
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 1

Amendment of 2008 Regulations

Amendments to the Regulated Covered Bonds Regulations 2008

7. The 2008 Regulations are amended in accordance with this Chapter.

Regulation 2 (eligible property)

8. In regulation 2 (eligible property)—
- (a) omit paragraph (1B)(b) and the “and” preceding it;
 - (b) in paragraph (2), after “an EEA state,” insert “the United Kingdom,”.

Regulation 41 (notification of the Commission)

9. Omit regulation 41 (notification of the Commission).

CHAPTER 2

Amendment of 2013 Regulations

Amendments to the Capital Requirements Regulations 2013

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

Regulation 2 (interpretation)

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

(2) In paragraph (1)—

- (a) omit the following definitions—
 - “Bank”;
 - “EBA Regulation”;
 - “EEA consolidating supervisor”;
 - “EEA parent institution”;
 - “EIOPA”;

“EIOPA Regulation”;
 “ESRB”;
 “ESRB Regulation”;
 “home EEA State”;
 “host EEA State”;
 “national consolidating supervisor”;
 “parent institution in an EEA State”;
 “parent financial holding company in an EEA State”;
 “parent mixed financial holding company in an EEA State”;
 “relevant competent authority”.

(b) at the end, insert—

““Specified EU Regulations under the Capital Requirements Regulation” means the EU regulations or parts of EU regulations which form part of retained EU law and which are specified in paragraphs 78 to 83 and 126 to 168, in Schedule 1 to the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations.”.

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

Regulation 2A (insertion of new paragraph)

12. After regulation 2 (interpretation) insert—

“Interpretation: regulators’ rules

2A.—(1) In these Regulations—

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

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

Regulation 4 (main provisions)

13. In regulation 4 (main provisions)—

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

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

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

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

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

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

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

Regulation 20 (determination of the consolidating supervisor)

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

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

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

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

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

- 19. Omit regulations 22 to 33.

Regulation 34 (supervisory powers: own funds)

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

- (a) in paragraph (1)(a), after “requirements of” insert “[Directive 2013/36/EU](#) UK law which implemented”;
- (b) in paragraphs (2)(a) and (2)(b), after “set out in” insert “[Directive 2013/36/EU](#) UK law which implemented”;

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

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

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

“Supervisory review and evaluation process

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

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

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

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

Ongoing review of the permission to use internal approaches

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

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

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

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

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

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

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

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

Regulation 35 (specific liquidity requirements)

22. In regulation 35 (specific liquidity requirements)—

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

Regulation 35A (insertion of new paragraphs)

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

“Application of supervisory measures to institutions with similar risk profiles

35A. Where the competent authority determines that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might

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

be exposed to similar risks or pose similar risks to the UK financial system, it may apply a SREP to those institutions in a similar or identical manner.

Supervisory powers

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

- (a) require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with [Directive 2013/36/EU](#) UK law which implemented Articles 73 and 74;
- (b) require institutions to present a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (c) require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (d) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- (e) require the reduction of the risk inherent in the activities, products and systems of institutions;
- (f) require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
- (g) require institutions to use net profits to strengthen own funds;
- (h) restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments (which meets the requirements of Article 52 of the capital requirements regulation) where the prohibition does not constitute an event of default of the institution;
- (i) impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (j) impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- (k) require additional disclosures.

Specific publication requirements

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

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

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

Regulation 36 (employee remuneration)

24. In regulation 36 (employee remuneration)—

- (a) the existing wording becomes paragraph (1) of the regulation;
- (b) for sub-paragraph (b) substitute—
 - “(b) collect information on the number of employees in each institution that are remunerated 1 million euros or more per financial year, in pay brackets of 1 million euros, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution;”;
- (c) in sub-paragraph (c), for “Article 94(1)(g)(ii) of the capital requirements directive” substitute “applicable remuneration rules”;
- (d) omit sub-paragraph (d) and the “and” preceding it;
- (e) after paragraph (1) insert—
 - “(2) In paragraph (1)(c) “applicable remuneration rules” means—
 - (a) in the case of PRA-authorised persons, rule 15.10 of the Remuneration Part of the PRA’s Rulebook and rule 19D.3.49 of the FCA’s Senior management arrangements, Systems and Controls sourcebook;
 - (b) in the case of FCA-authorised persons, rule 19A.3.44A of the FCA’s Senior management arrangements, Systems and Controls sourcebook.”.

