

Supervisory Statement | SS3/16

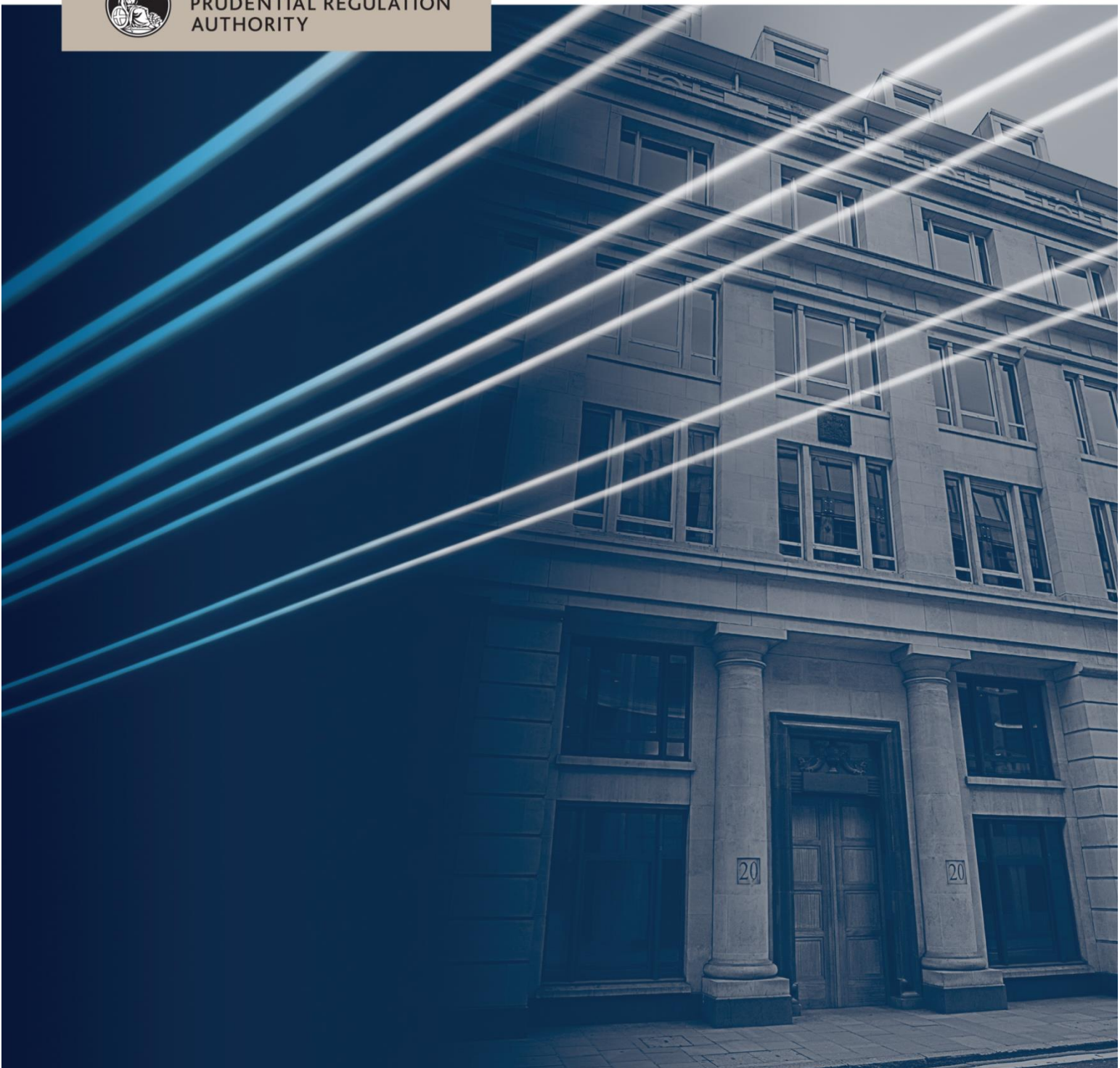
Fees: PRA approach and application

June 2019

(Updating February 2019)



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1 Introduction

1.1 This supervisory statement (SS) is addressed to all Prudential Regulation Authority (PRA) authorised firms and any firm seeking to become PRA-authorised. It should be read alongside the Fees Part of the PRA Rulebook.

2 Fee year and consultation timetable

2.1 The PRA consults annually on fee rates with the publication of a consultation paper (CP). Feedback on the proposals in the CP is then published in a policy statement (PS), together with the final rule-making instrument and any agreed policy.

2.2 The PRA's fee year is twelve months from 1 March to the end of February in the following year. New fee rates take effect from 1 March in each year.

