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 4

Amendment of the 2014 Regulations

Part 5A (Systemic Risk Buffer)

60. For Part 5A (systemic risk buffer) substitute—

“PART 5A

Systemic Risk Buffer

CHAPTER 1

Imposition of systemic risk buffer and interpretation

Duty on relevant regulator to require a systemic risk buffer to be maintained

34A.—(1) The relevant regulator must require an institution that falls within one of the classes set out in regulation 34B to maintain Common Equity Tier 1 capital, to be known as a “systemic risk buffer”.

(2) Regulation 34K makes provision about when an institution must apply a buffer rate in the calculation of its systemic risk buffer.

(3) The amount of the systemic risk buffer an institution must be required to maintain is to be calculated in accordance with Chapter 4.

(4) Neither the PRA nor the FCA may require an institution that does not fall within the classes set out in regulation 34B to maintain a systemic risk buffer without the consent of the Treasury.

Institutions required to maintain a systemic risk buffer

34B.—(1) An institution must be required to maintain a systemic risk buffer if it falls within one of the following classes—

(a) an institution falls within Class A if—

(i) it is an SRB institution,

(ii) the PRA has set a buffer rate for it under regulation 34H (which relates to UK buffer rates), and

(iii) it does not fall within Class B;

(b) an institution falls within Class B if—

(i) it is an SRB institution,

(ii) the PRA has set a buffer rate for it under regulation 34H, and

(iii) the PRA has decided that it must also apply a third country buffer rate under regulation 34J(2) (which relates to buffer rates set in countries other than the United Kingdom);

(c) an institution falls within Class C if—

(i) it is an SRB institution,

(ii) the PRA has not set a buffer rate for it under regulation 34H, and

(iii) the PRA has decided that it must apply a third country buffer rate under regulation 34J(2);

(d) an institution falls within Class D if—

(i) it is a PRA-authorised person other than an SRB institution, and

(ii) the PRA has decided that it must apply a third country buffer rate under regulation 34J(2);

(e) an institution falls within Class E if—

(i) it is an authorised person other than a PRA-authorised person, and

(ii) the FCA has decided that it must apply a third country buffer rate under regulation 34J(3).

Interpretation: SRB institutions

34C.—(1) In this Part, an "SRB institution" means—

(a) a ring-fenced body within the meaning of section 142A of FSMA, or

(b) a large building society.

(2) In paragraph (1)(b) "large building society" means a building society where the sum total of the following two values exceeds £25 billion—

(a) the value of shares issued by the building society that are not deferred shares, and

(b) the value of deposits held in accounts with the building society where one or more of the account holders is a small business.

(3) In paragraph (2)—

(a) "building society", "deferred shares", "deposit" and "share" have the meaning given by section 119 (interpretation) of the Building Societies Act 1986;

(b) a person is a small business only if the person is a small business for the purposes of section 7(10) (the funding limit) of the Building Societies Act 1986.

Interpretation: relevant regulator

34D.—(1) In this Part, "relevant regulator" means—

(a) in relation to a Class A, Class B, Class C or Class D institution, the PRA;

(b) in relation to a Class E institution, the FCA.

Interpretation: general

34E.—(1) In this Part—

"FPC framework" has the meaning set out in regulation 34G;

"systemic risk buffer" has the meaning given in regulation 34A(1);

"third country" means a country other than the United Kingdom;

"third country buffer rate" has the meaning given in regulation 34I(1).

(2) In this Part, a reference to an institution of a particular Class is to be construed in accordance with regulation 34B.

Overview

34F.—(1) In the remainder of this Part—

(a) Chapter 2 makes provision for United Kingdom buffer rates, including as to when buffer rates may be set for individual SRB institutions;

(b) Chapter 3 makes provision for the recognition of buffer rates in third countries, including as to when individual institutions must apply such buffer rates;

(c) Chapter 4 makes provision for the date from which the systemic risk buffer will apply to individual institutions and how such institutions are to be required to calculate the amount of their systemic risk buffer;

(d) Chapter 5 makes procedural provision relating to notifications, publication, reviews and appeals;

(e) Chapter 6 makes saving provisions for matters done before exit day.

CHAPTER 2

United Kingdom buffer rates for SRB institutions

The FPC framework

34G.—(1) The FPC must have a framework for systemic risk buffer rates in the United Kingdom established in accordance with this regulation ("the FPC framework").

