402.

<sup>31</sup> EU/2017/2401.

<sup>32</sup> Regulation (EU) 2015/35.

<sup>33</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/securitisation-the-new-eu-framework-and-significant-risk-transfer>.

<sup>34</sup> Laid in Parliament on Tuesday 4 December 2018: <http://www.legislation.gov.uk/ukSI/2018/1288/contents/made>.

<sup>35</sup> The 'Securitisation (Amendment) (EU Exit) Regulations 2019' draft SI was published on Wednesday 19 December 2018:

<https://www.gov.uk/government/publications/Draft-Securitisation-Amendment-EU-Exit-Regulations-2019>

<sup>36</sup> <https://eba.europa.eu/documents/10180/2298183/Draft+RTS+on+risk+retention+%28EBA-RTS-2018-01%29.pdf/a77e1aad-5cf9-444f-9e7b-fa2d948df1d6>.

4.7 The draft BTS to specify homogeneity of exposures underlying an STS securitisation (Articles 20 and 24 of the Securitisation Regulation) has been submitted to the European Commission and is likely to be adopted before exit day. However, the FCA will make the relevant changes relating to the UK's withdrawal from the EU to this BTS in due course, as they have been designated as the competent authority for supervising the compliance of originators, sponsors and SSPEs with the STS framework.

4.8 The final draft BTS to specify transparency requirements for originators, sponsors and securitisation special purpose entities (SSPEs) (Article 7 of the Securitisation Regulation) has been submitted to the European Commission. In the event that this BTS is adopted and in force before exit day, the BTS is expected to remain joint with the FCA, with the FCA leading on the drafting of the changes relating to the UK's withdrawal from the EU.

4.9 In the event a BTS is not adopted and in force by exit day, or is adopted with significant changes by the European Commission compared to the published draft, the PRA will provide an update on the expected approach.

4.10 A selection of legacy BTS relating to the pre-January 2019 CRR will also continue to apply from Tuesday 1 January 2019 as one of the following transitional provisions under the new EU securitisation framework:

- Under the post-January 2019 CRR (as amended by the Regulation (EU) 2017/2401), securitisations in which the securities were issued before Tuesday 1 January 2019 shall continue to apply the pre-January 2019 CRR securitisation capital framework until Tuesday 31 December 2019. Therefore, the PRA is proposing to make changes to the following onshored BTS relating to the current CRR securitisation capital framework:
  - (i) BTS facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights (Regulation (EU) 602/2014); and
  - (ii) BTS mapping credit assessments of external credit assessment institutions for securitisation (Regulation (EU) 2016/1801)
- In respect of securitisations the securities of which were issued before Tuesday 1 January 2019 credit institutions or investment firms as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, shall continue to apply Article 405 pre-January 2019 CRR and Chapters I, II and III and Article 22 of the BTS specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk (Regulation (EU) 625/2014). Therefore, the PRA is proposing to make changes to that onshored BTS.

4.11 The amendments proposed to the BTS listed in paragraph 4.10 are based on the versions currently in force and published in the Official Journal of the European Union.

### **Additional CRR BTS**

4.12 This CP also proposes changes to a BTS (2018/959) on Advanced Measurement Approaches for operational risk under the CRR. This was adopted by the European Commission on Wednesday 14 March 2018 and entered into force on Friday 26 July 2018. This BTS is expected to be added to the Schedule of the Regulations and to be in the joint remit of the PRA and FCA. Following the approach set out in CP26/18, this BTS is expected to be split. Appendix 3 sets out the proposed changes that the PRA would make as the lead regulator for this BTS.

## MiFID BTS

4.13 Three BTS under MiFID are to become shared responsibility between the FCA and PRA. Due to the nature of these BTS it is intended that they will remain joint with the FCA. Please see the FCA CP18/28<sup>37</sup> for an explanation of changes proposed to these BTS and the draft legal instruments.

### Disclosure of a TPR firm's authorisation status (status disclosure)

4.14 In CP26/18 the PRA set out proposals on rules that would apply to firms in TPR if there is no Implementation Period following the UK's withdrawal from the EU. This CP covers an additional proposal on the disclosure of a TPR firm's authorisation status.

4.15 In line with the FCA's proposals contained in CP18/36 'Brexit: proposed changes to the Handbook and Binding Technical Standards – second consultation'<sup>38</sup> the PRA is proposing that firms in the TPR include specific disclosure in their letters (or electronic equivalents) to retail clients of their authorisation status in line with the current requirements of General Provisions 3. EEA branches must already make a status disclosure, and so they will need to change the existing wording to reflect the firm's status because of their entry into the TPR. For EEA services firms, the rules requiring status disclosure in letters (or electronic equivalents) to retail clients do not currently apply, so disclosure in all such letters (or electronic equivalents) will be a new requirement.

4.16 Disclosure requirements around a firm's authorisation status aim at providing consumers with information about the regulatory status of the firm they are dealing with and the consequent protections which are available to them. The change in disclosure correctly reflects that the firm no longer operates in the UK under passporting rights and that from exit day it gains a deemed temporary permission under Part 4A of FSMA to continue its business in the UK.

4.17 The wording the PRA intends to use for dual-regulated TPR firms is:

'Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. [For EEA services firms: The nature and extent of consumer protections may differ from those for firms based in the UK.] Details of the temporary permissions regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the PRA's website'.

4.18 In each case, the wording for firms with a top-up permission will include different text to reflect that top-up permission, explaining that firms are authorised by the FCA or PRA (as appropriate) and with deemed variation of permission.

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<sup>37</sup> See footnote 17.

<sup>38</sup> November 2018: <https://www.fca.org.uk/publications/consultation-papers/cp18-36-brexit-proposed-changes-handbook-and-binding-technical-standards-second-consultation>.



## 5 Regulatory transactions forms

5.1 This chapter sets out the PRA's proposals on regulatory transactions forms in the PRA Rulebook, published on the PRA website, or available through the FCA's Connect system. This is relevant to all PRA-authorized firms, firms that have a qualifying holding, or which intend to acquire a qualifying holding in a PRA-authorized firm and firms that intend to apply for PRA authorisation.

5.2 Following the approach set out in CP26/18, in relation to reporting and disclosure requirements, the PRA does not propose to make line-by-line changes to regulatory transactions application and notification forms at this stage. Instead, the PRA proposes to amend the draft Supervisory Statement (SS) 'PRA approach to interpreting reporting and disclosure requirements after the UK's withdrawal from the EU' consulted on in CP26/18, so that the SS includes the approach the PRA would expect firms to take when completing regulatory transactions forms after the UK's withdrawal from the EU.

5.3 The draft SS sets out the PRA's expected interpretation of questions, notes or definitions related to the EU. The title and scoping statements of the draft SS are proposed to be changed to include regulatory transactions forms. The remaining content of the draft SS is unchanged as the draft SS consulted on in CP26/18 provides for the necessary interpretations in relation to these forms.