Regulation 37 (diversity practices)

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

Regulation 38 (consultation with the EBA)

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

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

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

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

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

Regulation 45 (misleading the PRA or FCA)

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

(a) for paragraph (b) substitute—

“(b) any of the Specified EU Regulations under the Capital Requirements Regulation, as amended from time to time;”;

(b) after paragraph (b) insert—

“(ba) a technical standard made by the PRA or FCA under the functions conferred on them by the Capital Requirements Regulation as amended by Part 4, Chapter 3 of the Capital Requirements (Amendment) (EU Exit) Regulations 2018; or”.

CHAPTER 3**Amendment of the 2013 Reporting Regulations****Amendments to the Capital Requirements (Country-by-Country Reporting) Regulations 2013**

29. The 2013 Reporting Regulations are amended in accordance with this Chapter.

Regulation 1 (citation, commencement and interpretation)

30.—(1) Regulation 1 (citation, commencement and interpretation) is amended as follows.

(2) In paragraph (2)—

(a) omit the definition of “capital requirements directive”;

(b) omit the definition of “[Directive 2006/43/EC](#)”.

Regulation 2 (ongoing reporting obligation)

31. In regulation 2(7) (ongoing reporting obligation), for the words “standards required by” to the end substitute “International Standards on Auditing (United Kingdom and Ireland) issued by the Financial Reporting Council Limited or a predecessor body”.

Regulation 3 (interim reporting obligation)

32. In regulation 3(2) (interim reporting obligation) omit “to the European Commission and”.

Regulation 5 (prior disclosure: prevention of duplication)

33. In regulation 5, omit paragraphs (1) and (2).

CHAPTER 4**Amendment of the 2014 Regulations****Amendments to the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014**

34. The 2014 Regulations are amended in accordance with this Chapter.

Regulation 2 (interpretation)

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

(2) In paragraph (1)—

- (a) for the definition of “capital conservation buffer” substitute—
 - ““capital conservation buffer” means—
 - (a) in relation to a PRA-authorised person, the capital conservation buffer that the person must calculate in accordance with Chapter 2 of the Capital Buffers Part of the PRA rulebook;
 - (b) in relation to a person to whom chapter 10 of the FCA’s Prudential sourcebook for Investment Firms applies, the capital conservation buffer that the person must calculate in accordance with section 10.2 of the sourcebook;”;
- (b) after the definition of “capital conservation buffer” insert—
 - ““the capital requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, and as amended from time to time thereafter;”
- (c) for the definition of “combined buffer requirement” substitute—
 - ““combined buffer requirement” means the total Common Equity Tier 1 capital required to meet the requirements for the capital conservation buffer extended by the following, as applicable—
 - (a) an institution-specific countercyclical capital buffer;
 - (b) a G-SII buffer;
 - (c) a systemic risk buffer;”;
- (d) for the definition of “G-SII buffer” substitute—
 - ““G-SII buffer” means the own funds that a G-SII is required to maintain in accordance with Part 4 of these Regulations, corresponding to the sub-category to which the G-SII is allocated and consisting of and supplementary to the Common Equity Tier 1 capital;”;
- (e) for the definition of “institution-specific countercyclical capital buffer” substitute—
 - ““institution-specific countercyclical capital buffer” means—
 - (a) in relation to a PRA-authorised person, the countercyclical capital buffer that the person must calculate in accordance with Chapter 3 of the Capital Buffers Part of the PRA rulebook;
 - (b) in relation to a person to whom chapter 10 of the FCA’s Prudential sourcebook for Investment Firms applies, the countercyclical capital buffer that the person must calculate in accordance with section 10.3 of the sourcebook;”;
- (f) for the definition of “systemic risk buffer” substitute—
 - ““systemic risk buffer” has the meaning set out in regulation 34A(1) of these Regulations;”;
- (g) omit the following definitions—
 - “EEA parent financial holding company”;
 - “EEA parent institution”;
 - “EEA parent mixed financial holding company”;
 - “ESRB”;
 - “O-SII buffer”.
- (3) After paragraph (2) insert—

“(2A) In these Regulations—

- (a) a reference to the PRA rulebook is to the rulebook published by the Prudential Regulation Authority containing rules made by that Authority under FSMA as the rulebook has effect on exit day;
- (b) any reference to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the Financial Conduct Authority containing rules made by that Authority under FSMA as the sourcebook has effect on exit day.”.

