

**2015 No. 19**

**FINANCIAL SERVICES AND MARKETS**

**The Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) Regulations 2015**

*Made* - - - - *12th January 2015*

*Laid before Parliament* *13th January 2015*

*Coming into force in accordance with paragraphs (2) to (4) of regulation 1*

The Treasury are designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> 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:

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) Regulations 2015.

(2) Regulation 2(4) comes into force on 31st May 2016 in so far as it relates to the insertion of the following provisions of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014—

- (a) regulations 34A to 34D, 34F, 34N(1) to (2); and
- (b) regulation 34O so far as it relates to the FPC.

(3) Regulation 2(4) comes into force on 1st January 2019 in so far as it relates to the insertion of the following provisions of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014—

- (a) regulations 34E, 34G to 34M, 34N(3) to (8), and 34P; and
- (b) regulation 34O so far as it relates to the PRA and FCA.

(4) The remaining provisions of these Regulations come into force on 31st May 2016.

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<sup>(a)</sup> S.I. 2012/1759.

<sup>(b)</sup> 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).

## **Amendments to the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.**

**2.**—(1) The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014<sup>(a)</sup> are amended as follows.

(2) In regulation 1 (citation, commencement and cessation), in paragraph 4—

- (a) at the end of sub-paragraph (a) omit “and”;
- (b) at the end of sub-paragraph (b) insert “; and”; and
- (c) after sub-paragraph (b) insert—

“(c) 1st January 2019 so far as it relates to the systemic risk buffer.”.

(3) In regulation 2(1) (interpretation), after the definition of “O-SII buffer”, insert—

““systemic risk buffer” has the meaning given by Article 128(5) of the capital requirements directive<sup>(b)</sup>.”.

(4) After regulation 34 insert—

### **“PART 5A**

#### **Systemic Risk Buffer**

##### **CHAPTER 1**

##### **Introduction**

#### **Meaning of “EEA buffer rate”**

**34A.** In this Part, an “EEA buffer rate” means a buffer rate set by an authority in an EEA State other than the United Kingdom pursuant to Article 133 (requirement to maintain a systemic risk buffer) of the capital requirements directive.

#### **Meaning of “individual basis”**

**34B.** In this Part, “individual basis” has the same meaning as in Article 133(3) of the capital requirements directive.

#### **Meaning of “mapping”**

**34C.** In this Part, a “mapping” means the correspondence between scores and buffer rates specified by the FPC in accordance with regulation 34F(5).

#### **Meaning of “SRB institution”**

**34D.**—(1) In this Part, an “SRB institution” means—

- (a) a ring-fenced body within the meaning of section 142A of FSMA<sup>(c)</sup>; or
- (b) a body satisfying conditions A and B in paragraphs (2) and (3) below.

(2) Condition A is that the body is a building society within the meaning given by section 119 (interpretation) of the Building Societies Act 1986<sup>(d)</sup>.

(3) Condition B is that the sum total of the following two values exceeds £25 billion—

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(a) S.I. 2014/894.

(b) OJ no. L176, 27.6.2013, p.338.

(c) “FSMA” is defined in regulation 2(1) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 to mean the Financial Services and Markets Act 2000 (c. 8). Section 142A was inserted by section 4(1) of the Financial Services (Banking Reform) Act 2013 (c. 33).

(d) 1986 c. 53, to which there are amendments not relevant to this regulation.

- (a) the value of shares issued by the body which are not deferred shares; and
  - (b) the value of deposits held in accounts with the body where one or more of the account holders is a small business.
- (4) In paragraph (3)—
- (a) “deferred shares”, “deposit” and “share” have the meaning given by section 119 of the Building Societies Act 1986(a); and
  - (b) a person is a small business if and only if the person is a small business for the purposes of section 7(10) (the funding limit) of the Building Societies Act 1986(b).

**Designated authorities**

**34E.** For the purposes of Article 133(2) of the capital requirements directive, the PRA and FCA are the designated authorities for each of the functions allocated to them by this Part.

CHAPTER 2

United Kingdom rates

**FPC: criteria, methodology and mapping**

**34F.**—(1) The FPC must specify a set of criteria for assessing the extent to which the failure or distress of an SRB institution might pose a long term non-cyclical systemic or macro-prudential risk not covered by the capital requirements regulation(c).

