STATUTORY INSTRUMENTS

2014 No. 894

FINANCIAL SERVICES AND MARKETS

The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014

Made - - - -	*1st April 2014*
Laid before Parliament	*3rd April 2014*
Coming into force in accordance with regulation 1	

The Treasury are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, make the following Regulations:

PART 1

Introductory provisions

Citation, commencement and cessation

1.—(1) These Regulations may be cited as the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

(2) Regulations 1 to 3, 7 to 13, 15 to 20, and 36 come into force on 1st May 2014.

(3) Regulations 4 to 6, 14, and 21 to 34 come into force on 1st January 2016.

(4) Regulation 35 comes into force on—

(a) 1st May 2014 so far as it relates to the institution-specific countercyclical capital buffer; and

(b) 1st January 2016 so far as it relates to the capital conservation buffer and the G-SII buffer.

(**1**) S.I. 2012/1759.

(**2**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and |Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under s2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(5) Regulations 13 and 19 cease to have effect on 1st January 2016.

Interpretation

2.—(1) In these Regulations—

"appropriate regulator" means the PRA in relation to a PRA-authorised person and the FCA in relation to any other person;

"the Bank" means the Bank of England;

"capital conservation buffer" has the meaning given by Article 128(1) of the capital requirements directive;

"combined buffer requirement" has the meaning given by Article 128(6) of the capital requirements directive, but with point (c) (reference to O-SII buffer) omitted;

"common equity tier 1 capital" has the same meaning as in Chapter 2 of Title 1 of Part 2 of the capital requirements regulation;

"countercyclical capital buffer" has the same meaning as in Articles 130, and 135 to 140, of the capital requirements directive;

"EEA parent financial holding company" means a parent financial holding company in an EEA State which is not a subsidiary of an institution authorised in an EEA State, or of another financial holding company or mixed financial holding company set up in an EEA State(**3**);

"EEA parent institution" means a parent institution in an EEA State which is not a subsidiary of another institution authorised in an EEA State, or of a financial holding company or mixed financial holding company set up in an EEA State(**4**);

"EEA parent mixed financial holding company" means a parent mixed financial holding company in an EEA State which is not a subsidiary of an institution authorised in an EEA State, or of another financial holding company or mixed financial holding company set up in an EEA State(**5**);

"ESRB" means the European Systemic Risk Board established under Regulation (EU) 1092/2010 of 24 November 2010 of the European Parliament and of the Council on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board(**6**);

"FPC" means the Financial Policy Committee of the Bank of England(**7**);

"FSMA" means the Financial Services and Markets Act 2000(**8**);

"G-SII" means a global systemically important institution(**9**);

"G-SII buffer" has the meaning given by Article 128(3) of the capital requirements directive;

"institution-specific countercyclical capital buffer" has the meaning given by Article 128(2) of the capital requirements directive;

(**3**) The terms "authorisation", "financial holding company", "institution", "mixed financial holding company" and "subsidiary" are defined in Article 4(1) of the capital requirements regulation and apply here by virtue of regulation 2(2)(a).
(**4**) The terms "authorisation", "financial holding company", "institution", "mixed financial holding company" and "subsidiary" are defined in Article 4(1) of the capital requirements regulation and apply here by virtue of regulation 2(2)(a).
(**5**) The terms "authorisation", "financial holding company", "institution", "mixed financial holding company" and "subsidiary" are defined in Article 4(1) of the capital requirements regulation and apply here by virtue of regulation 2(2)(a).
(**6**) OJ no L331, 15/12/2010, p1.
(**7**) The Financial Policy Committee was established by section 9B of the Bank of England Act 1998 (c.11), which was inserted by section 4(1) of the Financial Services Act 2012 (c. 21).
(**8**) 2000 c. 8.
(**9**) The terms "G-SII" and "global systemically important institution" are used in Article 131 of the capital requirements directive. "Systemically important institution" is defined in Article 3(30) of the capital requirements directive and applies here by virtue of regulation 2(2)(a).