(2) The FPC framework must contain the following elements—

(a) a set of criteria for assessing the extent to which the failure or distress of a SRB institution might pose a long term non-cyclical systemic or macro-prudential risk not covered by the capital requirements regulation;

(b) a methodology for measuring the criteria and giving a SRB institution a single score in relation to the criteria; and

(c) in relation to each score that a SRB institution may receive, a buffer rate that corresponds to the score.

(3) In paragraph (2)(a)—

(a) a SRB institution is in distress only if it experiences a significant deterioration in its financial situation;

(b) a long term non-cyclical systemic or macro-prudential risk means a risk of disruption to the financial system with the potential to have serious negative consequences for the financial system and the real economy in the United Kingdom.

(4) In paragraph (2)(a) the criteria to be specified must each be—

(a) measurable; and

(b) capable of being applied to SRB institutions on an individual basis, a sub-consolidated basis and a consolidated basis.

(5) In paragraph (2)(c) the only buffer rates that the FPC may specify are 0%, 1%, 1.5%, 2%, 2.5% and 3%.

(6) The way in which buffer rates correspond to scores in the FPC framework—

(a) must be clear, precise and unambiguous,

(b) must ensure that a score corresponds to one buffer rate only,

(c) may not be expressed in terms of a discretion conferred on a person or body (including the FPC), and

(d) may be expressed by way of a formula, an algorithm, a graph or a table.

Determination by PRA of buffer rates for individual SRB institutions

34H.—(1) The PRA must, in relation to each SRB institution, determine—

(a) whether or not to set a buffer rate for the institution; and

(b) where it does set a buffer rate, the level of the rate,

by applying the steps set out in paragraph (2).

(2) The steps set out in this paragraph are—

Step 1 – determining level of consolidation

The PRA must choose one of the following bases on which to apply the criteria specified in the FPC framework to the SRB institution—

(a) an individual basis;

(b) a sub-consolidated basis; or

(c) a consolidated basis.

Step 2 – deriving a framework buffer rate from the FPC framework

The PRA must derive a buffer rate from the FPC framework for the SRB institution ("a framework buffer rate") by—

(a) applying the methodology of the FPC framework to obtain a score for the SRB institution; and

(b) ascertaining to what buffer rate the score corresponds under the FPC framework.

Step 3 – setting a buffer rate for SRB institution based on supervisory judgment

The PRA may, if it makes a sound supervisory judgment that it is appropriate to do so—

(a) set a buffer rate for an SRB institution, even if it has derived a framework buffer rate for the institution of 0% under Step 2;

(b) set a buffer rate for an SRB institution which is different to the framework buffer rate derived for the institution under Step 2; or

(c) set no buffer rate for an SRB institution, even if it has derived a framework buffer rate for the institution of other than 0% under Step 2.

Where the PRA sets a buffer rate under sub-paragraph (a) or (b) of this Step the rate must be 1%, 1.5%, 2%, 2.5% or 3%.

Step 4 – setting a buffer rate for SRB institutions based on framework buffer rate

Unless the PRA exercises the discretion in Step 3—

(a) where the PRA derives a framework buffer rate under Step 2 of 0% for the SRB institution, the PRA may not set a buffer rate for the institution; and

(b) where the PRA derives a framework buffer rate under Step 2 other than 0% for the SRB institution, the PRA must set the rate so derived as the buffer rate for the institution.

CHAPTER 3

Third country buffer rates

Third country buffer rates: recognition

34I.—(1) In this Part, a "third country buffer rate" means—

(a) in relation to an EEA state, a buffer rate set in accordance with Article 133 of the capital requirements directive as it has effect in EU law as amended from time to time, or if revoked, by its successor; or

(b) in relation to a country other than the United Kingdom which is not an EEA state, a buffer rate set by the relevant authority of that country, that the PRA considers serves a similar purpose to the buffer rates that may be set in accordance with Article 133 of the capital requirements directive as it has effect in EU law as amended from time to time, or if revoked, by its successor.

(2) The PRA may decide to recognise a third country buffer rate ("a recognition decision").

(3) A recognition decision may relate to all institutions or institutions of a specified description.

(4) The PRA may revoke a recognition decision.

