
STATUTORY INSTRUMENTS

2018 No. 1401

**The Capital Requirements (Amendment)
(EU Exit) Regulations 2018**

PART 3

Amendment of secondary legislation: European Union (Withdrawal) Act 2018

CHAPTER 2

Amendment of 2013 Regulations

Amendments to the Capital Requirements Regulations 2013

10. The 2013 Regulations are amended in accordance with this Chapter.

Regulation 2 (interpretation)

11.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) omit the following definitions—

“Bank”;

“EBA Regulation”;

“EEA consolidating supervisor”;

“EEA parent institution”;

“EIOPA”;

“EIOPA Regulation”;

“ESRB”;

“ESRB Regulation”;

“home EEA State”;

“host EEA State”;

“national consolidating supervisor”;

“parent institution in an EEA State”;

“parent financial holding company in an EEA State”;

“parent mixed financial holding company in an EEA State”;

“relevant competent authority”.

(b) at the end, insert—

““Specified EU Regulations under the Capital Requirements Regulation” means the EU regulations or parts of EU regulations which form part of retained EU law and

which are specified in paragraphs 78 to 83 and 126 to 168, in Schedule 1 to the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations.”.

- (3) In paragraph (2)(a), omit “or Article 3 (definitions) of the capital requirements directive”.

Regulation 2A (insertion of new paragraph)

12. After regulation 2 (interpretation) insert—

“Interpretation: regulators’ rules

2A.—(1) In these Regulations—

- (a) a reference to the PRA rulebook is to the rulebook published by the PRA containing rules made by that Authority under FSMA as the rulebook has effect on exit day;
- (b) any reference to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by that Authority under FSMA as the sourcebook has effect on exit day.
- (c) “[Directive 2013/36/EU](#) UK law” means the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement the capital requirements directive and its implementing measures—
 - (i) as they have effect on exit day, in the case of rules made by the FCA or by the PRA under FSMA; and
 - (ii) as amended from time to time, in all other cases.

(2) By way of an exception to paragraph 1(c), for the purposes of regulations 21, 34, 34A, 35 and 35B, and the references to the capital requirements directive therein, “[Directive 2013/36/EU](#) UK law” shall mean the law of the United Kingdom or any part of it, which was relied on by the United Kingdom immediately before exit day to implement [Directive 2013/36/EU](#) and its implementing measures as amended from time to time.”.

Regulation 4 (main provisions)

13. In regulation 4 (main provisions)—

- (a) for the heading substitute “Main provisions of the capital requirements regulation and [Directive 2013/36/EU](#) UK law”;
- (b) for the words “every provision of the capital requirements directive and” substitute “every provision of [Directive 2013/36/EU](#) UK law and the”.

Regulation 5 (capital buffers and Article 458 of the capital requirements regulation)

14. Omit regulation 5 (capital buffers and Article 458 of the capital requirements regulation).

Regulations 6 (co-operation within the European System of Financial Supervision) to 17 (Duties to notify EBA and EIOPA)

15. Omit Part 4 (PRA and FCA: cooperation and co-ordination).

Regulations 18 (general disclosures required of PRA and FCA) to 19 (specific disclosures required of the PRA and FCA)

16. Omit Part 5 (publication of information by the PRA and FCA).

Regulation 20 (determination of the consolidating supervisor)

17. Omit regulation 20 (determination of the consolidating supervisor).

Regulation 21 (assessment of equivalent of consolidated supervision by supervisory authorities in non-EEA states)

18. In regulation 21 (assessment of equivalence of consolidated supervision by supervisory authorities in non-EEA states)—

- (a) in the heading, for “non-EEA States” substitute “third countries”;
- (b) in paragraphs (1)(b) and (5), for “an EEA State” substitute “the United Kingdom”;
- (c) in paragraph (1)(c), for the words from “in accordance with” to the end substitute “by the FCA or PRA”;
- (d) in paragraphs (1)(e)(i) and (2), for “EEA” substitute “United Kingdom”;
- (e) in paragraphs (2) and (4)(a), for “the capital requirements directive” substitute “[Directive 2013/36/EU](#) UK law”;
- (f) omit paragraph (3);
- (g) in paragraph (4)(b), omit the words “in accordance with” to the end;
- (h) omit paragraph (6).