"O-SII" means other systemically important institution(**10**);

"O-SII buffer" has the meaning given by Article 128(4) of the capital requirements directive;

(2) Except as provided by paragraph (1)—

(a) any expression used in these Regulations which is defined in Article 4 (definitions) of the capital requirements regulation or Article 3 (definitions) of the capital requirements directive has the meaning which it is given in that Article(**11**);

(b) any other expression used in these Regulations which is defined in section 417 (definitions) of the Financial Services and Markets Act 2000(**12**) has the meaning given by that section.

(3) A reference in these Regulations to an institution maintaining a buffer has the same meaning as in Articles 128 to 142 of the capital requirements directive.

(4) A reference in these Regulations to small or medium sized investment firms must be construed in accordance with Commission Recommendation 2003/361/EC of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises(**13**).

Conferral of functions or discretion on the FPC

3. Where these Regulations confer a function or discretion on the FPC, the FPC must exercise that function or discretion.

Appeals: application of Part 9 of the Financial Services and Markets Act 2000

4. Part 9 of FSMA (hearings and appeals) applies to a reference to the Tribunal under these regulations as it applies to a reference to the Tribunal under an Act.

PART 2

Capital conservation buffer

Transitional provisions: 1st January 2016 to 31st December 2018

5.—(1) The appropriate regulator must apply the capital conservation buffer in accordance with the following transitional provisions.

(2) In 2016, the capital conservation buffer must consist of common equity tier 1 capital equal to 0.625% of the total of the risk-weighted exposure amounts of an institution.

(3) In 2017, the capital conservation buffer must consist of common equity tier 1 capital equal to 1.25% of the total of the risk-weighted exposure amounts of an institution.

(4) In 2018, the capital conservation buffer must consist of common equity tier 1 capital equal to 1.875% of the total of the risk-weighted exposure amounts of an institution.

(5) The risk weighted exposure amounts of an institution must be calculated in accordance with Article 92(3) of the capital requirements regulation.

(**10**) The terms "O-SII" and "other systemically important institution" are used in Article 131 of the capital requirements directive. "Systemically important institution" is defined in Article 3(30) of the capital requirements directive and applies here by virtue of regulation 2(2)(a).

(**11**) "authorisation", "consolidated basis", "financial holding company", "institution", "investment firm", "mixed financial holding company", "sub-consolidated basis" and "subsidiary" are all defined in these Articles.

(**12**) 2000 c.8. Section 417 was amended by section 48(1) of the Financial Services Act 2012 (c. 21), S.I. 2010/22, S.I. 2012/916 and S.I. 2013/3115. There are other amending enactments, but none is relevant to these Regulations. Section 417 includes definitions of "capital requirements directive", "capital requirements regulation" and "Tribunal".

(**13**) OJ no L 124, 20.5.2003, p36.

Exemption for small and medium-sized investment firms

6.—(1) The FCA may exempt a small or medium-sized investment firm, or small or medium-sized investment firms of a specified description, from the requirement to maintain a capital conservation buffer where the exemption does not threaten the stability of the financial system of the United Kingdom.

(2) Where the FCA decides to grant such an exemption, its decision must—

(a) contain an exact definition of the small or medium-sized investment firms exempted;

(b) be fully reasoned; and

(c) explain why the exemption does not threaten the stability of the financial system of the United Kingdom.

(3) The FCA must notify a decision to grant an exemption to the European Commission, the ESRB, EBA and the competent authorities of the other EEA States which are responsible for the exercise of the duties of a competent authority under the capital requirements directive and capital requirements regulation.

PART 3

Countercyclical Capital Buffer

CHAPTER 1

Designated authority and interpretation

Designated authority

7. The Bank is the designated authority for the purposes of Article 136(1) of the capital requirements directive.

Meaning of "UK institution"

8. In this Part—

"EEA authority" means an authority designated in an EEA State other than the United Kingdom for the purposes of Article 136(1) of the capital requirements directive;

"UK institution" means an institution with permission to carry on a regulated activity under Part 4A of FSMA.

CHAPTER 2

Exposures located in the United Kingdom

The buffer guide

9.—(1) The FPC must calculate for every quarter a buffer guide as a reference to guide its exercise of judgement in assessing and setting the buffer rate in accordance with regulation 10.