(4) Omit paragraph (3).

(5) Omit paragraph (4).

Regulation 6 (exemption for small and medium-sized investment firms)

36. In regulation 6 (exemption for small and medium-sized investment firms)—

- (a) in paragraph (1) for the words “small or medium-sized investment firm, or small or medium-sized investment firms of a specified description,” substitute “SME”;
- (b) in paragraph (2)(a) for “small or medium-sized investment firms” substitute “SMEs”;
- (c) omit paragraph (3).

Chapter 1, Part 3 (designated authority and interpretation)

37. For the heading of Chapter 1, Part 3 (designated authority and interpretation) substitute “Overview and interpretation”.

Regulation 7 (designated authority)

38. For regulation 7 (designated authority) substitute—

“Overview

7.—(1) This Part makes provision for how the Bank—

- (a) must assess and set a countercyclical capital buffer rate for the United Kingdom (which relates to exposures located in the United Kingdom), and;
- (b) may recognise or set buffer rates for exposures which are located in countries other than the United Kingdom and held by UK institutions.

(2) The buffer rates mentioned in paragraph (1) must be used in the determination of institution-specific countercyclical capital buffers.”.

Regulation 8 (meaning of “UK institution”)

39. In regulation 8 (meaning of “UK institution”), omit the definition of “EEA authority”.

Regulation 9 (the buffer guide)

40. In regulation 9 (the buffer guide), omit paragraph (3)(b) and the “and” preceding it.

Regulation 10 (countercyclical buffer rate)

41. In regulation 10 (countercyclical buffer rate), in paragraph (3), omit sub-paragraphs (b) and (c).

Regulation 12 (announcement of changes to the buffer rate)

42. In regulation 12 (announcement of changes to the buffer rate), omit paragraphs (4) and (5).

Regulation 12A (insertion of new paragraph)

43. After regulation 12 (announcement of changes to the buffer rate) insert—

“Buffer rate rules

12A.—(1) Nothing in paragraph 17(9)(b) of Schedule 6A to the Bank of England Act 1998 or paragraph 8 of Part 1 of Schedule 1ZA to FSMA prohibits the making of a rule by the PRA or the FCA that references a countercyclical capital buffer rate set by the FPC under this Part.”**(3)**.

Regulation 14 (buffer rates for EEA exposures)

44. For regulation 14 (buffer rates for EEA exposures: on or after 1st January 2016) substitute—

“Buffer rates for EEA exposures: savings provision

14.—(1) Where, on or before exit day—

- (a) an EEA authority set a buffer rate (“the EEA buffer rate”) for that EEA state for the purpose of enabling institutions in that EEA State to calculate their institution-specific countercyclical capital buffer,
- (b) the EEA buffer rate exceeded 2.5%, and
- (c) the EEA buffer rate was recognised by the FPC, so that UK institutions with exposures located in that EEA State could be required by the PRA and FCA to apply it in their calculation of their institution-specific countercyclical capital buffers,

the FPC’s decision to recognise the EEA buffer rate must be treated after exit day as though it were a decision made under regulation 15 of these Regulations.”.

Regulation 15 (buffer rates for exposures outside the EEA)

45. In regulation 15 (buffer rates for exposures outside the EEA)—

- (a) in the heading, for “EEA” substitute “UK”;
- (b) in paragraph (1)(b), for “outside of the EEA” substitute “other than the United Kingdom”.

Regulation 17 (date of application of buffer rates)

46. In regulation 17 (date of application of buffer rates), in paragraph (1)(a), for “regulations 13, 14 or 15” substitute “regulation 15”.

Regulation 18 (announcement of changes to buffer rates)

47. In regulation 18 (announcement of changes to buffer rates)—

- (a) in paragraph (1), for “regulations 13, 14 or 15” substitute “regulation 15”;
- (b) in paragraph (2)(c), omit “EEA State or”.

(3) [1998 c.11](#), paragraph 17(9)(b) inserted by paragraph 1 of Schedule 1 of the Bank of England and Financial Services Act [2016 c.14](#); [2000 c.8](#), Schedule 1ZA substituted by Schedule 3 of the Financial Services Act [2012 c.21](#).

