

Bank of England PRA

The Prudential Regulation Authority's approach to rule permissions and waivers

Draft statement of policy

January 2024

Draft for consultation



Bank of England | Prudential Regulation Authority

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1: Introduction

1.1 This statement of policy (SoP) sets out the Prudential Regulation Authority's (PRA) approach to the granting of rule permissions under section 138BA of the Financial Services and Markets Act 2000 (FSMA). It is relevant to all persons subject to PRA rules.

1.2 Sometimes it may be appropriate for rules to vary if the PRA is satisfied that a firm meets specific criteria. Where it is justified, the PRA can enable a firm to disapply certain PRA rules or requirements, or to apply them with appropriate modifications that better fit the firm's circumstances. This is achieved through permissions, modifications, or waivers.

1.3 Section 138BA of FSMA was introduced by the Financial Services and Markets Act 2023 and allows the PRA, on the application or with the consent of a person who is subject to PRA rules, to give the person a permission that enables them to not apply rules, or to apply rules with a modification specified in the permission (rule permission).

1.4 The PRA also has other powers in UK legislation for granting waivers and permissions (sometimes called approvals). These powers include:

- a. Under s138A of FSMA, the PRA has a general power to modify or waive its rules where it is satisfied that the following criteria are met: (a) compliance with the rules would be unduly burdensome or would not achieve their intended purpose and (b) modifying or waiving the rule would not adversely affect any of its objectives.
- b. Under assimilated law (previously known as retained EU law), notably the Capital Requirements Regulation (CRR) and Solvency II (SII), the PRA has powers to grant permissions and approvals in relation to specific provisions. Under these assimilated law powers, the PRA can usually only grant permissions when firms meet certain criteria. These powers are expected to be revoked as part of the programme for the repeal and replacement of assimilated law.¹
- c. Under s144G of FSMA, the PRA has the power to grant permissions in relation to certain PRA rules (CRR rules). The PRA is using this power to transfer certain CRR permissions to the Rulebook as part of the implementation of Basel 3 and Basel 3.1 standards. Where the PRA has made a s144G permission available in relation to a particular CRR rule, the specific criteria for

¹ [The Regulatory Initiatives Grid](#) sets out expected key milestones for initiatives under the programme for the repeal and replacement of assimilated law.

granting the permission are usually set out in the rule or in an associated SoP or supervisory statement (SS).

1.5 The PRA's power to grant rule permissions under s138BA of FSMA is not subject to statutory criteria. This SoP explains how the PRA will generally exercise the power.

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2: Rule permissions and waivers

2.1 Where the PRA envisages granting specific permissions under s138BA with pre-determined criteria in relation to a particular PRA rule, it will set out the availability and effect of that type of permission. Generally, this will be in a subject specific SoP. The SoP will contain the criteria which the PRA will expect to be met, or the specific factors (also referred to as criteria in the remainder of the SoP) that it will take into account, in deciding whether to grant the permission.

2.2 Where the PRA has not set out criteria, the PRA encourages firms wishing to apply for the modification or waiver of a rule to apply under the PRA's general modification and waiver power in s138A FSMA.

2.3 If a firm applies for a rule permission under s138BA where the PRA has not set out specific criteria, the PRA will consider, and place significant weight upon, the statutory criteria that apply to the PRA's power under s138A, i.e. whether:

- Compliance by a firm with the unmodified rules would be unduly burdensome or would not achieve the purpose for which the rules were made; and
- The direction would not adversely affect the advancement of any of the PRA's objectives.²

2.4 The PRA expects applications for a rule permission under s138BA or a waiver or modification under s138A to be accompanied by detailed information and evidence demonstrating how the relevant criteria are met. Where necessary to allow a decision to be made, the PRA will request additional detail or information not provided in the application or will ask for clarification of information that is not clear.

2.5 Information that is common to all rule permission applications is communicated on the PRA website.³ This includes application forms, details on the application processes, instructions on where to send applications and information relating to how to pay applicable fees.

² These criteria should be interpreted in the same way as the criteria in s138A, including reading the reference to the PRA's objectives in accordance with s2F of FSMA.

³ Available at: www.bankofengland.co.uk/prudential-regulation/authorisations/waivers-and-modifications-of-rules.