(2) The buffer guide must—

(a) reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in the United Kingdom; and

(b) duly take into account the specificities of the economy of the United Kingdom.

(3) The buffer guide must be based on the deviation of the ratio of credit to gross domestic product from its long term trend, taking into account—

(a) an indicator of the growth of levels of credit within the United Kingdom and, in particular, an indicator reflecting the changes in the ratio of credit granted in the United Kingdom to gross domestic product; and

(b) any guidance maintained by the ESRB in accordance with Article 135(1)(b) of the capital requirements directive.

Countercyclical buffer rate

10.—(1) The FPC must assess and set a buffer rate for the United Kingdom.

(2) The purpose of the buffer rate is to enable institutions with exposures located in the United Kingdom to calculate their institution-specific countercyclical capital buffers.

(3) The buffer rate must be assessed and set on a quarterly basis, taking into account—

(a) the buffer guide calculated in accordance with regulation 9(1);

(b) any current guidance maintained by the ESRB in accordance with Articles 135(1)(a), (c) and (d) of the capital requirements directive;

(c) any recommendation issued by the ESRB on setting buffer rates for the countercyclical capital buffer; and

(d) any other variables that the FPC considers relevant for addressing cyclical systemic risk.

(4) The buffer rate must be expressed as a percentage of the total risk exposure of institutions with exposures located in the United Kingdom.

(5) Total risk exposure must be calculated in accordance with Article 92(3) of the capital requirements regulation.

(6) The buffer rate must be—

(a) set between 0% and 2.5%, except where the matters referred to in paragraph (3) justify a higher rate; and

(b) an integer multiple of 0.25%.

Date from which changes to the buffer rate apply

11.—(1) Where the FPC—

(a) sets the buffer rate above zero for the first time; or

(b) increases the buffer rate;

it must decide the date from which UK institutions must apply the buffer rate for the purposes of calculating their institution-specific countercyclical capital buffers.

(2) The date referred to in paragraph (1) must be 12 months after the date when the buffer rate is published in accordance with regulation 12(1), unless an earlier date is justified on the basis of exceptional circumstances.

(3) Where the FPC reduces the buffer rate, it must decide on an indicative period during which no increase in that rate is expected.

(4) The indicative period referred to in paragraph (3) is not be binding on the FPC.

Announcement of changes to the buffer rate

12.—(1) The Bank must publish the following information on its website—

(a) the buffer rate assessed and set by the FPC in accordance with regulation 10(1);

(b) the relevant ratio of credit to gross domestic product and its deviation from the long-term trend;

(c) the buffer guide calculated by the FPC in accordance with regulation 9;

(d) the reasons for the FPC's decision on the level of the buffer rate.

(2) Where the FPC decides to increase the buffer rate, the Bank must publish on its website—

(a) the date from which UK institutions must apply the new buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer; and

(b) any exceptional circumstances which justify any decision by the FPC to require institutions to apply the new buffer rate less than a year after it is published.

(3) Where the FPC decides to decrease the buffer rate, the Bank must publish on its website the indicative period referred to in regulation 11(3) and the FPC's reasons for choosing that period.

(4) The Bank must take all reasonable steps to co-ordinate the timing of the publication of the buffer rate with the publication by the EEA authorities of the buffer rates for the countercyclical capital buffer in the EEA.

(5) Every quarter, the Bank must notify the ESRB of the information referred to in paragraphs (1) to (3).

CHAPTER 3

Exposures located outside the United Kingdom

Buffer rates for EEA exposures: before 1st January 2016

13.—(1) This regulation(**14**) applies where—

(a) an EEA State other than the United Kingdom has implemented the countercyclical capital buffer before 1st January 2016; and

(b) the EEA authority for that EEA State has set a buffer rate ("the EEA buffer rate") for that EEA State, for the purpose of enabling institutions with exposures located in that EEA State to calculate their institution-specific countercyclical capital buffers.

(2) The FPC may—

(a) recognise the EEA buffer rate; or

(b) set a buffer rate for that EEA State which is less than the EEA buffer rate.

