



Consultation Paper | CP12/21

# Financial holding companies: Further implementation

June 2021





BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Consultation Paper | CP12/21

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Responses are requested by Thursday 22 July 2021.

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## 1 Overview

1.1 This Consultation Paper (CP) sets out the Prudential Regulation Authority's (PRA) proposed rules in respect of the application of existing consolidated prudential requirements to financial holding companies and mixed financial holding companies (holding companies) that have been approved or designated in accordance with Part 12B of the Financial Services and Markets Act 2000 (FSMA).<sup>1</sup> It also proposes guidance with respect to directions and penalties over holding companies under Part 12B FSMA, covering the taking of measures, including directions;<sup>2</sup> the imposition of penalties;<sup>3</sup> and the amount of penalties.<sup>4</sup>

1.2 The proposals in this CP would result in changes to the parts of the PRA Rulebook listed in the table below (Appendix 1):

Capital Buffers	Market Risk
Counterparty Credit Risk	Notifications
Credit Risk	Permissions
Definition of Capital	Record Keeping
Groups	Regulatory Reporting
Interpretation	Related Party Transaction Risk
Large Exposures	Reporting Pillar 2
Liquidity Coverage Requirement – UK Designated Investment Firms	Use of Skilled Persons

1.3 The proposals would also result in a new Statement of Policy (SoP) 'Supervisory measures and penalties in relation to financial holding companies' (the new SoP) (Appendix 2), and amendments to the SoP 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure' (the Enforcement SoP) (Appendix 3).<sup>5</sup>

1.4 This CP is relevant to financial holding companies, mixed financial holding companies, and banks and PRA-designated investment firms (firms) that are part of a UK consolidation group controlled by a UK parent financial holding company or UK parent mixed financial holding company.

1.5 The purpose of these proposals is to give effect to the changes in the Capital Requirements Directive V (CRD V), as transposed, and Capital Requirements Regulation II (CRR II), as onshored, which impose direct responsibility for compliance with consolidated prudential requirements on approved or designated holding companies. The proposed changes to the PRA Rulebook do not create any new prudential requirements. Instead, these changes are necessary to ensure that, where a Part of the PRA Rulebook applies on a consolidated basis, it is applied at the correct level within the banking group. The proposed new SoP would discharge the PRA's statutory duty under Part 12B FSMA.<sup>6</sup>

<sup>1</sup> As amended by The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020.

<sup>2</sup> Pursuant to s192T Financial Services and Markets Act 2000.

<sup>3</sup> Ibid. at s192Y.

<sup>4</sup> Ibid.

<sup>5</sup> October 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.

<sup>6</sup> s192Z2 FSMA.

1.6 The PRA has considered the interaction between its primary and secondary objectives and the ‘have regards’, including in relation to international standards, relative standing of the UK, and finance for the real economy.

1.7 The proposed consequential amendments set out in this CP are designed to maintain the operability of the PRA Rulebook when directly applicable consolidated prudential requirements apply at the level of the approved or designated holding company. The PRA does not anticipate any additional cost to firms as a result. In addition, the draft SoP sets out an incentive framework for firms to ensure compliance with the holding company approval criteria, as outlined in Part 12B FSMA, and compliance with consolidated prudential requirements. Costs will only be incurred by firms that are not compliant with the statutory holding company approval criteria or where they fail to ensure compliance with consolidated prudential requirements. The PRA expects that the benefits of the proposals are proportionate to the costs.

## Background

1.8 In May 2019, the EU published legislation to implement some of the prudential reforms agreed by the Basel Committee on Banking Supervision. CRD V and CRR II amend CRD IV and CRR respectively.

1.9 CRR II applies directly in the EU. Some amendments applied from Monday 28 December 2020, before the end of the EU Exit Transition Period (transition period). As a result, they became a specific type of UK law known as ‘retained EU law’, through the operation of the EU (Withdrawal) Act 2018 at the end of the transition period. The process of retaining and amending EU law so that it is operable in the UK after the end of the transition period is known as ‘Nationalising the Acquis’ or ‘onshoring’. For further information on the PRA’s approach to Nationalising the Acquis, please see CP13/20 ‘UK withdrawal from the EU: Changes before the end of the transition period’.<sup>7</sup>

1.10 The final policy on implementation of the new financial holding company approval regime was published as part of Policy Statement (PS) 29/20 ‘Capital Requirements Directive V (CRD V): Final policy’.<sup>8</sup>

1.11 Relevant holding companies will need to apply for approval or exemption in accordance with The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020, referred to here as ‘the SI’. As noted in PS26/20 ‘Capital Requirements Directive V (CRD V)’, the PRA expects relevant holding companies to submit their applications to the PRA by Monday 28 June 2021.<sup>9</sup>

1.12 The SI contains particular conditions which must be met if a holding company is to be approved. It also contains a different set of conditions which must be met if a holding company is to be exempt from approval. It is important to note that in order for the PRA to grant approval, the relevant conditions must be met (i) at the point that the application is made and (ii) on an ongoing basis.