5.4 The PRA considers that this approach would provide clarity for firms on how they should complete regulatory transactions forms, without imposing additional implementation costs by making changes to templates on exit day. The proposed update to the draft SS is set out in Appendix 1.

## 6 FSCS protection for deposits and insurance (including levies for inbound firms)

6.1 The PRA is responsible for the rules that provide FSCS protection for depositors and policyholders. The FCA is responsible for the rules that determine FSCS protection for other areas, including in particular, investment provision, investment intermediation, insurance intermediation, debt management and home finance intermediation.<sup>39</sup>

6.2 Chapter 8 of CP26/18 proposes a number of changes to PRA rules concerning the protection provided by the FSCS to depositors and insurance policyholders in light of the UK's withdrawal from the EU.

6.3 At the time of the October CP, the necessary SIs had not been published to allow the PRA to consult on changes in respect of FSCS protection relating to Gibraltar or the FSCR which includes the SRO and CRO mechanisms.<sup>40</sup> The FSCR SI and HMT explanatory information on the Gibraltar financial services SI have now been published and together form the basis for this consultation.

6.4 This chapter should be read alongside CP26/18 as these proposals add to and amend the FSCS-related proposals issued in consultations in October.<sup>41</sup>

6.5 This chapter is relevant to:

- depositors of deposit-takers and policyholders of insurers that operate cross-border between the UK and EEA and between the UK and Gibraltar;
- UK banks and building societies (including those operating in Gibraltar under an FOE passport), and EEA and Gibraltar credit institutions that operate in the UK under an FOE passport;
- UK insurers (including those operating in the Gibraltar under a passport), EEA and Gibraltar insurers that operate in the UK under a passport, and firms that have assumed responsibility for liabilities from the foregoing insurers (successors);
- the Society of Lloyd's; and
- the Financial Services Compensation Scheme Limited, as scheme manager.

6.6 As described in the NtA approach CP, if an Implementation Period is agreed with the EU, existing FSCS protection will continue during that period and the proposals in this chapter would not take effect.

### Summary of Proposals

6.7 The proposals included in this chapter and the accompanying instrument are to:

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<sup>39</sup> The FCA is consulting separately on its proposed changes to FSCS protection for these other areas.

<sup>40</sup> See Chapter 2 for further detail on the CRO and SRO mechanisms.

<sup>41</sup> The PRA also published CP24/18 'Occasional Consultation Paper' (the 'OCP') on Monday 22 October 2018 which proposed minor changes to certain rules in the Depositor Protection and Policyholder Protection Parts of the PRA Rulebook. These changes include amendments to rules 2.2(4)(f) and 28.3 in the Depositor Protection Part, changes to which were also consulted on in CP 26/18. Accordingly, readers should also refer to the OCP.

- maintain the pre-exit scope of FSCS protection in respect of Gibraltar, subject to necessary modifications;
- establish the scope of FSCS protection for depositors and policyholders of firms in the SRO and CRO; and
- adjust the Management Expenses Levy Limit and Base Costs Part (MELL) to include CRO insurers.

6.8 The PRA does not propose to grant transitional relief under the temporary transitional power in respect of proposals in this chapter. This includes changes to the FSCS rules in the Depositor Protection, Dormant Account Schemes, Policyholder Protection and Management Expenses Levy Limit and Base Costs Parts of the PRA Rulebook (Appendix 2). Proposals in this chapter would apply immediately upon exit.

### **FSCS and Gibraltar**

6.9 Pursuant to the Government's agreement with the Government of Gibraltar, the PRA is proposing to maintain the existing scope of FSCS protection after exit until a longer-term framework for market access is introduced. However, consistent with the treatment of UK firms proposed in CP26/18, new insurance policies issued after exit in respect of EEA risks would not be protected.

### **Deposit-takers**

6.10 Pursuant to HM Treasury's public statement on its approach to Gibraltar under the European Union (Withdrawal) Act 2018, the PRA proposes that protection in relation to deposits held by UK establishments of firms with head offices in Gibraltar will be maintained as it was prior to exit. As stated, the Government of Gibraltar will amend its own legislation to preserve the current regulatory position so that these deposits will continue to be protected by the Gibraltarian deposit guarantee scheme.

6.11 Consistent with existing requirements in the Depositor Protection Part of the PRA Rulebook, the PRA would require these firms to notify customers of UK establishments that their depositor protection is provided by the Gibraltarian deposit guarantee scheme via posters and stickers in branch and online.

6.12 Also consistent with the existing scope of FSCS protection, the PRA proposes that FSCS protection would continue for eligible deposits held by Gibraltarian branches of UK incorporated firms with Part 4A permissions to accept deposits. PRA depositor protection rules would continue to apply to those outbound branches.

6.13 The PRA does not propose to retain the pay-out co-operation provisions that were in place pursuant to the EU Deposit Guarantee Schemes Directive, which would mean that the deposit guarantee scheme responsible for funding the pay-out would also administer it.

### **Insurance**

6.14 The PRA proposes to maintain existing FSCS protection for insurance policies issued prior to exit day such that existing FSCS protected policies maintain protection until risks are run off, as long as the insurer remains a 'relevant person' under FSMA (including through the 'deemed passporting rights' provisions of the Gibraltar Order available to firms with a head office in Gibraltar).

6.15 The PRA proposes that for insurance policies issued after exit day by UK establishments of UK authorised insurers (including insurers with head offices in Gibraltar using the retained passporting provisions), FSCS protection would be available to policies in respect of Gibraltar risks in addition to those of the UK, Channel Islands, and Isle of Man. For insurance policies issued after exit day by inbound Gibraltar firms using a 'freedom of services' passport, FSCS protection would be available (as is the case prior to exit) to policies only in respect of UK risks.

6.16 Consistent with the existing scope of FSCS protection, FSCS protection would continue for policies issued in respect of UK and Gibraltar risks by Gibraltar establishments of UK insurers with Part 4A permission.

### **FSCS and the Financial Services Contracts Regime**

6.17 As discussed in Chapter 2, the FSCR (as drafted) is designed to enable EEA firms that were previously passporting to run-off their regulated activities in the UK. Deposit-takers with an establishment in the UK and insurers that are in the FSCR would be members of the FSCS and would need to comply with the Depositor Protection Part and the Policyholder Protection Part of the PRA Rulebook, respectively.

#### **Deposit-takers in the SRO**

6.18 Deposit-takers with UK establishments within the SRO would have deemed Part 4A permissions to accept deposits and the PRA proposes that their depositors would be treated the same as deposit-takers in the TPR. All associated depositor protection rules would apply immediately upon entry into the SRO (eg Single Customer View (SCV) files to assist in cases of failure, consumer disclosure, and FSCS levies). Readers are referred to paragraphs 8.25 to 8.35 of CP26/18.

