



BANK OF ENGLAND

July 2019

UK withdrawal from the EU: Changes following extension of Article 50

Bank of England Consultation Paper | PRA Consultation Paper CP18/19

Consultation Paper | CP18/19

UK withdrawal from the EU: Changes following extension of Article 50

July 2019

By responding to this consultation, you provide personal data to the Bank of England. This may include your name, contact details (including, if provided, details of the organisation you work for), and opinions or details offered in the response itself.

The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority. We may use your details to contact you to clarify any aspects of your response.

The consultation paper will explain if responses will be shared with other organisations (for example, the Financial Conduct Authority). If this is the case, the other organisation will also review the responses and may also contact you to clarify aspects of your response. We will retain all responses for the period that is relevant to supporting ongoing regulatory policy developments and reviews. However, all personal data will be redacted from the responses within five years of receipt. To find out more about how we deal with your personal data, your rights or to get in touch please visit [bankofengland.co.uk/legal/privacy](https://www.bankofengland.co.uk/legal/privacy).

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure to other parties in accordance with access to information regimes including under the Freedom of Information Act 2000 or data protection legislation, or as otherwise required by law or in discharge of the Bank's functions.

Please indicate if you regard all, or some of, the information you provide as confidential. If the Bank of England receives a request for disclosure of this information, we will take your indication(s) into account, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system on emails will not, of itself, be regarded as binding on the Bank of England.

Responses are requested by Wednesday 18 September 2019.

Please address any comments or enquiries on:

CP18_19@bankofengland.co.uk,

Nationalising the Acquis
Bank of England
Threadneedle Street
London
EC2R 8AH

Contents

1	Overview	1
	Section A: Update on the temporary transitional power	6
2	The Bank's and PRA's intended use of the temporary transitional power	6
	Section B: Changes to rules and Binding Technical Standards	10
	Part 1: PRA consultation	10
3	Further changes to PRA Rulebook and PRA Binding Technical Standards	10
4	The PRA's obligations under the Regulations	12
	Part 2: Bank (as FMI competent authority) consultation	14
5	Further changes to FMI Binding Technical Standards	14
6	The Bank's obligations under the Regulations	14
	Appendices	16

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 (e.g. 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'¹ (NtA).² The Government has delegated some of these powers to the Bank of England (Bank), as resolution authority and financial market infrastructure (FMI) competent authority, and the Prudential Regulation Authority (PRA).

1.2 On Thursday 18 April 2019 the Bank and PRA published their amendments to financial services legislation under the Act.³ This included final EU Exit Instruments covering NtA changes to PRA and FMI rules and Binding Technical Standards (BTS) in the Bank's and PRA's remits. These EU Exit Instruments have, with limited exceptions, an effective date of 'exit day' as defined in the Act.

1.3 In light of the extension of the Article 50 period announced on Wednesday 10 April 2019,⁴ and the consequent change of 'exit day' in the Act to Thursday 31 October 2019 at 11pm, some minor amendments are needed to the Bank's and PRA's EU Exit Instruments. There are also additional provisions in EU law that apply before Thursday 31 October 2019. These provisions will now meet the definition of retained EU law and require amending.

1.4 This Consultation Paper (CP) contains:

- Section A: an update on the Bank's and PRA's⁵ intended use of the temporary transitional power provided for in the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019⁶ (FSMA SI).
- Section B: Bank and PRA⁷ consultation with proposals to fix deficiencies arising from the UK's withdrawal from the EU and make consequential changes in light of the extension of the Article 50 period. Section B is split into two parts:
 - Part 1 sets out the PRA's proposals in relation to the PRA Rulebook and BTS within the PRA's remit that will be retained, or 'onshored', in UK law.

¹ Acquis refers to the 'acquis communautaire'.

² 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>.

³ PS5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018' April and June 2019: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

⁴ <https://www.gov.uk/government/news/confirmation-of-uk-government-agreement-to-extend-article-50>.