Third country buffer rates: application to institutions

34J.—(1) This regulation applies when a recognition decision (within the meaning of regulation 34I(2)) has effect in relation to a third country.

(2) The PRA may require an institution which is a PRA-authorised person and which satisfies the condition in paragraph (4) to apply the third country buffer rate.

(3) The FCA may require an institution which is not a PRA-authorised person and which satisfies the condition in paragraph (4) to apply the third country buffer rate.

(4) The condition in this paragraph is that the institution has exposures located in the third country.

(5) The powers in paragraphs (2) and (3), in relation to a recognition decision which is limited to institutions of a specified description (in accordance with regulation 34I(3)), apply only to institutions falling within the description.

(6) Where an institution is required to apply a third country buffer rate under paragraph (2) or (3), the PRA or the FCA (as the case may be) must specify, to the relevant institution, the basis to be applied in valuing exposures in accordance with Chapter 4 from one of the following bases—

(a) an individual basis,

(b) a sub-consolidated basis, or

(c) a consolidated basis.

(7) Paragraph (6) does not apply to a Class B institution.

(8) The PRA may not require an SRB institution to apply a third country buffer rate under paragraph (2) if—

(a) the PRA has set a buffer rate for the SRB institution under regulation 34H, and

(b) the buffer rate set under regulation 34H is greater than the third country buffer rate.

(9) The FCA or the PRA may revoke a requirement imposed under paragraph (2) or (3).

CHAPTER 4

Date of application and calculation of systemic risk buffer

Date of application

34K.—(1) Where the PRA sets a buffer rate for an SRB institution under regulation 34H, the PRA must decide the date from which the SRB institution must apply that rate in the calculation of its systemic risk buffer.

(2) Where the PRA has set a buffer rate for an SRB institution under regulation 34H and determines that a buffer rate is no longer to be set for the institution under the regulation, the PRA must decide the date from which this takes effect.

(3) Where the relevant regulator decides that an institution must apply a third country buffer rate under regulation 34J, the relevant regulator must decide the date from which the institution must apply the buffer rate in the calculation of its systemic risk buffer.

(4) Where the relevant regulator revokes a requirement that an institution apply a third country buffer rate under regulation 34J, the relevant regulator must decide the date from which the institution must cease to apply the buffer rate in the calculation of its systemic risk buffer.

Calculation: Class A institutions

34L.—(1) The PRA must require a Class A institution to calculate its systemic risk buffer by applying the buffer rate set for it under regulation 34H to all its exposures.

(2) The PRA must require the institution, for the purposes of the calculation required under paragraph (1), to—

(a) determine the value of its exposures by applying the level of consolidation selected by the PRA under Step 1 of regulation 34H(2), and

(b) apply the buffer rate equally to all exposures, regardless of where they are located.

Calculation: Class B institutions

34M.—(1) The PRA must require a Class B institution to calculate its systemic risk buffer by—

(a) applying the third country buffer rate to its exposures located within the third country, and

(b) applying the buffer rate set for it under regulation 34H to all its other exposures.

(2) The PRA must require the institution, for the purposes of the calculation required under paragraph (1), to—

(a) determine the value of its exposures by applying the level of consolidation selected by the PRA under Step 1 of regulation 34H(2), and

(b) apply the buffer rate set for it under regulation 34H equally to all exposures other than exposures located within the third country, regardless of where they are located.

Calculation: Class C, Class D and Class E institutions

34N.—(1) The relevant regulator must require a Class C, Class D or Class E institution to calculate its systemic risk buffer by applying the third country buffer rate to the value of its exposures located within the third country.

(2) The relevant regulator must require the institution, for the purposes of the calculation required under paragraph (1), to determine the value of its exposures by applying the level of consolidation selected by the relevant regulator under regulation 34J(6).

CHAPTER 5

Notifications, Publication, Review and Appeals

Notification: recognition of third country buffer rate

34O. Where the PRA gives or revokes a recognition decision under regulation 34I, it must notify—

(a) the FCA,

(b) the authorities of the third country which are responsible for supervision of undertakings, and

(c) if different, the authorities of the third country responsible for setting the buffer rate.

Publication: FPC framework

34P. The Bank must publish each element of the FPC framework set out in regulation 34G(2), together with the FPC's justification for each element.