2.3 Where significant policy changes are envisaged, the PRA may consult on these separately. This normally happens in the summer or autumn preceding the start of the fee year in which they are intended to take effect.

3 Periodic fees (Fees 3)

3.1 Periodic fees are set by the PRA and collected each year in order to recover the PRA's annual funding requirement ('AFR'). The AFR reflects:¹

- costs relating to Ongoing Regulatory Activities ('ORA'), being the costs which the PRA incurs in performing its functions as regulator; and
- any exceptional costs (eg to reflect recent changes in the scope of regulation) not incorporated into ORA costs.

3.2 An example of the latter were the costs of establishing the PRA in 2013, referred to in the rules as 'transition costs', which were recovered from PRA-regulated firms in five equal tranches between 2013/14 and 2017/18. In each of those fee years, periodic fees payable by firms included a contribution towards transition costs.

3.3 The AFR is allocated across 'fee blocks',² which are groupings of firms conducting broadly similar regulated activities. Firms pay a fee for each fee block into which they fall, the amount of fee being linked to the volume of activity undertaken by each firm within the fee block.

3.4 In addition to the AFR, firms which have a model permission under CRR³ or Solvency II⁴ pay a 'model maintenance fee'. This fee covers the PRA's costs associated with reviewing and maintaining firm models and is set according to the size of the firm and the models for which the firm has permissions.

3.5 As well as the AFR and the model maintenance fee, the PRA may introduce 'cost allocations', subject to consultation. 'Cost allocations' are used to cover the costs of significant

1 Note: the AFR does not include any special project fee (SPF) costs, where these are budgeted.

2 PRA fee blocks are currently: A0 - the minimum fee block, A1 – the deposit acceptors fee block, A3 – the general insurance fee block, A4 – the life insurance fee block, A5 – the Lloyd's managing agents fee block, A6 - the Society of Lloyd's fee block, A10 – designated firms dealing as principal fee block.

3 Capital Requirements Regulation (575/2013) (CRR).

4 Solvency II Directive (2009/138/EC) (as amended).

pieces of work that apply to a specific group of firms that fall into more than one of the existing fee blocks or a sub-set of firms within a fee block. Where the PRA proposes to introduce a new 'cost allocation' or change an existing 'cost allocation' it will consult. An example of a 'cost allocation' is the ring-fencing fee.¹

3.6 Together, the AFR, the model maintenance fee, and implementation fees are known as 'periodic fees' and are the main source of fee income for the PRA.

3.7 Rules relating to periodic fees can be found in Fees 3 and the Periodic Fees Schedule annexed to that Part. The Periodic Fees Schedule is updated each year to reflect the PRA's budgeted AFR and the fee rates consultation.

3.8 In most cases the firm's compliance with normal regulatory reporting will provide the necessary data for the periodic fees calculation. Where this is not the case, the PRA may invoke its own-initiative information gathering powers under statute or the Rulebook to require other information to be provided, either direct to the PRA or to its collection agent.

3.9 The PRA may return a surplus to firms or require further payment to fund a deficit. The PRA reserves its right to retain a surplus or to fund a deficit temporarily from borrowing.

4 Regulatory transaction fees (Fees 4)

4.1 The PRA may charge fees relating to certain applications and transactions in some circumstances. Fees uses the term 'regulatory transaction fee' to describe such payments.

Authorisation fees

4.2 Fees 4 includes information on the fees that firms pay when applying to become PRA-authorized (defined as 'new authorisations' in Fees 4).

4.3 All PRA firms are dual regulated, ie they are authorised initially and thereafter regulated by both the PRA and the Financial Conduct Authority (FCA) for different aspects of their business. Dual regulated firms have a single Part 4A permission which describes the PRA and FCA regulated activities which they may carry on.

4.4 The level of authorisation fee is dependent on the complexity of the application, based on the regulated activities to which the application relates. Where a firm is applying to undertake multiple regulated activities, only one authorisation fee is payable, which is the highest of the authorisation fees payable under Fees 4.

4.5 When a firm carries out a restructuring that involves a new authorisation (for example, if a branch applies to become a subsidiary), the PRA may choose to levy a Special Project Fee (SPF) for restructuring (see Chapter 5 of this SS) to cover the entire cost of all related regulatory work conducted by the PRA, including the new authorisation.

Variations of Permission

4.6 If a firm, once authorised, decides to undertake a new regulated activity or expand into new areas of business, this may necessitate a change to its permission.