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<sup>7</sup> September 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

<sup>8</sup> December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.

<sup>9</sup> December 2020: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2620.pdf>.

1.13 The PRA currently has the power to make rules applying to approved or designated holding companies in order to secure the consolidated application of CRD/CRR and to advance any of its objectives.<sup>10</sup> HM Government's Financial Services Act 2021 (the FS Act) gives a power to the PRA to make rules, in certain circumstances, applying to approved and designated holding companies, where it appears to the PRA to be necessary or expedient to make the rules for the purpose of advancing any of its objectives.<sup>11</sup>

### Summary of proposals

1.14 Chapter 2 of this CP sets out the PRA's proposed rules in respect of the application of existing consolidated prudential requirements to approved and designated holding companies. The proposed changes to the PRA Rulebook do not create any new prudential requirements. Instead, these changes are necessary to ensure that, where a Part of the PRA Rulebook applies on a consolidated basis, it is applied at the correct level within the banking group.

1.15 Chapter 3 of this CP proposes the PRA's draft SoP with respect to directions and penalties over holding companies under Part 12B FSMA, alongside amendments to the Enforcement SoP.

### Implementation

1.16 The PRA proposes that the implementation date for the changes resulting from this CP would be Wednesday 15 September 2021.

### Co-ordination with other UK bodies

1.17 The PRA has consulted with the Financial Conduct Authority (FCA) on the proposals in this consultation. Responses to this CP will be shared with the FCA where they affect FCA objectives.

### Responses and next steps

1.18 This consultation closes on Thursday 22 July 2021. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to [CP12\\_21@bankofengland.co.uk](mailto:CP12_21@bankofengland.co.uk).

1.19 The proposals in this CP have been designed in the context of the UK having now left the EU and the transition period having come to an end. Unless otherwise stated, any references to EU or EU derived legislation refer to the version of that legislation which forms part of retained EU law.<sup>12</sup>

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<sup>10</sup> s192V(1) FSMA.

<sup>11</sup> s192XA(2) FSMA, as amended.

<sup>12</sup> For further information please see <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

## 2 Consequential amendments to the PRA Rulebook

2.1 Under CRD and CRR, responsibility for compliance with consolidated prudential requirements rested with individual banks and designated investment firms. Among other things, the PRA Rulebook supplements the directly applicable requirements of CRR on PRA-authorized firms, and provides detail on the various options and discretions that are afforded to the PRA as the authority responsible for prudential supervision of the banks and designated investment firms.

2.2 At present, the requirements set out in the PRA Rulebook apply to PRA-authorized firms on an individual and consolidated basis. Where a PRA-authorized firm is controlled by a UK parent financial holding company or UK parent mixed financial holding company, for which the PRA is responsible for supervision on a consolidated basis, the PRA-authorized firm must comply with the rules on the basis of the consolidated situation of its UK parent holding company. This approach to the application of consolidated prudential requirements is changing.

2.3 CRR II requires a UK consolidation group's approved parent holding company – where it has one – to become responsible for ensuring that consolidated prudential requirements are met. If the relevant holding company cannot be approved because it does not meet the relevant criteria (and it cannot meet the exemption criteria), another group entity (which may be an intermediate holding company) may be temporarily designated as responsible for ensuring that consolidated prudential requirements are met.

2.4 The proposals in this chapter set out the consequential amendments to the PRA Rulebook which are necessary to apply existing consolidated prudential requirements to approved and designated holding companies. These proposals do not involve any substantive changes in prudential requirements. Instead, the amendments are necessary to ensure that the PRA Rulebook remains operable when responsibility for compliance with consolidated requirements moves from the PRA-authorized firm(s) to the approved or designated holding company.

2.5 These proposals would ensure the continuity of consolidated supervision, enabling the PRA to continue to supervise, monitor, exercise discretions, impose additional requirements, and enforce against breaches of obligations which apply on a consolidated basis. As a result, these proposals promote the safety and soundness of PRA-authorized firms. In addition, these proposals seek to ensure that the PRA's resources are used in the most efficient and economical way by avoiding a need to give individual directions to every approved or designated holding company in a relevant group. Furthermore, the proposals aid transparency by providing clarity to firms on the PRA's proposed approach to the application of consolidated requirements, and supervision on a consolidated basis, following the approval or designation of a holding company.

