

Title: THE CAPITAL REQUIREMENTS REGULATION (AMENDMENT) REGULATIONS 2021	De minimis assessment
SI No: xxxx	Date: 05/07/2021
Other departments or agencies: N/A Contact for enquiries: Jamie Loxton – jamie.loxton@hmtreasury.gov.uk	Type of regulation: Domestic Date measure comes into force: 01/01/2022
Cost of Preferred (or more likely) Option £160,000 total familiarisation costs	Net cost to business per year (EANDCB in 2019 prices) N/A

1. What is the problem under consideration? Why is government intervention necessary? (Maximum 5 lines)

Since the financial crisis of 2008, the international community has, through the Basel Regulatory Framework, updated international standards – which are endorsed by the G20 - in order to improve domestic prudential standards. Now that the UK has left the EU and the implementation period is over, HM Treasury needs to update the prudential regime to reflect new Basel standards. This is being done through the Financial Services Act 2021 (FS Act) and regulations made under it.

Prior to the end of the implementation period the UK had implemented the majority of the earlier Basel Standards through its membership of the EU. The specific vehicles that implemented these standards were the Capital Requirements Regulation (CRR) and the Capital Requirements Directives (CRD). The most recent iteration of these vehicles was the 2nd Capital Requirements Regulation (CRR2) and the 5th Capital Requirements Regulation (CRDV). The UK implemented CRDV, per its obligation to implement EU directives during the implementation period. The majority of CRR2, however, comes into force after the end of the implementation period and therefore does not form EU retained law.

It is intended that the majority of the prudential requirements contained in CRR2, given their highly technical nature, will be implemented by the Prudential Regulation Authority (PRA) through its rules. This will ensure that the regime is agile and responsive to market developments. To enable the PRA to make these rules, it is required that HM Treasury make this SI to delete the provisions of the onshored CRR that we intend to delegate to the PRA, so they can replace the provisions with rules implementing the updated Basel standards.

2. What are the policy objectives and the intended effects? (Maximum 5 lines)

The policy objective of these regulations is to allow the PRA through its rules to ensure an effective and proportionate implementation of the outstanding Basel 3 (equivalent to the EU's CRR2) standards that are tailored where necessary to the UK specific market.

In order to ensure that these objectives are met, the FS Act requires that when making its rules the PRA must 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;
- 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); and
- any other matter specified by the Treasury by regulations.

These matters are in addition to the PRA's statutory primary objective of promoting the safety and soundness of the firms they regulate and its secondary objective of facilitating effective competition between firms.

This SI also contains two transitional provisions made under the European Union (Withdrawal) Act 2018 (EUWA). The first relates to a transitional provision under Article 497 of the CRR that allows for certain foreign central counterparties (CCPs) to retain qualifying status, and therefore allows for UK business to use these CCPs without facing higher capital requirements. This SI will allow for HM Treasury to, via regulations, extend this transitional provision indefinitely (one year at a time). Currently, the provision can only be extended for one year, until the end of 2023. This change will have no direct impact on businesses as this provision only provides HM Treasury with the option to lay future legislation which would extend the transitional period for these CCPs indefinitely one year at a time, rather than just once for a year.

The second relates to an equivalence provision under Article 391 of the CRR. Up until now businesses have been relying on European Banking Authority (EBA) guidance that any jurisdictions found equivalent under Article 107 of the CRR may also be considered to have equivalence under Article 391 (because they follow the same test). In order to continue this effect post-EU exit HM Treasury would need to carry out a large number of assessments (with support from the PRA under the terms of the equivalence MOU) and make corresponding equivalence determinations by regulations under Article 391. In order to provide clarity to firms, and until a long-term solution can be found, this SI makes clear that firms can rely on equivalence decisions under Article 107 for the purposes of Article 391. As this provision will only provide clarity to businesses this will have no net direct cost to businesses.

Finally, this SI contains a few minor deficiency fixes, these are all small corrections and will have no net direct costs on firms.

3. What policy options have been considered, including any alternatives to regulation?

Please justify preferred option (Maximum 5 lines)

The alternative policy option we considered was the relevant provisions being implemented in UK law, rather than being deleted to be implemented in PRA rules. This is not a practical alternative, as the PRA has the requisite technical knowledge to ensure implementation and taking this contrary approach would go against the model that the FS Act has set up of delegating responsibility to the expert regulators.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

One off costs:

As discussed above, these deletions are being implemented to allow the PRA to replace certain CRR provisions as they stand in EU retained law, with provisions in its rules. The only significant net costs that will arise from these PRA rules are therefore deviations from the existing CRR provisions.

However, these deviations from the CRR are a matter for the PRA, not for these regulations. Accordingly, it would not be appropriate for us to consider where the PRA chooses to diverge from the CRR in this impact assessment. Furthermore, the PRA have already made a cost benefit analysis on its draft rules available¹, which considers these costs.

However, we do recognise there will be some costs directly associated with these deletions. These relate to familiarisation costs. These are the costs associated with compliance officers becoming familiar with the new legislation and documentation. There are approximately 100 pages of the CRR which are to be deleted and to be replaced by PRA rules.

Compliance officers will therefore need to:

1. familiarise themselves with what has been deleted; and
2. familiarise themselves with how the new PRA rules “meshes” with the remainder of the capital requirements regulation.

It is reasonable to use the 100 pages of deletions to estimate this cost, as compliance officers may have to read through the entirety of the deletions to ensure that they understand how the new rulebook – sitting across legislation and PRA rules – operates.

Taking 100 pages at 500 words per page = 50000 words.

The mean hourly wages of in-house compliance staff are expected to be £40 per hour. These wage costs are inflated by 30% to reflect non-wage labour costs.

¹ <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2021/february/cp521.pdf?la=en&hash=430FBE3BF2D03AC61F86794BD9F09CDAE031E0E8> – see page 76 onwards

Reading speed declines with text complexity. An assessment of the complexity of this information yields a Flesch-Kincaid readability score² that suggests a reading speed of 80 words per minute. At 50000 words, this suggests a reading time of 10.5 hours. The familiarisation costs to each financial institution in scope will therefore be £420, assuming the cost of one compliance officer.

Length of changes to regulations and policy statements	100 pages (50000 words)
Mean hourly wage costs of in-house compliance costs	£40 per hour
Reading time	10.5 hours
Familiarisation cost per institution	£420
Anticipated number of firms we expect to be affected	380
Total familiarisation costs	£160,000

Ongoing costs:

N/A

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) Significant distributional impacts (such as significant transfers between different businesses or sectors)

No

b) Disproportionate burdens on small businesses

Only a very limited number of small firms may be in scope of the CRR and given the very low costs directly associated with this legislation this will not place any significant burdens on any firms including any small firms in scope.

It is also worth noting that in its consultation on its draft rules relating to this SI the PRA have stated that proportionality is one of its core objectives. In addition, the PRA's consultation sets out specific measures which aim to enhance proportionality.

c) Significant gross effects despite small net impacts

No

d) Significant wider social, environmental, financial or economic impacts

No

e) Significant novel or contentious elements

No

Sign-off for de minimis assessment: SCS

² The Flesch-Kincaid readability tests are readability tests designed to indicate how difficult a passage in English is to understand.

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Policy team

Signed: ***Fayyaz Muneer***

Date: 27/05/2021

SCS of Better Regulation Unit

Signed: ***Linda Timson***

Date: 09/06/2021

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen MP***

Date: 05/07/2021