
STATUTORY INSTRUMENTS

2018 No. 1401

**The Capital Requirements (Amendment)
(EU Exit) Regulations 2018**

PART 4

Amendment of retained direct EU legislation

CHAPTER 1

Amendment of the Capital Requirements Regulation

Article 4(1) (definitions)

64.—(1) Article 4(1) (definitions) is amended as follows.

(2) In point (2) (definition of ‘investment firm’)—

(a) for the words from “point (1) of” to “that Directive” substitute “paragraph 1A of Article 2 of Regulation 600/2014/EU, as that Article has effect subject to the requirements imposed by the United Kingdom legislation that implemented [Directive 2014/65/EU](#), as amended from time to time”(1);

(b) in paragraph (c)—

(i) for “point (1) of Section B of Annex I to [Directive 2004/39/EC](#)” substitute “paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order”;

(ii) for “points 1, 2, 4 and 5 of Section A of Annex I to that Directive” substitute “paragraphs 1, 2, 4 and 5 of Part 3 of Schedule 2 to the Regulated Activities Order”.

(3) After point (2), insert—

“(2A) ‘CRR firm’ means a person that satisfies the following conditions—

(a) it is an authorised person within the meaning of section 31(1)(a) of FSMA that—

(i) is a credit institution which has permission under Part 4A of FSMA to carry on the regulated activity of accepting deposits; or

(ii) is an investment firm;

(b) its registered office, or if it has no registered office, its head office, is in the United Kingdom; and

(c) it is not a credit union within the meaning of the Credit Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985, or a friendly society within the meaning of section 417(1) of FSMA;

and for the purposes of this definition, ‘regulated activity’ has the meaning in section 22 of FSMA, and ‘accepting deposits’ has the meaning in Regulation 5 of the Regulated Activities Order;

(1) OJNo. L. 173, 12.6.2014, p.349 - 496.

- (2B) ‘Solvency II excluded operations’ has the meaning given in the PRA rulebook;”(2).
- (4) In point (5), (definition of ‘insurance undertaking’) for the words “point (1) of Article 13 of” to the end, substitute “section 417 of FSMA”.
- (5) In point (6), (definition of ‘reinsurance undertaking’) for the words “point (4) of Article 13 of [Directive 2009/138/EC](#)” substitute “section 417 of FSMA”.
- (6) After point (6), insert—
- “(6A) ‘pure reinsurer’ has the meaning given in the PRA rulebook;”.
- (7) In point (7) (definition of ‘collective investment undertaking’)—
- (a) for the words from “Article 1(2) of [Directive 2009/65/EC](#)” to “transferrable securities (UCITS)” substitute “section 236A of FSMA”;
- (b) omit “to Union law or”;
- (c) for “the Union,” to the end substitute “the United Kingdom, a UK AIF, EEA AIF or a third country AIF within the meaning of regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013”(3).
- (8) For point (9) (definition of ‘management body’) substitute—
- “(9) ‘management body’ means an institution’s body, which is appointed in accordance with national law, which is empowered to set the institution’s strategy, objectives and overall direction, and which oversees and monitors management decision-making, and includes the persons who effectively direct the business of the institution;”.
- (9) After point (9), insert—
- “(9A) ‘management body in its supervisory function’ means the management body acting in its role of overseeing and monitoring management decision-making;”.
- (10) For point (10) (definition of ‘senior management’) substitute—
- “(10) ‘senior management’ means those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;”.
- (11) For point (11) (definition of ‘systemic risk’) substitute—
- “(11) ‘systemic risk’ means a risk of disruption in the financial system of the United Kingdom with the potential to have serious negative consequences for the financial system and the real economy of the United Kingdom;”.
- (12) For point (12) (definition of ‘model risk’) substitute—
- “(12) ‘model risk’ means the potential loss an institution may incur as a consequence of decisions that could be principally based on the output of internal models due to errors in the development, implementation or use of such models;”.
- (13) For point (15) (definition of ‘parent undertaking’) substitute—
- “(15) ‘parent undertaking’ means—
- (a) a parent undertaking within the meaning of section 1162 of the Companies Act 2006; or
- (b) for the purposes of [Directive 2013/36/EU](#) UK law which implemented Section II of Chapters 3 and 4 of Title 7 and Title 8, and for the purposes of Part 5 of this Regulation—

(2) Credit Unions Act 1979 c.34, Credit Unions (Northern Ireland) Order 1985 SI 2013/1773.