⁵ Unless otherwise stated, references in Section A of this CP to 'the Bank' include the PRA except where 'the Bank and PRA' is stated in which case powers are exercised separately and the reference to 'the Bank' excludes the PRA.

⁶ <http://www.legislation.gov.uk/uksi/2019/632/contents/made>.

⁷ Unless otherwise stated, references to 'the Bank' in Section B of this CP; Part 1 include the PRA except where 'the Bank and PRA' is stated in which case powers are exercised separately and the reference to 'the Bank' excludes the PRA; in Part 2 are to the Bank as FMI competent authority.

- Part 2 sets out proposals by the Bank, as FMI competent authority in relation to BTS under the Central Securities Depositories Regulation (CSDR).⁸

1.5 This CP follows the Bank's and PRA's previous consultations on amending financial services legislation under the Act.⁹ In light of the extension of the Article 50 period, the Bank and PRA are consulting on further changes in this CP to ensure an operable legal framework after the UK leaves the EU. The Bank and PRA continue to follow the approach set out in CP25/18 'The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018' (the 'NtA approach CP').¹⁰

1.6 The draft PRA Rulebook: (EU Exit) (No. 2) Instrument contained in Appendix 6 shows all proposed changes to the PRA Rulebook: (EU Exit) Instrument 2019¹¹ originally published on Thursday 18 April 2019. The further changes being consulted on in this CP are highlighted in yellow in Appendix 6.

1.7 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),¹² or that seek to apply for PRA authorisation in the future. It is also relevant to FMIs recognised and supervised by the Bank, including those CCPs that expect to have a deemed recognition under the 'temporary recognition regime' (TRR).

Background

1.8 As set out in the NtA approach CP, HM Treasury has delegated powers, under the Act, to the PRA, Bank, Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR) (collectively 'financial services regulators') through the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the Regulations). This gives the financial services regulators responsibility for fixing deficiencies in onshored BTS.¹³ HM Treasury also intends to amend the Regulations to include other relevant BTS adopted by the European Commission, including some since the original exit day of 29 March 2019. The delegated power can also be used by the financial services regulators to make amendments within their respective rules.

1.9 Therefore, in light of the extension of the Article 50 period, the PRA and Bank intend to continue to make or amend 'EU Exit Instruments' to fix any deficiency in PRA or Bank (FMI) rules, or in BTS in the PRA's or Bank's remit, arising from the UK's withdrawal from the EU. The PRA and Bank cannot use the power as the basis for policy changes unrelated to the UK's withdrawal from the EU.

1.10 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

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0909>.

⁹ See consultations published in October 2018, December 2018, and final policy in April 2019, all available on <https://www.bankofengland.co.uk/eu-withdrawal>.

¹⁰ <http://www.bankofengland.co.uk/paper/2018/the-boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

¹¹ PRA 2019/10: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/ps519-section-b-app2-april-2019.pdf>.

¹² As set out in the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 – see the Bank's Financial Services Contracts Regime webpage for more information: <https://www.bankofengland.co.uk/eu-withdrawal/financial-services-contracts-regime>.

¹³ In addition to the power to address deficiencies, the Regulations also delegate to the financial services 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.

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 Act provides temporary powers for Government to make subordinate legislation in the form of Statutory Instruments (SIs) to enable changes to be made to laws that would otherwise no longer operate effectively once the UK has left the EU.

1.11 In light of the extension of the Article 50 period, new EU regulations that apply before 31 October 2019 will form 'retained EU law' under the Act. HM Treasury will continue the process of making SIs to make any necessary amendments. The Bank will continue work with HMT in order to provide technical input to the preparation of the SIs.