2.6 In CP5/21 'Implementation of Basel standards',<sup>13</sup> the PRA proposed to introduce new rules in each of the proposed Large Exposures (CRR), Liquidity (CRR), Liquidity Coverage Ratio (CRR), Reporting (CRR) and Disclosure (CRR) Parts of the PRA Rulebook, which would require parent firms and approved holding companies to meet those requirements on a consolidated basis. Those proposals seek to mirror the approach of the CRR by applying the requirements on a consolidated basis to the 'CRR consolidation entity', a new definition that the PRA proposes to introduce into the Glossary Part of the PRA Rulebook. The PRA will finalise this definition as part of the feedback to

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<sup>13</sup> February 2021: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/february/implementation-of-basel-standards>.

CP5/21. In the event that the proposals set out in this CP are made before the rules proposed in CP5/21, the instrument at Appendix 1 will include the definition of 'CRR consolidation entities'.

### **Scope of application of PRA Rulebook parts**

2.7 The PRA proposes to amend the scope of the following PRA Rulebook parts to apply the relevant consolidated requirement at the level of the 'CRR consolidation entity':

- Capital Buffers;
- Counterparty Credit Risk;
- Credit Risk;
- Definition of Capital;
- Groups;
- Interpretation
- Large Exposures;
- Liquidity Coverage Requirement - UK Designated Investment Firms;
- Market Risk;
- Notifications;
- Permissions;
- Record Keeping;
- Related Party Transaction Risk;
- Reporting Pillar 2; and
- Use of Skilled Persons.

### **Ancillary amendments**

2.8 The PRA is also proposing certain ancillary amendments to the Definition of Capital, Groups, and Notifications Parts of the PRA Rulebook. These proposed amendments would ensure that, where the application of a consolidated prudential requirement also carries a secondary obligation, that obligation would rest at the appropriate level of application.

### **Definition of Capital**

2.9 Among other things, the Definition of Capital Part sets out the requirements for the pre/post-issuance notifications in respect of Common Equity Tier 1, Additional Tier 1, and Tier 2 capital instruments. The relevant chapters impose requirements on PRA-authorized firms to notify the PRA when there is an intention to issue a capital instrument that the firm considers will qualify as the firm's own funds, or to amend or vary the terms of such an instrument.



2.10 These requirements apply in respect of capital instruments which the firm, or another member of its group that is not a firm but is included in the supervision of the firm on a consolidated basis, intends to include in its own funds. However, in certain circumstances, this may lead to the same notification or information being submitted twice. The proposed amendment to the Definition of Capital Part would remove the need for duplicate notifications and provides that, where a CRR consolidation entity provides the PRA with a notification or other information, the PRA-authorized firm shall not be required to provide the same notification or information on an individual basis.

## Groups

2.11 The CRR grants powers to the PRA to determine methods of prudential consolidation.<sup>14</sup> Chapter 2 of the Groups Part concerns calculations made for the purposes of prudential consolidation. The PRA proposes that, as the chapter relates to consolidated obligations, it would be more appropriate to place this requirement on the CRR consolidation entity.

2.12 In CP5/21, the PRA proposed to introduce a requirement in the Groups Part of the PRA Rulebook for firms to notify the PRA of when they intend to exclude a small subsidiary or subsidiaries from consolidation.<sup>15</sup> The consultation closed on Monday 3 May 2021 and the PRA is currently considering the responses received.

2.13 If the proposed notification requirement is made into a PRA rule, it would take effect on Saturday 1 January 2022. This CP proposes to amend the notification requirement so that it applies to approved or designated holding companies. If the notification requirement rule is made, the proposal to make it apply to approved or designated holding companies would also take effect on Saturday 1 January 2022.

## Notifications

2.14 The Notifications Part sets out the requirements for when PRA-authorized firms are expected to make notifications to the PRA. Rule 2.3 requires PRA-authorized firms to notify the PRA of any action that they propose to take which would result in a material change in their capital adequacy or solvency. In addition, where firms are subject to consolidated supervision, they must notify the PRA of any proposal under which another group member may be considering such an action.

2.15 The PRA proposes to amend Notifications 2.3 so that the notification requirement in respect of actions by other group members would apply at the level of the CRR consolidation entity.