(3) S.I. 2013/1773.

(i) a parent undertaking within the meaning of section 1162 of the Companies Act 2006, apart from the meaning given in subsection (4), or

(ii) an undertaking which effectively exercises a dominant influence over another undertaking;

where section 1162(5) of the Companies Act 2006 applies to parent undertakings falling within point (b)(ii) as it applies to parent undertakings falling within section 1162;”(4).

(14) For point (16) (definition of ‘subsidiary’) substitute—

“(16) ‘subsidiary’ means—

(a) a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006; or

(b) for the purposes of [Directive 2013/36/EU](#) UK law which implemented Section II of Chapters 3 and 4 of Title 7 and Title 8, and for the purposes of Part 5 of this Regulation—

(i) a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006, apart from the meaning given in subsection (4), or

(ii) an undertaking over which another undertaking effectively exercises a dominant influence;

where section 1162(5) of the Companies Act 2006 applies to subsidiaries falling within point (b)(ii) as it applies to subsidiaries falling within section 1162;”.

(15) For point (19) (definition of ‘asset management company’) substitute—

“(19) ‘asset management company’ means—

(a) a person who has permission under Part 4A of FSMA to carry on the regulated activity of managing a UK UCITS (as specified in article 51ZA of the Regulated Activities Order), or would require that permission if its registered office were located in the United Kingdom;

(b) a person who has permission under Part 4A of FSMA to carry on the regulated activity of managing an AIF (as specified in article 51ZC of the Regulated Activities Order), or would require that permission if its registered office were located in the United Kingdom; or

(c) a person who is registered as a small AIFM within the meaning of regulation 9 of the Alternative Investment Fund Managers Regulations 2013 under Part 3 of those Regulations, or would require that permission if its registered office were located in the United Kingdom;

including, unless otherwise provided, a third-country entity that carries out similar activities and that is subject to the laws of a third country which applies supervisory and regulatory requirements at least equivalent to those applied in the United Kingdom;”(5).

(16) In point (23) (definition of ‘third-country insurance undertaking’), for “point (3) of Article 13 of [Directive 2009/138/EC](#)” substitute “the Solvency 2 Regulations 2015”(6).

(17) In point (24) (definition of ‘third-country reinsurance undertaking’), for “point (6) of Article 13 of [Directive 2009/138/EC](#)” substitute “the Solvency 2 Regulations 2015”.

(4) [2006 c. 46](#).

(5) Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, [S.I. 2001/544](#); articles 51ZA and 51ZC substituted by Schedule 2(1) Alternative Investment Fund Managers Regulations 2013, [S.I. 2013/1773](#).

(6) [S.I. 2015/575](#).

