

SCHEDULES

SCHEDULE 3

Section 5

PRUDENTIAL REGULATION OF CREDIT INSTITUTIONS ETC

PART 1

NEW PART 9D OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

- 1 In the Financial Services and Markets Act 2000, after Part 9C (inserted by Schedule 2 to this Act) insert—

“PART 9D

PRUDENTIAL REGULATION OF CREDIT INSTITUTIONS ETC

Interpretation

144A CRR rules

- (1) In this Act, “CRR rules” means rules of a type described in subsection (2) to the extent that they make provision about a matter described in subsection (3).
- (2) The types of rules are—
 - (a) general rules made, or to be made, by the PRA applying to CRR firms or a description of CRR firm;
 - (b) rules made, or to be made, under section 192XA.
- (3) The matters are any matter that is the subject of—
 - (a) a relevant provision of the capital requirements regulation, or
 - (b) a CRR Basel standard.
- (4) For the purposes of subsection (3)(a), a provision is “relevant” if—
 - (a) it has been or may be revoked by regulations made under section 3(1) of the Financial Services Act 2021, or
 - (b) it has been revoked by regulations made under section 3(3) or (5) of that Act.
- (5) In subsection (3)—
 - (a) the reference to a matter that is the subject of a provision of the capital requirements regulation includes a matter that is the subject of an instrument made under the provision, and

Status: This is the original version (as it was originally enacted).

- (b) the reference to a matter that is the subject of a CRR Basel standard includes such a matter as it relates to any CRR firm (even where the standard in question does not apply to all CRR firms).

144B Terms used in this Part

- (1) In this Part—
- “CRR Basel standard” has the meaning given in section 4 of the Financial Services Act 2021;
 - “CRR firm” has the same meaning as in the capital requirements regulation;
 - “EU tertiary legislation” has the meaning given in section 20 of the European Union (Withdrawal) Act 2018.
- (2) In this Part, references to instruments made under the capital requirements regulation include EU tertiary legislation made under that regulation which forms part of retained EU law.

Making CRR rules

144C Matters to consider when making CRR rules

- (1) When making CRR rules, the PRA must, among other things, have regard to—
- (a) relevant standards recommended by the Basel Committee on Banking Supervision from time to time,
 - (b) the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be based or to carry on activities,
 - (c) the likely effect of the rules on the ability of CRR firms to continue to provide finance to businesses and consumers in the United Kingdom on a sustainable basis in the medium and long term,
 - (d) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and
 - (e) any other matter specified by the Treasury by regulations.
- (2) For the purposes of subsection (1)(b), the PRA must consider the United Kingdom’s standing in relation to the other countries and territories in which, in its opinion, internationally active credit institutions and investment firms are most likely to choose to be based or carry on activities.
- (3) When making CRR rules, the PRA must consider, and consult the Treasury about, the likely effect of the rules on relevant equivalence decisions.
- (4) For the purpose of this section, an equivalence decision is “relevant” if the Treasury have, by notice in writing, informed the PRA that it is relevant for that purpose.
- (5) In this section—
- “consumer” means an individual who is acting for purposes outside those of any trade, business or profession carried on by the individual;

Status: This is the original version (as it was originally enacted).

“equivalence decision” means a decision as to whether the law and practice of one country or territory is equivalent to the law and practice of another country or territory, either generally or as it relates to a particular matter;

“territory” includes the European Union and any other international organisation or authority comprising countries or territories.

(6) This section is subject to section 144E.

144D Explanation to accompany consultation on CRR rules

- (1) A draft of proposed CRR rules published in accordance with section 138J(1)
 - (b) must be accompanied by an explanation of the ways in which having regard to the matters specified in or under section 144C(1) has affected the proposed rules (as well as being accompanied by the information listed in section 138J(2)).
- (2) If the PRA makes the proposed CRR rules, it must publish—
 - (a) a summary of the purpose of the proposed rules, and
 - (b) an explanation complying with subsection (1),(as well as the information required by section 138J(4) and (5)).
- (3) This section is subject to section 144E.

144E Exceptions from sections 144C and 144D etc

- (1) Sections 144C and 144D do not apply where the PRA makes CRR rules—
 - (a) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
 - (b) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the PRA’s functions).
- (2) Section 144C does not apply where the PRA makes CRR rules to the extent that they make provision (“CRR restatement provision”) reproducing without any changes which, in the PRA’s opinion, are material—
 - (a) a provision of the capital requirements regulation as it had effect immediately before it was revoked by regulations made under section 3 of the Financial Services Act 2021, or
 - (b) a provision of an instrument made under the capital requirements regulation as it had effect immediately before it was revoked by such regulations.
- (3) The following do not apply in relation to CRR rules to the extent that they make CRR restatement provision—
 - (a) section 138J, other than subsection (1)(a),
 - (b) section 138K, and
 - (c) section 144D,

Status: This is the original version (as it was originally enacted).

but, if it makes rules making such provision, the PRA must publish a statement of which provisions of the capital requirements regulation, or of the instrument made under that regulation, are reproduced and what changes (if any) are made.