- (2) For the purposes of paragraph (1)—
- (a) an SRB institution is in distress if and only if it experiences a significant deterioration in its financial situation; and
  - (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.
- (3) Each criterion must—
- (a) be measurable; and
  - (b) be capable of being applied to SRB institutions on an individual basis, sub-consolidated basis and consolidated basis(d).
- (4) The FPC must create a methodology for measuring the criteria and giving an SRB institution a single score in relation to the criteria.
- (5) For each score which SRB institutions may receive under the methodology, the FPC must specify a corresponding buffer rate for the systemic risk buffer(e).
- (6) The only buffer rates which the FPC may specify are 0%, 1%, 1.5%, 2%, 2.5% and 3%.
- (7) The mapping—
- (a) must be clear, precise and unambiguous;

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(a) The definition of “deferred share” was amended by S.I. 2001/2617. The definitions of “deposit” and “share” were inserted by section 43 of, and paragraphs 53(1)(g) and (n) of Schedule 7 to, the Building Societies Act 1997 (c. 32).

(b) Section 7 has been amended by section 8 of the Building Societies Act 1997, sections 1(1) and 6(2) of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c.26), sections 138 and 148(2) of, and Schedule 9 to, the Financial Services (Banking Reform) Act 2013 (cc.33), S.I. 2001/2617 and S.I. 2013/496.

(c) OJ no. L176, 27.6.2013, p1.

(d) “Sub-consolidated basis” and “consolidated basis” are defined in points 49 and 48 respectively of Article 4(1) of the capital requirements regulation. These definitions apply for the purposes of these regulations by virtue of regulation 2(2)(a) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

(e) This correspondence is defined in regulation 34C as a “mapping”.

- (b) must ensure a score is mapped to only one buffer rate;
- (c) may not be expressed in terms of a discretion conferred on a person or body (including the FPC itself); and
- (d) may be expressed by way of a formula, an algorithm, a graph or a table.

**PRA: applying the systemic risk buffer**

**34G.**—(1) The PRA must apply the process set out in this regulation to each SRB institution.

(2) The PRA must choose one of the following bases on which to apply the criteria specified by the FPC in accordance with regulation 34F(1) to an SRB institution—

- (a) an individual basis;
- (b) a sub-consolidated basis;
- (c) a consolidated basis.

(3) The PRA must then—

- (a) apply the methodology created by the FPC in accordance with regulation 34F(4) to the SRB institution in order to obtain a score for the SRB institution; and
- (b) derive the corresponding buffer rate for the SRB institution by applying the mapping.

(4) Except where paragraph (5) applies—

- (a) where the PRA derives a buffer rate of 0% for an SRB institution, the PRA may not set a buffer rate for that SRB institution's systemic risk buffer;
- (b) where the PRA derives a buffer rate of other than 0% for an SRB institution, the PRA must set that rate as the buffer rate for the SRB institution's systemic risk buffer.

(5) The PRA may, in exercise of sound supervisory judgement—

- (a) set a buffer rate for an SRB institution's systemic risk buffer, notwithstanding the fact that the PRA has derived a buffer rate of 0% for that SRB institution;
- (b) set a buffer rate for an SRB institution which is different to a buffer rate derived under paragraph (3)(b); or
- (c) waive the requirement in paragraph (4)(b) to set a buffer rate for an SRB institution, and set no buffer rate for the SRB institution.

(6) Where the PRA sets a buffer rate for an SRB institution under paragraph (5)(a) or (b), the buffer rate must be 1%, 1.5%, 2%, 2.5% or 3%.

**Pre-notification to EEA and third country authorities**

**34H.**—(1) Before the PRA sets a buffer rate for an SRB institution, the PRA must notify—

- (a) the European Commission;
- (b) the ESRB;
- (c) the EBA;
- (d) the competent authorities of the EEA States concerned which are responsible for exercising the duties of a competent authority under the capital requirements directive and capital requirements regulation;
- (e) the authorities in the EEA States concerned which are designated for the purposes of Article 133(2) of the capital requirements directive; and
- (f) the supervisory authorities of every country outside the EEA.

