

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament and published on 2 February 2015 (ISBN 978-0-11-112842-8). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Order laid before Parliament under section 9N of the Bank of England Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

FINANCIAL SERVICES AND MARKETS

**The Bank of England Act 1998 (Macro-prudential Measures)
Order 2015**

Made - - - - *****
Coming into force - - *6th April 2015*

In accordance with section 9N of the Bank of England Act 1998(a), a draft of this Order has been laid before Parliament and approved by a resolution of each House.

In accordance with section 9L(2) of the Bank of England Act 1998, the Treasury has consulted with the Financial Policy Committee of the Bank of England.

The Treasury make the following Order in exercise of the powers conferred by section 9I(2) and 9L of the Bank of England Act 1998(b):

Citation and Commencement

1. This Order may be cited as the Bank of England Act 1998 (Macro-prudential Measures) Order 2015 and comes into force on 6th April 2015.

Interpretation

2.—(1) In this Order—

“annual income” means the amount of the annual income (gross or net of tax and national insurance) verified by the lender when deciding to provide credit to the borrower;

“borrower” means an individual who receives credit; and includes an individual acting jointly with others, and an individual acting as a trustee who receives credit jointly with other trustees;

“cost benefit analysis” means—

(a) 1998 c.11, inserted by section 4 of the Financial Services Act 2012 (c.21).
(b) Inserted by section 4 of the Financial Services Act 2012.

(a) an analysis of the costs and benefits of any change in rules made pursuant to Part 9A of the Financial Services and Markets Act 2000(a) to give effect to a subsequent direction; and

(b) where the costs and benefits can reasonably be estimated and it is reasonably practicable to produce an estimate, an estimate of those costs and of those benefits;

“credit” includes a cash loan, and any other form of financial accommodation;

“debt-to-income ratio” means the ratio, calculated by the lender when deciding to enter into a relevant mortgage contract, of the borrower’s total relevant debt to the borrower’s annual income;

“excluded mortgage contract” means—

(a) a mortgage contract—

(i) which is offered to a particular class of borrower and not offered to the public generally;

(ii) which is offered under an enactment with a general interest purpose; and

(iii) where the terms on which the credit is provided are more favourable to the borrower than those prevailing on the market, because it meets one of the following conditions—

(aa) it is interest free;

(bb) the rate of interest is lower than that prevailing on the market at the date when the credit is provided;

(cc) the rate of interest is no higher than that prevailing on the market at the date when the credit is provided, but the other terms on which credit is provided are more favourable to the borrower;

(b) a mortgage contract where the agreement is entered into by the borrower, or by a trustee on behalf of a beneficiary, wholly or predominantly for the purpose of a business carried on, or intended to be carried on, by the borrower or beneficiary; or

(c) a remortgage;

“FCA” has the meaning given by section 1A of the Financial Services and Markets Act 2000(b);

“Financial Policy Committee” has the meaning given by section 9B of the 1998 Act(c);

“lender” means a person providing credit by way of business;

“loan-to-value percentage” means, in relation to a provision of credit by a lender to a borrower, the aggregate amount of outstanding credit provided under all relevant mortgage contracts relating to the same land immediately after the last amount of credit is provided, as a percentage of the total value of the land as assessed by the lender for the purposes of deciding to provide credit to the borrower;

“mortgage” includes a charge and (in Scotland) a heritable security;

“mortgage contract ” means a contract under which—

(a) the lender provides credit to the borrower;

(b) the obligation of the borrower to repay is secured by a mortgage on land whether or not in the United Kingdom; and

(c) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a person who is a related person to the borrower or a related person to the individual who is the beneficiary of the trust;

(a) Inserted by section 24 of the Financial Services Act 2012.

(b) Inserted by section 6(1) of the Financial Services Act 2012.

(c) Inserted by section 4 of the Financial Services Act 2012.