## Further consequential amendments

2.16 In CP17/20 'Capital Requirements Directive V (CRD V): Further Implementation',<sup>16</sup> the PRA proposed changes to the PRA Rulebook in order to apply certain prudential requirements to approved and designated holding companies on a consolidated or sub-consolidated basis. In addition, the PRA stated that it intended to consider using its s192C FSMA power of direction over qualifying parent undertakings to apply prudential requirements to intermediate holding companies of groups which are required to meet CRR/CRD requirements on a sub-consolidated basis. In order to effect these changes, CP17/20 proposed to introduce a new term in the PRA Rulebook – Article

<sup>14</sup> CRR Article 18.

<sup>15</sup> Small in this context means where the balance sheet of a subsidiary or subsidiaries is less than the smaller of €10 million or 1% of the total assets and off-balance sheet items of the parent.

<sup>16</sup> October 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.

109 Undertaking – to capture all types of entities that could be responsible for consolidated prudential requirements under CRD/CRR.

2.17 PS29/20<sup>17</sup> effected these changes by expanding the scope of the relevant PRA Rulebook parts to apply directly to Article 109 undertakings.<sup>18</sup>

2.18 The PRA will consider in due course the desirability of further consequential amendments to the relevant PRA Rulebook parts and Supervisory Statements to align consolidated prudential requirements directly to approved and designated holding companies.

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<sup>17</sup> December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.

<sup>18</sup> December 2020: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2920.pdf>.

### 3 Supervisory measures and penalties over holding companies

3.1 The PRA proposes to introduce a new SoP with respect to supervisory measures and penalties in respect of holding companies under Part 12B FSMA, covering the taking of measures, including directions;<sup>19</sup> the imposition of penalties;<sup>20</sup> and the amount of penalties.<sup>21</sup>

3.2 The CRD V requirements for approval and supervision of holding companies<sup>22</sup> have been transposed in the UK through the SI that has applied from Tuesday 29 December 2020.<sup>23</sup> The SI requires that holding companies make an application to the PRA for approval, or an exemption from approval, before Monday 28 June 2021. Once approved, the relevant holding company will become responsible for ensuring its group meets consolidated prudential requirements and that it continues to meet the approval criteria.

3.3 The SI requires the PRA to take supervisory measures in circumstances where the holding company is not eligible for exemption and the approval conditions are not met; or where the holding company has been approved by the PRA but the conditions for approval have subsequently ceased to be met.

3.4 Separately, the SI confers on the PRA a power to impose financial penalties on approved or designated holding companies or to issue a censure where the holding company has contravened a requirement imposed on it, for example, under CRR or related PRA rules.

3.5 In tandem with the granting of these powers, the SI also imposes a requirement that the PRA prepare and issue a SoP on the taking of supervisory measures, the imposition of penalties, and the amount of those penalties over holding companies.

3.6 In order to discharge this statutory requirement, the PRA is proposing a new SoP ‘Supervisory measures and penalties in relation to financial holding companies’ (Appendix 2). The draft SoP explains the formal powers that FSMA grants the PRA in terms of supervisory measures and the imposition of financial penalties.

3.7 When drafting the SoP, the PRA considered its primary objective of promoting the safety and soundness of the firms which it supervises and its secondary objective of facilitating effective competition in the markets for services provided by PRA-authorized firms. The supervisory measures and penalties over holding companies are intended to reflect the fact that responsibility for consolidated prudential requirements will rest with the approved/designated holding company, as appropriate. The draft SoP aims to achieve simplicity, proportionality between burden and benefits, and transparency on how the PRA exercises its supervisory function, thereby advancing the PRA’s secondary competition objective.

3.8 The PRA proposes that, when considering the exercise of the supervisory measures in respect of holding companies, or the imposition of penalties on holding companies, it would always be guided by its statutory objectives, attaching particular weight to its strategic goals. The PRA would also be

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<sup>19</sup> Pursuant to section 192T Financial Services and Markets Act 2000.

<sup>20</sup> *Ibid.* at section 192Y.

<sup>21</sup> *Ibid.*

<sup>22</sup> Article 21a of the Fifth Capital Requirements Directive (CRD V) (2019/878/EU).

<sup>23</sup> The Financial Services and Markets Act 2000 Part 12B, as inserted by The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020.

guided by the need to observe applicable principles of public law and in particular to ensure the use of powers is, in the circumstances, proportionate.

3.9 The PRA proposes that it would always aim to intervene at an early stage to ensure holding companies take the necessary action to address any breaches, but that it would not hesitate to use formal powers wherever necessary in order to achieve desired supervisory outcomes.

3.10 In addition, the PRA proposes that when considering whether and how to use formal powers, the particular facts and circumstances would be assessed on a case-by-case basis. It proposes that it would consider a number of factors in these cases, in line with its established approach to banking supervision (see paragraph 2.10 of the draft SoP).

