

## GENERAL GUIDANCE ON THE BANK'S TRANSITIONAL DIRECTION

### Introduction

1. **This document provides general guidance on the Bank's transitional direction.** The Bank's transitional direction is made under the temporary transitional power (TTP) conferred on the regulators by Parliament (via The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019).<sup>1</sup> *The Bank has also produced detailed guidance on its use of the transitional direction as FMI competent authority and in the context of bank recovery and resolution.*
2. This guidance explains:
  - a. the general effect of the Bank's transitional direction, which is to generally delay onshoring changes which fall within the remit of the Bank until Thursday 31 March 2022;
  - b. how firms and FMIs should interpret their regulatory obligations which applied immediately before the end of the transition period; and
  - c. exceptions to the Bank's general approach.
3. Firms and FMIs should have regard to this guidance while the transitional relief granted under the direction is in effect. Firms and FMIs should note that this guidance is non-binding in nature, that it may be amended from time-to-time and that the direction should be followed in the case of any inconsistency with this guidance.
4. The direction will come into effect at the end of the transition period and will apply until Thursday 31 March 2022 unless the Bank decides to change this in future.
5. Any reference to an EU regulation, including to a Binding Technical Standard, is a reference to the UK version of that regulation, unless otherwise stated.

### General delay of onshoring changes until 31 March 2022

6. **The general effect of the transitional direction is to delay the application to firms and FMIs of all changes to regulatory requirements resulting from onshoring for 15 months after the end of the transition period, ie until Thursday 31 March 2022 (the TTP period).** This includes:
  - a. onshoring changes that the Bank is making to rules and Binding Technical Standards;
  - b. changes that HM Treasury is making to onshored EU regulations (such as onshored EMIR<sup>2</sup>); and

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<sup>1</sup> Available at: <<https://www.legislation.gov.uk/ukxi/2019/632/contents/made>>

<sup>2</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

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- c. changes that HM Treasury is making to existing domestic legislation that relates to EU membership (for example UK legislation that implemented an EU Directive).
7. The transitional direction only applies to requirements which fall within the remit of the Bank, but covers both:
  - a. new and amended regulatory requirements that have changed as a result of onshoring; and
  - b. existing regulatory requirements that apply to a firm or an FMI for the first time as a result of onshoring (even if those requirements have not themselves changed).
8. **This means that during the TTP period firms and FMIs should generally continue to comply with their regulatory obligations which applied immediately before the end of the transition period. This is unless the Bank has provided for an exception (see section below for more details).**
9. The transitional direction does not (unless expressly stated otherwise) allow optionality, making it mandatory for firms and FMIs to continue to comply with the effect of the obligations that applied immediately before the end of the transition period where this is covered by the direction.
10. The use of the transitional power does not affect the Bank's approach to the supervision of individual FMIs. The Bank will continue to consider supervisory action in relation to individual FMIs in line with its statutory objectives.

***How firms and FMIs should interpret their regulatory obligations which applied immediately before the end of the transition period***

11. **The Bank's intention is that firms and FMIs should, in substance, continue to do the same thing after the end of the transition period as before. But in order to achieve this, firms and FMIs should take a common sense approach to interpreting regulatory obligations which applied immediately before the end of the transition period.**
12. For example:
  - a. If a requirement referred to the EU, it may need to be read as including the UK after the end of the transition period; or
  - b. Other references requiring similar adaptation may be to governments, central banks, national competent authorities, other institutions of member states and non-EEA third countries.
13. In particular, any obligation to provide information to (i) an undertaking in the EU or member state, or (ii) an institution of the EU or a member state should be read as an obligation to provide it to the equivalent or corresponding undertaking or institution in the UK instead (see paragraph 9 of the transitional direction). Any record keeping

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obligations in relation to the provision of such information should similarly be adapted.

### ***Exceptions to the Bank's general approach***

14. The Bank has excepted certain requirements from the general approach described above (see paragraph 6 of the transitional direction). These are explained below and in the 'Bank Recovery and Resolution Guidance on the Bank's use of the transitional direction'<sup>3</sup> and the 'Guidance on the Bank's use of the transitional direction as FMI competent authority'.<sup>4</sup>
15. **Interaction with other transitional arrangements.** The Bank's transitional direction does not apply where specific transitional provisions have been included in relation to the relevant issue in the underlying onshoring changes.
16. **Interaction with HM Treasury equivalence findings.** In certain areas, the use of the transitional power has the same effect as if the EU had been found equivalent by HM Treasury. The effect of the direction is to end the transitional relief if HM Treasury find the EU equivalent before Thursday 31 March 2022, but the requirements will remain the same for firms and FMIs.
17. The Bank and PRA will at this time exempt all areas of MiFIR and certain areas of EMIR from the scope of the transitional power where the effect of the transitional power could be achieved by HM Treasury making a finding of equivalence. Further detail in relation to the corresponding requirements for PRA firms is set out in the 'General guidance on the PRA's transitional direction'.
18. **Central bank exemptions.** The direction does not apply in relation to requirements where HM Treasury has the power to exempt central banks and other bodies from those requirements.

### ***Accounting Standards***

19. References in onshored legislation to International Accounting Standards (IAS) should be read as references to EU-adopted IAS during the TTP period unless and until a firm or FMI is required to move from EU-adopted IAS to UK-adopted IAS.

### ***Gibraltar***

20. HM Treasury has already provided for specific transitional provisions in relation to Gibraltar and therefore these are not covered by the transitional direction.

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<sup>3</sup> Available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a9.pdf>.

<sup>4</sup> Available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a10.pdf>.