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## SCHEDULES

### SCHEDULE 3

#### 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*

#### **CRR rules**

- 144A(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  - (b) it has been revoked by regulations made under section 3(3) or (5) of that Act.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

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- (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).

### **Terms used in this Part**

144(B) 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*

### **Matters to consider when making CRR rules**

144(C) 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;

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“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.

### **Explanation to accompany consultation on CRR rules**

144D) 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.

### **Exceptions from sections 144C and 144D etc**

144E) 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,

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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).

### **Power to consequentially amend enactments**

144(F) 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*

### **Disapplication or modification of CRR rules in individual cases**

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

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- (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.

### **Relationship with the capital requirements regulation**

- 144(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.”

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#### **Commencement Information**

**II** Sch. 3 para. 1 in force at 9.6.2021 by S.I. 2021/671, reg. 2(d)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by [S.I. 2021/1163 reg. 2](#)