3.11 The PRA is also proposing to amend the SoP 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure' to reflect the fact that it will apply to holding companies. The proposed amendments are set out in Appendix 3.<sup>24</sup>

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<sup>24</sup> Available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.

## 4 The PRA's statutory obligations

4.1 In carrying out its policy making functions, the PRA is required to comply with several legal obligations. The PRA has a statutory duty to consult when introducing new rules (FSMA s138J), or new standards instruments (FSMA s138S). When not making rules, the PRA has a public law duty to consult widely where it would be fair to do so.

4.2 The PRA fulfils its statutory obligations and public law duties by providing the following in relation to the proposed policy:

- (i) **a cost benefit analysis;**
- (ii) **compatibility with the PRA's objectives:** an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,<sup>25</sup> insurance objective<sup>26</sup> (if applicable), and secondary competition objective;<sup>27</sup>
- (iii) **FSMA regulatory principles:** an explanation of the ways in which having regard to the regulatory principles has affected the proposed rules;<sup>28</sup>
- (iv) **CRR rules:** in addition to the above, FSMA requires the PRA to 'have regard' to several further matters when making CRR rules.<sup>29</sup> It also requires the PRA to explain how the new 'have regards' have affected its proposed rules.<sup>30</sup> The FS Act further requires the PRA to 'consider, and consult the Treasury about, the likely effect of the rules on relevant equivalence decisions';<sup>31</sup>
- (v) **Impact on mutuals:** a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons;<sup>32</sup>
- (vi) **HM Treasury recommendation letter:** the Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury;<sup>33</sup> and
- (vii) **Equality and diversity:** the PRA is also required by the Equality Act 2010<sup>34</sup> to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services, and functions.

4.3 Appendix 4 lists the statutory obligations applicable to the PRA's policy development process. The analysis in this chapter explains how each proposal has had regard to the most relevant matters as listed in paragraph 4.2, including an explanation of the ways in which having regard to these matters has affected the proposals.

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<sup>25</sup> Section 2B of FSMA.

<sup>26</sup> Section 2C of FSMA.

<sup>27</sup> Section 2H(1) of FSMA.

<sup>28</sup> Sections 2H(2) and 3B of FSMA.

<sup>29</sup> Section 144C(1) of FSMA.

<sup>30</sup> Section 144D of FSMA.

<sup>31</sup> Section 144C(3) of FSMA.

<sup>32</sup> Section 138K of FSMA.

<sup>33</sup> Section 30B of the Bank of England Act 1998.

<sup>34</sup> Section 149.

## Responsibility for compliance with consolidated prudential requirements

4.4 The consequential amendments to the PRA Rulebook set out in Chapter 2 of this CP are necessary to apply existing consolidated prudential requirements to approved and designated holding companies. The proposed amendments are necessary to ensure that the PRA Rulebook remains operable when responsibility for compliance with consolidated requirements moves to the approved or designated holding company. The proposed amendments do not involve any substantive changes in prudential requirements.

4.5 The PRA considers that the proposed consequential amendments advance its primary objective, facilitate effective competition, align with Basel standards, maintain 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, and have no material impact on finance for the real economy.

## Cost benefit analysis

4.6 In CP17/20, the PRA set out its cost benefit analysis in respect of the application of consolidated prudential requirements to approved holding companies.<sup>35</sup> The benefits of the proposals in this CP are to maintain the operability of the PRA Rulebook when directly applicable consolidated prudential requirements apply at the level of the approved or designated holding company. The PRA also anticipates there would be no additional cost to firms as a result of these consequential amendments.

## PRA objectives

4.7 The PRA considers that these proposals advance its general objective to promote the safety and soundness of PRA-authorized firms. In particular, they seek to ensure that there is continuity of consolidated supervision from the date on which a group's approved or designated holding company becomes responsible for ensuring that consolidated prudential requirements are met. The absence of these proposals would undermine the benefits of the PRA's prudential regime because the PRA Rulebook would not be operable for groups where compliance with consolidated prudential requirements was the responsibility of the approved or designated holding company.

4.8 The PRA considers that these proposals will not have a material impact on competition, as they seek to ensure that the PRA's existing approach to consolidated supervision continues to apply where compliance with consolidated prudential requirements is the responsibility of the approved or designated holding company.

## Have regards

### *FSMA regulatory principles*

4.9 In developing these proposals, the PRA has had regard to the regulatory principles. The following two principles are of particular relevance:

- (i) **The principle that the PRA's resources are used in the most efficient and economical way:** The consequential amendments provide for the continuity of consolidated supervision of banking groups in an efficient and effective manner. Furthermore, they ensure the continued operability of the PRA Rulebook at a consolidated level, and are therefore more appropriate and cost-effective than giving individual directions to every approved or designated holding company in a relevant group.