Publication: UK buffer rates

34Q.—(1) Where the PRA sets a buffer rate for an SRB institution under regulation 34H, the PRA must publish the following information—

(a) the SRB institution to which the buffer rate applies,

(b) the buffer rate,

(c) the justification for setting the buffer rate,

(d) the date from which the SRB institution must apply the buffer rate,

(e) the level of consolidation to be used in the calculation of the systemic risk buffer (as determined under Step 1 of regulation 34H(2)), and

(f) the fact that the systemic risk buffer applies to exposures located anywhere in the world (unless a third country buffer rate is applied to the SRB institution under regulation 34J).

(2) Where the PRA determines that a buffer rate is no longer to be set for an SRB institution under regulation 34H, the PRA must publish the following information—

(a) the fact that the buffer rate is no longer set,

(b) if applicable, the fact that the SRB institution is no longer required to maintain a systemic risk buffer,

(c) the justification for ceasing to set the buffer rate, and

(d) the date from which the SRB institution may cease to apply the buffer rate.

(3) A reference to the PRA's justification in paragraphs (1)(c) and (2)(c) includes the PRA's justification for doing anything under Step 3 of regulation 34H(2).

(4) The PRA must not publish information under paragraph (1)(c) or (2)(c) if publication might jeopardise the stability of the financial system.

Publication: third country buffer rates

34R.—(1) Where the PRA recognises a third country buffer rate under regulation 34I, it must publish—

(a) the buffer rate, and

(b) the justification for recognising the buffer rate.

(2) Where the relevant regulator requires an institution to apply a third country buffer rate under regulation 34J, it must publish—

(a) the date from which the institution must apply the third country buffer rate,

(b) the location of the exposures to which the third country buffer rate relates,

(c) the level of consolidation which applies in the calculation of the systemic risk buffer, and

(d) the justification for its decision under regulation 34J(2) or (3) (as the case may be).

(3) The PRA or the FCA (as the case may be) must not publish information under paragraph (1)(b) or (2)(d) if publication might jeopardise the stability of the financial system.

(4) Where the relevant regulator revokes a requirement that an institution apply a third country buffer rate under regulation 34J, it must publish—

(a) the fact that the requirement has been revoked,

(b) the justification for its decision to revoke the requirement, and

(c) the date from which the institution may cease to apply the third country buffer rate.

Review

34S.—(1) The authority specified in the first column of the Table must review the matters set out in the second column at least every second year.

Table

Authority to conduct review	*Matter to be reviewed*
FPC	The elements of the FPC framework.
PRA	A buffer rate set under regulation 34H. A decision not to set a buffer rate under regulation 34H. A decision to recognise a third country buffer rate under regulation 34I.

Authority to conduct review	*Matter to be reviewed*
	A decision that an institution must apply a third country buffer rate under regulation 34J. A decision as to the level of consolidation to apply in relation to the application of a third country buffer rate under regulation 34J(6).
FCA	A decision that an institution must apply a third country buffer rate under regulation 34J. A decision as to the level of consolidation to apply in relation to the application of a third country buffer rate under regulation 34J(6).

Appeals

34T.—(1) A person who is aggrieved by a decision of the PRA under regulation 34H may refer the matter to the Tribunal.

(2) The scope of such an appeal is limited to—

(a) the application of Step 2 of regulation 34H(2), and

(b) the exercise of the PRA's discretion in Step 3 of regulation 34H(2).

CHAPTER 6

Savings

Savings provision

34U.—(1) Paragraph (2) and (3) apply in respect of provisions which were contained in Part 5A of these Regulations as they stood immediately before exit day, and for which there is a provision having equivalent effect in Part 5A of these Regulations after exit day.

(2) Anything done—

(a) in accordance with Part 5A of these Regulations, as they stood immediately before exit day; and

(b) which was in force or effective immediately before exit day;

continues to remain in force or effective on or after exit day, as though it had been done under the regulation having equivalent effect in Part 5A after exit day.

(3) Anything which was—

(a) in accordance with Part 5A of these Regulations, as they stood immediately before exit day; and

(b) in the process of being done immediately before exit day;

continues to be in the process of being done on or after exit day, as though it was proceeding under the regulation having equivalent effect in Part 5A after exit day."(**1**).

(**1**) In regulation 34C, Building Societies Act 1986 c.53. In regulation 34I, Directive 2013/36/EU, OJNo. L. 176, 27.6.2013, p338-436.