(2) The notification must describe in detail—

- (a) the systemic or macro-prudential risk in the United Kingdom;
- (b) the reasons why the scale of the systemic or macro-prudential risk which threatens the stability of the financial system at a national level justifies the proposed buffer rate;
- (c) the justification for considering why the systemic risk buffer is likely to be an effective and proportionate way to mitigate those risks;
- (d) an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, within the meaning of Article 26(2) of the Treaty on the Functioning of the European Union, based on information available to the United Kingdom;
- (e) the justification for considering why none of the existing measures set out in the capital requirements regulation or the capital requirements directive, excluding Articles 458 and 459 of the capital requirements regulation, taken either alone or in combination and taking into account their relative efficacy, would be sufficient to address the macro-prudential or systemic risk which has been identified; and
- (f) the proposed buffer rate and the SRB institution to which it will apply.

## Appeals

**34I.**—(1) Where a person is aggrieved at a decision made by the PRA under regulation 34G, then the person may refer the matter to the Tribunal.

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

- (a) the application of the methodology in accordance with regulation 34G(3)(a);
- (b) the derivation of the buffer rate in accordance with regulation 34G(3)(b); and
- (c) the exercise of the PRA’s discretion in accordance with regulation 34G(5).

## CHAPTER 3

### EEA rates

## Recognition of EEA buffer rates

**34J.**—(1) This regulation applies where an EEA State other than the United Kingdom sets an EEA buffer rate.

(2) The PRA may recognise the EEA buffer rate for the purposes of requiring institutions<sup>(a)</sup> or a class of institutions which—

- (a) are authorised in the United Kingdom under Part 4A of FSMA; and
- (b) have exposures located in that EEA State;

to apply the EEA buffer rate in the calculation of their systemic risk buffers.

(3) When deciding whether to recognise an EEA buffer rate, the PRA must take into account the information set out in the notification submitted in relation to the EEA buffer rate under Article 133(11), (12) or (13) of the capital requirements directive.

(4) Where the PRA recognises an EEA buffer rate—

- (a) the PRA must notify the FCA; and
- (b) the PRA and FCA must decide, in respect of PRA-authorised persons and persons who are not PRA-authorised persons respectively, which institutions must apply the EEA buffer rate in the calculation of their systemic risk buffers.

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(a) “Institution” is defined in Article 4(1)(3) of the capital requirements regulations. This definition is applied for the purposes of these Regulations by regulation 2(2)(a) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

- (5) But the PRA may not require an SRB institution to apply the EEA buffer rate if—
- (a) the PRA has set a buffer rate for that SRB institution under regulation 34G; and
  - (b) the buffer rate set by the PRA is greater than the EEA buffer rate.

### **Notification**

**34K.** Where the PRA recognises an EEA buffer rate, the PRA must notify—

- (a) the European Commission;
- (b) the ESRB;
- (c) the EBA;
- (d) the competent authorities of the EEA States concerned which are responsible for exercising the duties of a competent authority under the capital requirements directive and capital requirements regulation; and
- (e) the authorities in the EEA States concerned which are designated for the purposes of Article 133(2) of the capital requirements directive.

## **CHAPTER 4**

### **Maintenance and calculation of systemic risk buffer**

#### **Maintenance of systemic risk buffer**

**34L.**—(1) The authority specified in the second column of Table 1 must require the institutions specified in the first column of Table 1 to maintain a systemic risk buffer in the circumstances specified in the third column of Table 1.

(2) Where an institution is required to maintain a systemic risk buffer, the authority must require the institution to—

- (a) calculate the systemic risk buffer in the manner set out in the fourth column of Table 1; and
- (b) determine the value of its exposures for the purposes of that calculation by applying the level of consolidation specified in the fifth column of Table 1.

(3) Table 1 specifies the only circumstances in which an institution may be required to maintain a systemic risk buffer.