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<sup>35</sup> Paragraph 11.14, October 2020: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2020/cp1720.pdf>.

- (ii) **The principle that the PRA should exercise its functions transparently:** The proposals in this CP aid transparency by providing clarity to firms on the PRA's proposed approach to the application of consolidated requirements, and supervision on a consolidated basis, following the approval or designation of a holding company.

4.10 The PRA has considered the remaining FSMA regulatory principles (see references in Appendix 4), and considers that they are not relevant to this proposal.

#### *CRR rules*

4.11 **Relevant standards recommended by the Basel Committee on Banking Supervision:** Effective consolidated supervision is an essential element of the Basel framework. As the proposed rules are aimed at ensuring the continued application of consolidated prudential requirements, the PRA considers the proposals to be consistent with Basel standards.

4.12 **Relative standing of the UK and competitiveness:** The PRA considers the proposed changes to be minor and unlikely to result in a material change in the current relative standing of the UK, or the competitiveness of the UK.

4.13 **Finance for the real economy, growth, and sustainable growth:** The proposed rules are unlikely to have a significant impact on capital requirements, balance sheet structure, or business activities. Hence, the proposed rules are unlikely to have any material impact on finance for the real economy. Therefore, the impact on growth and sustainable growth is also not expected to be material.

4.14 The PRA has considered the remaining matters to which it should have regard when making CRR rules (see references in Appendix 4), and considers that they are not relevant to this proposal.

#### *Impact on mutuals*

4.15 Mutuals do not have parent financial holding companies and therefore the proposals in this CP would not apply to them. PRA-authorized firms at the head of mutual groups will continue to be responsible for ensuring that their group meets CRR consolidated prudential requirements.

#### *HM Treasury recommendation letter*

4.16 HM Treasury has made recommendations to the PRC about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.<sup>36</sup>

4.17 **Competitiveness:** The PRA considers that the UK's competitiveness would not be materially impacted by the proposals. The proposals allow for the continuity of consolidated supervision, as well as for supervisory measures and enforcement action to be taken against the entity responsible for compliance with consolidated prudential requirements. These measures would promote the safety and soundness of PRA-authorized firms and help maintain a robust and resilient UK financial system, thereby supporting London's position as a leading international financial centre and the UK's attractiveness to internationally active financial institutions.

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<sup>36</sup> Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at <https://www.bankofengland.co.uk/about/people/prudential-regulation-committee>

4.18 **Growth:** HM Government wishes to ensure financial services markets make a positive contribution to sustainable economic growth in the UK economy in the medium and long term, through the facilitation of finance for productive investment and as a productive sector of the UK economy. The proposals in this CP help to maintain financial stability, which is a pre-requisite for strong, sustainable, and balanced growth.

4.19 The PRA has considered the remaining aspects of government economic policy as laid out in the HM Treasury recommendation letter (see references in Appendix 4), and considers that they are not relevant to this proposal.

#### *Equality and diversity*

4.20 The PRA considers that the proposals do not give rise to equality and diversity implications.

### **Supervisory measures and penalties over holding companies**

4.21 The PRA proposes to introduce a new SoP with respect to supervisory measures and penalties in respect of holding companies under Part 12B FSMA, covering the taking of measures, including directions;<sup>37</sup> the imposition of penalties;<sup>38</sup> and the amount of penalties.<sup>39</sup>

4.22 The PRA considers that the approach set out in the draft SoP reflects the fact that, for certain banking groups, responsibility for consolidated prudential requirements will rest with the approved or designated holding company. Furthermore, the draft SoP aims to achieve simplicity, proportionality between burden and benefits, and transparency on how the PRA exercises its supervisory function, thereby advancing the PRA's secondary competition objective.

#### **Cost benefit analysis**

4.23 The PRA's obligations to prepare a CBA do not apply to SoPs. However, the PRA has considered as a matter of good practice to provide this nevertheless.

4.24 The benefit of these proposals, as noted in the draft SoP, is that an incentive framework is created for firms to ensure compliance with the holding company approval criteria, as outlined in Part 12B FSMA, and compliance with consolidated prudential requirements. The PRA considers that in the absence of this framework, there would be an increased likelihood that the benefits of the CRD V requirements for approval and supervision of holding companies might not be realised. Firms are not expected to incur costs directly as a result of these proposals, beyond familiarisation with the framework. Costs will only be incurred by firms that are not compliant with the statutory holding company approval criteria or where they fail to ensure compliance with consolidated prudential requirements. The PRA expects that the benefits of the proposals are proportionate to the costs.