#### **Deposit-takers in the CRO**

6.19 Deposit-takers without UK establishments (ie former FoS firms) would not be members of the FSCS and the rules in the Depositor Protection Part would not apply. The PRA expects that home state deposit guarantee schemes would continue to protect deposits held by these deposit-takers (whether in the firm's home state or in another EEA state).

#### **Insurance policies issued before exit day**

6.20 The PRA proposes to maintain existing FSCS protection for insurance policies issued prior to exit day such that existing FSCS protected policies maintain protection until risks are run-off, as long as the insurer remains a 'relevant person' under FSMA.

6.21 Status as a 'relevant person' is achieved by a firm being an 'authorised person' under FSMA at the time of the act or omission giving rise to the claim. Firms would be 'authorised persons' if they have a Part 4A permission, are a TPR or SRO insurer with a deemed Part 4A permission, or pursuant to the changes to FSMA proposed in the draft FSCR by being a firm in the CRO.

6.22 This proposal recognises that policyholders may have factored FSCS protection into their purchase decision and may struggle to replace existing policies with similar protection if there was a sudden cessation in FSCS protection on exit day.

6.23 EEA firms in SRO or CRO would be required to pay FSCS levies, just as they are currently required to do as passporting firms. Readers are referred to Chapter 8 'The PRA's statutory obligations under FSMA'.

### Insurance policies issued after exit day

6.24 To the extent policies are issued after exit day by SRO insurers with a UK establishment, protection would apply as it does for policyholders of insurers in the TPR, where policies in respect of risks situated in the UK, Channel Islands, Isle of Man (or Gibraltar – see above) would be eligible for protection.

6.25 To the extent policies are issued after exit day by or SRO or CRO insurers without an establishment in the UK, FSCS protection would extend to protect policies only in respect of risks situated in the UK.

### Consequences of exiting the Financial Services Contracts Regime

6.26 The Government proposes in the draft FSCR that an SRO or CRO insurer would cease to be a 'relevant person' when the:

- firm's policies have been run-off or transferred;
- SRO or CRO regimes expire;
- EEA home state supervisor withdraws authorisation; or
- PRA removes a firm from the SRO or CRO.

If, for any of these reasons, a SRO or CRO insurer is not a 'relevant person' at the time the act or omission that gives rise to the claim occurs (or the policies have not been transferred to a 'relevant person'), FSCS protection would be lost. Existing FSCS protection would continue to be available for claims in relation to acts or omissions that arose before the loss of status.

6.27 Readers are referred to paragraphs 8.44-8.46 in CP26/18 in relation to transfers of insurance policies to successors.

### FSCS Levies

6.28 All firms that have Part 4A permissions, deemed Part 4A permissions (under TPR or SRO), or are deemed to be authorised persons for the purposes of the FSCS provisions in FSMA under the CRO, would be subject to FSCS levies in respect of their eligible products. Readers are referred to the Chapter 8 for the PRA's statutory obligations in respect of the FSCS levies and administrative fees that would be imposed as a result of rule changes in this consultation as well as those arising from the proposals in CP26/18.

## **7 The PRA's obligations under the Regulations (relevant to Chapters 2-5)**

7.1 HM Treasury has delegated a power, under Section 8 of the Act, to the PRA to make changes to PRA rules and relevant BTS. As such, similar restrictions that apply to the power in Section 8 of the Act also apply to the PRA's delegated power. Different constraints will exist in relation to the temporary transitional power as highlighted in Chapter 4 of the NtA approach CP.

7.2 In accordance with those restrictions, the PRA considers that all changes proposed to Rules and BTS in this CP are appropriate to prevent, remedy or mitigate any:

- (a) failure of the relevant PRA rules or BTS to operate effectively; or
- (b) other deficiency in the relevant PRA rules or BTS, arising from the UK's withdrawal from the EU.

7.3 The types of changes that fall within the scope of 'deficiency' are listed in Section 8(2) of the Act. This list is exhaustive, ie all amendments must address deficiencies of these types or make consequential, supplementary, transitory or transitional provision in connection with them.

7.4 The PRA also confirms that the proposed Rule and BTS changes made under the Act do not:

- (a) impose or increase taxation or fees;
- (b) make retrospective provision;
- (c) create a criminal offence which is capable of leading to imprisonment of more than two years;
- (d) establish a public authority;
- (e) implement the Article 50 Withdrawal Agreement;
- (f) result in the transfer of a function of an EU authority to a UK authority;
- (g) confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or
- (h) amend any legislation other than the relevant PRA rules or BTS.

7.5 Changes proposed in Chapter 6 of this CP relating to FSCS levies are not proposed to be made under the Act. The PRA proposes to make these changes under its FSMA Rule-making power. See Chapter 8 for the consideration of the PRA's statutory obligations under FSMA in relation to these proposals.

### **Equality and diversity**

7.6 The PRA has performed an assessment of the policy proposals and does not consider that the proposals give rise to equality and diversity implications.

## 8 The PRA's statutory obligations under FSMA (relevant to Chapter 6)

### The PRA's statutory obligations

8.1 Generally, in carrying out its policy making functions, the PRA is required to comply with several legal obligations. As mentioned in Chapter 1, the PRA is proposing to use its FSMA powers in relation to certain aspects of the FSCS rules relating to FSCS levies and administrative fees. This is because the Act places restrictions on using the power to fix deficiencies in a way which imposes fees. The effect of the changes in status of firms entering TPR, SRO or CRO pursuant to the TPR or FSCR statutory instruments (as applicable) and, in some instances, related PRA rule changes, is that:

- (i) incoming EEA deposit takers in TPR or SRO which hold deposits at UK establishments will be brought in scope of FSCS levy (and administrative fee) provisions; and
- (ii) incoming EEA insurers (which are already subject to FSCS levy and administrative fee provisions) in TPR, SRO or CRO will change status within the authorisations framework, but continue to be subject to FSCS levy (and administrative fee) provisions.

8.2 The use of FSMA powers means the duty to have regard to certain regulatory principles apply to these aspects of the FSCS rules.

8.3 Before making rules under FSMA,<sup>42</sup> it requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis (except as noted in the 'Cost benefit analysis' section below);
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,<sup>43</sup> insurance objective<sup>44</sup> (if applicable), and secondary competition objective;<sup>45</sup>
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;<sup>46</sup> and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.<sup>47</sup>

8.4 The Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury.<sup>48</sup>

8.5 The PRA is also required by the Equality Act 2010<sup>49</sup> to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

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42 Section 138J of FSMA.