Regulations 22 (co-ordination and co-operation arrangements) to 33 (colleges of supervisors)

19. Omit regulations 22 to 33.

Regulation 34 (supervisory powers: own funds)

20. In regulation 34 (supervisory powers: own funds)—

- (a) in paragraph (1)(a), after “requirements of” insert “[Directive 2013/36/EU](#) UK law which implemented”;
- (b) in paragraphs (2)(a) and (2)(b), after “set out in” insert “[Directive 2013/36/EU](#) UK law which implemented”;
- (c) in paragraph (2)(d)—
 - (i) for the words from “the review referred” to “capital requirements directive” substitute “either a SREP or an internal model review”;
 - (ii) for “application of the respective approach” insert “applicable internal approaches”;
- (d) in paragraph (2)(e), for the words from “the capital requirements directive” to the end, substitute “[Directive 2013/36/EU](#) UK law or the capital requirements regulation”;
- (e) in paragraph (3), for the words from “the review and evaluation” to “capital requirements directive” substitute “a SREP”;
- (f) in paragraphs (3)(a) and (3)(b), after “referred to in” insert “[Directive 2013/36/EU](#) UK law which implemented”;
- (g) in paragraph (3)(c), for the words from “the review and evaluation” to “capital requirements directive” substitute “the SREP or internal model review”;
- (h) after paragraph 3 insert—
 - “(4) In this Part—
 - “internal model review” means a review carried out under regulation 34B;

“SREP” means the supervisory review and evaluation process detailed in regulation 34A.”.

Regulations 34A and 34B (insertion of new paragraphs)

21. After regulation 34 (supervisory powers: own funds) insert—

“Supervisory review and evaluation process

34A.—(1) The competent authority must review the arrangements, strategies, processes and mechanisms implemented by an institution to comply with [Directive 2013/36/EU](#) UK law and the capital requirements regulation and evaluate—

- (a) risks to which that institution is or might be exposed;
- (b) risks that institution poses to the UK financial system; and
- (c) risks revealed by stress testing taking into account the nature, scale and complexity of that institution’s activities.

(2) On the basis of the review and evaluation referred to in paragraph (1), the competent authority must determine whether the arrangements, strategies, processes and mechanisms implemented by an institution and the own funds and liquidity held by it ensures a sound management and coverage of its risks.

(3) The competent authority must establish the frequency and intensity of the review and evaluation referred to in paragraph (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned.

Ongoing review of the permission to use internal approaches

34B.—(1) The competent authority must review on a regular basis, and at least every 3 years, an institution’s compliance with the requirements regarding internal approaches that require permission by the competent authorities before using such internal approaches for the calculation of own funds requirements in accordance with Part 3 of the capital requirements regulation.

(2) In its review the competent authority must have particular regard to changes in an institution’s business and to the implementation of those approaches to new products.

(3) Where material deficiencies are identified in risk capture by an institution’s internal approaches, the competent authority must ensure these are rectified, or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

(4) The competent authority must in particular review and assess whether the institution uses well developed and up-to-date techniques and practices for its internal approaches.

(5) If for an internal market risk model numerous overshootings referred to in Article 366 of the capital requirements regulation indicate that the model is not or is no longer sufficiently accurate, the competent authority must revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

(6) If an institution has received permission to apply an approach that requires permission by the competent authority before using such an approach for the calculation of own funds requirements in accordance with Part 3 of the capital requirements regulation but no longer meets the requirements imposed as part of the grant of permission for applying that internal approach, the competent authority must require the institution either to satisfy the competent authority that the effect of non-compliance is immaterial where applicable in accordance

with the capital requirements regulation or to present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation.

(7) The competent authority must require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate.

(8) If the institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the internal approach must be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.”(1).

Regulation 35 (specific liquidity requirements)

22. In regulation 35 (specific liquidity requirements)—

- (a) in the paragraph at the beginning, for the words from “the review and evaluation” to “capital requirements directive” substitute “a SREP”;
- (b) in paragraph (b), after “referred to in” insert “[Directive 2013/36/EU](#) UK law which implemented”;
- (c) in paragraph (c), for the words from “the review and evaluation” to “capital requirements directive” substitute “the SREP”.

Regulation 35A (insertion of new paragraphs)

23. After regulation 35 (specific liquidity requirements) insert—

“Application of supervisory measures to institutions with similar risk profiles

35A. Where the competent authority determines that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the UK financial system, it may apply a SREP to those institutions in a similar or identical manner.

