

STATUTORY INSTRUMENTS

2015 No. 905

FINANCIAL SERVICES AND MARKETS

The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015

<i>Made</i>	- - - -	<i>25th March 2015</i>
<i>Coming into force</i>		
<i>for the purpose of article</i>		
<i>4(b)</i>		<i>1st January 2019</i>
<i>for the remainder</i>		<i>6th April 2015</i>

The Treasury make the following Order in exercise of the powers conferred by sections 9I(2) and 9L of the Bank of England Act 1998 ^{M1}.

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

In accordance with section 9N of the Bank of England Act 1998 ^{M2}, a draft of this Order has been laid before Parliament and approved by a resolution of each House.

Marginal Citations

M1 Inserted by section 4 of the Financial Services Act 2012.

M2 1998 c.11. Inserted by section 4 of the [Financial Services Act 2012 \(c.21\)](#).

Citation and Commencement

1.—(1) This Order may be cited as the Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015.

(2) Articles 1 to 3, 4(a), 4(c) to 4(d) and 5 come into force on 6th April 2015.

(3) Article 4(b) comes into force on 1st January 2019.

Interpretation

2.—(1) In this Order—

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...

“Common Equity Tier 1 capital” has the meaning given by Article 50 of the capital requirements regulation;

[^{F2}“consolidated basis” means, in relation to a measure, on the basis that the undertaking to which the measure applies and one or more other undertakings are to be treated as a single undertaking;]

“cost benefit analysis” means—

- (a) an analysis of the costs and benefits of any change in rules made pursuant to Part 9A [^{F3}or section 192XA] of the Financial Services and Markets Act 2000 ^{M3} to give effect to a subsequent direction; and
- (b) where the costs and benefits can reasonably be estimated and it is reasonably practicable to produce an estimate, an estimate of those costs and of those benefits;

[^{F4}“countercyclical capital buffer rate” means any of the rates that UK banks and investment firms must apply to calculate their institution-specific countercyclical capital buffer;]

“Financial Policy Committee” has the meaning given by section 9B of the Bank of England Act 1998 ^{M4};

“G-SII” means a global systemically important institution, as identified by the PRA pursuant to Part 4 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 ^{M5};

“G-SII additional leverage ratio” means a leverage ratio calculated by reference to the rate of the G-SII buffer which the PRA requires a G-SII to maintain;

[^{F5}“G-SII buffer” has the meaning given in regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014;]

[^{F6}“holding company” means a financial holding company or a mixed financial holding company;]

“individual basis” in relation to a macro-prudential measure applicable to an institution, means the application of that measure in respect of that institution only;

[^{F7}“institution-specific countercyclical capital buffer” has the meaning given in regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014;]

“investment firm” has the meaning given by section 424A of the Financial Services and Markets Act 2000;

“leverage ratio” means an institution's Tier 1 capital divided by its total exposure measure, with this ratio expressed as a percentage;

[^{F8}“O-SII additional leverage ratio” means a leverage ratio calculated by reference to the rate of the O-SII buffers which the PRA requires a relevant O-SII to maintain pursuant to Part 5ZA of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014;]

[^{F9}“O-SII buffer” has the meaning given by regulation 34 of the Capital Requirements (Capital Buffers and Macro-prudential Measure) Regulations 2014;]

“PRA” means the Prudential Regulation Authority;

“PRA-authorized person” has the meaning given by section 2B of the Financial Services and Markets Act 2000 ^{M6};

[^{F10}“relevant O-SII has the meaning given in regulation 34 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014;]

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...

“Tier 1 capital” has the meaning given by Article 25 of the capital requirements regulation;

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“UK bank” means a UK institution which has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits, but excludes—

- (a) a credit union within the meaning of section 31 of the Credit Unions Act 1979 ^{M7}, or
- (b) a person with permission under Part 4A of the Financial Services and Markets Act 2000 ^{M8} to effect or carry out contracts of insurance as principal;

“UK institution” means an institution which is established in the United Kingdom and is incorporated, or formed under the law of any part of the United Kingdom; and

“UK investment firm” means a UK institution which—

- (a) has permission under Part 4A of the Financial Services and Markets Act 2000;
- (b) is a PRA-*authorised* person by virtue of a designation under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 ^{M9}; and
- (c) is an investment firm.

[^{F15}(2) Subject to article 4(4), “total exposure measure” has the meaning given in rules made by the PRA as amended from time to time.]