43 Section 2B of FSMA.

44 Section 2C of FSMA.

45 Section 2H(1) of FSMA.

46 Sections 2H(2) and 3B of FSMA.

47 Section 138K of FSMA.

48 Section 30B of the Bank of England Act 1998.

49 Section 149.

## Cost benefit analysis

8.6 As a result of falling within scope of the FSCS pursuant to Government statutory instruments and PRA rule changes proposed in CP26/18 and in this consultation, firms would be required to pay FSCS levies after the UK's withdrawal from the EU. The PRA is required to conduct a cost benefit analysis in respect of FSCS levies that will be imposed on these firms.<sup>50</sup> Proposals regarding administrative fees are exempt from FSMA's CBA requirement. The PRA has estimated costs and benefits where it is reasonably practicable to do so.

8.7 The FSCS delivers direct benefits to customers of deposit-takers and insurers through the payment of compensation to eligible claimants in the event of firm failure. This reduces customers' financial loss and increases confidence in authorised financial services firms. This may contribute towards the safety and soundness of firms and minimise the adverse effects that the failure of a firm could have on the stability of the UK financial system.

## Management expenses levy

8.8 The FSCS' management expenses levy (representing the FSCS' annual operating budget) allows the FSCS to raise funds to cover its expenses so it can continue to operate and meet its objective of providing a compensation scheme that is efficient, fair, approachable and responsive.

8.9 The management expenses levy payable by a firm consists of a share of the base costs levy and a share of the specific costs levy. The distribution of the base costs levy amongst individual firms is based on a ratio of the amount of regulatory costs of the firm as a proportion of the total regulatory costs of all firms. The specific costs levy is allocated based on the business volumes of a firm relative to other firms in its class.

## Compensation cost levies

8.10 The proposed legislative changes and PRA rules mean that the scope of FSCS protection would be expanded in some respects (eg including deposits held by UK branches of EEA deposit-takers) and narrowed in others (eg removal of protection for new insurance policies in respect of EEA risks, and removal of protection for deposits held by EEA branches of UK deposit-takers). The actual quantum of future FSCS compensation cost levies depends on three factors: (i) the probability of an event leading to compensation, ie the frequency of failure, (ii) the total contingent liability in failure, which reflects the proposed changes in scope, and (iii) the likely degree of recoveries available to the FSCS.

8.11 The distribution of levies amongst individual deposit-takers depends upon the PRA's risk-based levy methodology. The risk weighting for UK firms is calculated on a number of risk factors.<sup>51</sup> The exact impact on individual firms will depend on their risk profiles based on regulatory data submitted, and will vary from year to year. The PRA rates all third country branches (which would include the new FSCS members resulting from these consultations and legislative changes) as average risk, for the purposes of the risk-based levy methodology. This is a pragmatic and proportionate approach since the PRA does not systematically collect prudential risk data from third country firms.

8.12 There is not a similar risk based methodology for distributing compensation cost levies amongst insurance firms instead it is based on the volume of business the firms conduct.

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<sup>50</sup> For relevant levies, refer to the Depositor Protection, Policyholder Protection, Dormant Account Scheme and Management Expenses Levy Limit and Base Costs Parts of the PRA Rulebook.

<sup>51</sup> PRA Statement of Policy, 'Calculating risk-based levies for the Financial Services Compensation Scheme deposits class,' February 2017. <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/calculating-risk-based-levies-for-the-financial-services-compensation-scheme-deposits-class>.



8.13 Levies are charged to firms and may be passed on to customers in the form of higher prices. Overall, the PRA considers that the benefits of imposing the FSCS levies outweigh the costs placed on industry, and indirectly passed on to customers, primarily because the provision of compensation in the event of a firm's failure helps ensure confidence in the financial system and increases financial stability.

### **Compatibility with the PRA's objectives**

8.14 The proposals in Chapter 6 are intended to provide for, and fund, the protection to certain customers of deposit-takers and insurers in the event of failure. The new scope of FSCS protection and the associated levies on firms whose customers have protection would contribute to financial stability and the PRA's general objectives of promoting the safety and soundness of firms, and securing an appropriate degree of protection for policyholders.

8.15 The PRA has assessed whether the impact of its proposals on FSCS levies facilitates effective competition. The requirement for firms to pay levies in respect of their products that are FSCS protected should have position impacts on competition; as all firms would be treated similarly. The levies are generally applied to firms in proportion to their share of FSCS protected business within their funding class. Compensation costs levies on a firm will take into account the business volume of the firm levied, as well as the claims received in the relevant classes.

8.16 Depending on home Member State requirements, some UK branches of EEA deposit-takers may also be required to maintain membership of the deposit guarantee scheme in their home Member State. This would mean that these firms are required to pay management and compensation cost levies to both schemes on account of the same deposits. This double-counting was eliminated under the cooperative aspects under the EU Deposit Guarantee Schemes Directive (DGSD), which would fall away at exit.

8.17 Because the DGSD does not require home state schemes to protect outbound branches located in third countries, protection of deposits in UK establishments of EEA firms could vary depending upon the rules of the individual EEA home states. If there is no Implementation Period (during which the DGSD principles would continue), the PRA considers it important to ensure that deposits held by UK establishments are protected by the FSCS, the scope of which is under control of the UK government and regulators. The potential for dual membership (and associated costs) is consistent with the UK's existing treatment of third country branches.

### **Regulatory principles**

8.18 In developing the proposals regarding the applicability of FSCS levies, the PRA has had regard to the regulatory principles. The principle most relevant to the proposals is that a burden or restriction which is imposed on a person, or the carrying on of an activity, should be proportionate to the benefits. The PRA's assessment of the fairness and proportionality of the FSCS levies can be found in the 'Cost benefit analysis' and 'Compatibility with the PRA's objectives' sections above.

### **Impact on mutuals**

8.19 FSCS levies are levied on all authorised firms according to the volume of relevant financial services business they conduct. This includes mutual societies. The impact on mutual societies is not considered disproportionate to other types of firm.

## HM Treasury recommendation letter

8.20 HM Treasury has made recommendations to the PRC about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.<sup>52</sup>

8.21 The aspects of the Government's economic policy most relevant to the proposals in this chapter are: competition, better outcome for consumers, and competitiveness, which have been considered in the 'Compatibility with the PRA's objectives' and 'Regulatory principles' sections above. The PRA considers that an appropriately funded compensation scheme will enhance customers' trust in firms operating in the UK. This will help ensure that the UK remains an attractive domicile for internationally active financial institutions, and that London retains its position as a leading financial centre.

## Equality and diversity

8.22 The PRA considers that the proposals' consequential impacts on FSCS levies do not give rise to equality and diversity implications.

## Responses and next steps

8.23 This consultation closes on Monday 21 January 2019. The PRA invites feedback on the additional proposals set out in Part 1 of this CP. Please address any comments or enquiries to [CP32\\_18@bankofengland.co.uk](mailto:CP32_18@bankofengland.co.uk), or:

Nationalising the Acquis  
Prudential Regulation Authority  
20 Moorgate  
London  
EC2R 6DA

8.24 Responses to this CP will be shared with the FCA.

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<sup>52</sup> Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at <https://www.bankofengland.co.uk/about/people/prudential-regulation-committee>.

