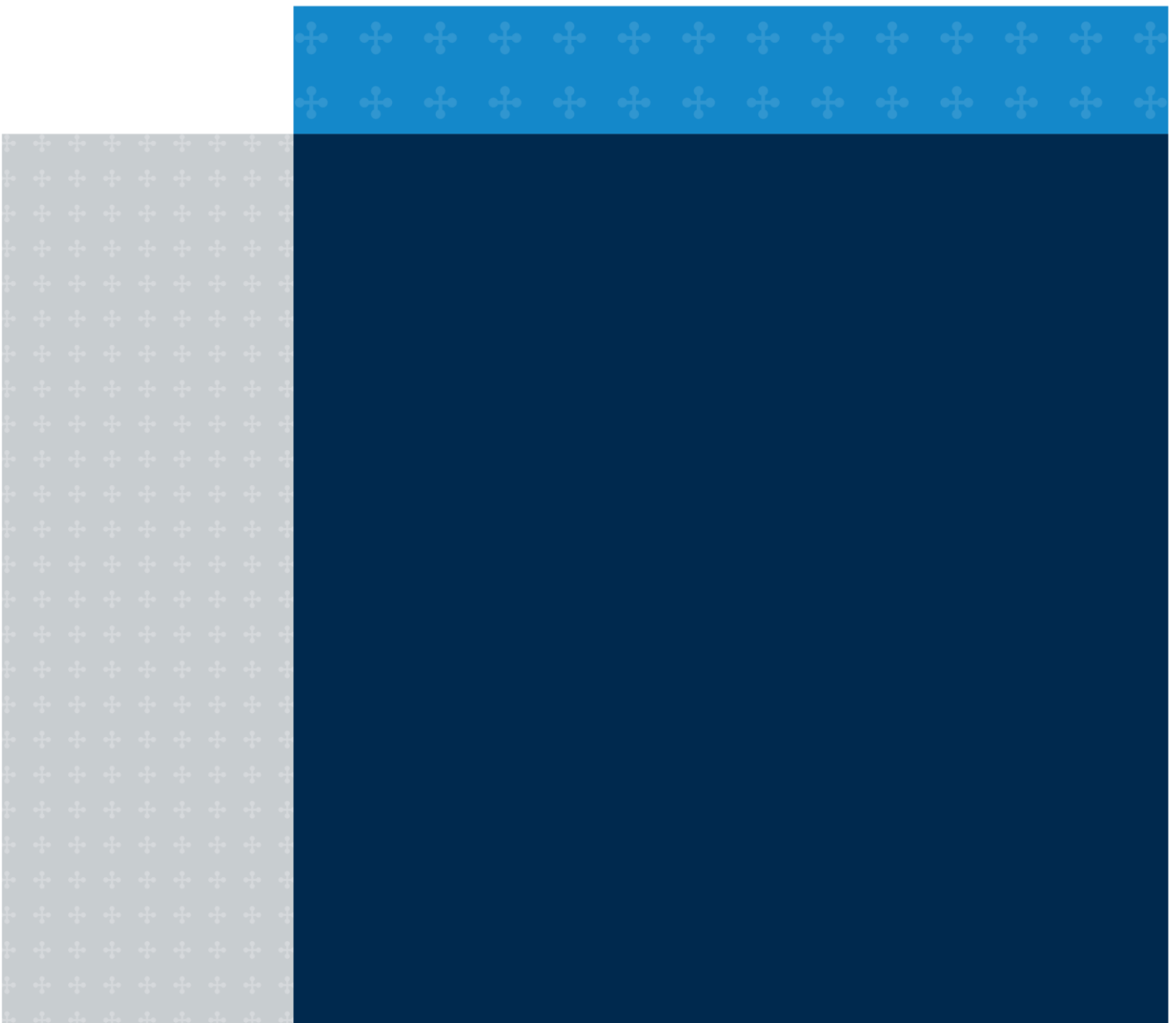




Policy Statement | PS28/21

Remuneration: Identification of material risk takers

December 2021





BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

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1 Overview

1.1 This Prudential Regulation Authority (PRA) Policy Statement (PS) provides feedback to responses to Consultation Paper (CP) 18/21 ‘Remuneration: Identification of material risk takers’.¹ It also contains the PRA’s final policy, as follows:

- amendments to the Remuneration Part of the PRA Rulebook, in relation to the criteria for identifying Material Risk Takers (MRTs) and relevant definitions (Appendix 1);
- the revocation of the PRA version of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 (2014 RTS) (Appendix 2);²
- an updated Supervisory Statement (SS) 2/17 ‘Remuneration’, which reflects the rule changes and the amended process for excluding an employee identified as an MRT solely based on the quantitative criteria (Appendix 3);³ and
- consequential changes to the Certification Part of the PRA Rulebook (Appendix 1), and to SS28/15 ‘Strengthening individual accountability in banking’, (Appendix 4) which mirror the Remuneration Part changes.⁴

1.2 This PS is relevant to banks, building societies, and PRA-designated investment firms, including third country branches. This PS is not relevant to credit unions or PRA-authorized insurers.

Background

1.3 In CP18/21, the PRA proposed changes to the applicable requirements on the identification of MRTs for the purposes of the PRA’s remuneration regime. More specifically, it proposed to:

- revoke the PRA version of the 2014 RTS;
- insert the provisions of the European Banking Authority’s (EBA) revised draft Regulatory Technical Standards (MRT Regulation), as adopted by the European Commission on Wednesday 9 June 2021, into the Remuneration Part of the PRA Rulebook, amended only as needed for consistency with PRA Rulebook style and converting currency references into Pounds Sterling;
- make technical drafting fixes for consistency; and
- update SS2/17 to reflect the rule changes, and the amended process for excluding an employee identified solely based on the quantitative criteria.

Summary of responses

1.4 The PRA received three responses to the CP. Respondents generally welcomed the PRA’s proposals. Two respondents made some observations about the proposals. The PRA gives feedback on these in Chapter 2. One respondent welcomed all the proposals.

¹ September 2021: [CP18/21 – Remuneration: Identification of material risk takers](#).

² Commission Delegated Regulation (EU) No 604/2014 (on regulatory technical standards (RTS) with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution’s risk profile) has been divided into two versions headed ‘Part 1 (FCA)’ and ‘Part 2 (PRA)’ respectively.

³ July 2021: SS2/17 – [Remuneration](#).

⁴ June 2021: SS28/15 – [Strengthening individual accountability in banking](#).

Changes to draft policy

1.5 Where the final rules differ from the draft in the CP in a way which is, in the opinion of the PRA, significant, the Financial Services and Markets Act 2000 (FSMA)⁵ requires the PRA to publish:

- (a) details of the difference together with a cost benefit analysis; and
- (b) a statement setting out in the PRA's opinion whether or not the impact of the final rule on mutuals is significantly different to: the impact that the draft rule would have had on mutuals; or the impact that the final rule will have on other PRA-authorized firms.

1.6 The PRA has made two changes to the draft policy:

- a consequential amendment to the Certification Part of the PRA Rulebook, as a result of the revocation of the 2014 RTS (see paragraph 1.8 below); and
- a clarification relating to Rule 3.3A(2) as a result of a response received (see paragraph 2.5 below).

1.7 The PRA considers that the changes to draft policy will enhance clarity, to the benefit of firms, without adding any additional burden. The impact of the PRA's changes to its draft policy is expected to be no different for mutuals than for other firms.

Consequential amendment to the Certification Part of the PRA Rulebook

1.8 The PRA has deleted the reference to the Material Risk Takers Regulation in the Certification Part of the PRA Rulebook, and replaced it with the relevant, updated rules in the Remuneration Part. The PRA does not consider the amendment to the Certification Part made to represent a substantive change in policy. As such, there are no additional cost and benefit implications. The policy intention is to maintain alignment of the two parts of the PRA Rulebook, and therefore avoid duplication of rules and processes.

1.9 More specifically, in defining who is a 'significant risk taker' for certification purposes in Capital Requirements Regulation (CRR) firms, the Certification Part refers to the Material Risk Taker Regulation; this is a reference to the 2014 RTS. As set out in SS28/15 (paragraph 3.3), for CRR firms the definition of 'significant risk taker' which applies in the Certification Part is intended to align with the definition of 'material risk taker' in the Remuneration Part, subject only to minor differences in scope, for example in relation to senior management function holders. As the PRA is revoking the PRA version of the 2014 RTS, the PRA has updated the Certification Part (Appendix 1) and SS28/15 (Appendix 4) accordingly, to delete the reference to the 2014 RTS and replace it with a reference to the relevant rules in the updated Remuneration Part.