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| F1 | Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297) , regs. 1(2), 12(2)(a) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F2 | Words in art. 2(1) substituted (21.7.2021) by The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021 (S.I. 2021/869) , arts. 1(2), 4(2)(a) |
| F3 | Words in art. 2(1) inserted (21.7.2021) by The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021 (S.I. 2021/869) , arts. 1(2), 4(2)(b) |
| F4 | Words in art. 2(1) substituted (31.12.2020) by The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297) , regs. 1(2), 12(2)(b) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F5 | Words in art. 2(1) substituted (31.12.2020) by The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297) , regs. 1(2), 12(2)(c) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F6 | Words in art. 2(1) inserted (21.7.2021) by The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021 (S.I. 2021/869) , arts. 1(2), 4(2)(c) |
| F7 | Words in art. 2(1) inserted (31.12.2020) by The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297) , regs. 1(2), 12(2)(d) ; 2020 c. 1, Sch. 5 para. 1(1) |
| F8 | Words in art. 2(1) inserted (29.12.2020) by The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406) , regs. 1(4), 8(2)(d) |
| F9 | Words in art. 2(1) inserted (29.12.2020) by The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406) , regs. 1(4), 8(2)(f) |
| F10 | Words in art. 2(1) inserted (29.12.2020) by The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406) , regs. 1(4), 8(2)(a) |
| F11 | Words in art. 2(1) omitted (29.12.2020) by virtue of The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406) , regs. 1(4), 8(2)(b) |

- F12** Words in art. 2(1) omitted (29.12.2020) by virtue of *The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020* (S.I. 2020/1406), regs. 1(4), **8(2)(c)**
- F13** Words in art. 2(1) omitted (29.12.2020) by virtue of *The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020* (S.I. 2020/1406), regs. 1(4), **8(2)(e)**
- F14** Words in art. 2(1) omitted (21.7.2021) by virtue of *The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021* (S.I. 2021/869), arts. 1(2), **4(2)(d)**
- F15** Art. 2(2) inserted (21.7.2021) by *The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021* (S.I. 2021/869), arts. 1(2), **4(3)**

Marginal Citations

- M3** Inserted by section 24 of the *Financial Services Act 2012*.
- M4** Inserted by section 4 of the *Financial Services Act 2012*.
- M5** SI 2014/894, amended by SI 2015/19.
- M6** Inserted by section 6(1) of the *Financial Services Act 2012*.
- M7** 1979 c.34.
- M8** Inserted by section 11(2) of the *Financial Services Act 2012* (c.21).
- M9** SI 2013/556.

[^{F16}Macro-prudential measures

3.—(1) Subject to paragraph (2), each of the measures set out in article 4 may be applied on, or by reference to, an individual basis or a consolidated basis.

(2) Where a measure set out in article 4(1)(a) or (d) is applied to the holding company of a UK bank or of a UK investment firm, the measure may only be applied to that holding company on, or by reference to, a consolidated basis.]

- F16** Art. 3 substituted (21.7.2021) by *The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021* (S.I. 2021/869), arts. 1(2), **4(4)**

Macro-prudential measures

4.—(1) For the purposes of section 9H(1) and 9L of the *Bank of England Act 1998*, the following measures (and any measures falling within a listed measure) are prescribed in relation to the PRA—

- (a) a measure to require UK banks [^{F17}, or their holding companies,] and UK investment firms [^{F18}, or their holding companies,] to hold sufficient Tier 1 capital to satisfy a minimum leverage ratio specified by the Financial Policy Committee;
- (b) a measure to secure that [^{F19}relevant O-SIIs] ordinarily hold sufficient Tier 1 capital to satisfy an [^{F20}O-SII] additional leverage ratio specified by the Financial Policy Committee;
- (c) a measure to secure that G-SIIs ordinarily hold sufficient Tier 1 capital to satisfy a G-SII additional leverage ratio specified by the Financial Policy Committee;
- (d) a measure to secure that UK banks [^{F17}, or their holding companies,] and UK investment firms [^{F18}, or their holding companies,] ordinarily hold sufficient Tier 1 capital to satisfy a countercyclical leverage ratio buffer specified by the Financial Policy Committee.

(2) The Financial Policy Committee may also specify a minimum proportion of Common Equity Tier 1 capital that shall be held in relation to a measure specified in paragraph (1).

(3) The Financial Policy Committee may include in a direction relating to the countercyclical leverage ratio buffer a method of calculating the countercyclical leverage ratio buffer by reference to the prevailing countercyclical capital buffer rates.

[^{F21}(4) The Financial Policy Committee may include, in a direction relating to any of the measures specified in paragraph (1), specifications as to how the total exposure measure is to be determined for the purposes of that measure.]

- F17** Words in art. 4(1) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **4(5)**
- F18** Words in art. 4(1) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **4(6)**
- F19** Words in art. 4(1)(b) substituted (29.12.2020) by [The Financial Holding Companies \(Approval etc.\) and Capital Requirements \(Capital Buffers and Macro-prudential Measures\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1406\)](#), regs. 1(4), **8(3)(a)**
- F20** Word in art. 4(1)(b) substituted (29.12.2020) by [The Financial Holding Companies \(Approval etc.\) and Capital Requirements \(Capital Buffers and Macro-prudential Measures\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1406\)](#), regs. 1(4), **8(3)(b)**
- F21** Art. 4(4) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **4(7)**

Procedural requirements

5.—(1) Paragraph (2) applies if—

- (a) the Financial Policy Committee has given a direction to the PRA under section 9H of the Bank of England Act 1998 which specifies a value for a counter-cyclical leverage ratio buffer, and which includes a method of calculating the value of the countercyclical leverage ratio buffer by reference to the prevailing countercyclical capital buffer rates pursuant to paragraph 4(3) (“the first direction”);
- (b) the Financial Policy Committee subsequently revokes the first direction; and
- (c) within a reasonable period after the revocation of the first direction, the Financial Policy Committee gives another direction to the PRA under section 9H of the Bank of England Act 1998 (“the subsequent direction”) which is in substance identical to the first direction except in relation to the value specified in the direction.