1.12 The new EU regulations that apply before 31 October 2019 include: the European Markets Infrastructure Regulation (EMIR) REFIT Regulation;¹⁴ parts of the regulation revising the Capital Requirements Regulation (CRR II);¹⁵ and amendments to the Solvency II Delegated Act.¹⁶ In the majority of cases the Bank and PRA do not expect there to be any need to use the respective regulators' delegated powers under the Act in relation to these new EU regulations. This is because the Bank and PRA do not expect there to be any interaction with the respective regulators' rules or new BTS mandates for the Bank/PRA that apply before 31 October 2019. Where consequential changes are required, the changes proposed to the PRA Rulebook and BTS in the Bank's and PRA's remit 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.

1.13 While the changes proposed in this CP are minor, the PRA and Bank consider consultation to be appropriate in the interests of transparency. This CP should be read in conjunction with the NtA approach CP, which sets out the overall approach taken to NtA changes, and with Policy Statement (PS) 5/19,¹⁷ which contains most existing EU Exit Instruments.

Joint PRA/FCA BTS

1.14 The responsibility for some onshored BTS is shared¹⁸ between the PRA and FCA. BTS 2016/1646¹⁹ is one such shared BTS. The PRA's Technical Standards (Capital Requirements) (EU Exit) (No.3) Instrument 2019 'splits' this BTS so that it now has two parts – Part 1 relating to FCA-only regulated firms and Part 2 relating to PRA-regulated (dual-regulated) firms. The proposals being consulted on in this CP will only affect Part 2 relating to PRA-regulated firms. The FCA is expected to make similar changes to their Part 1 of the BTS in due course.

1.15 In other cases, such as BTS 2016/2251, shared BTS are to remain joint, therefore the changes proposed in this CP will affect both PRA-regulated and FCA-regulated firms.

Implementation

Section A

1.16 HM Treasury has given the financial services regulators a temporary transitional power to enable firms to adjust to changes made as a result of onshoring. The Bank and PRA published

¹⁴ Regulation (EU) 2019/834.

¹⁵ Regulation (EU) 2019/876.

¹⁶ Commission Delegated Regulation (EU) 2019/981.

¹⁷ June 2019, 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018': <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

¹⁸ As specified in the Schedule to the Regulations.

¹⁹ Commission Implementing Regulation (EU) 2016/1646.

near-final transitional directions and accompanying guidance setting out the intended use of the temporary transitional power on Thursday 28 February 2019.²⁰ As highlighted in the April version of PS5/19,²¹ the Bank and PRA have been considering their proposed use for the temporary transitional power in light of the extension of the Article 50 period to Thursday 31 October 2019 (see Section A). The Bank and PRA intend to make and publish final directions and guidance ahead of exit day reflecting those considerations.

Section B

1.17 The Bank and PRA intend that the changes proposed in this CP would take effect on exit day only in the event that there is no Implementation Period.²² If the Withdrawal Agreement between the UK and EU is ratified and the Implementation Period commences on exit day, the proposed changes may instead take effect after the Implementation Period. Further modifications to PRA and Bank rules and onshored BTS may be required to reflect any arrangements made between the UK and EU as part of their future relationship.²³

1.18 There is one outstanding BTS concerning the Bank as resolution authority, BTS 2019/348,²⁴ relating to simplified obligations which was published in the Official Journal of the EU on Monday 4 March 2019 and became applicable on Sunday 24 March 2019. The Bank consulted on changes to this BTS in December 2018. The final EU Exit instrument amending this BTS will be made alongside the EU Exit Instruments consulted on in this CP once HM Treasury has granted the Bank the mandate to do so through the making of the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019 laid in Parliament on Monday 15 July 2019.

Structure of the document

1.19 The rest of this CP is structured as follows:

Section A: Update on the temporary transitional power

- Chapter 2 sets out an update on the Bank's and PRA's intended use of the temporary transitional power.

Section B: Changes to rules and BTS

Part 1: PRA consultation

- Chapter 3 sets out proposals relating to additional PRA Rulebook and BTS changes.
- Chapter 4 sets out the PRA's obligations under the Regulations (relevant to Chapter 3).