**Table 1**

<i>Type of institution</i>	<i>Authority responsible</i>	<i>When a systemic risk buffer must be maintained</i>	<i>Calculation of systemic risk buffer</i>	<i>Applicable level of consolidation</i>
SRB institution	PRA	When the PRA sets a buffer rate for the SRB institution under regulation 34G.  <i>Or</i>  When the PRA decides that the SRB institution must apply an EEA buffer rate under regulation 34J.	If the SRB institution is not required to apply an EEA buffer rate, apply the buffer rate set under regulation 34G to all the SRB institution's exposures.  If the SRB institution is required to apply an EEA buffer rate, apply the EEA buffer rate to the SRB's institution's exposures located in the EEA State concerned. If the PRA has also set a buffer rate for the SRB institution under regulation 34G, apply that buffer rate to all of the SRB institution's other exposures.  A buffer rate set under regulation 34G must be applied equally to all exposures, regardless of where they are located, except those exposures to which an EEA buffer rate applies.	If the PRA has set a buffer rate for the SRB institution under regulation 34G, the same level of consolidation as was chosen by the PRA as the basis on which to apply the criteria pursuant to paragraph (2) of regulation 34G.  Otherwise, the PRA must specify one of the following bases: an individual basis, a sub-consolidated basis or a consolidated basis.
Institution which is	PRA (for PRA-authorized persons).	When the PRA or FCA	Apply the EEA buffer rate to	The PRA or FCA (as the case

not an SRB institution	<p><i>Or</i></p> <p>FCA (for persons who are not PRA-authorized persons).</p>	decides that an institution must apply an EEA buffer rate under regulation 34J.	the institution's exposures located in the EEA State concerned.	may be) must specify one of the following bases: an individual basis, a sub-consolidated basis or a consolidated basis.
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## CHAPTER 5

### Miscellaneous

#### **Date of application**

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

(2) Where the PRA decides that an SRB institution is no longer required to maintain a systemic risk buffer, the PRA must decide the date from which the SRB institution may cease to maintain the systemic risk buffer.

(3) Where the PRA or FCA decide that an institution must apply an EEA buffer rate under regulation 34J, the PRA or FCA (as the case may be) must decide the date from which the institution must apply the buffer rate in the calculation of its systemic risk buffer.

#### **Publication**

**34N.**—(1) The Bank must publish—

- (a) the set of criteria specified by the FPC in accordance with regulation 34F(1);
- (b) the methodology created by the FPC in accordance with regulation 34F(4);
- (c) the mapping.

(2) When the Bank publishes a set of criteria, a methodology or a mapping, the Bank must also publish the FPC's justification for the set of criteria, methodology or mapping (as the case may be).

(3) Where the PRA sets a buffer rate for an SRB institution under regulation 34G, the PRA must publish—

- (a) the buffer rate;
- (b) the SRB institution to which the buffer rate applies;
- (c) the justification for the systemic risk buffer;
- (d) the date from which the SRB institution must apply the buffer rate;
- (e) the level of consolidation which applies pursuant to regulation 34L; and
- (f) the fact that the systemic risk buffer applies to exposures located anywhere in the world (subject to the application of EEA buffer rates recognised under regulation 34J).

(4) Where the PRA decides that an SRB institution is no longer required to maintain a systemic risk buffer under regulation 34G, the PRA must publish—

- (a) the fact that the SRB is no longer required to maintain the systemic risk buffer;
- (b) the justification for ceasing to apply the systemic risk buffer; and
- (c) the date from which the SRB institution may cease to apply the buffer rate.

(5) The reference to the justification in paragraphs (3)(c) and 4(b) includes the PRA's reasons for doing any of the matters referred to in sub-paragraphs (a) to (c) of regulation 34G(5).

(6) Where the PRA recognises an EEA buffer rate under regulation 34J—

- (a) the PRA must publish—
  - (i) the EEA buffer rate;
  - (ii) its decision under regulation 34J(4)(b) as to which institutions must apply the EEA buffer rate in the calculation of their systemic risk buffers;
  - (iii) the date from which those institutions must apply the EEA buffer rate;

- (iv) the location of the exposures to which the EEA buffer rate applies;
  - (v) the level of consolidation which applies pursuant to regulation 34L; and
  - (vi) the justification for recognising the EEA buffer rate and for its decision under regulation 34J(4)(b);
- (b) the FCA must publish—
- (i) its decision under regulation 34J(4)(b) as to which institutions must apply the EEA buffer rate in the calculation of their systemic risk buffers;
  - (ii) the date from which those institutions must apply the EEA buffer rate;
  - (iii) the level of consolidation which applies pursuant to regulation 34L; and
  - (iv) the justification for its decision under regulation 34J(4)(b).