- (4) Section 144D does not apply in relation to CRR rules if the PRA considers that the delay involved in complying with that section would be prejudicial to the safety and soundness of PRA-authorised persons.
- (5) If the PRA proposes CRR rules that change existing CRR rules and the changes consist of or include changes which, in the PRA’s opinion, are not material—
 - (a) the explanation described in section 144D(1) is not required in relation to the rules to the extent that they make those changes, but
 - (b) the draft of the rules must be accompanied by a statement of the PRA’s opinion.
- (6) If the PRA makes CRR rules that change existing CRR rules and the changes consist of or include changes which, in the PRA’s opinion, are not material—
 - (a) the summary and explanation described in section 144D(2) are not required in relation to the rules to the extent that they make those changes, but
 - (b) the PRA must publish a statement of its opinion.
- (7) For the purposes of this section, whether a change is material is to be determined by the PRA by reference to, among other things, the matters specified in or under section 144C(1).

144F Power to consequentially amend enactments

- (1) The Treasury may by regulations make provision amending an enactment that is consequential on CRR rules.
- (2) In this section—
 - “enactment” includes—
 - (a) retained direct EU legislation,
 - (b) an enactment comprised in subordinate legislation,
 - (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
 - (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
 - (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
 - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

Content of CRR rules

144G Disapplication or modification of CRR rules in individual cases

- (1) This section applies to a CRR rule if, or to the extent that, CRR rules provide for it to apply to the rule.

Status: This is the original version (as it was originally enacted).

- (2) The PRA may, on the application of or with the consent of a person who is subject to CRR rules, give the person a permission that enables the person—
 - (a) not to apply the CRR rule, or
 - (b) to apply the CRR rule with the modifications specified in the permission.
- (3) The PRA may—
 - (a) give permission under this section subject to conditions, and
 - (b) revoke or vary permission under this section.

144H Relationship with the capital requirements regulation

- (1) CRR rules may make provision by reference to the capital requirements regulation, to an instrument made under the capital requirements regulation or to [Directive 2013/36/EU](#) UK law, as amended from time to time.
- (2) CRR rules may, despite section 137G(6), include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke a provision of that regulation or such an instrument).
- (3) In this section, “[Directive 2013/36/EU](#) UK law” means the law of the United Kingdom which was relied on immediately before IP completion day to implement the capital requirements directive and its implementing measures as it has effect—
 - (a) on IP completion day, in the case of rules made by the PRA or the FCA under this Act, and
 - (b) as amended from time to time, in all other cases.”

PART 2

PRA’S POWERS IN RELATION TO CERTAIN HOLDING COMPANIES

2 Part 12B of the Financial Services and Markets Act 2000 (approval of certain holding companies by the PRA) is amended as follows.

3 Before section 192O insert—

“Interpretation”.

4 (1) Section 192O(1) (interpretation) is amended as follows.

(2) Omit the definition of “section 192V rules”.

(3) After that definition insert—

““section 192XA rules” means rules made under section 192XA;”.

5 Before section 192P insert—

“Approval”.

6 Omit section 192V (rules imposing consolidated or sub-consolidated requirements).

7 After section 192X insert—

“Rules

192XA Rules applying to holding companies

- (1) The PRA may make rules described in subsection (2) applying to financial holding companies and mixed financial holding companies that are—
 - (a) approved under section 192R, or
 - (b) designated under section 192T(2)(c),
 where it appears to the PRA to be necessary or expedient to make the rules for the purpose of advancing any of its objectives.
- (2) Those rules are—
 - (a) rules imposing requirements to be complied with by holding companies on a consolidated or sub-consolidated basis;
 - (b) rules imposing requirements which, in the PRA’s opinion, are likely to mitigate group risk;
 - (c) rules imposing reporting requirements related to requirements described in paragraph (a) or (b);
 - (d) rules imposing public disclosure requirements related to requirements described in paragraph (a) or (b);
 - (e) rules imposing requirements in respect of governance arrangements;
 - (f) rules imposing requirements in respect of remuneration policies and practices.
- (3) Subject to subsection (4), rules made under this section may not modify, amend or revoke any retained direct EU legislation, except retained direct EU legislation which takes the form of PRA rules.
- (4) Rules made under this section may include provision that modifies the capital requirements regulation or an instrument made under that regulation (but may not amend or revoke provisions of that regulation or such an instrument).
- (5) Rules made under this section may make provision by reference to the capital requirements regulation, to instruments made under that regulation or to [Directive 2013/36/EU](#) UK law, as amended from time to time.
- (6) Section 137H (rules about remuneration) applies where the PRA makes rules under this section prohibiting persons, or persons of a specified description, from being remunerated in a specified way as it applies where the PRA makes general rules imposing such a prohibition.
- (7) Section 137I (Treasury direction to consider compliance with remuneration policies) applies where the PRA makes rules under this section requiring financial holding companies or mixed financial holding companies, or a specified description of such companies, to act in accordance with a remuneration policy as it applies where the PRA makes general rules imposing such requirements on authorised persons, but as if—
 - (a) the references in that section to authorised persons were references to financial holding companies or mixed financial holding companies, and

Status: This is the original version (as it was originally enacted).