4.7 Wherever a PRA-regulated activity is involved, the firm should submit a Variation of Part 4A Permission (or VoP) application to the PRA. As with new authorisations, firms seeking to

¹ Fees 3.18

vary their permissions should make a single application to both regulators, on which the PRA will lead.

4.8 Where a firm's application extends its Part 4A permission to include additional regulatory activities, the applicable fee is 50% of the highest fee which would have been payable by that firm had it been applying for a new firm authorisation and should be paid on submission of the application. The firm will also be expected to pay periodic fees for this additional regulatory activity based on its projected business, with the amount of the fee calculated under the methodology outlined in Fees 3.7. This additional periodic fee will be requested by invoice and is usually raised the month after the firm becomes authorised with payment requested within 30 days of the date of the invoice.

4.9 Firms applying for authorisation by both the PRA and the FCA, or to vary their Part 4A permission, pay a single application fee. This will be the sum of amounts due to the PRA as shown in the Fees Part of the PRA Rulebook and any amounts payable to the FCA under the FCA's fees rules.

Other regulatory transaction fees

4.10 At the time of publication, the other regulatory transaction fees in Chapter 4 of this SS are fees:

- for Gibraltar-based and incoming European Economic Area (EEA) firms seeking permissions in relation to PRA regulated activities for which they do not have automatic passported activity rights;
- payable by a transferor seeking consent for an insurance business transfer scheme under Part VII of Financial Services and Markets Act 2000 (FSMA);
- for Capital Requirements Regulation (CRR) firms (banks, building societies and certain investment firms) seeking permission to use specified internal approaches to assessing risk;
- for Solvency II firms (firms subject to the Solvency II directive) seeking permission to use internal models; and
- payable in some circumstances where the PRA has commissioned a skilled person's investigation or report.

5 Special Project Fee for restructuring (Fees 5)

5.1 Fees 5 sets out the rules for SPFs, which PRA-authorised firms may have to pay in addition to any other fees.

5.2 At the time of publication, there is only one SPF mechanism available under the rules. This is the SPF for restructuring, charged to firms involved in mergers and acquisitions, corporate fund-raising, business model changes, major internal change programmes or other significant restructuring requiring additional oversight by the PRA.

5.3 The PRA will not ordinarily charge an SPF for restructuring if the amount calculated under Fees 5 is less than £25,000. Where this threshold is reached and an SPF is charged, the full amount calculated under Fees 5 is payable and not just the excess over £25,000.

5.4 Where the PRA charges an SPF for restructuring, it will seek to recover all costs directly associated with the project, including relevant contributions to general overheads.

5.5 If a regulated firm carries out a restructuring that attracts an SPF and one or more regulatory transaction fees (including a new authorisation or a Part VII transfer), the PRA may choose to levy an SPF for restructuring to cover the entire cost of all related regulatory work conducted by the PRA, including the regulatory transactions. In these circumstances, the PRA would expect to waive the regulatory transaction fees associated with the activity.

5.6 Prospective SPFs are considered on a case-by-case basis, to ensure that their application is fair, consistent and in line with general legal principles. This includes consideration of the impact, if any, of an SPF on competition in the relevant market. When considering if an SPF for a new authorisation will be charged, the PRA will take into account the nature, scale and complexity of the applicant firm.

5.7 The PRA has indicated that it may in future introduce other types of SPF, subject to appropriate consultation.

Factors the PRA will consider before levying a new SPF

5.8 Paragraphs 5.9 to 5.12 set out factors which the PRA will consider when deciding whether or not to introduce a new SPF. These factors are not intended to be exhaustive and should not be read as a list of criteria of which a set number must be satisfied before the PRA will introduce an SPF.

5.9 The PRA may use an SPF to recover some or all of the costs it incurs in undertaking regulatory activity:

- which results from a request from or decision by a fee payer (or group of fee payers) leading to the PRA undertaking specific regulatory activity on its (or their) behalf; or
- where the regulatory activity would primarily relate to one fee payer (or group¹ of fee payers) rather than all fee payers in a particular fee block.

5.10 The PRA may use an SPF as a way of allocating its costs directly at those firms making significant calls on its resources.

5.11 Among other matters, the PRA will have regard to the likely duration of a project when considering whether to charge for the costs relating to that project by introducing an SPF or through fees for ORA.

5.12 When considering whether to use an SPF to recover costs, the PRA will act in accordance with its statutory duties and objectives.

6 Invoicing and collection of fees

6.1 The PRA appoints a collection agent for all its fees. Currently this is the FCA.

6.2 PRA fees may be paid by firms individually or on a group basis or through an agent. Where payment is made by a group or through an agent, it is the responsibility of the firm to ensure

¹ The group of firms must be legally related to each other. A single SPF cannot be charged across legal entity boundaries.

that the PRA's collection agent is notified in writing of the firm or firms on whose behalf fees are being paid.