(2) To the extent that the PRA is implementing the subsequent direction by way of rules pursuant to Part 9A [^{F22}or section 192XA] of the Financial Services and Markets Act—

- (a) sections 138J and 138K of the Financial Services and Markets Act 2000 do not apply; and
- (b) the PRA must undertake a cost benefit analysis of the measure and publish it at the same time as it publishes the rules which give effect to the subsequent direction.

- F22** Words in art. 5(2) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **4(8)**

[^{F23}Review

6.—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision contained in this Order, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the day on which this article comes into force.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this article must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in a way which involves less onerous regulatory provision.

(5) In this article, “regulatory provision” has the meaning given in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).]

F23 Art. 6 inserted (21.7.2021) by The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021 (S.I. 2021/869), arts. 1(2), 4(9)

Mark Lancaster
Gavin Barwell
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

The Financial Policy Committee is responsible for monitoring and addressing systemic risks which threaten the stability of the United Kingdom's financial system. One tool available to the FPC is the power to issue directions to the Prudential Regulation Authority and the Financial Conduct Authority (together the regulators). The Financial Policy Committee can only issue directions in relation to macro-prudential measures which have been prescribed by HM Treasury. The Basel III accord included proposals for capital adequacy standards based on an assessment of financial institutions leverage position (which treats all exposures equally, regardless of their estimated risk). These leverage requirements are designed to strengthen the capital position of financial institutions and to mitigate the risk of future financial crises. The Basel proposals included a minimum standard for all financial institutions with the possibility of additional “buffers” for particular classes of financial institutions, in particular those which are systemically important. These proposals are designed to ensure that financial institutions maintain a minimum amount of capital to absorb losses regardless of the risk profile of their assets.

This Order prescribes four macro-prudential measures for the purposes of section 9H of the Bank of England Act 1998 (c.11) (“the 1998 Act”) (power of the Financial Policy Committee of the Bank of England to direct the Financial Conduct Authority and the Prudential Regulation Authority).

The first measure allows the Financial Policy Committee to give a direction to specify a minimum leverage ratio which will apply to all UK banks and PRA regulated UK investment firms (“investment firms”). This will mean that UK banks and investment firms will need to maintain a minimum amount of capital which will be calculated by reference to the amount of their assets and certain off-balance sheet items.

The second measure allows the Financial Policy Committee to give a direction which will secure that institutions which are subject to a systemic risk buffer will ordinarily maintain an additional capital buffer. This requirement will only be engaged if the PRA has set a strategic risk buffer for individual institutions pursuant to Chapter 2 of Part 5A of Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, which does not come into force until 1st January 2019. Accordingly article 4(b) of this Order, which contains the measure for specifying the SRB leverage ratio, also comes into force on 1st January 2019.

The third measure allows the Financial Policy Committee to give a direction that will secure that globally systemically important institutions will ordinarily hold sufficient capital necessary to maintain a G-SII additional leverage buffer.

Finally, the fourth measure allows the Financial Policy Committee to give a direction which will secure that UK banks and UK investment firms will ordinarily hold sufficient capital to maintain a countercyclical leverage buffer. The countercyclical leverage ratio buffer will ensure that UK banks and UK investment firms will ordinarily maintain sufficient capital to satisfy the specified ratio during the upturn in the economic cycle, ensuring that they are not over-extended during a stressed period. The Financial Policy Committee may specify that the countercyclical leverage buffer can be calculated by reference to the countercyclical capital buffer rates

Article 5 provides that where the Financial Policy Committee gives a direction which secures that that UK banks and investment firms ordinarily hold an amount of capital to satisfy a countercyclical leverage ratio buffer and this buffer is to be calculated by reference to countercyclical capital buffer rates and subsequently gives another direction which is identical in substance to the first direction except that it changes a specified value, and where this change is implemented by the PRA by way of new rules issued pursuant to Part 9A of the Financial Services and Markets Act 2000, then if the rules are issued by the PRA then it need not comply

Changes to legislation: There are currently no known outstanding effects for the The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015. (See end of Document for details)

with the obligations under sections 138J and 138K of the Financial Services and Markets Act 2000. However, Article 5 does require the PRA to undertake, and publish alongside any new rules, a cost-benefit analysis of any change in rules.

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

Changes to legislation:

There are currently no known outstanding effects for the The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015.