



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 28 FEBRUARY 2021

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

September 2021

Introduction

1. The European Union (Withdrawal) Act 2018 (the Act)¹ requires the Bank of England (the Bank) and the Prudential Regulation Authority (PRA) to report to Parliament annually if we exercise our relevant sub-delegated powers.
2. This report relates to the use of the sub-delegated powers by the Bank and PRA in our annual reporting year ending Sunday 28 February 2021. HM Treasury laid our report covering the year ending Saturday 29 February 2020 before Parliament on Thursday 17 September 2020.²
3. The main powers for the purposes of this report (the Powers) are the powers delegated to:
 - make onshoring changes to the PRA Rulebook and Binding Technical Standards (BTS) within our remits to ensure that they continue to work effectively in the United Kingdom (UK) at the end of the transition period, in light of the UK's withdrawal from the European Union (EU); and
 - make directions to exercise the temporary transitional power (TTP) to help firms adjust to onshoring changes made to financial services legislation, in light of the UK's withdrawal from the EU.
4. The Powers arise under:
 - 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 remits of the Bank and the PRA (the 'deficiency fixing power'); and
 - Regulation 198 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, as regards the making of directions to exercise the TTP.
5. We have published detailed information on the use of the Powers on our website.^{3 4}

Approach to using the Powers

PRA Rulebook and BTS instruments using the deficiency fixing power

6. The deficiency fixing power allows us to make onshoring changes to PRA rules and BTS, so that they continue to operate effectively in light of the UK's withdrawal from the EU. These do not reflect any change in our policy, except to reflect the UK's withdrawal from the EU.
7. On Thursday 25 October 2018, we published joint Consultation Paper (CP) 25/18 'The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018'. This proposed our general approach to amending financial services

1 Schedule 7, paragraph 32 of the Act.

2 <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/exercise-of-sub-delegated-powers-under-eu-withdrawal-act-2018>.

3 <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

4 <https://www.bankofengland.co.uk/eu-withdrawal/temporary-transitional-power>.

legislation.⁵ Our subsequent consultations on this topic have all followed the approach set out in CP25/18.

The temporary transitional power (TTP)

8. The TTP allows us 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 Exit Instrument. This was intended to minimise disruption for firms and financial market infrastructures (FMIs) by enabling them to adjust in an orderly way to onshoring changes made to financial services legislation as a result of the UK's withdrawal from the EU.
9. Our approach is to use the TTP to provide broad transitional relief for 15 months after the end of the transition period (i.e. until Thursday 31 March 2022), with key exceptions expressly provided for in our transitional directions. This means that, in all but a few areas, firms and FMIs did not need to have completed preparations to implement changes in UK law that took effect at the end of the transition period, (i.e. 11pm on Thursday 31 December 2020). We expect firms and FMIs to use this period to prepare for full compliance with these onshoring changes starting from Friday 1 April 2022.
10. The main exceptions, where transitional relief is not available for firms, related to contractual recognition of bail-in rules, contractual stays, and FSCS protection. We considered that granting transitional relief in these areas could have undermined our statutory objectives. This meant that firms needed to comply with these onshoring changes from the end of the transition period.
11. Areas covered by specific transitional provisions, including the temporary permissions regime (TPR), the financial services contract regime (FSCR), the temporary recognition regime (TRR), and the temporary designation regime (TDR), are excluded from the general application of the TTP. This means that former passporting firms in the Temporary Permissions Regime (TPR) or Supervised Run-Off (SRO) have, in the main, been required to meet third-country requirements from the end of the transition period. However, specific transitional relief is available for certain third-country requirements, which are applicable to firms in the TPR and SRO for the first time.
12. Our overall approach to the TTP has remained the same as that set out in the February 2019 version of Policy Statement (PS) 5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018'.⁶
13. On Friday 9 July 2021, we published PS17/21 'Implementation of Basel standards' which set out our near-final PRA rules to implement some of the remaining Basel III standards in the UK.⁷ As part of this, certain provisions in the Capital Requirements Regulation (CRR), and CRR Level 2 Regulations (referred to as 'CRR restatement provisions'), are not changing materially, but are being transferred into PRA rules on Saturday 1 January 2022.
14. In order to preserve the effect of the TTP for CRR restatement provisions, the PRA has included a 'mirror provision' in the Interpretation Part of the PRA Rulebook. This replicates the effect of the PRA's transitional direction for CRR restatement provisions until Thursday 31 March 2022, when the direction is due to expire. This is intended to ensure that firms do not lose the benefit of the TTP simply because these provisions are being moved from the CRR into PRA rules. The overall

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

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

7 July 2021: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2021/july/ps1721.pdf>.

effect of the TTP mirror provision is to leave firms in the same position as they would have been had these provisions not been moved from the CRR into PRA rules.