#### **PRA objectives**

4.25 The supervisory measures and penalties in respect of holding companies set out in the SoP are intended to reflect the fact that responsibility for consolidated prudential requirements will rest with the approved/designated holding company, as appropriate. These proposals are intended to increase the efficiency of PRA supervision and enforcement action, and the transparency of its processes. The taking of supervisory measures and enforcement action contributes to the PRA's objectives of promoting the safety and soundness of firms.

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<sup>37</sup> Pursuant to section 192T Financial Services and Markets Act 2000.

<sup>38</sup> *Ibid.* at section 192Y.

<sup>39</sup> *Ibid.*



4.26 The PRA has a secondary objective to facilitate effective competition. The PRA's approach to the draft SoP aims to achieve simplicity, proportionality between burden and benefits, and transparency on how the PRA exercises its supervisory function, thereby advancing the PRA's secondary competition objective.

#### Have regards

##### *FSMA regulatory principles*

4.27 In developing these proposals, the PRA has had regard to the regulatory principles. The following two principles are of particular relevance:

- (i) **The principle that the PRA should exercise its functions transparently:** The proposals follow the PRA's transparent approach to banking supervision<sup>40</sup> and the enforcement regime.<sup>41</sup> The proposals inform industry and the wider public that the PRA will, in appropriate cases, use supervisory measures and its existing financial penalties framework to impose penalties on relevant undertakings, and how it will do so.
- (ii) **The principle that a burden or restriction which is imposed on a person should be proportionate to the benefits which are expected to result from the imposition of that burden:** The proposals follow principle (ii) in that the PRA considers the proposed supervisory measures and financial penalties to be proportionate to the misconduct and/or breach, in keeping with the application of general principles of public law and existing policy. Furthermore, the proposals clarify the penalty framework that applies in the case of a breach.

4.28 The PRA has considered the remaining FSMA regulatory principles (see Appendix X), and considers that they are not relevant to this proposal.

##### *CRR rules*

4.29 **Relevant standards recommended by the Basel Committee on Banking Supervision:** Effective consolidated supervision is an essential element of the Basel framework. The PRA's ability to carry out effective consolidated supervision would be significantly undermined without the ability to apply supervisory measures or take enforcement action for the breach of consolidated requirements. Accordingly, the PRA considers the proposals set out in the SoP to be consistent with Basel standards.

4.1 **Finance for the real economy, growth, and sustainable growth:** The draft SoP sets out an incentive framework for firms to ensure compliance with the holding company approval criteria, as outlined in Part 12B FSMA, and compliance with consolidated prudential requirements. Taken together, the approval criteria and consolidated prudential requirements promote the safety and soundness of PRA authorised firms, thereby contributing to the stability of the UK financial system. The PRA therefore considers that the proposals set out in the draft SoP contribute to the continued and sustainable provision of finance to UK businesses and households, in the context of a resilient financial system, over the medium to long term.

4.2 **Relative standing of the UK and competitiveness:** In the absence of the proposals set out in the draft SoP, the PRA would be unable to effectively supervise, exercise discretions, impose additional

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<sup>40</sup> October 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>.

<sup>41</sup> October 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.

requirements, and enforce against breaches of obligations which apply on a consolidated basis. This would undermine the benefits of the PRA's prudential regime by reducing the ability of the PRA to hold a group entity accountable for any breach of consolidated prudential requirements. The PRA therefore considers that the continuity of effective supervision does not result in a material change in the current relative standing of the UK, or the competitiveness of the UK.

4.3 The PRA has considered the remaining matters to which it should have regard when making CRR rules (see references in Appendix 4), and considers that they are not relevant to this proposal.

#### *Impact on mutuals*

4.4 Mutuals do not have parent financial holding companies and therefore the proposals in the draft SoP would not apply to them. PRA-authorized firms at the head of mutual groups will continue to be subject to the PRA's existing supervisory and enforcement regime.

#### *HM Treasury recommendation letter*

4.5 HM Treasury has made recommendations to the PRC about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.<sup>42</sup>

- (i) **Competitiveness:** The PRA considers that the UK's competitiveness would be supported by the proposals. The proposals allow for the continuity of consolidated supervision, as well as for supervisory measures and enforcement action to be taken against the entity responsible for compliance with consolidated prudential requirements. These measures would promote the safety and soundness of PRA-authorized firms and help maintain a robust and resilient UK financial system, thereby supporting London's position as a leading international financial centre and the UK's attractiveness to internationally active financial institutions.
- (ii) **Growth:** HM Government wishes to ensure financial services markets make a positive contribution to sustainable economic growth in the UK economy in the medium and long term, through the facilitation of finance for productive investment and as a productive sector of the UK economy. The proposals in the SoP increase financial stability, which is a prerequisite for strong, sustainable, and balanced growth.