(3) The purpose for which a buffer rate may be recognised or set under paragraph (2) is so that UK institutions with exposures located in that EEA State may be required by the PRA and FCA to apply that buffer rate in their calculation of their institution-specific countercyclical capital buffers.

(4) The FPC may not set a buffer rate for an EEA State other than the United Kingdom except as permitted by this regulation.

Buffer rates for EEA exposures: on or after 1st January 2016

14.—(1) This regulation(**15**) applies where—

(a) an EEA authority has set a buffer rate ("the EEA buffer rate") for that EEA State, for the purpose of enabling institutions with exposures in that EEA State to calculate their institution-specific countercyclical capital buffer; and

(b) the EEA buffer rate exceeds 2.5%.

(**14**) This regulation ceases to have effect on 1st January 2016. See regulation 1(5).
(**15**) This regulation commences on 1st January 2016. See regulation 1(3).

(2) The FPC may recognise the EEA buffer rate, so that UK institutions with exposures located in that EEA State may be required by the PRA and FCA to apply the EEA buffer rate in their calculation of their institution-specific countercyclical capital buffers.

Buffer rates for exposures outside the EEA

15.—(1) This regulation specifies the circumstances in which the FPC may recognise or set a buffer rate for exposures—

(a) held by a UK institution; and

(b) located in a country outside of the EEA (a "third country").

(2) Where the supervisory authority of the third country has not set and published a buffer rate for a capital buffer serving the same purpose as the countercyclical capital buffer, the FPC may set a buffer rate for the third country.

(3) Where the supervisory authority of the third country sets a buffer rate of more than 2.5% for a capital buffer serving the same purpose as the countercyclical capital buffer, the FPC may recognise that buffer rate.

(4) Where the supervisory authority of the third country sets a buffer rate (the "third country buffer rate") for a capital buffer serving the same purpose as the countercyclical capital buffer and the FPC reasonably considers that the third country buffer rate is not sufficient to protect UK institutions from the risks of excessive credit growth in the third country, the FPC may—

(a) set a buffer rate for the third country which is higher than the third country buffer rate; or

(b) set a buffer rate for the third country which is lower than the third country buffer rate, provided the buffer rate set by the FPC exceeds 2.5%.

(5) The purpose for which a buffer rate may be recognised or set under this regulation is so that UK institutions with exposures located in the third country may be required by the PRA and FCA to apply that buffer rate in their calculation of their institution-specific countercyclical capital buffers.

Buffer rates: integer multiples of 0.25%

16. A buffer rate set by the FPC under regulation 13(2)(b), 15(2) or 15(4) must be an integer multiple of 0.25%.

Date of application of buffer rates

17.—(1) Where FPC—

(a) recognises or sets a buffer rate under regulations 13, 14 or 15 in relation to exposures located outside the United Kingdom; and

(b) the buffer rate is higher than the buffer rate which UK institutions are currently required to apply in relation to those exposures when calculating their institution-specific countercyclical capital buffers;

then the FPC must decide the date from which UK institutions must apply the buffer rate for the purposes of calculating their institution-specific countercyclical capital buffers.

(2) The date referred to in paragraph (1)—

(a) may only be earlier than 12 months after the date when the buffer rate is published if such a date is justified on the basis of exceptional circumstances; and

(b) may not be later than 12 months after the date when the buffer rate is published where the FPC has set the buffer rate under regulation 15(2) or 15(4).

Announcement of changes to buffer rates

18.—(1) Where the FPC recognises or sets a buffer rate under regulations 13, 14 or 15, the Bank must publish the FPC's decision on its website.

(2) The Bank must also publish the following information when a decision is published under paragraph (1)—

(a) the buffer rate;

(b) where the FPC has set the buffer rate under regulation 15(2) or 15(4), the justification for the buffer rate;

(c) the EEA State or country to which that buffer rate applies;

(d) the date from which the buffer rate applies; and

(e) any exceptional circumstances justifying a date of application of less than twelve months after the date of publication.