1.10 As the updates to the Certification Part were not included in the proposed draft rules set out in the CP, the changes to the Certification Part will come into effect on Tuesday 1 March 2022 in order to give firms additional time to take any necessary steps to ensure their compliance.

1.11 Firms may prefer to apply the update to the Certification Part earlier than this date.

1.12 In general, the application of the criteria set out in the Remuneration Part will result in the identification of a broader scope of individuals (falling within the Certification Part) than the application of the criteria set out in the 2014 RTS. Therefore, in applying the criteria set out in the

⁵ Sections 138J(5) and 138K(4) of FSMA.

Remuneration Part for the purposes of assessing whether an individual performs a certified function, the PRA considers that firms will also meet the criteria set out in the 2014 RTS.

1.13 In any limited instances where individuals are within scope of the criteria set out in the 2014 RTS, but not in scope of the criteria set out in the Remuneration Part,⁶ and firms consider that the professional activities of those individuals do not have a material impact on the firm's risk profile, the PRA considers that those individuals do not fall within the Certification Part.

Clarification relating to Rule 3.3A(2)

1.14 The PRA's clarification of Rule 3.3A(2) represents a minor drafting update to provide enhanced clarity. As such, the PRA does not consider it to represent a substantive change in policy, and the clarification does not materially alter the cost benefit analysis presented in the CP.

1.15 When making CRR rules, the PRA must consider, and publish an explanation of, the ways in which the PRA has had regard to certain additional matters to consider and how the additional have regards have affected the proposed rules.⁷ In CP18/21, the PRA set out this explanation in Chapter 3 'The PRA's statutory obligations'.⁸ The PRA's consideration of the have regards has not changed in light of the responses received.

1.16 The PRA must also publish a summary of the purpose of the proposed rules.⁹ The purpose of the proposed rules is to maintain alignment with the MRT identification regime currently in force. The consequential change ensures that the Certification and Remuneration Parts of the PRA Rulebook are aligned.

Implementation

1.17 The changes to the Remuneration Part of the PRA Rulebook (Appendices 1, 2 and 3) will take effect on Thursday 30 December 2021, and are required to be implemented by firms from the first performance year which starts after this date. The changes to the Certification Part of the PRA Rulebook will take effect on Tuesday 1 March 2022 (Appendices 1 and 4).

1.18 References related to the UK's membership of the EU in the SS2/17 and SS28/15 covered by the policy in this PS have been updated as part of this PS to reflect the UK's withdrawal from the EU. Unless otherwise stated, any remaining references to EU or EU-derived legislation refer to the version of that legislation which forms part of retained EU law.¹⁰

2 Feedback to responses

2.1 Before making any proposed rules, the PRA is required by FSMA to have regard to any representations made to it, and to publish an account, in general terms, of those representations and its feedback to them.¹¹

2.2 The PRA has considered the responses received to the CP. This chapter sets out the PRA's feedback to those responses, and its final decisions.

2.3 The sections below have been grouped as follows:

⁶ For example, the 2014 RTS captures individuals responsible for initiating credit proposals, or structuring credit products, which can result in credit risk exposures exceeding €5 million and 0.5% of Common Equity Tier 1.

⁷ Sections 144C(1)(2) and 144D(1) of FSMA.

⁸ September 2021: [CP18/21 – Remuneration: Identification of material risk takers](#).

⁹ Section 144D(2) of FSMA.

¹⁰ For further information please see [Transitioning to post-exit rules and standards](#).

¹¹ Sections 138J(3) and 138J(4) of FSMA.

- general responses;
- application of the quantitative criteria for identifying MRTs;
- redenomination of currency thresholds; and
- application of rules to part-year MRTs.

General responses

2.4 One respondent welcomed all of the proposals set out in the CP. The respondent observed that in their view the duplication of MRT criteria is cumbersome, and the removal of the requirement to record both criteria (under the 2014 RTS and the MRT Regulation) will be of benefit to the firm and its operating process.