Part 2: Bank (as FMI competent authority) consultation

- Chapter 5 sets out proposals relating to CSDR BTS.

²⁰ The transitional directions and accompanying guidance as published on Thursday 28 February 2019 are available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/transitioning-to-post-exit-rules-and-standards-as-at-16-april-2019.pdf>.

²¹ Available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

²² A Withdrawal Agreement was agreed between the UK and EU and endorsed by EU 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').

²³ 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.

²⁴ Commission Delegated Regulation (EU) 2019/348.

- Chapter 6 sets out the Bank's obligations under the Regulations (relevant to Chapter 5).

1.20 The appendices to this CP consist of:

Section A appendices

- Appendix 1: Draft PRA transitional direction
- Appendix 2: Draft Bank transitional direction

Section B appendices

Part 1 PRA

- Appendix 3: Draft Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument
- Appendix 4: Draft Technical Standards (European Market Infrastructure) (EU Exit) (No. 4) Instrument
- Appendix 5: Draft Technical Standards (Solvency II Directive) (EU Exit) (No.2) Instrument
- Appendix 6: Draft PRA Rulebook: (EU Exit) (No. 2) Instrument

Part 2 Bank (as FMI competent authority)

- Appendix 7: Draft Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No.2) Instrument

Responses and next steps

1.21 This consultation closes on Wednesday 18 September 2019. The PRA and Bank invite feedback on the proposals set out in this CP. Please address any comments or enquiries using the details provided in Chapter 4 (for proposals set out in Section B Part 1: PRA consultation) and Chapter 6 (for proposals set out in Section B Part 2: Bank (as FMI competent authority) consultation).

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

Section A: Update on the temporary transitional power

2 The Bank's and PRA's intended use of the temporary transitional power

2.1 In October 2018 the Bank and PRA consulted on the proposed approach to the temporary transitional power granted to the regulators (Bank, PRA and FCA) under the FSMA SI. In February 2019 the Bank and PRA published near-final directions setting out the intended approach for the final directions. These had a fixed end date of 30 June 2020.

2.2 In April 2019 the Bank and PRA communicated that, due to the extension of the Article 50 period, the Bank and PRA would be considering the use of the transitional power.

2.3 This chapter sets out the Bank's and PRA's intended approach relating to the duration of the directions in the event that the UK withdraws from the EU on 31 October 2019 with no Implementation Period. Also highlighted are a number of clarifications and updates that the Bank and PRA intend to make for the final directions compared to the near-final versions published on 28 February 2019.²⁵ These are set out in the draft directions in Appendices 1 and 2. Otherwise the approach set out in the February version of PS5/19,²⁶ including the previously identified exceptions, remains relevant.

2.4 The Bank and PRA also published guidance²⁷ on the Bank and PRA transitional directions on 28 February 2019.²⁸ This guidance continues to be of relevance to the draft directions included in this CP. The guidance will be amended to reflect the changes to the directions described in this chapter where necessary.

Duration

2.5 As set out in the NtA approach CP, the Bank and PRA intend to use the temporary transitional power in a broad way to effectively delay the application of NtA changes to PRA-regulated firms' and FMIs' obligations, with limited exceptions. The rationale of this approach is to help minimise operational risks for firms/FMIs if there is no Implementation Period. This approach is intended to broadly replicate some of the effects of the Implementation Period in the event of a sudden 'no deal' exit.

2.6 The maximum possible duration of the use of the temporary transitional power, provided for in the FSMA SI, is two years after exit day. This remains unchanged notwithstanding the extension of the Article 50 period.²⁹

2.7 Responses to the NtA approach CP asked that the period for transitional relief should be as long as possible. The Bank and PRA subsequently communicated its view that 15 months (to a fixed end date of 30 June 2020) would provide an adequate timeframe for firms and FMIs to

²⁵ 'Transitioning to post-exit rules and standards' page: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/transitioning-to-post-exit-rules-and-standards-as-at-16-april-2019.pdf>.