CHAPTER 4

Institution-specific countercyclical capital buffers

Calculation of buffer before 1st January 2016

19.—(1) The appropriate regulator must require institutions to calculate their institution-specific countercyclical capital buffers in accordance with Article 140 of the capital requirements directive, subject to the modifications set out in paragraph (2)(**16**).

(2) The countercyclical buffer rate for exposures located in an EEA State other than the United Kingdom is—

(a) the buffer rate recognised or set for that EEA State by the FPC under regulation 13; or

(b) 0% otherwise.

Exemption for small and medium-sized investment firms

20.—(1) The FCA may exempt a small or medium-sized investment firm, or small or medium-sized investment firms of a specified description, from the requirement to maintain an institution-specific countercyclical capital buffer where such an exemption does not threaten the stability of the financial system of the United Kingdom.

(2) Where the FCA decides to grant such an exemption, its decision must—

(a) contain an exact definition of the small and medium-sized investment firms which are exempted;

(b) be fully reasoned; and

(c) explain why the exemption does not threaten the stability of the financial system of the United Kingdom.

(3) The FCA must notify a decision to grant an exemption to the European Commission, the ESRB, EBA and the competent authorities of other EEA States which are responsible for the exercise of the duties of a competent authority under the capital requirements directive and capital requirements regulation.

(**16**) This regulation ceases to have effect on 1st January 2016. See regulation 1(5).

PART 4

G-SII Buffer

Designated authority

21. The PRA is the authority responsible for identifying G-SIIs and requiring G-SIIs to maintain a G-SII buffer.

G-SIIs: location and nature

22.—(1) A G-SII must be—

(a) a person with permission to carry on a regulated activity for the purposes of Part 4A of FSMA; or

(b) a person established in the United Kingdom.

(2) A G-SII must also be—

(a) an EEA parent institution;

(b) an EEA parent financial holding company;

(c) an EEA parent mixed financial holding company; or

(d) an institution authorised in the EEA which is not a subsidiary of a body mentioned in subparagraphs (a) to (c).

Identification methodology

23.—(1) In order to identify whether a particular body ("the relevant body") is a G-SII, the PRA must apply an identification methodology to the relevant body on a consolidated basis.

(2) Where the relevant body is an EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company, the identification methodology must be applied in accordance with any directly applicable regulation made under Article 131(18) of the capital requirements directive.

(3) The identification methodology must be based on the following criteria—

(a) the size of the group to which the relevant body belongs;

(b) the interconnectness of the group within the financial system;

(c) the extent to which an entity or entities outside the group could provide the services or financial infrastructure which the group provides;

(d) the complexity of the group;

(e) the extent of the group's cross-border activity, including cross-border activity between EEA States and between an EEA State and a country outside the EEA.

(4) Each criteria in the identification methodology must consist of quantifiable indicators and be given an equal weighting.

(5) The identification methodology must result in an overall score for the relevant body which allows the PRA to—

(a) determine whether the relevant body is a G-SII; and

(b) if the relevant body is a G-SII, allocate the relevant body to an appropriate sub-category of G-SII;

in accordance with the sub-categories of G-SII defined by the PRA in accordance with regulation 24.

Sub-catgories of G-SII and corresponding buffer rates

24.—(1) The PRA must define the sub-categories of G-SII in accordance with this regulation and any directly applicable regulation made under Article 131(18) of the capital requirements directive.

(2) There must be five or six sub-categories of G-SII.

(3) The lowest boundary and the boundaries between each sub-category must be determined by the scores under the identification methodology.

(4) The cut-off scores between adjacent sub-categories must—

(a) be defined clearly; and

(b) ensure that there is a linear relationship between the systemic significance represented by the sub-categories and the G-SII buffer rates assigned to those sub-categories.

(5) Where there are five sub-categories, the cut-off score between the highest sub-category and the sub-category immediately below it need not comply with paragraph (4)(b).

(6) The following G-SII buffer rates must be assigned to the sub-categories—

(a) 1% for the lowest sub-category;

(b) 3.5% for the highest sub-category;

(c) for all other sub-categories, the rate must be 0.5% higher than the rate assigned to the sub-category immediately below it.