## Part 2 Bank (resolution authority) consultation - UK withdrawal from the EU: Further changes to Resolution Binding Technical Standards

### 9 Proposals relating to additional BRRD BTS

9.1 This chapter highlights proposed amendments to additional Bank Recovery and Resolution Directive (BRRD) BTS allocated to the Bank, as resolution authority, which are expected to be in force on exit day.

#### Resolution planning

9.2 The Bank did not consult on amendments to Commission Implementing Regulation (EU) 2016/1066 (on provision of information for the purpose of resolution plans) in Bank CP 'UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards'.<sup>53</sup> This was because the EBA had proposed to repeal this BTS and replace it with an updated BTS. Commission Implementing Regulation (EU) 2018/1624 was adopted on 23 October 2018 and entered into force on 27 November 2018. This repeals BTS 2016/1066.

9.3 In this CP, the Bank proposes to make amendments to BTS 2018/1624 to fix deficiencies arising from the UK's withdrawal from the EU. These draft amendments are consistent with the principles and approach to fixing deficiencies set out in the NtA approach CP (CP25/18). These draft changes are set out in the draft EU Exit Instrument in Appendix 4.

9.4 The Bank does not plan to make line-by-line changes to the reporting templates in BTS 2018/1624 for exit day. Instead, consistent with the approach proposed by the PRA for reporting and disclosure requirements,<sup>54</sup> the Bank proposes to provide firms with guidance on how they should interpret EU-based references for the purpose of BTS 2018/1624. The effect of this approach is to retain the current reporting definitions but with some minor changes to reflect the UK's withdrawal from the EU. The proposed guidance is shown in Table A and B below. Final guidance would be published on the Bank's website.

**Table A: General approach to interpretation of EU-based references in BTS 2018/1624**

This table sets out the various different types of EU-based references and a default approach to how these should be interpreted.

Type of reference	Default interpretation
Reference to EU regulation	This should be read as a reference to the nationalised version of the regulation.
Reference to EU directive	This should be read as a reference to the UK legislation; Prudential Regulation Authority (PRA) or Financial Conduct Authority (FCA) rules; or the UK, PRA or FCA processes that give effect to the directive, as amended on EU withdrawal. In some cases firms may also find it helpful to refer to the text of the EU directive as it stands on the date of UK withdrawal from the EU, to provide additional context.
Reference to EU technical standard	This should be read as a reference to the nationalised version of the technical standard.

<sup>53</sup> October 2018: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/uk-withdrawal-from-eu-boe-approach-to-resolution-sops-and-onshored-bts-split.pdf?la=en&hash=FC418612AD1CFE4E94AA52813CAC62E02C5CD954>.

<sup>54</sup> See Chapter 3 of CP26/18.

Stand-alone reference to the European Union or EU (i.e. not in relation to legislation); or the European Economic Area or EEA	This should be read as a reference to the UK, except where otherwise noted below.
Reference to Member State, Member States, home Member State or Union	This should be read as a reference to the UK, except where otherwise noted below.
Reference to third country	This should be read as a reference to a country or territory outside the United Kingdom.
Reference to a specific accounting standard as endorsed by the EU (e.g. International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS))	This should be read as a reference to the implementation of the corresponding accounting standard that is in place in the UK after exit day.
Reference to statistical definitions set out by European bodies outside of legislation (eg by the European Central Bank (ECB), Eurostat or European Commission), or to non-binding materials such as guidelines or Q&As produced by the European Banking Authority (EBA)	These should be read as a reference to the definitions or materials as they stand at the date of UK withdrawal from the EU.  Example occurrences: References in CRR Financial Reporting (FINREP) templates and instructions to the Small and Medium-sized Enterprise (SME) definition set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. <sup>55</sup>

**Table B: Approach to interpretation of specific EU-based references in BTS 2018/1624**

This table considers specific cases where reporting requirements include EU-based references, and sets out an expected approach in each instance.

Reference	Template title	Legislative reference	Interpretation
Liabilities excluded from bail-in	Annex I, Z 02.00 - Liability Structure (LIAB), rows 0100 - 0200  Annex II, II.2.2 Instructions concerning specific positions, rows 0100 - 0200	Article 44 of Directive 2014/59/EU	References in Annexes I and II to liabilities excluded from bail-in under Article 44 of Directive 2014/59/EU should be read as the equivalent excluded liabilities in section 48B(8) of the Banking Act 2009.
Liabilities not excluded from bail-in	Annex I, Z 02.00 - Liability Structure (LIAB), rows 0300 – 0400  Annex II, II.2.2 Instructions concerning specific positions, rows 0300 - 0400	Article 108 of Directive 214/59/EU	References in Annexes I and II to liabilities not excluded from bail-in under Article 108 of Directive 214/59/EU should be read as referring to section 175 and Schedule 6 of the Insolvency Act 1986.

<sup>55</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>.

Senior non-preferred liabilities	Annex I, Z 02.00 - Liability Structure (LIAB), row 0365  Annex II, II.2.2 Instructions concerning specific positions, row 0365	Article 108 of Directive 2014/59/EU	The senior non-preferred liabilities should be read as referring to section 176AZA of the Insolvency Act 1986 as amended by the Banks and Building Societies (Priorities on Insolvency) Order 2018.
DGS / Deposit insurance (DIS)	Annex I, Z 02.00 - Liability Structure (LIAB), row 0200  Annex I, Z 06.00		References to DGS and Deposit insurance (DIS) should be read as the UK deposit guarantee scheme, the Financial Services Compensation Scheme (FSCS), as set out in the Depositor Protection part of the PRA Rulebook.
DGS liabilities	Annex II, II.2.2 Instructions concerning specific positions, row 0200	Article 44(2) point g (iv) of Directive 2014/59/EU	Reference to DGS liabilities under Article 44(2) point g (iv) of Directive 2014/59/EU should be read as FSCS liabilities pursuant to section 48B(8)(j) of the Banking Act 2009.
DGS	Annex II, II.6 Z 06.00 — Deposit insurance (DIS) , II.6.2 Instructions concerning specific positions, row 0030	Article 4(3) of Directive 2014/49/EU	Reference to DGS pursuant to Article 4(3) of Directive 2014/49/EU should be read as the UK deposit guarantee scheme, the FSCS, as defined in the Depositor Protection part of the PRA Rulebook.
Amount of covered deposits	Annex II, II.6 Z 06.00 — Deposit insurance (DIS) , II.6.2 Instructions concerning specific positions, row 0040	Articles 2(1)(5) and 6(2) of Directive 2014/49/EU	References to covered deposits as defined in Articles 2(1)(5) and 6(2) of Directive 2014/49/EU should be read as the amount of covered deposits as defined in the Depositor Protection part of the PRA Rulebook.
Institutional Protection Scheme	Annex II, Z 06.00 — Deposit insurance (DIS), II.6.2 Instructions concerning specific positions, row 0050	Article 113(7) of Regulation (EU) No 575/2013	Reference to an institutional protection scheme in row 0050 can be disregarded as there is no UK institutional protection scheme.
Additional protection under contractual scheme	Annex II, II.6 Z 06.00 — Deposit insurance (DIS), II.6.2 Instructions concerning specific positions, row 0060	Article 1(3)(a) of Directive 2014/49/EU	Reference to additional protection under a contractual scheme in row 0060 can be disregarded as there is no such scheme under the FSCS.