²⁶ Available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

²⁷ See footnote 22.

²⁸ Available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/transitioning-to-post-exit-rules-and-standards-as-at-16-april-2019.pdf>.

²⁹ As provided for by the FSMA SI, the temporary transitional power can be used for a period of two years after exit day and any transitional direction cannot have effect for more than two years after exit day. This remains the case even though exit day has moved to 31 October 2019.

prepare and implement the totality of NtA changes. The FCA also set out a similar view alongside its final direction published on 29 March 2019.³⁰

2.8 The extension of the Article 50 period does not change this overall approach. However, depending on the date of exit the duration of the directions may need to be modified to align the fixed end date with the closest reporting period. A year-end (or a quarter-end) date for a significant change in regulatory requirements assists with the analysis of regulatory data series going forward. This may also reduce the operational risk and impact on firms and FMIs of changing to post-transitional requirements mid-reporting cycle.

2.9 Therefore, if exit day occurs on 31 October 2019, the new fixed end date of the directions would be 31 December 2020. This would provide for a transitional period of 14 months from exit day.

Transitional period relating to credit ratings

2.10 The 'near final' Bank and PRA directions and the February version of PS5/19 identified the use of EEA credit ratings as a policy area where the Bank and PRA intend to provide a shorter transitional period of 12 months. This is to align with the specific transitional provision provided for in the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 (the CRA SI). The end date of this shorter transitional relief period in the CRA SI will move automatically as a consequence of the change in 'exit day'. The Bank and PRA intend to maintain the alignment with this 12 month period.

Duration of transitional relief for firms in TPR and FSCR

2.11 As set out in the February version of PS5/19, for firms in TPR and FSCR the transitional relief does not apply in most cases. For the limited number of provisions where transitional relief does apply, the Bank and PRA intend to continue the alignment of the maximum duration of TPR transitional relief with that of the overall Bank and PRA transitional relief.

2.12 In relation to two aspects of third country branch requirements: i) bank branch profit and loss reporting; and ii) Solvency II reporting related to the branch Minimum Capital Requirement (MCR) and Solvency Capital Requirement (SCR) calculations, the Bank and PRA intend to continue to align the TPR transitional relief with the overall Bank and PRA transitional relief, i.e. ending on 31 December 2020 if the UK leaves the EU on 31 October 2019.

2.13 The Bank and PRA intend to keep the post-exit duration of other TPR transitional relief periods the same as set out in the February version of PS5/19 i.e. where a 3 month transitional period is set out this will become 3 months after the 31 October exit day.^{31 32}

Clarifications

2.14 The Bank's and PRA's final transitional directions will be similar to the near-final directions that were published as part of the February version of PS5/19. A few limited changes will be made. They are set out below and in the draft directions in Appendices 1 and 2.

³⁰ <https://www.fca.org.uk/publications/policy-statements/ps19-5-brexite-policy-statement>.

³¹ These include 3 months transitional relief for status disclosure rules; 6 months for Solvency II qualitative reporting and first performance year starting on or after the date falling 3 months after exit for remuneration rules where they go beyond CRD IV.

³² Transitional relief does not apply to the TRR.

Changes to the PRA transitional direction

Paragraph 1

2.15 A reference to regulation 198 of the FSMA SI has been added. This regulation provides the PRA with the power to make the direction. The reference has been included to help readers identify the relevant regulation under which the direction is made.

Paragraph 3

2.16 The PRA has added new definitions of 'Exemption Order', 'Financial Promotion Order' and 'Regulated Activities Order' in paragraph 3(1). These newly defined terms are used in new paragraph 5(m). 'PRA' is also now defined to aid clarity.

