



BANK OF ENGLAND

Regulatory Policy



# Exercise by The Bank of England and Prudential Regulation Authority of sub-delegated powers under the EU (Withdrawal) Act 2018

Year ending 29 February 2020







**BANK OF ENGLAND**

**EXERCISE BY THE BANK OF ENGLAND AND PRUDENTIAL REGULATION  
AUTHORITY OF SUB-DELEGATED POWERS UNDER THE EUROPEAN UNION  
(WITHDRAWAL) ACT 2018**

**REPORT FOR THE FINANCIAL YEAR ENDING 29 FEBRUARY 2020**

Presented to Parliament pursuant to paragraph 32(2)(a) of Schedule 7 to the European Union  
(Withdrawal) Act 2018

September 2020



## Introduction

1. The European Union (Withdrawal) Act 2018 (EUWA 2018) requires the Bank of England (the Bank) and the Prudential Regulation Authority (PRA) to report to Parliament annually if it exercises relevant sub-delegated powers. The relevant powers for these purposes (the Powers) are the powers delegated to the Bank and the PRA to:
  - a. make changes to the PRA Handbook and Bank and PRA Binding Technical Standards (BTS), to ensure they work effectively in the United Kingdom (UK) in light of exit from the European Union (EU); and
  - b. make directions under the temporary transitional power (TTP) to help firms adjust in light of the UK's exit from the EU.<sup>1</sup>
2. The Powers arise under:
  - a. Regulation 3 of The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, as regards the making of EU Exit instruments relating to the PRA Rulebook and BTS that fall within the remit of the Bank and the PRA (the 'deficiency fixing power'); and
  - b. Regulation 198 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, as regards the making of directions under the TTP.
3. This report relates to the use of the Powers by the Bank and PRA in its annual reporting year ending 29 February 2020 in order to make EU Exit Instruments relating to BTS and Rules, and also in relation to transitional directions. These have not yet come into force in light of the UK's entry into the transition period on 31 January 2020, during which time EU law continues to apply.
4. The Bank has published detailed information on the use of the Powers on its website.<sup>2</sup>

## Approach to using the delegated powers

### Rulebook and BTS instruments using the deficiency fixing power

5. The deficiency fixing power allows the Bank and PRA, where it is a relevant regulator, to amend EU-derived provisions in its Rulebook and existing BTS, which will be incorporated into UK law by the EUWA 2018, so that they function effectively in light of the UK's exit from the EU.
6. In October 2018, the Bank and PRA published a joint consultation paper, CP25/18, setting out the Bank and PRA's general approach to amending financial services legislation, including BTS and PRA Rules.<sup>3</sup>

### Temporary transitional power (TTP) directions

7. The TTP allows the Bank and the PRA to make transitional directions to delay the application of, or otherwise modify, firms' regulatory obligations where they have changed as a result of an EU

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<sup>1</sup> EUWA 2018 schedule 7 paragraph 32.

<sup>2</sup> <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

<sup>3</sup> CP25/18 'The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018.' October 2018: <https://www.bankofengland.co.uk/paper/2018/the-boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

Exit Instrument. This was intended to minimise the disruption for firms and other regulated entities, enabling them to adjust in an orderly way.

8. On 25 October 2018 in CP25/18, the PRA set out its proposed approach to using the TTP in a broad way, with key exceptions, meaning that that firms and FMIs could generally continue to comply with their regulatory obligations as they did before exit. The main exceptions related to contractual recognition of bail-in rules, contractual stays, and FSCS protection. In these specific areas, the PRA would have expected firms to be ready to comply with the onshored version of those provisions by exit day.
9. As set out in CP26/18,<sup>4</sup> a further exception to the general approach was that EEA firms operating in the UK that entered the Temporary Permissions Regime (TPR) would be immediately subject to the same obligations and supervisory framework as if they were Part 4A authorised third country firms. However, the PRA intended to exercise the TTP in a targeted way so that firms entering the TPR would not have been expected to comply on exit day with all aspects of the PRA Rules that would have applied to them for the first time.
10. The above approach was confirmed in the 28 February 2019 publication of PS5/19 and the relevant transitional directions published in near-final format along with relevant guidance documents.

## How the Powers were used in the year ending 29 February 2020

### Rulebook and BTS instruments using the deficiency fixing power

11. On 28 March 2019, the Bank used the deficiency fixing power to make the EU Exit Instruments within the remit of the Bank of England acting as Financial Market Infrastructure Supervisor. Subsequent to the extension of Article 50 to 12 April 2019 being announced, on 9 April 2019 the Bank used the deficiency fixing power to make the EU Exit Instruments within the remit of the Bank of England acting as Resolution Authority. On 9 April 2019, the PRA used the deficiency fixing power to make the EU Exit Instruments within the remit of the PRA.
12. The Bank and PRA published the made versions of the EU Exit Instruments in an updated version of PS5/19 on 18 April 2019.<sup>5</sup> These EU Exit Instruments are listed in Part 1 of the annex of this report. The instruments as originally made were due to come into force on 'exit day' (31 January 2020), but this will be delayed to the end of the transition period (pursuant to the EU (Withdrawal Agreement) Act 2020), and so they have not entered into force at the time of this report.
13. Subsequently, in July 2019 the Bank/PRA published additional draft EU Exit Instruments in CP 18/19,<sup>6</sup> which related to amending deficiencies in BTS that came into effect during the Article 50 extension periods between March and October 2019. CP18/19 also included some updates to earlier EU Exit instruments originally published in PS5/19.