6.3 Notwithstanding group and agent arrangements, liability for payment remains with the firm. Should the PRA's collection agent receive an amount from a group which is insufficient to meet the total fees liability of all firms notified as being part of the group, the sums received will be allocated across firms in proportion to the fees they owe, but each firm's debt to the PRA will be discharged only upon payment in full of its own fees.

6.4 It is expected that firms will settle their fees liability to both regulators in a single payment to the FCA, which the FCA receives on its own behalf in respect of FCA fees and as collection agent for the PRA in respect of PRA fees.

7 Waivers or modifications to fees rules

7.1 Where it would be unduly burdensome to require (or retain) payment, or where this would not achieve the purpose for which the relevant rule was made, the PRA may waive or reduce a fee payable. Any decision to waive a fee by the PRA will be undertaken under the powers set out by FSMA section 138A.¹

7.2 Submissions will be assessed on a case-by-case basis. Relief will be granted only for transactions for which the firm can demonstrate that the criteria in section 138A FSMA are clearly met, taking account of the impact of both the unmodified rules on the firm's fee, and of any waiver or modification on the fees of other firms.

Large 'one-off' reinsurance transactions

7.3 The PRA notes there is a risk that firms conducting a large 'one-off' reinsurance transaction could be subject to a very high and, potentially inequitable, periodic fee. Where an insurer believes this may be the case, it can apply for a waiver or modification under section 138A FSMA. Such waivers or modifications should be submitted by the end of February before the start of the fee year to which the application relates.

7.4 Examples of reinsurance transactions that may be eligible for relief include:

- Long-term reinsurance arrangements made on an ad hoc basis; and
- Reinsurance conducted in advance of a Part VII transfer and similar in scope to the intended transfer.

7.5 These examples are illustrative only: all applications will be considered on their own merits, and the fact that an application comes within an example given in this paragraph does not guarantee that a waiver or modification will be granted in full or in part.

7.6 Any waiver or modification application made under S138A will need to be accompanied by a copy of all relevant reinsurance agreements.

¹ Fees 2.9

Annex – SS3/16 updates

This annex outlines changes made to SS3/16 since its publication in PS7/16 ‘PRA Rulebook: Fees Part and responses to CP40/15’ in February 2016.¹

June 2019

This SS was updated following the publication of PS12/19 ‘Regulated fees and levies: Rates for 2019/20’² to:

- update the reference to the example implementation fee (Chapter 3);
- rename implementation fees to cost allocations to reflect that they are not limited to just the implementation of changes to the regulatory environment (Chapter 3);
- update the PRA’s approach to periodic fees (Chapter 3);
- clarify the application of regulatory transaction fees and periodic fees for those firms expanding its Part 4A permission to include additional regulatory activities (Chapter 4);
- clarify the factors that the PRA will consider before levying a new SPF (Chapter 5); and
- correct several non-policy related grammar changes (all chapters).

February 2019

This SS was updated following the publication of PS3/19 ‘PRA fees and levies: Changes to periodic and transaction fees’³ to:

- add the model maintenance fee to the fees making up a firm’s periodic fee (Chapter 3);
- clarify the PRA will look to levy a SPF for those Part VII transactions expected to exceed £25,000 (Chapter 4);
- remove an obsolete reference (Chapter 4);
- clarify the process for insurance firms wishing to seek relief from PRA fees (Chapter 5);
- clarify the types of reinsurance transactions the PRA considers may qualify for relief from PRA fees (Chapter 5); and
- correct several non-policy related grammar changes (all chapters).

June 2017

This SS was updated following the publication of PS17/17 ‘Regulated fees and levies: rates for 2017/18’¹ to:

¹ <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/the-pra-rulebook-fees>.

² <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/regulated-fees-and-levies-rates-proposals-2019-20>.

³ <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/pr-a-fees-and-levies-changes-to-periodic-and-transaction-fees>.

- clarify the instances where a special project fee (SPF) for restructuring can be levied (Chapter 4);
- clarify Solvency II firms seeking permission to use internal models are liable to a regulatory transaction fee (Chapter 4);
- reflect the lower threshold for an SPF for restructuring being triggered (Chapter 5); and
- correct several non-policy related grammar and referencing changes to conform with current drafting policy (all chapters).

¹ <https://www.bankofengland.co.uk/prudential-regulation/publication/2017/regulated-fees-and-levies-rates-proposals-2017-18>.