2.17 The PRA has added a new paragraph 3(2) to clarify that, unless otherwise indicated, references in the PRA direction to any EU regulation are to that EU regulation as it forms part of domestic law on exit day. This means that such references would capture NtA amendments made to EU regulations by relevant SIs or EU Exit Instruments. Equivalent wording in the definition of 'CRA regulation' in paragraph 3(1), which related specifically to that regulation, is now unnecessary and has been deleted.

Paragraph 5(8) – now paragraph 5(1)(h) and (i)

2.18 A drafting change has been made to make clear that the PRA is excluding relevant obligations in relation to which an equivalence direction or equivalence determination for the purposes of the Markets in Financial Instruments Regulation (MiFIR) has been or could be made. For clarity this situation has been separated in the PRA direction from other cases where an equivalence direction or determination would need to be made (by setting them out in separate sub-paragraphs).

New paragraph 5(1)(m)

2.19 The effect of paragraph 5(1)(m) is that the transitional direction does not apply where the scope of a relevant obligation is affected by an amendment to the Regulated Activities Order, the Financial Promotion Order or the Exemption Order.

New paragraph 5(1)(n)

2.20 The drafting has been amended to clarify that relevant obligations relating to the payment of fees are exempted from the PRA direction. The PRA has consulted on and set fee rates for the 2019/2020 fee year separately in the normal course of business³³.

New paragraph 5(2)

2.21 The new paragraph 5(2) makes it clear that Part VII of the Financial Services and Markets Act 2000 and related provisions are not covered by the direction. HM Treasury has introduced a separate savings provision for Part VII insurance business transfers which are already underway at exit day.³⁴

Paragraph 10(2)

2.22 Paragraphs 10(3) and (11) set out a limited number of areas where the PRA is providing specific transitional relief for former passporting firms. Otherwise requirements which apply to such firms for the first time (or apply to them differently) solely due to the repeal of EEA passporting (together, where relevant, with the introduction of TPR and FSCR) are not

³³ <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2019/ps1219.pdf>.

³⁴ Regulation 36 of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019.

generally covered by the PRA direction. The PRA has clarified at the end of paragraph 10(2) that this includes obligations which it is expressly extending to former passporting firms without an establishment in the UK (e.g. certain Senior Managers and Certification Regime requirements). Former passporting firms without an establishment in the UK will need to comply with these obligations from exit day.

Changes to the Bank transitional direction

Paragraph 1

2.23 A reference to regulation 198 of the FSMA SI has been added. This regulation provides the Bank with the power to make the direction. The reference has been included to help readers identify the relevant regulation under which the direction is made.

Paragraph 4

2.24 The words 'on exit day' have been added to clarify that, unless otherwise indicated, references in the Bank direction to any EU regulation are to that EU regulation as it forms part of domestic law on exit day.

Paragraph 6(e)

2.25 The drafting has been clarified to refer to the specific BTS relating to MiFIR that are intended to be exempted from the Bank direction. The Bank has consulted on FMI supervision fee rates for the 2019/2020 fee year separately in the normal course of business.³⁵

Paragraph 6(j)

2.26 The drafting has been amended to clarify that relevant obligations relating to the payment of fees are exempted from the Bank direction.

Implementation and next steps

2.27 The Bank and PRA intend to make the transitional directions ahead of exit day. The Bank and PRA may make any changes or further exceptions necessary, including any changes resulting from new EU law which begins to apply before exit day.

2.28 The Bank and PRA will continue to keep their approach to the use of the transitional power under review in light of any further developments relating to the duration of the Article 50 period.

³⁵ <https://www.bankofengland.co.uk/paper/2019/fees-regime-for-financial-market-infrastructure-supervision-2019-20>.

Section B: Changes to rules and Binding Technical Standards

Part 1: PRA consultation

3 Further changes to PRA Rulebook and PRA Binding Technical Standards

3.1 There have been very few new BTS adopted by the European Commission since 29 March 2019 which are relevant to the PRA's remit. There is only one new amending BTS in the PRA's remit, ITS 2019/439,³⁶ which is the latest annual update to the supervisory benchmarking reporting requirements. This is covered by Supervisory Statement 2/19 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU'³⁷ and therefore does not need to be amended at this time. The PRA does not expect additional BTS relevant to its remit to be adopted before exit day.