Re-allocation in exercise of sound supervisory judgement

25. The PRA may, in the exercise of sound supervisory judgement—

(a) determine that a body is a G-SII, notwithstanding the fact that the body is not recognised as a G-SII in accordance with the PRA's identification methodology and the sub-categories which the PRA has defined;

(b) allocate a G-SII to a higher sub-category to that indicated by its score under the identification methodology and the sub-categories which the PRA has defined.

Notification, publication and review

26.—(1) The PRA must provide the names of the G-SIIs it has identified, together with the sub-category to which each has been allocated, to the Commission, the ESRB and EBA.

(2) The PRA must notify EBA when it allocates a G-SII to a higher sub-category than its score under the identification methodology would indicate, in accordance with regulation 25(b).

(3) The PRA's notification under paragraph (2) must include its reasons for exercising its discretion under regulation 25(b).

(4) The PRA must publish an up-to-date list of the names of the G-SIIs it has identified and the sub-category to which each has been allocated.

(5) The PRA must review its identification of G-SIIs and their allocation to sub-categories annually and report the results of its review to the bodies concerned, the Commission, the ESRB and EBA.

Appeals

27.—(1) Where a person is aggrieved at the PRA's decision—

(a) that the person is, or is not, a G-SII; or

(b) to allocate that person to a particular sub-category of G-SII;

then the person may refer the matter to the Tribunal.

(2) The scope of an appeal under paragraph (1) is limited to the application of the PRA's identification methodology and sub-categories of G-SII to the aggrieved person.

Transitional provision: 1st January 2016 to 31st December 2019

28. In the period beginning with 1st January 2016 and ending on 31st December 2019, the PRA must apply the G-SII buffer in accordance with the transitional provisions at Article 162(5) of the capital requirements directive.

PART 5

O-SIIs

Designated authority

29. The PRA is the authority responsible for identifying O-SIIs.

O-SIIs: location and nature

30.—(1) An O-SII must be—

(a) a person with permission to carry on a regulated activity for the purposes of Part 4A of FSMA; or

(b) a person established in the United Kingdom.

(2) An O-SII must also be—

(a) an EEA parent institution;

(b) an EEA parent financial holding company;

(c) an EEA parent mixed financial holding company; or

(d) an institution.

Identification of O-SIIs

31.—(1) In order to assess whether a particular body ("the relevant body") is an O-SII, the PRA must base its assessment on the systemic importance of the relevant body on an individual, sub-consolidated or consolidated basis.

(2) The assessment of systemic importance must include a consideration of one or more of the following criteria—

(a) the size of the relevant body;

(b) the importance of the relevant body to economy of the United Kingdom or the European Union;

(c) the significance of the relevant body's cross-border activities; and

(d) the interconnectedness of the relevant body, or the group to which it belongs, with the financial system.

Notification, publication and review

32.—(1) The PRA must provide the names of the O-SIIs it has identified to the Commission, the ESRB and EBA.

(2) The PRA must publish an up-to-date list of the names of the O-SIIs it has identified.

(3) The PRA must review its identification of O-SIIs annually and report the results of its review to the bodies concerned, the Commission, the ESRB and EBA.

Appeals

33. Where a person is aggrieved at the PRA's decision that the person is, or is not, an O-SII, then the person may refer the matter to the Tribunal.

No requirement to maintain an O-SII buffer

34. No O-SII may be required to maintain an O-SII buffer.

PART 6

Combined buffer requirement

Combined buffer requirement

35. The appropriate regulator is responsible for requiring institutions to comply with the combined buffer requirement.

PART 7

Macro-prudential measures: procedure

Amendments to the Bank of England Act 1998

36.—(1) The Bank of England Act 1998(**17**) is amended as follows.