9.5 Should there not be an Implementation Period, the Bank is considering exercising the temporary transitional power (described in Chapter 4 of the NtA approach CP) to delay the application of onshoring changes that will alter the reporting templates in BTS 2018/1624. This means that firms would continue to submit the templates in BTS 2018/1624 on the same basis

as before exit day.<sup>56</sup> Firms should, however, bear in mind that changes to underlying regulatory requirements arising as a result of the UK's withdrawal from the EU may necessitate amendments to the information reported. Subject to transitional relief being granted, NtA changes would only come into effect at the end of the transitional period.

### **Simplified obligations**

9.6 On 25 October 2018, the European Commission adopted a draft Delegated Regulation specifying the criteria under the BRRD for the competent authority and resolution authority to assess the impact of an institution's failure on financial markets, on other institutions and on funding conditions (C(2018)6901).<sup>57</sup> The final Delegated Regulation is expected to be adopted and enter into force before exit day.

9.7 Appendix 4 contains the draft EU Exit Instrument that provides the amendments to fix deficiencies arising from the UK's withdrawal from the EU in this BTS, should it be adopted and enter into force by exit day. These amendments are consistent with the principles and approach to fixing deficiencies set out in the NtA approach CP.

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<sup>56</sup> Details of existing expectations are available on the Bank of England's website:  
<https://www.bankofengland.co.uk/prudential-regulation/publication/2013/resolution-planning-ss>.

<sup>57</sup> <https://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-6901-F1-EN-MAIN-PART-1.PDF>.

## 10 The Bank's obligations under the Regulations

10.1 The Financial Regulators SI delegates power to make changes to relevant BTS under Section 8 of the Act to the Bank by HM Treasury. As such the restrictions that apply to the use of the power in Section 8 also apply to the Bank.<sup>58</sup>

10.2 In accordance with those restrictions, the Bank considers that all changes proposed in this CP are appropriate to prevent, remedy or mitigate any:

- (i) failure of the relevant BTS to operate effectively, or
- (ii) other deficiency in the relevant BTS, arising from the UK's withdrawal from the EU.

10.3 The types of changes that fall within the scope of 'deficiency' are listed in Section 8(2) of the Act. This list is exhaustive, ie all amendments must address deficiencies of these types or make consequential, supplementary, transitory or transitional provision in connection with them.

10.4 The Bank also confirms that the proposals do not:

- (a) impose or increase taxation or fees;
- (b) make retrospective provision;
- (c) create a criminal offence which is capable of leading to imprisonment of more than two years;
- (d) establish a public authority;
- (e) implement the Article 50 Withdrawal Agreement;
- (f) result in the transfer of a function of an EU authority to a UK authority;
- (g) confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or
- (h) amend any legislation other than the relevant BTS.

### Equality and diversity

10.5 The Bank does not consider that the proposals give rise to equality and diversity implications.

### Next steps

10.6 The Bank invites feedback on the proposals set out in this paper by Monday 21 January 2019. Please provide those comments by email to the address below:

[ResolutionBTS@bankofengland.co.uk](mailto:ResolutionBTS@bankofengland.co.uk)

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<sup>58</sup> The Bank expects HMT to introduce legislation giving it responsibility for making onshoring changes to these BTS in due course.

Alternatively you may provide comments by post to:

Resolution Directorate  
Bank of England  
Threadneedle Street  
London  
EC2R 8AH



## Appendices

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### Part 1 – PRA Consultation

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**1 Update to draft Supervisory Statement – PRA approach to interpreting reporting and disclosure requirements after the UK’s withdrawal from the EU**

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**2 Draft PRA Rulebook: EU Exit Instrument**

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**3 Draft BTS EU Exit Instruments**

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### Part 2 – Bank (resolution authority) Consultation

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**4 Draft BTS EU Exit Instrument**

## Appendix 1: Update to draft Supervisory Statement 'PRA approach to interpreting reporting and disclosure requirements after the UK's withdrawal from the EU' as consulted on in CP26/18

This draft Supervisory Statement (SS) is being consulted on in CP26/18 'UK withdrawal from the EU: Further changes to PRA Rulebook and onshored BTS'.<sup>1</sup> This draft update proposes changes to the draft SS in CP26/18. For the purposes of the proposed changes in this CP, new text is shown as underlined and deleted text is shown as struck through.

### Draft Supervisory Statement 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU'

## 1 Introduction

1.1 This supervisory statement (SS) sets out the approach the Prudential Regulation Authority (PRA) expects firms to take when interpreting EU-based references found in reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU. The PRA has not made line-by-line changes to reporting or disclosure requirements, or regulatory transactions forms as a result of the UK's withdrawal from the EU, as it would not have been proportionate to do so. Instead, the PRA expects firms to interpret EU references in those requirements in accordance with this SS.

1.2 Chapter 2 outlines a general approach on this issue, which is in line with the approach taken more widely when making changes to retained EU law under the European Union (Withdrawal) Act 2018.<sup>2</sup> Chapters 3, 4 and 5 detail an expected approach on certain more specific issues. In any instance where the approach set out in Chapters 3, 4 and 5 conflicts with the approach set out in Chapter 2, the approach set out in Chapters 3, 4 and 5 should take priority.

1.3 The appendix to this SS outlines which European Binding Technical Standards (BTS) and which parts of the PRA Rulebook are in scope of this guidance.

## 2 General approach

2.1 Table A sets out the various different types of EU-based references, and a default approach to how these should be interpreted.

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<sup>1</sup> October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>.