4.6 The PRA has considered the remaining aspects of government economic policy as laid out in the HM Treasury recommendation letter (see references in Appendix 4), and considers that they are not relevant to these proposals.

#### *Equality and diversity*

4.7 The PRA considers that the proposals do not give rise to equality and diversity implications.

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<sup>42</sup> Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at <https://www.bankofengland.co.uk/about/people/prudential-regulation-committee>.

## Appendices

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1	Draft PRA (Rules applying to holding companies) Instrument 2021, available at: <a href="https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2021/june/cp1221app1.pdf">https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2021/june/cp1221app1.pdf</a>	
2	Draft Statement of Policy - Supervisory measures and penalties in relation to financial holding companies, available at: <a href="https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2021/june/cp1221app2.pdf">https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2021/june/cp1221app2.pdf</a>	
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### 3 Draft amendments to Statement of Policy - The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure

This appendix outlines proposed amendments to SoP 'The PRA's approach to enforcement: statutory statements of policy and procedure'. The underlining of text indicates that this is new text and the striking through of text indicates deleted text.

## 2 Statement of the PRA's policy on the imposition and amount of financial penalties under the Act

### Introduction and interpretation

1 This statement of policy is issued by the Prudential Regulation Authority (the 'PRA') in accordance with the requirements of sections 63C(1), 69(1), 142V, 192N(1), 192Z2 and 210(1) of the Act.<sup>1</sup> It sets out the PRA's policy on the imposition and amount of penalties under sections 63A, 66, 142S, 192K, 192Y and 206 of the Act.

...

### Determining whether the PRA will take action for a penalty

3 The PRA will consider all relevant facts and circumstances of each case when determining whether to take action against a person for a penalty under section 63A, 66, 142S(2), 192K, 192Y or 206 of the Act (and/or other appropriate enforcement action).

...

### Public censures

4 Pursuant to sections 66(3)(b), 142S(3), 192K(3), 192Y and 205 of the Act, where a person has breached the PRA's regulatory requirements, the PRA may publish a statement of his misconduct (a 'public censure').

...

**Action against financial holding company or mixed financial holding company under section 192Y of the Act**

12. Under section 192Y of the Act, where the PRA is satisfied that a company which is or has been a financial holding company or a mixed financial holding company has contravened:

(a) a requirement imposed by a direction given to that company by the PRA under Part 12B of the Act;

(b) a requirement imposed by a direction given to that company by the PRA under section 192T of the Act;

(c) rules made by the PRA under section 192V of the Act; or

(d) Parts 3, 4, 6, 7 or 7A of the Capital Requirements Regulation;

the PRA may, under section 192Y(2) and (3) of the Act, impose on that company or any person who was knowingly concerned in the contravention, a penalty of such amount as it considers appropriate or, alternatively, issue a public censure.

## 4 PRA statutory obligations

**The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.**

- Purpose of the policy proposals (FSMA s138J(2)(b)).
- Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letter (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22)
- Have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat (Natural Environment and Rural Communities Act 2006, s40).
- Consultation of the FCA (FSMA s138J(1)(a)).
- Where the consultation proposals a PRA rule change or amendment to onshored BTS that affects the processing of personal data - consultation with the Information Commissioner's Office (article 36(4) General Data Protection Regulation).
- For UK Technical Standards Instruments only: FSMA s138J(1)(a) is replaced with: consultation of the FCA and/or Bank, where that Regulator has an interest in the technical standards (FSMA s138P(4) and (5)).
- For UK Technical Standards Instruments only: notice given to HMT of the consultation on the UKTS ('best efforts' basis).
- For CRR rules only: subject to certain exceptions, have regard to:

- relevant standards recommended by the Basel Committee on Banking Supervision from time to time

- 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. For these purposes, 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

- 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

- the target in section 1 of the Climate Change Act 2008 (carbon target for 2050)

(s144C (1) & (2) FSMA – exceptions in s144E FSMA).

- For CRR rules only – explanation of the ways in which having regard to the matters specified above has affected the proposed rules (s144D FSMA).
- For CRR rules only – publication of a summary of the proposed CRR rules.
- For CRR rules only – consideration and consultation with the Treasury about the likely effect of the rules on relevant equivalence decisions (s144C (3) & (4) FSMA).