- (b) subsection (7) of that section were omitted.
- (8) Section 141A (power to make consequential amendments of references to rules etc) applies to the exercise by the PRA of its power to make, alter or revoke rules under this section as it applies in relation to the exercise by the PRA of its power to make, alter or revoke rules under Part 9A.
- (9) In this section—
 - “governance arrangements” includes organisational structure, lines of responsibility and internal control mechanisms;
 - “group risk” means the risk that the financial position of a financial holding company or mixed financial holding company or of a member of its group may be adversely affected—
 - (a) by its relationships, whether financial or non-financial, with other members of the group, or
 - (b) by matters which affect the financial position of the group, or of a group which forms part of that group, taken as a whole (including, for example, reputational contagion).

192XB Procedural provision

- (1) For provision about the making of section 192XA rules that are CRR rules, see Part 9D.
- (2) The following provisions of Part 9D apply in relation to section 192XA rules that are not CRR rules as if they were CRR rules—
 - (a) section 144C (matters to consider when making rules);
 - (b) section 144D (explanation to accompany consultation on rules);
 - (c) section 144E(1) and (4) to (7) (exceptions from sections 144C and 144D).

192XC Disapplication or modification of rules in individual cases

- (1) This section applies to a section 192XA rule if, or to the extent that, section 192XA rules provide for it to apply to the rule.
- (2) The PRA may, on the application of or with the consent of a person who is subject to section 192XA rules, give the person a permission that enables the person—
 - (a) not to apply the section 192XA rule, or
 - (b) to apply the section 192XA rule with the modifications specified in the permission.
- (3) The PRA may—
 - (a) give permission under this section subject to conditions, and
 - (b) revoke or vary permission under this section.

Disciplinary measures”.

- 8 In section 192Y(1) (power to impose penalty or issue censure), for paragraph (d) substitute—

Status: This is the original version (as it was originally enacted).

“(d) the capital requirements regulation or an instrument made under that regulation.””

PART 3

MINOR AND CONSEQUENTIAL AMENDMENTS

Bank of England Act 1998 (c. 11)

- 9 (1) Section 9H of the Bank of England Act 1998 (directions to FCA or PRA requiring macro-prudential measures) is amended as follows.
- (2) In subsection (2) (definition of “regulated person”), for paragraph (b) substitute—
- “(b) in relation to the PRA—
- (i) a PRA-authorized person within the meaning of that Act, or
- (ii) a financial holding company or mixed financial holding company that is approved under section 192R of that Act or designated under section 192T(2)(c) of that Act.”
- (3) At the end insert—
- “(12) In this section—
- “the Capital Requirements Regulation” means [Regulation \(EU\) No. 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;
- “financial holding company” has the meaning given in Article 4(1)(20) of the Capital Requirements Regulation;
- “mixed financial holding company” has the meaning given in Article 4(1)(21) of the Capital Requirements Regulation.”

Financial Services and Markets Act 2000 (c. 8)

- 10 The Financial Services and Markets Act 2000 is amended as follows.
- 11 In section 137G (the PRA’s general rules), at the end insert—
- “(7) Subsection (6) is subject to section 144H(2).”
- 12 In section 138J(10) (consultation by the PRA), for “section 138L” substitute “sections 138L and 144E(3).”
- 13 In section 138K (consultation: mutual societies), at the end insert—
- “(7) This section is subject to section 144E(3).”
- 14 (1) Section 192O (interpretation of Part 12B) is amended as follows.
- (2) In subsection (1)—
- (a) in the definition of “[Directive 2013/36/EU](#) UK law”, omit the words following paragraph (b), and
- (b) after that definition insert—
- ““EU tertiary legislation” has the meaning given in section 20 of the European Union (Withdrawal) Act 2018;”.