(2) In section 2AA(**18**) (macro-prudential measures: Article 458 of the capital requirements regulation), after subsection (2) insert—

> "(3) The Bank must undertake (in relation to a measure falling within subsection (1)) the notification process required by Article 458 of the capital requirements regulation ("the Article 458 notification process") in any case where it is requested to do so by the Financial Policy Committee in connection with—
>
> (a) a direction that the Committee has given or proposes to give under section 9H, or
>
> (b) recommendations that the Committee has made or proposes to make under section 9Q.
>
> (4) The Treasury must undertake (in relation to a measure falling within subsection (2)) the Article 458 notification process in any case where they are requested to do so by the Financial Policy Committee in connection with recommendations that the Committee has made or proposes to make under section 9Q.
>
> (5) Subsections (3) and (4) do not require the Bank or the Treasury to undertake the Article 458 notification process if—
>
> (a) the Financial Policy Committee revokes the request, or

(**17**) 1998 c. 11.
(**18**) Section 2AA was inserted by S.I. 2013/3115.

(b) the Bank considers (in a case within subsection (3)), or the Treasury consider (in a case within subsection (4)), that the measure is incompatible with EU law.

(6) Neither the Bank nor the Treasury may undertake the Article 458 notification process except in accordance with subsection (3) or (4).

(7) Where the Bank undertakes the Article 458 notification process, it must consult the Treasury about the assessment required by Article 458(2)(f) of the capital requirements regulation.

(8) Where the Financial Policy Committee requests the Treasury to undertake the Article 458 notification process, it must include in the request any information that would in its opinion be relevant to any notification by the Treasury.".

(3) In section 9H(**19**)(directions to FCA or PRA requiring macro-prudential measures), after subsection (10) insert—

"(11) Before giving a direction under this section, the Financial Policy Committee—

(a) must consider whether the measure is one to which Article 458 of the capital requirements regulation applies, and

(b) if the Committee is of the opinion that it is, may request the Bank to complete the notification process required by that Article.".

(4) In section 9I(**20**)(compliance with directions under section 9H)—

(a) after subsection (1) insert—

"(1A) But where a direction under section 9H concerns the implementation of a measure to which Article 458 of the capital requirements regulation applies, the regulator—

(a) is not required to comply with the direction unless it has been notified by the Financial Policy Committee that the measure is authorised in accordance with that Article, and

(b) must then comply with the direction as soon as reasonably practicable."; and

(b) after subsection (4) insert—

"(4A) For the purposes of subsection (1A), a measure is authorised in accordance with Article 458 of the capital requirements regulation if the notification process required by that Article has been completed and any of the following applies—

(a) the period during which the European Commission may issue a proposal for an implementing act to reject the draft measure has expired and no such proposal has been issued,

(b) where the European Commission has issued a proposal for an implementing act to reject the draft measure, the period during which the Council of the European Union may adopt a decision in the form of an implementing act to reject the draft measure has expired without any such decision being adopted, or

(c) the measure falls within Article 458(10).".

(5) In section 9Q(**21**) (recommendations to FCA and PRA), after subsection (4), insert—

"(4A) Before making recommendations under this section, the Financial Policy Committee—

(**19**) Section 9H was inserted by section 4(1) of the Financial Services Act 2012.
(**20**) Section 9I was inserted by section 4(1) of the Financial Services Act 2012.
(**21**) Section 9Q was inserted by section 4(1) of the Financial Services Act 2012.

(a) must consider whether acting in accordance with the recommendations would involve a measure to which Article 458 of the capital requirements regulation applies, and

(b) if the Committee is of the opinion that it would, may—

(i) where the measure falls within section 2AA(1), request the Bank to complete the notification process required by that Article, or

(ii) where the measure falls within section 2AA(2), request the Treasury to complete that process.

(4B) If the body to which recommendations under this section are made is of the opinion that the implementation of the recommendations would involve a measure to which Article 458 of the capital requirements regulation applies, that body must—

(a) state that opinion to the Financial Policy Committee, and

(b) indicate to the Financial Policy Committee whether it intends to act in accordance with the recommendations if the measure is authorised in accordance with Article 458.

(4C) Subsection (4B)(b) is to be read in accordance with section 9I(4A).".