(7) The PRA and FCA must not publish any information pursuant to paragraph (3)(c), (4)(b), (6)(a)(vi) or (6)(b)(iv) if publication might jeopardise the stability of the financial system.

(8) The date on which the PRA publishes the buffer rate under paragraph (3) must be at least one month after the date on which the PRA gives notification under regulation 34H.

### Review

**34O.** The authority specified in the first column of Table 2 must review the matters set out in second column of Table 2 at least every second year.

**Table 2**

<i>Authority conducting review</i>	<i>Matter to be reviewed</i>
FPC	The set of criteria specified under regulation 34F(1). The methodology created in accordance with regulation 34F(4). The mapping.
PRA	A buffer rate set under regulation 34G. A decision under regulation 34G not to set a buffer rate. An EEA buffer rate recognised under regulation 34J. A decision under regulation 34J that an institution must apply an EEA buffer rate in the calculation of its systemic risk buffer. A decision under regulation 34L as to the level of consolidation at which a buffer rate must be applied.
FCA	A decision under regulation 34J that an institution must apply an EEA buffer rate in the calculation of its systemic risk buffer. A decision under regulation 34L as to the level of consolidation at which a buffer rate must be applied.

### Prohibition on affecting the internal market

**34P.** The PRA and FCA must, in the exercise of their respective functions and discretions under this Part, ensure that a systemic risk buffer does not have a disproportionate adverse effect on the whole or any part of the financial system of other EEA States or the Union as a whole, such that the adverse effect forms or creates an obstacle to the functioning of the internal market within the meaning of Article 26(2) of the Treaty on the Functioning of the European Union.”.

*David Evennett  
Harriet Baldwin*

Two of the Lords Commissioners of Her Majesty’s Treasury

12th January 2015

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement in part the provisions relating to systemic risk buffers at Articles 133 and 134 of 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”.

The systemic risk buffer is one of a number of capital buffers set out at Articles 128 to 142, and 160 and 162, of the capital requirements directive. The capital conservation buffer, countercyclical capital buffer and G-SII buffer were implemented in part by the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 (the “capital buffers regulations”). These Regulations amend the capital buffers regulations by inserting provisions relating to the systemic risk buffer. These provisions are concerned with what the Financial Policy Committee, the Prudential Regulation Authority and Financial Conduct Authority are required to do. The remainder of the systemic risk buffer will be implemented by rules made, and individual requirements imposed, by the Prudential Regulation Authority and Financial Conduct Authority under powers conferred by the Financial Services and Markets Act 2000. These rules and individual requirements will set out the requirements binding on individual institutions.

New regulation 34D of the capital buffers regulations defines “SRB institutions”. SRB institutions are banks which are ring-fenced bodies within the meaning of section 142A of the Financial Services and Markets Act 2000 (c.8) or building societies above a specified size threshold.

New regulation 34F of the capital buffers regulations requires the Financial Policy Committee of the Bank of England to create a framework for identifying the extent to which the failure or distress of SRB institutions will pose certain long term non-cyclical systemic or macro-prudential risks. New regulation 34G requires the Prudential Regulation Authority to apply the framework to SRB institutions in order to determine whether they should hold a systemic risk buffer and, if so, decide the buffer rate.

Where another EEA State imposes a systemic risk buffer on its domestic banks or investment firms, the Prudential Regulation Authority may recognise that buffer rate under new regulation 34J, and the Prudential Regulation Authority and Financial Conduct Authority must decide which institutions in the United Kingdom should apply that buffer rate in the calculation of their systemic risk buffers. Where such a buffer rate applies, it applies only to exposures located in the EEA State concerned.

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.

An impact assessment on the effect of the proposals from the Independent Commission on Banking, including the systemic risk buffer, can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223566/PU1488\\_Banking\\_reform\\_consultation\\_-\\_online-1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223566/PU1488_Banking_reform_consultation_-_online-1.pdf)

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