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<sup>4</sup> CP26/18 'UK Withdrawal from EU: Changes to PRA Rulebook and onshored Binding Technical Standards'. October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>.

<sup>5</sup> PS5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018'. February 2019: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

<sup>6</sup> CP18/19 'UK Withdrawal from the EU: Changes following the extension of Article 50'. July 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/uk-withdrawal-from-the-eu-changes-following-extension-of-article-50>.

14. The Bank and PRA prepared for these further EU Exit Instruments to be made, but these procedures were discontinued when the further extension of the Article 50 period to 31 January 2020 was announced on 28 October 2019. Due to this and to the subsequent entry into the transition period, these further EU Exit Instruments have not been made at the time of this report.

### **Temporary transitional power (TTP) directions**

15. The Bank and PRA published 'near final' drafts of its proposed TTP directions in PS19/5 on 28 February 2019. The directions were 'near final' because the power was not available until the Financial Services and Markets Act (Amendment) (EU Exit) Regulations 2019 was made law on 22 March 2019.
16. PS5/19 set out that the Bank and PRA intended to provide transitional relief using the TTP for a period of 15 months after the original exit day (29 March 2019), extendable to a date up to two years following exit day. This would have meant that, in the event of the UK leaving the EU without a transition period on the original exit day of 29 March 2019, the transitional relief would have been provided until 30 June 2020.
17. On 9 April 2019, the Bank and PRA used the power granted by Regulation 198 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 to make transitional directions in advance of the scheduled 12 April 2019 exit day. These directions were revoked shortly after, following the announcement of the extension of the Article 50 period to 31 October. The end date of transitional relief was specified in the directions as 30 June 2020 (providing for 15 months of transitional relief from 29 March 2019), and the Bank and PRA wished to review this end-date in light of the extension of the Article 50 period. Consequently, to avoid confusion, the revoked directions were not published on 18 April alongside the final Rule and BTS EU Exit Instruments.
18. Subsequently, on 25 July 2019 the Bank and PRA published CP18/19, which set out the Bank and PRA intention that, in the event of a no-deal exit on the 31 October, the Bank and PRA would use the TTP in the same way as previously published, to provide board transitional relief, with key exceptions, for 14 months until 31 December 2020. This proposed approach was aligned with that taken by the FCA. CP18/19 included an updated draft version of the Bank and PRA transitional directions. Due to the further extensions and entry into the transition period, the updated directions have not been made during the period covered by this report.
19. Following the period covered by this report, on 25 March 2020, HM Treasury confirmed their intention to retain the regulators' temporary transitional power.<sup>7</sup> On 30 April 2020, the Bank and PRA issued a statement<sup>8</sup> outlining the intention to use the TTP after the transition period as previously communicated in relation to exit day for a period of 15 months until 31 March 2022.

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<sup>7</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2020-03-25/HLWS183>.

<sup>8</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/joint-bank-pra-statement-on-proposed-use-of-ttp-at-the-end-of-the-transition-period>.

## ANNEX

### Part 1 – Instruments using the deficiency fixing power made by the PRA

The PRA exercised the power in Regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 to make the following 10 EU Exit Instruments on 9 April 2019. The instruments are available at:

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

PRA Binding Technical Standards (EU Exit) Instruments:

- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No. 1) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No 2) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No. 3) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES OFFERING ANCILLARY BANKING SERVICES) (EU EXIT) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES OFFERING ANCILLARY BANKING SERVICES) (EU EXIT) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RECOVERY AND RESOLUTION DIRECTIVE) (EU EXIT) (No.2) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (EU EXIT) (No.3) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SOLVENCY II DIRECTIVE & INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION DIRECTIVE) (EU EXIT) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (FINANCIAL CONGLOMERATES) (EU EXIT) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE) (EU EXIT) (PRA) INSTRUMENT 2019



## **Part 2 – Instruments using the deficiency fixing power made by the Bank (as resolution authority)**

The Bank (as resolution authority) exercised the power in Regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 to make the following 2 EU Exit Instruments on 9 April 2019. The instruments are available at:

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

Bank (as resolution authority) Binding Technical Standards (EU Exit) Instruments:

- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RECOVERY AND RESOLUTION) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT 2019
- EU EXIT INSTRUMENT: RECOGNISED CLEARING HOUSE RULES (AMENDMENT ETC.) (EU EXIT) INSTRUMENT 2019

## **Part 3 – Instruments using the deficiency fixing power made by the Bank (as FMI competent authority)**

The Bank (as FMI competent authority) exercised the power in Regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 to make the following 4 EU Exit Instruments on 22 March 2019. The instruments are available at:

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

- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (AMENDMENT ETC.) (EU EXIT) (No. 2) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES) (AMENDMENT ETC.) (EU EXIT) INSTRUMENT 2019
- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CENTRAL SECURITIES DEPOSITORIES) (AMENDMENT ETC.) (EU EXIT) INSTRUMENT 2019 (PDF)