(6) In section 9U(**22**) (publication of record of meetings)—

(a) in subsection (3), after paragraph (b) insert—

"(c) to make or revoke a request under section 2AA(3) or (4);

(d) made under the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014."; and

(b) in subsection (8), after paragraph (e) insert—

"(f) information about a decision to make a request under section 2AA(3) or (4) which has been revoked before the record of the meeting at which it was given is published;

(g) information about the decision to revoke a request under section 2AA(3) or (4) where information about the request is withheld under paragraph (f).".

Anne Milton
Mark Lancaster
Two of the Lords Commissioners of Her Majesty's Treasury

1st April 2014

(**22**) Section 9U was inserted by section 4(1) of the Financial Services Act 2012.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part the provisions relating to capital buffers in Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ no L176, 27/6/2013, p. 338; for corrigenda see OJ no L208, 2/8/2013, p.73). This directive ("the capital requirements directive") is part of a package of EU legislation commonly known as "CRD4". Articles 128 to 142, 160 and 162 of the capital requirements directive are concerned with capital buffers. Further implementation of the capital buffers provisions will be achieved through rules, or other binding requirements, imposed by the Prudential Regulation Authority ("PRA") and Financial Conduct Authority ("FCA").

The Regulations also make provision in relation to the notification procedure under Article 458 of Regulation 575/2013/EU of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ no L176, 27/6/2013, p.1, for corrigenda see OJ no L208, 27/6/2013, p.68 and OJ no L321, 30/11/2013, p.6) ("the capital requirements regulation").

Part 1 contains provisions relating to commencement, cessation and interpretation. The countercyclical capital buffer commences on 1st May 2014 and the other capital buffers commence on 1st January 2016.

Part 2 is concerned with the capital conservation buffer (Articles 129 and 160 of the capital requirements directive). The buffer rate is set at 2.5% under Article 129(1), subject to the transitional provisions at Article 160 which are implemented by regulation 5. The FCA is given the power to exempt small or medium-sized investment firms in appropriate circumstances.

Part 3 is concerned with the countercyclical capital buffer (Articles 130, and 135 to 140, of the capital requirements directive). Under the capital requirements directive, institutions must calculate an institution-specific countercyclical capital buffer rate by taking a weighted average of the countercyclical buffer rates set by macro-prudential regulatory authorities in the countries in which its exposures are located. By virtue of regulation 10, the Financial Policy Committee (a statutory sub-committee of the Court of the Bank of England) will set the buffer rate for the United Kingdom. Regulations 13, 14 and 15 specify the circumstances in which the Financial Policy Committee may recognise or set a buffer rate for a country other than the United Kingdom.

Part 4 is concerned with the "G-SII" buffer (Articles 131 and 162(5) of the capital requirements directive). G-SII is a term used in the capital requirements directive as an abbreviation for "global systemically significant institution". Under Part 4, the PRA must identify G-SIIs using an identification methodology and various sub-categories, with the buffer rates for each sub-category specified by regulation 24(6). The transitional provisions at Article 162(5) of the capital requirements directive are applied by regulation 28.

Part 5 is concerned with "O-SII"s (Article 131 of the capital requirements directive). O-SII is a term used in the capital requirements directive to describe "other systemically significant institutions". Under Part 5, the PRA must identify O-SIIs. However, the the provisions of the capital requirements directive requiring O-SIIs to maintain a specific O-SII buffer are not mandatory and the United Kingdom is not implementing them.

Part 6 provides that the PRA and FCA are responsible for requiring institutions to comply with the combined buffer requirement. The combined buffer required is the total amount of Common Equity Tier 1 capital required to meet all the buffers which apply to an institution.

Part 7 amends the Bank of England Act 1998 to make provision for the notification procedure under Article 458 of the capital requirements regulation.

A Transposition Table setting out how the relevant provisions of the capital requirements directive are transposed into UK law is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ.

Impact assessments of the effect that these Regulations will have on the costs of business and the voluntary sector are available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ and from—

(a) http://www.legislation.gov.uk/ukia/2013/1156/pdfs/ukia_20131156_en.pdf) in relation to the macro-prudential measures; and

(b) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223566/PU1488_Banking_reform_consultation_-_online-1.pdf in relation to the other measures.