“PRA” has the meaning given by section 2A of the Financial Services and Markets Act 2000(a);

“regulated persons” has the meaning given by section 9H(2) of the 1998 Act(b);

“related person” means, in relation to a borrower, or in the case of credit provided to trustees, a beneficiary of the trust —

- (a) that person’s spouse or civil partner;
- (b) a person (whether or not of the opposite sex) whose relationship with that person has substantially the same characteristics of a relationship between husband and wife or between civil partners; or
- (c) that person’s parent, brother, sister, child, grandparent or grandchild;

“relevant credit agreement” means—

- (a) a credit agreement within the meaning of article 60B(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c), but excluding a relevant mortgage contract and the types of agreement described in articles 60D(d), 60F(5)(e) and 60F(6)(f), 60G(3)(g) and 60G(4)(h) of that Order; and
- (b) a consumer hire agreement within the meaning of article 60N(3)(i) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, but excluding the type of agreement described in article 60P(j) of that Order;

“relevant mortgage contract” means a mortgage contract other than an excluded mortgage contract;

“remortgage” means a mortgage contract under which the amount of credit provided by the lender to the borrower does not exceed that outstanding to the lender, or to a different lender, under:

- (a) a previous mortgage contract; or
- (b) any other type of contract under which the obligation to repay the credit is secured by a legal mortgage

which relates to the same land;

“the 1998 Act” means the Bank of England Act 1998;

“total relevant debt” means the total amount of outstanding credit provided to a borrower pursuant to—

- (a) any relevant credit agreement; and
- (b) any relevant mortgage contract.

(2) For the purposes of assessing the amount of credit provided under a remortgage contract, the lender may disregard a reasonable sum in respect of any of the following fees or costs—

- (a) arrangement fees;
- (b) professional fees and costs;
- (c) redemption fees for redeeming a previous mortgage contract which relates to the same land;
- (d) administration costs.

(a) Inserted by section 6(1) of the Financial Services Act 2012.

(b) Inserted by section 4 of the Financial Services Act 2012.

(c) SI 2001/544, inserted by SI 2013/1881, articles 2 and 6.

(d) Inserted by SI 2013/1881, articles 2 and 6.

(e) Inserted by SI 2013/1881, articles 2 and 6, amended by SI 2014/366, articles 2(1) and 27(b).

(f) Inserted by SI 2013/1881, articles 2 and 6, amended by SI 2014/366, articles 2(1) and 27(b).

(g) Inserted by SI 2013/1881, articles 2 and 6.

(h) Inserted by SI 2013/1881, articles 2 and 6.

(i) Inserted by SI 2013/1881, articles 2 and 6, amended by SI 2014/366, article 2(1) and (34).

(j) Inserted by SI 2013/1881, articles 2 and 6.

(3) Any reference to ‘specified’ in the first column of the table in article 3 of this Order means specified by the Financial Policy Committee in a direction made under section 9H of the 1998 Act by reference to this Order.

Macro-prudential measures

3. The measures listed in the first column of the table (and any measures falling within a listed measure) are prescribed in relation to the regulator specified in the second column of the table.

<i>Macro-prudential measure</i>	<i>Regulator</i>
A measure to require regulated persons who enter into relevant mortgage contracts to ensure that no more than a specified proportion of relevant mortgage contracts entered into after the date of a direction made with reference to this order have a loan-to-value percentage greater than the maximum loan-to-value percentage specified in the direction.	PRA or FCA
A measure to require regulated persons who enter into relevant mortgage contracts to ensure that no more than a specified proportion of relevant mortgage contracts entered into after the date of a direction made with reference to this order have a debt-to-income ratio greater than the maximum debt-to-income ratio specified in the direction.	PRA or FCA

Disapplication of procedural requirements

4.—(1) Paragraph (2) applies if—

- (a) the Financial Policy Committee has given a direction to the PRA or the FCA under section 9H of the 1998 Act which specifies a loan-to-value percentage or a debt-to-income ratio (“the first direction”);
- (b) the Financial Policy Committee subsequently revokes the first direction; and
- (c) within a reasonable period of time after the revocation of the first direction, the Financial Policy Committee gives another direction to the PRA or the FCA under section 9H of the 1998 Act (“the subsequent direction”) which is in substance identical to the first direction except in relation to the values specified in the direction.