Regulation 20 (exemption for small and medium-sized investment firms)

48. In regulation 20 (exemption for small and medium-sized investment firms)—

- (a) in paragraph (1), for “small or medium-sized investment firm, or small or medium-sized investment firms of a specified description,” substitute “SME”;
- (b) in paragraph (2)(a), for “small and medium-sized investment firms” substitute “SMEs”;
- (c) omit paragraph (3).

Regulation 21 (designated authority)

49. For regulation 21 (designated authority) substitute—

“Duty of PRA to identify G-SIIs

21. The PRA must identify G-SIIs in accordance with the provisions of this Part.”.

Regulation 22 (G-SIIs: location and nature)

50. In regulation 22 (G-SIIs: location and nature), for paragraph (2) substitute—

“(2) A G-SII must also be—

- (a) a UK parent institution;
- (b) a UK parent financial holding company;
- (c) a UK parent mixed financial holding company; or
- (d) an institution authorised in the United Kingdom which is not a subsidiary of a body mentioned in sub-paragraphs (a) to (c).”.

Regulation 23 (identification methodology)

51. In regulation 23 (identification methodology)—

(a) for paragraph (2) substitute—

“(2) Where the relevant body is a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company, the identification methodology must be applied in accordance with Commission Delegated Regulation (EU) No 1222/2014 or any technical standards made by the PRA under the functions conferred on it by Article 464B(3) of the capital requirements regulation.”;

(b) in paragraph (3)(e) omit the words from “, including” to the end.

Regulation 24 (sub-categories of G-SII and corresponding buffer rates)

52. In regulation 24(1) (sub-categories of G-SII and corresponding buffer rates), for the words “any directly applicable regulation” to the end substitute “Commission Delegated Regulation (EU) 1222/2014 or any technical standards made by the PRA under the functions conferred on it by Article 464B(3) of the capital requirements regulation.”.

Regulation 26 (notification, publication and review)

53. In regulation 26 (notification, publication and review)—

- (a) omit paragraphs (1) to (3);
- (b) in paragraph (5), omit “, the Commission, the ESRB and EBA”.

Regulation 28 (transitional provision: 1st January 2016 to 31st December 2019)

54. Omit regulation 28 (transitional provision: 1st January 2016 to 31st December 2019).

Regulation 29 (designated authority)

55. For regulation 29 (designated authority) substitute—

“Duty of PRA to identify O-SIIs

29. The PRA must identify O-SIIs in accordance with the provisions of this Part.”.

Regulation 30 (O-SIIs: location and nature)

56. In regulation 30 (O-SIIs: location and nature), in paragraph (2), for sub-paragraphs (a) to (c) substitute—

- “(a) a UK parent institution;
- (b) a UK parent financial holding company;
- (c) a UK parent mixed financial holding company; or”.

Regulation 31 (identification of O-SIIs)

57. In regulation 31 (identification of O-SIIs), in paragraph (2)(b), omit “or the European Union”.

Regulation 32 (notification, publication and review)

58. In regulation 32 (notification, publication and review)—

- (a) for the heading substitute “Publication and review”;
- (b) omit paragraph (1);
- (c) in paragraph (3), omit “, the Commission, the ESRB and EBA”.

Regulation 34 (no requirement to maintain an O-SII buffer)

59. For regulation 34 (no requirement to maintain an O-SII buffer) substitute—

“No requirement to maintain an O-SII buffer

34.—(1) No requirement may be imposed by the FCA or PRA on an O-SII to maintain a capital buffer solely because of its identification as an O-SII under this Part.

(2) In paragraph (1) a “capital buffer” means a requirement to maintain additional Common Equity Tier 1 capital expressed as a percentage of the O-SII’s total risk exposure amount calculated in accordance with Article 92(3) of the capital requirements regulation.”.

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

<i>Authority to conduct review</i>	<i>Matter to be reviewed</i>
FPC	The elements of the FPC framework.
PRA	<p>A buffer rate set under regulation 34H.</p> <p>A decision not to set a buffer rate under regulation 34H.</p> <p>A decision to recognise a third country buffer rate under regulation 34I.</p> <p>A decision that an institution must apply a third country buffer rate under regulation 34J.</p> <p>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).</p>
FCA	<p>A decision that an institution must apply a third country buffer rate under regulation 34J.</p> <p>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).</p>

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.”⁽⁴⁾

⁽⁴⁾ In regulation 34C, Building Societies Act 1986 c.53. In regulation 34I, Directive 2013/36/EU, OJNo. L. 176, 27.6.2013, p338-436.