3.2 There are, however, a number of small amendments required to onshored BTS and the PRA Rulebook. These proposed changes will be made in new or amended EU Exit Instruments.

3.3 Additional consequential changes may be required to BTS and PRA Rulebook EU Exit Instruments once any additional SIs amending new Level 1 EU legislation have been published. The PRA will prioritise making all relevant amendments before exit day. It may not be possible to consult on all changes in advance of them being made. In any such cases, the PRA intends to continue to follow the approach set out in the NtA approach CP and used for previous onshoring changes. For instance, the PRA cannot use its powers under the Act as the basis for policy changes unrelated to the UK's withdrawal from the EU.

BTS changes

BTS 2016/1646 on indices and recognised exchanges for use in prudential calculations of credit institutions and investment firms

3.4 Annex 2 of this BTS was not corrected in the PRA Technical Standards (Capital Requirements) (EU Exit) (No.3) Instrument 2019. As a consequence of changes in the Capital Requirements (Amendment) (EU Exit) Regulations 2018 (CRR SI), in particular the definition of 'regulated market' being reduced in scope to UK only, the general third country treatment will be applied to the EU in this case. Therefore, the relevant lists will be updated to remove EU 'recognised exchanges' post-exit.

3.5 This BTS is shared with the FCA. It has been 'split' so it now has two, currently identical, parts: Part 1 applicable to FCA firms and Part 2 applicable to PRA-regulated firms. The changes consulted on in this CP will only affect the PRA's Part 2. The FCA is expected to make similar amendments to its Part 1 of the BTS in due course.

BTS 2016/2251³⁸ on bilateral margining

3.6 An amendment needs to be made to reflect the fact that one provision which applies from September 2019 will now become part of retained EU law as a result of the extension of the

³⁶ Commission Implementing Regulation (EU) 2019/439.

³⁷ April 2019: [https://www.bankofengland.co.uk/pr-a-approach-to-interpreting-reporting-and-disclosure-reqs-and-reg-trans-forms-ss](https://www.bankofengland.co.uk/prudential-regulation/publication/2019/pr-a-approach-to-interpreting-reporting-and-disclosure-reqs-and-reg-trans-forms-ss).

³⁸ Commission Delegated Regulation (EU) 2016/2251.

Article 50 period. This is a necessary technical amendment to the PRA's Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019.

3.7 The BTS is shared with the FCA and is remaining joint. Therefore, the change would be made by the PRA on behalf of both regulators once the FCA's consent is received under regulation 3(2) of the Regulations.

BTS 2015/462 on establishing insurance special purpose vehicles (ISPVs)

3.8 The PRA expects that HM Treasury will publish, in due course, changes in relation to the Risk Transformation Regulations 2017 and the Solvency II Commission Delegated Regulation which relate to ISPVs. The PRA proposes related changes to BTS 2015/462³⁹ on establishing special purpose vehicles.

3.9 This BTS is insurance related and is PRA only (not joint with FCA).

PRA Rulebook changes

ISPVs

3.10 The PRA expects that HM Treasury will publish, in due course, changes in relation to the Risk Transformation Regulations 2017 and the Solvency II Commission Delegated Regulation which relate to ISPVs. The PRA proposes related changes to the existing PRA Rulebook: (EU Exit) Instrument 2019, Glossary and ISPV Part of the PRA Rulebook.

Solvency II Gibraltar consequential amendments

3.11 Due to specific amendments made in the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019, the PRA proposes consequential changes to the existing PRA Rulebook: (EU Exit) Instrument 2019, Glossary and Insurance Groups Part of the PRA Rulebook.