15. The TTP mirror provision can only apply to CRR restatement provisions. It cannot apply to new rules, or rules which the PRA is materially changing to implement outstanding Basel III standards in the UK, such as the net stable funding ratio.
16. The PRA has also carved-out the Liquidity (CRR) Part, the Liquidity Coverage Ratio (CRR) Part, and the related liquidity reporting and disclosure rules in the Reporting and Disclosure Parts of the PRA Rulebook from the application of the TTP mirror provision. This was to ensure consistency in terms of the application dates across the liquidity coverage ratio and the net stable funding ratio.

How the Powers were used in the year ending 28 February 2021

PRA Rulebook and BTS instruments using the deficiency fixing power

17. On Tuesday 22 September 2020, we published a further joint consultation, CP13/20 'UK withdrawal from the EU: Changes before the end of the transition period'. This proposed amendments to PRA rules and BTS in our remits to reflect legislative changes that had applied, or were expected to apply, before the end of the transition period, and thereby would form part of the body of EU law that would be retained in the UK.⁸ It also proposed updates to Bank and PRA EU Exit Instruments which had already been made, which were required as a consequence of the transition period.
18. The draft EU Exit Instruments published as part of CP13/20 incorporated and, where necessary, updated EU Exit Instruments which were originally published on Thursday 25 July 2019 in CP18/19 'UK withdrawal from the EU: Changes following extension of Article 50'.⁹ This was because the EU Exit Instruments published in CP18/19 had not been made following the UK's entry into the transition period.
19. With the exception of the PRA Rulebook (EU Exit) Instrument, the instruments published in draft in CP13/20 and, where relevant, CP18/19, were published as made on Friday 18 December 2020 in PS27/20 'The Bank of England's amendments under the European Union (Withdrawal) Act 2018: Changes before the end of the transition period'.¹⁰ The PRA Rulebook (EU Exit) Instrument 2020 was published as 'near-final', meaning that it had been approved by the PRA's governance committees, but had not been formally made. This was because the PRA Rulebook (EU Exit) Instrument 2020 would only be made once the PRA's rules implementing the Capital Requirements Directive V (CRD V) had been made.
20. On Monday 28 December 2020, following the making of the PRA's rules implementing CRD V,¹¹ the PRA Rulebook (EU Exit) Instrument 2020 was made and published as final in PS30/20 'The Bank of England's amendments under the European Union (Withdrawal) Act 2018: Changes before the end of the transition period'.¹² The PRA did not make any changes to the PRA

8 September 2020: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2020/cp1320>.

9 July 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/uk-withdrawal-from-the-eu-changes-following-extension-of-article-50>.

10 December 2020: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720>.

11 PS29/20 'Capital Requirements Directive V (CRD V)'. December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.

12 December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

Rulebook (EU Exit) Instrument compared to the version that was published as near-final in PS27/20.

21. The EU Exit Instruments that we made using the deficiency power in the year ending Sunday 28 February 2021 are listed in the annex of this report. Section B of PS27/20 provides an overview of these EU Exit Instruments, including an explanation of how the PRA Rulebook (EU Exit) Instrument 2020 differs from the previous April 2019 PRA Rulebook (EU Exit) Instrument. The instruments came into force at, or in the case of amending instruments shortly before, the end of the transition period at 11pm on 31 December 2020.
22. These final instruments sit alongside our other final EU Exit Instruments published in Section B of the April 2019 version of PS5/19.¹³ These instruments also came into force at the end of the transition period.