Supervisory powers

35B. For the purposes of a SREP, an internal model review, and in order to address a situation where an institution does not meet the requirements of the Capital Requirements Regulation or [Directive 2013/36/EU](#) UK law, or where the competent authority has evidence that an institution is likely to breach such requirements within the following twelve months, the competent authorities may at least—

- (a) require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with [Directive 2013/36/EU](#) UK law which implemented Articles 73 and 74;
- (b) require institutions to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

(1) The powers in regulation 34A(1) are restated from Article 97(1) of [Directive 2013/36/EU](#), the powers in regulation 34A(2) are restated from Article 97(3) of [Directive 2013/36/EU](#), the powers in regulation 34A(3) are restated from Article 97(4) of [Directive 2013/36/EU](#), the powers in regulation 34B(1) to (3) are restated from Article 101(1) of [Directive 2013/36/EU](#), the powers in regulation 34B(4) are restated from Article 101(2) of [Directive 2013/36/EU](#), the powers in regulation 34B(5) are restated from Article 101(3) of [Directive 2013/36/EU](#), and the powers in regulation 34B(6) to (8) are restated from Article 101(4) of [Directive 2013/36/EU](#).

- (c) require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (d) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- (e) require the reduction of the risk inherent in the activities, products and systems of institutions;
- (f) require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
- (g) require institutions to use net profits to strengthen own funds;
- (h) restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments (which meets the requirements of Article 52 of the capital requirements regulation) where the prohibition does not constitute an event of default of the institution;
- (i) impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (j) impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- (k) require additional disclosures.

Specific publication requirements

35C.—(1) The competent authorities may require institutions to—

- (a) publish information referred to in Part 8 of the capital requirements regulation more than once per year, and to set deadlines for publication
- (b) use specific media and locations for publications other than the financial statements and

(2) The competent authorities may require parent undertakings to publish annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group of institutions.”(2).

Regulation 36 (employee remuneration)

24. In regulation 36 (employee remuneration)—

- (a) the existing wording becomes paragraph (1) of the regulation;
- (b) for sub-paragraph (b) substitute—
 - “(b) collect information on the number of employees in each institution that are remunerated 1 million euros or more per financial year, in pay brackets of 1 million euros, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution;”;
- (c) in sub-paragraph (c), for “Article 94(1)(g)(ii) of the capital requirements directive” substitute “applicable remuneration rules”;
- (d) omit sub-paragraph (d) and the “and” preceding it;
- (e) after paragraph (1) insert—

(2) The powers in regulation 35A are restated from Article 103(1) of [Directive 2013/36/EU](#), the powers in regulation 35B are restated from Article 104(1) of [Directive 2013/36/EU](#), the powers in regulation 35C are restated from Article 106 of [Directive 2013/36/EU](#).

“(2) In paragraph (1)(c) “applicable remuneration rules” means—

- (a) in the case of PRA-authorised persons, rule 15.10 of the Remuneration Part of the PRA’s Rulebook and rule 19D.3.49 of the FCA’s Senior management arrangements, Systems and Controls sourcebook;
- (b) in the case of FCA-authorised persons, rule 19A.3.44A of the FCA’s Senior management arrangements, Systems and Controls sourcebook.”.

Regulation 37 (diversity practices)

25. In regulation 37 (diversity practices), omit paragraph (b) and the “and” preceding it.

Regulation 38 (consultation with the EBA)

26. Omit regulation 38 (consultation with the EBA).

Regulation 39 (meaning of “permission” and “protected item” in this part)

27. In regulation 39 (meaning of “permission” and “protected item” in this part)—

- (a) in paragraph (a), omit “or”;
- (b) for paragraph (b) substitute—
 - “(b) any of the Specified EU Regulations under the Capital Requirements Regulation, as amended from time to time; or”;
- (c) after paragraph (b) insert—
 - “(c) a technical standard made by the PRA or FCA under the functions conferred on them by the Capital Requirements Regulation as amended by Part 4, Chapter 3 of the Capital Requirements (Amendment) (EU Exit) Regulations 2018.”.

Regulation 45 (misleading the PRA or FCA)

28. In regulation 45 (misleading the PRA or FCA)—

- (a) for paragraph (b) substitute—
 - “(b) any of the Specified EU Regulations under the Capital Requirements Regulation, as amended from time to time;”;
- (b) after paragraph (b) insert—
 - “(ba) a technical standard made by the PRA or FCA under the functions conferred on them by the Capital Requirements Regulation as amended by Part 4, Chapter 3 of the Capital Requirements (Amendment) (EU Exit) Regulations 2018; or”.