(2) To the extent that the subsequent direction is implemented by way of rules pursuant to Part 9A of the Financial Services and Markets Act 2000 then—

- (a) sections 138I, 138K, and 139A(3) of the Financial Services and Markets Act 2000 do not apply to the FCA, but the FCA must undertake and publish, at the same time as the subsequent direction is implemented, a cost benefit analysis relating to changes implemented pursuant to the subsequent direction; and
- (b) sections 138J and 138K of the Financial Services and Markets Act 2000 do not apply to the PRA, but the PRA must undertake and publish, at the same time as the subsequent direction is implemented, a cost benefit analysis relating to changes implemented pursuant to the subsequent direction.

Name
Name

Date Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

The Financial Policy Committee is responsible for monitoring and addressing systemic risks which threaten the stability of the United Kingdom's financial system. One tool available to the FPC is the power to issue directions to the Prudential Regulation Authority and the Financial Conduct Authority (together the regulators). The Financial Policy Committee can only issue directions in relation to macro-prudential measures which have been prescribed by HM Treasury.

This Order prescribes macro-prudential measures in relation to the residential housing market and permit the Financial Policy Committee to make directions to the PRA or the FCA to address the risks posed by the residential housing lending market to the systemic stability of the financial system.

On 26th September 2014 the Financial Policy Committee issued a statement on housing market powers of direction, in which it recommend that HM Treasury exercises its statutory powers to enable the FPC to direct, if necessary to protect and enhance financial stability, the Prudential Regulation Authority and Financial Conduct Authority to require regulated lenders to place limits on residual mortgage lending, both owner-occupied and buy-to-let, by reference to (1) loan to value ratios, and (2) debt to income ratios.

The first measure allows the Financial Policy Committee to issue a direction to limit lenders from issuing more than a certain proportion of new mortgages where the loan-to-value ratio of the mortgages exceeds a level specified by the Financial Policy Committee. This ratio will be calculated at the time when the lender makes the decision to lend to the borrower. The limit may be expressed either as a proportion of the volume of the new mortgages, or as a proportion of the value of the new mortgages. Where a remortgage does not involve an increase in the amount of the credit provided then it is excluded.

The second measure allows the Financial Policy Committee to issue a direction to limit lenders from issuing more than a certain proportion of new mortgages where the borrowers' debt-to-income ratio is greater than a particular level specified by the Financial Policy Committee. This ratio will be calculated at the time when the lender makes the decision to lend to the borrower. The limit may be expressed either as a proportion of the volume of the new mortgages, or as a proportion of the value of the new mortgages. Where a remortgage does not involve an increase in the amount of the credit provided then it is excluded.

Article 4 provides that where the Financial Policy Committee gives a direction which specifies a particular value (for example, the specified proportion of relevant mortgage contracts which may have a debt-to-income ratio greater than the maximum debt-to-income ratio specified in the direction) and subsequently gives another direction which is identical in substance to the first direction except that it changes one of the specified values and where this change is implemented by either the FCA or PRA by way of new rules issued pursuant to Part 9A of the Financial Services and Markets Act 2000, then if the rules are issued by the PRA then it need not comply with the obligations under sections 138J and 138K of the Financial Services and Markets Act 2000 and if the rules are issued by the FCA then it need not comply with the obligations under sections 138I, 138K and 139A(3) of the Financial Services and Markets Act 2000. However, Article 4 does require both the PRA and FCA to undertake, and publish alongside any new rules, a cost-benefit analysis of any change in rules.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available on the HM Treasury website and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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