Temporary transitional power (TTP) directions

23. On Thursday 25 March 2020, HM Treasury confirmed that it was their intention to retain the TTP in light of the UK's entry into the transition period, and shift its application so that it would be available for use by the Bank and PRA for a period of two years after the end of the transition period.¹⁴ Under the previous legislative position, the TTP could only be used for a maximum duration of two years from 'exit day', ie Friday 31 January 2020.
24. The Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020, which were made law on Tuesday 17 November 2020, shifted the application of the TTP from exit day so that it would be available for use by the Bank and PRA for a maximum period of two years after the end of the transition period.¹⁵
25. On Thursday 30 April 2020, we issued a statement¹⁶ outlining that it was our intention to use the TTP at end of the transition period, as previously communicated in relation to exit day, for a period of 15 months until Thursday 31 March 2022.
26. On Tuesday 22 September 2020, in CP13/20, we published an update on our intended use of the TTP, alongside updated draft Bank and PRA transitional directions. The transitional directions included the new end date of Thursday 31 March 2022, providing for 15 months of transitional relief starting from the end of the transition period. Our draft transitional directions were essentially the same as the near-final directions published as part of the February version of PS5/19, with a few limited further changes.
27. The Bank transitional direction was made on Monday 14 December 2020, and on Friday 18 December 2020, in PS27/20, we published the made Bank transitional direction.¹⁷ The PRA transitional direction was published as near-final at this time. This was because the direction would only be made once the PRA Rulebook (EU Exit) Instrument 2020 had been made.

13 PS5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018'. April 2020: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

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

15 <https://www.legislation.gov.uk/ukxi/2020/1301/contents/made>.

16 <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>.

17 Direction made by the Bank of England under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a7.pdf>.

28. On Monday 28 December 2020, following the making of the PRA rules implementing CRD V and the subsequent making of the PRA Rulebook (EU Exit) Instrument 2020, the PRA transitional direction was made and published as final in PS30/20.¹⁸ We did not make any changes to the PRA transitional direction compared to the version that was published as near-final in PS27/20.
29. Our transitional directions came into force at the end of the transition period at 11pm on Thursday 31 December 2020.

Other transferred powers

30. There are a number of other powers transferred to us under the Act that we are required to report on if they are exercised.
31. The PRA has exercised its power to publish technical information relating to risk-free interest rate term structures; and the Symmetric Adjustment of the Equity Capital Charge (SAECC). These powers arise under regulation 4B of the Solvency 2 Regulations 2015/575, and Article 3(5) of the Solvency II Delegated Act 2015/35. The PRA has published detailed information on its approach to publishing technical information for Solvency II firms on its website.¹⁹
32. There are powers conferred on us to require and set fees arising under:
- Regulation 207 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
 - Regulation 16 of The Uncertificated Securities (Amendment and EU Exit) Regulations 2019;
 - Regulation 26 of The Central Counterparties (amendment, etc., and Transitional Provision (EU Exit) Regulations 2018;
 - Regulation 209 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019; and
 - Regulation 63 EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.
33. Our use of fees powers is set out on our website.^{20 21}

¹⁸ Direction made by the PRA under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps3020app2.pdf>.

¹⁹ <https://www.bankofengland.co.uk/prudential-regulation/key-initiatives/solvency-ii/technical-information>.

²⁰ <https://www.bankofengland.co.uk/paper/2020/fees-regime-for-the-supervision-of-financial-market-infrastructure-feedback-on-responses>

²¹ <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/regulated-fees-and-levies-rates-proposals-2020-21>

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 4 Technical Standards (EU Exit) Instruments on 15 December 2020, and the PRA Rulebook (EU Exit) Instrument on Monday 28 December 2020. The instruments are available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

PRA EU Exit Instruments:

- PRA Rulebook (EU Exit) Instrument 2020
- The PRA Technical Standards (Consequential Amendment) Instrument 2020
- The Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument 2020
- The Technical Standards (Solvency II Directive) (EU Exit) (No. 2) Instrument 2020
- The Technical Standards (European Market Infrastructure) (EU Exit) (No. 5) Instrument 2020

Part 2 – Instruments using the deficiency fixing power made by the Bank (as resolution authority and FMI competent authority)

The Bank (as resolution authority and 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 Technical Standard (EU Exit) Instrument on Monday 14 December 2020. The instrument is available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

Bank (as resolution authority and FMI competent authority) EU Exit Instruments:

- The Bank Technical Standards (Consequential Amendments) (EU Exit) Instrument 2020

Part 3 – 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 Technical Standard (EU Exit) Instrument on 8 December 2020. The instrument is available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

Bank (as resolution authority) EU Exit Instruments:

- The Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No.3) Instrument 2020

Part 4 – 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 2 Technical Standards (EU Exit) Instruments on Monday 14 December 2020. The instruments are available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

Bank (as FMI competent authority) EU Exit Instruments:

- The Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No. 2) Instrument 2020
- The Technical Standards (European Market Infrastructure) (EU Exit) (No. 4) Instrument 2020