<sup>2</sup> These processes are often known as onshoring or Nationalising the Acquis (NtA)

**Table A: General approach to interpretation of EU-based references**

Type of reference	Default interpretation
Reference to EU regulation	This should be read as a reference to the nationalised version of the regulation.
Reference to EU directive	This should be read as a reference to the UK legislation; PRA or Financial Conduct Authority (FCA) rules; or the UK, PRA or FCA processes that give effect to the directive, as amended on EU withdrawal. In some cases firms may also find it helpful to refer to the text of the EU directive as it stands on the date of UK withdrawal from the EU, to provide additional context.
Reference to EU technical standard	This should be read as a reference to the nationalised version of the technical standard.
Stand-alone reference to the European Union or EU (ie not in relation to legislation); or the European Economic Area or EEA	This should be read as a reference to the UK, except where otherwise noted below.
Reference to Member State, Member States or home Member State	This should be read as a reference to the UK, except where otherwise noted below.
Reference to third country	This should be read as a reference to a non-UK country.
Reference to Euros	Where Euro is given as an example of a currency, and the same treatment is applied to other currencies (eg US dollars), no change in interpretation is required.  Any reference to a threshold set in Euros will continue to apply.  In any other case, further details can be found in Chapters 3, 4 and 5 of this SS of how this should be interpreted.
Reference to definition based on Capital Requirements Regulation (575/2013) (CRR) or Solvency II requirements	In some cases, reporting definitions are written to mirror text in level one legislation (either in addition to, or instead of, including a direct reference to the legislation). Where this happens, institutions should also refer to the relevant nationalised legislation to ensure they are interpreting the reporting requirements properly. Where this differs to the text in the technical standard, the definition in the relevant nationalised legislation should take priority.  Example occurrence: The CRR Common Reporting (COREP) templates on Liquidity Coverage Ratio (Annexes XXIV and XXV of ITS 680/2014) use definitions based on the definitions set out in the Liquidity Commission Delegated Regulation. In most cases, the article reference is provided, but in some cases this is implicit. Firms should ensure their reporting aligns to the nationalised version of the Liquidity Commission Delegated Regulation.
Reference to a specific accounting standard as endorsed by the EU (eg International Financial Reporting Standards (IFRS) 9)	This should be read as a reference to the implementation of the corresponding accounting standard that is in place in the UK after exit day.

Type of reference	Default interpretation
<p>Reference to statistical definitions set out by European bodies outside of legislation (eg by the European Central Bank (ECB), Eurostat or European Commission), or to non-binding materials such as guidelines or Q&amp;As produced by the European Banking Authority (EBA) or the European Insurance and Occupational Pensions Authority (EIOPA)</p>	<p>These should be read as a reference to the definitions or materials as they stand at the date of UK withdrawal from the EU.</p> <p>Example occurrences:                      References in CRR Financial Reporting (FINREP) templates and instructions to statistical definitions set out in the ECB BSI regulation.<sup>3</sup>                      References in CRR FINREP templates and instructions to the Small and Medium-sized Enterprise (SME) definition set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.<sup>4</sup>                      References in CRR COREP instructions to the definition of ISO code 3166-1-alpha-2 set out in Eurostat's 'Balance of Payments Vademecum'.<sup>5</sup></p>
<p>References to lists or information produced by European bodies</p>	<p>This should be read as a reference to the equivalent list or information produced by a UK body after EU withdrawal.</p> <p>Example occurrences:                      The CRR ITS on Disclosure for Own Funds (ITS 1423/2013) refers to the EBA list of capital instruments qualifying as Common Equity Tier (CET)1, as set out in CRR article 26(3). These references should be read as a reference to the corresponding list produced by the PRA.                      The CRR COREP instructions for C17.01 and C17.02 (Annexes I and II of ITS 680/2014) contain references to supervisory disclosures published on the EBA website, and the gross domestic product at market prices data published by Eurostat. These references should be read as a reference to the corresponding disclosure produced by the PRA,<sup>6</sup> and the corresponding data published by the Office for National Statistics.                      The instructions for Solvency II templates S06.02, S08.01, S30.02, S30.04, S31.01 and S31.02 include a list of credit rating agencies as registered or certified by the European Securities and Markets Authority (ESMA). This should be read as a reference to the list of credit rating agencies as registered or certified within the UK.</p>
<p>Reference to 'freedom to provide services'</p>	<p>On the basis that UK firms will no longer write business under the Freedom to Provide Services in the EU after exit:</p> <ul style="list-style-type: none"> <li>• Any data relating to business performed through freedom to provide services will be a nil entry after EU withdrawal.                         <ul style="list-style-type: none"> <li>○ Example occurrences: S04.01 and S04.02 Solvency II templates.</li> </ul> </li> <li>• Any references to the country where the freedom to provide services notification was made for the purposes of identifying the location where a contract is entered into should be disregarded.                         <ul style="list-style-type: none"> <li>○ Example occurrences: S05.02, S12.02 and S17.02 Solvency II templates.</li> </ul> </li> </ul>

3 <https://www.ecb.europa.eu/ecb/legal/pdf/02013r1071-20131127-en.pdf>.

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>.

5 <http://ec.europa.eu/eurostat/documents/39118/40189/BOP+Vademecum+-+December+2016/a5e89ad8-254b-485d-a9cd-521885c616e4>.

6 This can be found on the Regulatory reporting – banking sector page in the prudential regulation section of the Bank of England website: [www.bankofengland.co.uk/prudential-regulation/regulatory-reporting/regulatory-reporting-banking-sector](http://www.bankofengland.co.uk/prudential-regulation/regulatory-reporting/regulatory-reporting-banking-sector).

### 3 Approach to specific cases: Reporting and disclosure requirements based on the CRR

3.1 Table B considers specific cases where CRR reporting and disclosure requirements include EU-based references, and sets out an expected approach in each instance.

**Table B: Approach to interpretation of specific EU-based references in reporting and disclosure requirements based on the CRR**

Reference	Template title	Legislative reference	Interpretation
Geographical splits with different treatment of EU/EEA countries	CRR IP losses (C15)	ITS 680/2014; Annexes VI and VII	The current reporting requirements relating to geographical split continue to apply. In other words, reporting should consist of a total template, one template for each national market in the EU or UK to which the institution is exposed, and one template for aggregated data for all national markets outside the EU/UK.
Row and column labels referring to EU	Leverage ratio disclosures	ITS 2016/200, Annex I	Firms have an option to either retain the reference to the EU or remove this from the row labels.
Euro conversion rate	GSII indicator reporting	ITS 1030/2014, Annex	Firms should continue to include the Euro conversion rate within their disclosures.
Reference to Member State obligations	COREP C12.00, row 150 COREP C13.00, row 420	ITS 680/2014, Annexes I and II	The reference to '...Member States shall ensure that the competent authorities impose...' should be read as '...the competent authority shall impose...'
Conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State	COREP C04.00, row 760, C06.02, column 440	ITS 680/2014, Annexes I and II	The reference to '...conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State...' should be read as '...conservation buffer due to enhanced prudential measures...'
References to Capital Requirements Directive (2013/36/EU) (CRD) Article 140(4) within counter-cyclical capital buffer disclosure requirements	CCyB disclosures	ITS 2015/1555, Annexes I and II	References in Part II of Annex II to exposures 'defined in accordance with Article 140(4)(a) of Directive 2013/36/EU' shall be read as references to 'all exposure classes (other than those referred to in points (a) to (f) of CRR Article 112 ) that are subject to the own funds requirements for credit risk under Part Three, Title II of that Regulation'. References in Part II of Annex II to exposures 'defined in accordance with Article 140(4)(b) of Directive 2013/36/EU' shall be read, where the exposure is held in the trading book, as references to 'all exposure classes (other than those referred to in points (a) to (f) of CRR Article 112) that are subject to the own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation'. References in Part II of Annex II to exposures 'defined in accordance with Article 140(4)(c) of Directive 2013/36/EU' shall be read, where the exposure is a securitisation as references to 'all exposure classes (other than those referred to in points (a) to (f) of CRR Article 112) that are subject to the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation'. References to relevant credit exposures defined