Application of the quantitative criteria for identifying MRTs

2.5 Regarding the quantitative criteria for identifying MRTs in Rule 3.3A(2) of the Remuneration Part of the PRA Rulebook, one respondent sought confirmation that the reference to a 0.3% threshold of employees within the firm who have been awarded the highest total remuneration should be calculated on an individual entity basis, and not calculated at the consolidated level. After considering the response, the PRA has decided to make a minor drafting amendment to Rule 3.3A(2) to further clarify that this threshold should be calculated on an individual entity basis, and not calculated at the consolidated level.

Redenomination of currency thresholds

2.6 The PRA proposed to redenominate currency references from EUR to GBP by using the average of daily GBP/EUR spot exchange rates over a 12-month period, prior to Friday 10 July 2020: £1 = €1.14, rounded to the nearest integer. One respondent sought clarification as to whether the PRA intends to repeat the process of redenomination of the thresholds on an annual basis.

2.7 As stated in paragraph 2.10 of CP18/21, the PRA considers that its approach to redenomination would offer greater certainty to firms regarding the value of monetary thresholds in PRA rules, irrespective of fluctuations in the GBP/EUR exchange rate. This would be done by including the thresholds in GBP amounts in the PRA Rulebook. Therefore, the PRA considers it is not necessary to repeat the process of redenominating currency references into GBP on an annual basis. The PRA has therefore decided to maintain its policy as proposed.

Application of rules to part-year MRTs

2.8 The PRA proposed changes to SS2/17 to reflect rule changes, and the amended process for excluding an employee identified solely based on the quantitative criteria. One respondent commented that the proposals in relation to the SS provided clarity on the changes made, and the processes required, for excluding MRTs identified solely on the quantitative criteria.

2.9 Two respondents commented that it would be helpful for firms if the PRA restored paragraph 3.17 of the April 2017 version of SS2/17, which is now deleted. Paragraph 3.17 allowed the disapplication of certain remuneration rules to certain MRTs for three months or less in a given performance year, who had not received a guaranteed variable remuneration award in relation to their appointment as MRT.

2.10 The PRA considers that the treatment of part-year MRTs concerns the proportionate application of remuneration rules to those MRTs, not the criteria or process to identify MRTs. The PRA already applies a proportionate approach for individuals who are MRTs in role for less than 12

months in a given performance year.¹² Where a firm considers that the proportionate application of the remuneration rules to a part-year MRT leads to results that are unduly burdensome, or would not achieve the purpose for which the rules were made, it may apply for a rule waiver or modification which the PRA would consider in accordance with section 138A of FSMA. The PRA considers that the proportionate application of rules to part-year MRTs was not in scope of this consultation, but it will continue monitoring the effects of its expectations in relation to part-year MRTs. Having considered the response, the PRA has decided not to amend its draft policy on the criteria and process in identifying MRTs.

2.11 One respondent noted that paragraph 102 of the EBA Guidelines on sound remuneration policies requests firms to identify as MRTs employees who are likely to meet any of the identification criteria 'for a period of at least three months in a financial year' and suggested that the PRA consider adopting such an approach.¹³

2.12 As stated in the Bank of England and PRA's Statement of Policy 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU',¹⁴ the PRA's approach is for firms to continue to make every effort to comply with the existing EU Guidelines and Recommendations that were applicable at the end of the transition period, to the extent that these remain relevant. This includes relevant parts of the 2015 EBA Guidelines on sound remuneration policies. The PRA considers that paragraph 89 of those guidelines corresponds to paragraph 102 of the 2021 version. Having considered the response, the PRA has decided that no amendment is necessary to its policy approach.

¹² As stated in paragraphs 3.11–3.16: SS2/17 – [Remuneration](#).

¹³ EBA: [Guidelines on sound remuneration policies](#).

¹⁴ December 2020: [Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU](#).

Appendices

- 1 **PRA RULEBOOK: CRR FIRMS: REMUNERATION AND CERTIFICATION INSTRUMENT 2021**, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2021/december/ps2821app1.pdf>

 - 2 **PRA STANDARDS INSTRUMENT: THE TECHNICAL STANDARDS (REMUNERATION) INSTRUMENT 2021**, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2021/december/ps2821app2.pdf>

 - 3 **SS2/17 'Remuneration'**, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/september/remuneration-identification-material-risk-takers>

 - 4 **SS28/15 'Strengthening individual accountability in banking'**, available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-banking-ss>
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