3.12 These amendments reinstate the term 'Solvency II undertaking' and amend it to refer to Gibraltar insurance or reinsurance undertakings as well as UK Solvency II firms. Where references to 'EEA State' were previously replaced with references to the UK, these now also include a reference to Gibraltar. The term 'supervisory authority' has been amended to include the Financial Services Commission of Gibraltar. A number of deleted provisions relating to supervisory cooperation with EEA Member States have been reinstated and amended to refer to Gibraltar.

Other consequential changes

3.13 The implementation date of the specific transitional for Credit Union EEA investments inserted into the Credit Union Part of the PRA Rulebook will be adjusted to take account of the intended new duration of the PRA transitional direction.

Clarification changes

3.14 A number of technical changes and small amendments for clarification to the PRA Rulebook (EU Exit) Instrument 2019 is required. These include:

- italicisation of defined terms; and
- grammatical corrections and amendments for consistency.

³⁹ Commission Implementing Regulation (EU) 2015/462.

NtA changes to new rules

3.15 Subsequent to the publication of CP25/18 and 26/18 in October 2018, a second version of any proposed rules which includes the necessary changes under the Act has also been part of relevant PRA CPs.⁴⁰ Where final rules are made before exit day they do not include the NtA changes. Instead the relevant NtA changes consulted on in these CPs will be made as part of the final pre-exit update to the PRA Rulebook: (EU Exit) Instrument 2019.

4 The PRA's obligations under the Regulations

4.1 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.

4.2 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.

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

4.4 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.

⁴⁰ For example CP15/19 'Large exposures: Reciprocation of French measure', July 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/large-exposures-reciprocation-of-french-measure>.

Equality and diversity

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

Next steps

4.6 The PRA invites feedback on the proposals set out in this paper by Wednesday 18 September 2019. Please provide those comments by email to the address CP18_19@bankofengland.co.uk.

Alternatively you may provide comments by post to:

Nationalising the Acquis
Bank of England
Threadneedle Street
London
EC2R 8AH

Part 2: Bank (as FMI competent authority) consultation

5 Further changes to FMI Binding Technical Standards

5.1 The Central Securities Depositories Regulation (CSDR)⁴¹ and the BTS adopted under it will be onshored into UK law under the Act.

5.2 The Bank has identified a few instances in the text of the BTS where it would be helpful to clarify the scope of the provisions. The Bank proposes to amend the BTS to make these clarifications. These amendments are set out in Appendix 7.

6 The Bank's obligations under the Regulations

6.1 HM Treasury has delegated powers, under Section 8 of the Act, to the Bank to make changes to relevant BTS.⁴² As such, similar restrictions that apply to the power in Section 8 of the Act also apply to the Bank's delegated powers.

6.2 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.

6.3 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.

6.4 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

⁴¹ Regulation (EU) No 909/2014.

⁴² The Bank expects HM Treasury to introduce legislation giving it responsibility for making onshoring changes to these BTS in due course.

(h) amend any legislation other than the relevant BTS.

Equality and diversity

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

Next steps

6.6 The Bank invites feedback on the proposals set out in this paper by Wednesday 18 September 2019. Please provide those comments by email to the address below:

CP18_19@bankofengland.co.uk

Alternatively you may provide comments by post to:

Nationalising the Acquis
Bank of England
Threadneedle Street
London
EC2R 8AH

Appendices

1	Draft PRA transitional direction	17
2	Draft Bank transitional direction	24
3	Draft Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument (update to BTS 2016/1646)	28
4	Draft Technical Standards (European Market Infrastructure) (EU Exit) (No.4) Instrument (update to BTS 2016/2251)	37
5	Draft Technical Standards (Solvency II Directive) (EU Exit) (No.2) Instrument (update to BTS 2015/462)	40
6	Draft PRA Rulebook: (EU Exit) (No.2) Instrument	42
7	Draft Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No.2) Instrument (update to BTS 2017/392 and 2017/394)	229