Reference	Template title	Legislative reference	Interpretation
			in accordance to Article 140(4) of Directive 2013/36/EU are to be read in line with the instructions above.
EU references contained within the definitions of benchmarking portfolios and corresponding reporting instructions	Benchmarking templates	2016/2070, all annexes	The definitions of the benchmarking portfolios should remain unchanged. For the avoidance of doubt, this means that any references to codes assigned by the EBA; to Euros; to Central European Time (CET); and to European OTC options should remain as they are.
Reference to joint decisions	Benchmarking template C105.01	2016/2070 Annexes III and IV	Firms should report whether a joint decision, made prior to the date of EU withdrawal, continues to apply in relation to the use of the IRB approach for exposures included in the benchmarking portfolios.

## 4 Approach to specific cases: Reporting and disclosure requirements based on Solvency II

4.1 Table C considers specific cases where Solvency II reporting and disclosure requirements include EU-based references, and sets out an expected approach in each instance.

**Table C: Approach to interpretation of specific EU-based references in reporting and disclosure requirements based on Solvency II**

Reference	Template title	Legislative reference	Interpretation
Geographical splits with different treatment of EU/EEA countries	S04.01, S04.02, S12.02, S17.02	ITS 2015/2450, Annexes I and II	The current reporting requirements relating to geographical split continue to apply. References to the EEA should be read as a reference to the EEA plus the UK, and references to non-EEA should be read as a reference to all non-EEA countries excluding the UK.
References to repealed legislation	S22.04, S22.05	ITS 2015/2450, Annexes I and II	Some Solvency II reporting and disclosure templates contain references to repealed legislation (Directive 2002/83/EC and Directive 2005/68/EC). Firms should continue to refer to this as at the date of last application.
References to repealed CRD legislation	S23.01	ITS 2015/2450, Annexes I, II and III ITS 2015/2452, Annexes I, II and III	References to 'credit institutions authorised in accordance with Directive 2006/48/EC' should be read as a reference to PRA-regulated credit institutions.
Method for allocating identifying code	Multiple templates	ITS 2015/2450, Annexes I, II and III	The instructions for assigning identifying codes distinguish between entities in the EEA and those outside the EEA. Firms should continue to use the same identifying codes as they have used previously.
Method for allocating code to be used for Issuer Country	S06.02, S06.03, S11.01	ITS 2015/2450, Annexes I, II and III	Firms should continue to use the code 'EU' for European Union Institutions.

## 5 Approach to specific cases: reporting and disclosure requirements set out in PRA Rulebook requirements

5.1 Table D considers specific cases where templates within the PRA Rulebook reporting and disclosure requirements include EU-based references, and sets out an expected approach in each instance.

5.2 The Appendix lists the PRA parts and subsections in scope of this guidance.

**Table D: Approach to interpretation of specific EU-based references in reporting and disclosure requirements set out in PRA rules**

Reference	Template title	Rulebook reference	Interpretation
Geographical splits with different treatment of EU/EEA countries	FSA016	CRR Firms; Regulatory Reporting Part	The reporting requirements for this template remain unchanged. Row 2 should report investments relating to UK and EEA countries, and row 3 should report investments related to all countries except the UK and EEA countries.
Row and column labels referring to EU	FSA083	CRR Firms; Reporting Leverage Ratio Part	No changes required to the current template; the references to 'EU' in the row and column labels should remain unchanged.
Reference to EEA branches	Branch Return	Non-CRR Firms; Incoming and Third Country Firms Part; Branch Return	The reporting requirement in row 9 of the Lending section remains unchanged.
Conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State	PRA101, PRA102, PRA103	CRR Firms; Regulatory Reporting Part; Capital +	The reference to '...conservation buffer due to macro-prudential or systemic risk identified at the level of a Member State...' in the templates should be read as '...conservation buffer due to enhanced prudential measures...'

## Appendix: Scope

The PRA expects firms to apply the approach set out in this SS to the Annexes of the following European Binding Technical Standards (as amended up until the date of UK withdrawal from the EU):

Firms	Title	Reference
CRR Firms	Supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 680/2014
CRR Firms	Disclosure of own funds requirements for institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 1423/2013
CRR Firms	Disclosure of the leverage ratio for institutions, according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 2016/200
CRR Firms	Uniform formats and date for the disclosure of the values used to identify global systemically important institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council	ITS 1030/2014
CRR Firms	Disclosure of information in relation to the compliance of institutions with the requirement for a countercyclical capital buffer in accordance with Article 440	RTS 2015/1555
CRR Firms	Disclosure of encumbered and unencumbered assets	RTS 2017/2295
CRR Firms	Templates, definitions and IT-solutions to be used by institutions when reporting to the European Banking Authority and to competent authorities in accordance with Article 78(2) of Directive 2013/36/EU of the European Parliament and of the Council	ITS 2016/2070
SII Firms	Templates for the submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council	ITS 2015/2450
SII Firms	Procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council	ITS 2015/2452
SII SPVs	Procedures for supervisory approval to establish special purpose vehicles, for the co-operation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council	ITS 2015/462

The PRA expects firms to apply the approach set out in this SS to templates contained within the following parts, and sub-sections, of the PRA Rulebook:

Firms	Rulebook part	Sections
CRR Firms	Regulatory Reporting	All
CRR Firms	Reporting Leverage Ratio	All
CRR Firms	Reporting Pillar 2	All
Non-CRR Firms	Credit Unions	19 Regulatory Reporting for Credit Unions
Non-CRR Firms	Incoming Firms and Third Country Firms	3 Branch Return 4 Form
Non-SII Firms	Friendly Society – Reporting	All
Non-SII Firms	Insurance Company – Reporting	All
SII Firms	Reporting	All
SII Firms	Third Country Branches	9 Reporting
<u>Controllers</u>	<u>Change in Control</u>	<u>6 Forms</u>
<u>All firms</u>	<u>Senior Managers Regime – Applications and Notifications</u>	<u>8 Forms</u>
<u>ISPVs</u>	<u>Insurance Special Purpose Vehicles</u>	<u>6 Forms</u>
<u>All firms</u>	<u>Notifications</u>	<u>10 Forms</u>