- (3) At the end insert—
- “(3) In this Part, references to instruments made under the capital requirements regulation include EU tertiary legislation made under that regulation which forms part of retained EU law.”
- 15 In section 192R(3) (grant of approval)—
- (a) in paragraph (a) omit “, section 192V rules” and the “and” at the end, and
- (b) after that paragraph insert—
- “(aa) adequate for the purpose of complying with section 192XA rules, and”.
- 16 (1) Section 192T (measures) is amended as follows.
- (2) In subsection (1)—
- (a) omit the “and” at the end of paragraph (a),
- (b) in paragraph (b) omit “, section 192V rules”, and
- (c) at the end of paragraph (b) insert “, and
- (c) to ensure that the relevant group complies with section 192XA rules.”
- (3) In subsection (2)(c)—
- (a) omit “, section 192V rules”, and
- (b) at the end insert “and with section 192XA rules”.
- 17 In section 192Y(1) (power to impose penalty or issue censure)—
- (a) omit paragraph (c) (including the “or” at the end), and
- (b) after that paragraph insert—
- “(ca) section 192XA rules; or”.
- 18 In section 417(1) (definitions), at the appropriate place, insert—
- ““CRR rules” has the meaning given in section 144A;”.
- 19 In section 429(2) (parliamentary control of statutory instruments: affirmative procedure), before “214A” insert “144C(1), 144F”.

Capital Requirements Regulations 2013 (S.I. 2013/3115)

- 20 The Capital Requirements Regulations 2013 (meaning of “permission” etc) is amended as follows.
- 21 In regulation 2(1), in the definition of “appropriate regulator”, at the end insert “, subject to regulation 39(2)”.
- 22 (1) Regulation 39 (meaning of “permission” etc) is amended as follows.
- (2) The existing text becomes paragraph (1).
- (3) In that paragraph, in the definition of “permission”, after paragraph (a) insert—
- “(aa) section 144G of FSMA and CRR rules (as defined in Part 9D of FSMA);
- (ab) section 192XC of FSMA and section 192XA rules (as defined in Part 12B of FSMA);”.
- (4) After that paragraph insert—

Status: This is the original version (as it was originally enacted).

- “(2) In this Part, in relation to—
- (a) a decision made under a power conferred by section 144G of FSMA and CRR rules (as defined in Part 9D of FSMA) that are section 192XA rules (as defined in Part 12B of FSMA), or
 - (b) a decision made under a power conferred by section 192XC of FSMA and section 192XA rules (as defined in Part 12B of FSMA),
- “appropriate regulator” means the PRA.”

PART 4

TRANSITIONAL PROVISION

Pre-commencement consultation etc

- 23 (1) In relation to general rules that are CRR rules, the requirements of the provisions listed in sub-paragraph (3) may be satisfied by things done before Part 1 of this Schedule comes into force (as well as by things done after that time).
- (2) In relation to section 192XA rules, the requirements of the provisions listed in sub-paragraph (3) may be satisfied by things done before Part 2 of this Schedule comes into force (as well as by things done after that time).
- (3) Those provisions are—
- (a) sections 138J and 138K of the Financial Services and Markets Act 2000 (consultation);
 - (b) sections 144C to 144E of that Act (inserted by Part 1 of this Schedule).

Relevant equivalence decisions

- 24 For the purposes of section 144C of the Financial Services and Markets Act 2000 (inserted by Part 1 of this Schedule), an equivalence decision may be a relevant equivalence decision by virtue of a notice in writing given by the Treasury before Part 1 of this Schedule comes into force (as well as by a notice given after that time).

Carbon target

- 25 In relation to the making of CRR rules or section 192XA rules that are made on or before 1 January 2022—
- (a) paragraph (d) of section 144C(1) of the Financial Services and Markets Act 2000 (duty to have regard to carbon target for 2050) does not apply, and
 - (b) section 144D(1) of that Act does not require an explanation in respect of matters specified in that paragraph.

Section 192V rules

- 26 (1) Rules made by the Prudential Regulation Authority under section 192V of the Financial Services and Markets Act 2000 and in force immediately before the day on which the repeal of that section by Part 2 of this Schedule comes into force (“the repeal day”) are to be treated, on and after that day—
- (a) as validly made section 192XA rules, and

Status: This is the original version (as it was originally enacted).

- (b) to the extent that they make provision about a matter described in section 144A(3) of the Financial Services and Markets Act 2000 (inserted by Part 1 of this Schedule), as validly made CRR rules.
- (2) Sections 192Y, 192Z and 192Z1 of the Financial Services and Markets Act 2000 (disciplinary measures) continue to have effect in relation to a contravention, before the repeal day, of a rule made under section 192V of that Act, despite the repeal of section 192Y(1)(c) of that Act.

Interpretation

27 In this Part of this Schedule—

“CRR rules” has the same meaning as in the Financial Services and Markets Act 2000 (see section 144A of that Act, inserted by Part 1 of this Schedule);

“general rules” has the meaning given in section 137G(2) of that Act;

“section 192XA rules” has the same meaning as in Part 12B of that Act (see section 192O of that Act, as amended by Part 3 of this Schedule).