

Bank of England

Prudential Regulation Authority

Appendix 10: Operating the Simpler-regime criteria

Statement of Policy

November 2022

Draft for consultation



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1. Introduction

1.1 This Statement of Policy (SoP) sets out the Prudential Regulation Authority's (PRA) approach to operating the Simpler-regime criteria.¹ It covers:

- how banks and building societies ('firms') that meet the Simpler-regime criteria can access the Transitional Capital Regime;²
- how firms that are part of groups based outside of the UK could access the Transitional Capital Regime;
- how firms will be treated in the case of a merger, acquisition, a disposal of entities or activities, or similar circumstances; and
- how firms that cease to meet the Simpler-regime criteria will transition between the Transitional Capital Regime and the Basel 3.1 rules.

1.2 The statement should be of interest to PRA-authorised banks and building societies, and prospective entities interested in, and currently applying for, authorisation as a deposit-taker. It should be of particular interest to firms that meet the Simpler-regime criteria or those that expect to do so in the future, and firms wishing to be treated in the same way as firms meeting those criteria.

¹ <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2022/november/cp1622app4.pdf>.

² <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2022/november/cp1622app9.pdf>.

2. Accessing the Transitional Capital Regime

2.1 The PRA is prepared to offer a firm that meets the Simpler-regime criteria on 1 January 2024 a modification of the definition of 'TCR firm' by which the firm would become a TCR firm. The Transitional Capital Regime will apply to TCR firms when it comes into effect.

2.2 The offer of the modification is on condition that any other firm in the firm's consolidation group is also willing to consent to a similar modification at the same time. Where all PRA-authorized firms in a consolidation group are TCR firms, the CRR consolidation entity is a 'TCR consolidation entity', which will also be subject to the Transitional Capital Regime.

Discretion to remove firms meeting the Simpler-regime criteria from the Transitional Capital Regime

2.3 The PRA will consider removing a firm from the Transitional Capital Regime by revoking its modification direction if, in the PRA's consideration, the firm's inclusion in the regime does not advance the PRA's objectives.

2.4 This situation is likely to arise if a firm is carrying out business activities that create risks to the firm's safety and soundness that are not adequately addressed by the Transitional Capital Regime, but are adequately addressed by the prudential rules that apply to other firms.

2.5 The PRA may in particular consider revoking a firm's modification direction in the case of a merger or acquisition, or similar circumstances, if the Transitional Capital Regime is no longer appropriate for the firm even though it continues to meet the Simpler-regime criteria due to the criteria's use of measures based on historical data (eg a three-year average of total assets to calculate the size measure).

3. Approach to firms that do not meet the Simpler-regime criteria

3.1 This chapter sets out the PRA's approach to firms that wish to access the Transitional Capital Regime but do not meet the Simpler-regime criteria, but may still be able to be treated in the same way as a firm meeting the Simpler-regime criteria.

Firms that are subsidiaries of foreign groups

3.2 A firm that is a UK subsidiary of a group based outside the UK (including a firm that has a holding company outside the UK) (a 'foreign group') cannot meet the Simpler-regime criteria. The criteria includes a requirement that any undertaking of which the firm is a subsidiary must be a UK undertaking.

3.3 The PRA considers that it may be appropriate for a firm that is a subsidiary of a foreign group and that satisfies each of the other conditions in the Simpler-regime criteria to be treated in the same way as a firm that satisfies all the Simpler-regime criteria. Whether this is the case will depend in particular on the total size of the foreign group of which the firm is a part. The PRA considers that this is likely to be the case where the firm can demonstrate that the group's total assets do not exceed £20 billion when calculated on the following basis:

- the measure of total assets is comparable to the measure used in the Simpler-regime criteria and calculated using the average of this measure during the previous 36 months; and
- the entities included in or excluded from the group for this purpose are determined using approximately the same principles as those used when establishing the boundaries of a UK consolidation group.

3.4 If a firm in this position wishes to be subject to the Transitional Capital Regime, it should apply under section 138A of the Financial Services and Markets Act 2000 (FSMA) for a modification of the Simpler-regime criteria, so that instead of requiring that any undertaking of which the firm is a subsidiary must be a UK undertaking, the modified criteria include a criterion to the effect that the group's total assets do not exceed £20 billion, appropriately tailored to the circumstances of the group.

3.5 The PRA will consider any application for a modification of the Simpler-regime criteria on a case-by-case basis, applying the statutory tests in section 138A(4) of FSMA. The PRA considers that the statutory tests are generally likely to be met in the circumstances described above. In assessing an application for the modification, the PRA will consider

whether there are any reasons that the firm's safety and soundness would be negatively affected if it were granted the modification.

3.6 A firm that is a UK subsidiary of a foreign group that is granted a modification to the Simplifier-regime criteria, and meets its modified Simplifier-regime criteria, will be subject to the PRA's offer of a modification by consent to become a TCR firm and enter the Transitional Capital Regime (on the same terms as other firms that meet the Simplifier-regime criteria).

Other firms

3.7 In the case of a disposal of entities or activities, or similar circumstances, a firm might consider that the Transitional Capital Regime is appropriate for the firm even though it does not meet the Simplifier-regime criteria, due the criteria's use of measures based on historical data (eg a three-year average of total assets to calculate the size measure).

3.8 If a firm in such a position applies for a modification of the Simplifier-regime criteria under section 138A of FSMA, the PRA will consider its application, including the explanation and evidence submitted by the firm that support its view that the PRA can be satisfied that the statutory tests in FSMA 138A(4) are met.

4. Leaving the Transitional Capital Regime

4.1 This chapter sets out the approach for firms transitioning out of the Transitional Capital Regime.

4.2 If a TCR firm (ie a firm that is subject to a modification described in 2.2) ceases to meet the Simpler-regime criteria between 1 January 2024 and the implementation date of the risk-based capital framework in the Simpler-regime, it must notify the PRA. The firm should expect that the PRA will then decide to revoke its modification direction so that it stops being subject to the Transitional Capital Regime and becomes subject to Basel 3.1 rules.³ In many cases, such a firm will be able to prepare for ceasing to meet the scope criteria, and should therefore be able to comply with Basel 3.1 rules (as implemented by the PRA), almost immediately. In some circumstances, a firm might reasonably need some limited further time to prepare for complying with Basel 3.1 rules (as implemented by the PRA). The PRA will consider this when deciding when to revoke the firm's modification direction.

4.3 If a firm that has a modification direction for the Transitional Capital Regime ceases to meet the Simpler-regime criteria because it receives an internal ratings based (IRB) approval, the PRA will engage with the firm in the period before the approval decision to ensure the firm is ready to move from the Transitional Capital Regime to Basel 3.1 (as implemented by the PRA).

³ If these circumstances arise before the Transitional Capital Regime and Basel 3.1 rules have come into effect, then the firm would not become subject to the Transitional Capital Regime.