- (18) In point (25) (definition of ‘recognised third-country investment firm’)—
- (a) omit “recognised” from the defined term;
 - (b) in point (a), for “Union” substitute “United Kingdom”;
 - (c) in point (c) for “[Directive 2013/36/EU](#)” substitute “[Directive 2013/36/EU](#) UK law”.
- (19) After point (25) insert—
- “(25A) ‘third country’ means a country or territory outside the United Kingdom”;
- (20) In point (26) (definition of ‘financial institution’)—
- (a) after “one or more of the” insert “Annex 1”;
 - (b) omit “of Annex I to [Directive 2013/36/EU](#)”;
 - (c) for the words from “a payment institution within” to “internal market” substitute “an authorised payment institution within the meaning of regulation 2 of the Payment Services Regulations 2017”(7);
 - (d) for “, respectively, in points (f) and (g) of Article 212(1) of [Directive 2009/138/EC](#)” substitute “in the PRA rulebook”.
- (21) After point (26) insert—
- “(26A) ‘Annex 1 activities’ means the list of activities set out in Annex 1 to [Directive 2013/36/EU](#) as it had effect immediately before exit day, with the following amendments—
- (a) omit the heading;
 - (b) in point 4 for the words “Article 4(3) of [Directive 2007/64/EC](#)” substitute “regulation 2 of the Payment Services Regulations 2017”;
 - (c) after point 15—
 - (i) for “Sections A and B of Annex I to [Directive 2004/39/EC](#)” substitute “Parts 3 and 3A of Schedule 2 to the Regulated Activities Order”;
 - (ii) for “Section C of Annex I of that Directive” substitute “Part 1 of Schedule 2 to the Regulated Activities Order”;
 - (iii) omit the words from “, are subject to” to the end.”.
- (22) In point (27) (definition of ‘financial sector entity’)—
- (a) in point (h), for “point (f) of Article 212(1) of [Directive 2009/138/EC](#)” substitute “the Solvency 2 Regulations 2015”;
 - (b) for point (k) substitute—
 - “(k) a non-directive firm as defined in the PRA Rulebook unless that non-directive firm is only a non-directive firm because either—
 - (i) the firm’s Part 4A permission includes a requirement that it may only carry on Solvency II excluded operations; or
 - (ii) the firm is a pure reinsurer which ceased to conduct new reinsurance contracts before 10 December 2007;”.
- (23) In point (28) (definition of ‘parent institution in a Member State’)—
- (a) for “parent institution in a Member State” substitute “UK parent institution”;
 - (b) for “a Member State which” substitute “the United Kingdom which”;
 - (c) for “same Member State”, in both places it occurs, substitute “United Kingdom”.
- (24) Omit point (29) (definition of ‘EU parent institution’).

- (25) In point (30) (definition of ‘parent financial holding company in a Member State’)—
- (a) for “parent financial holding company in a Member State” substitute “UK parent financial holding company”;
 - (b) for “same Member State”, in both places it occurs, substitute “United Kingdom”.
- (26) Omit point (31) (definition of ‘EU parent financial holding company’).
- (27) In point (32) (definition of ‘parent mixed financial holding company in a Member State’)—
- (a) for “parent mixed financial holding company in a Member State” substitute “UK parent mixed financial holding company”;
 - (b) for “the same Member State” substitute “the United Kingdom”;
 - (c) for “that same Member State” substitute “the United Kingdom”.
- (28) Omit point (33) (definition of ‘EU parent mixed financial holding company’).
- (29) For point (35) (definition of ‘participation’) substitute—
- “(35) ‘participation’ means rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the activities of the undertaking which holds those rights, or the ownership, direct or indirect, of 20% or more of the voting rights or capital of an undertaking;”.
- (30) After point (38), insert—
- “(38A) ‘common management relationship’ means a relationship between an undertaking (“U1”) and one or more other undertakings (“U2”) which satisfies the following conditions—
- (a) U1 and U2 are not connected in the manner described in section 1162 of the Companies Act 2006; and
 - (b) either—
 - (i) U1 and U2 are managed on a unified basis pursuant to a contract with U1, or provisions in U2’s memorandum or articles of association; or
 - (ii) the administrative, management or supervisory bodies of U2 consist, for the major part, of the same persons in office as U1, during the financial year of U1 for which it is being decided whether such a relationship exists;”(8).
- (31) In point (40) (‘definition of ‘competent authority’), for “Member State concerned” substitute “United Kingdom (or, where the context requires, a third country)”.
- (32) For point (41) (definition of ‘consolidating supervisor’) substitute—
- “(41) ‘consolidating supervisor’ means the competent authority responsible for the exercise of supervision on a consolidated basis of—
- (a) a UK parent institution, or
 - (b) an institution controlled by a UK parent financial holding company or UK parent mixed financial holding company;
- determined in accordance with Article 4B.”
- (33) Omit point (43) (definition of ‘home Member State’).
- (34) Omit point (44) (definition of ‘host Member State’).
- (35) Omit point (45) (definition of ‘ESCB central banks’).
- (36) For point (46) (definition of ‘central banks’) substitute—

- “(46) ‘central banks’ means the Bank, the European Central Bank and the central banks of third countries;”.
- (37) In point (50)(b) (definition of ‘financial instrument’) for “Section C of Annex I to [Directive 2004/39/EC](#)” substitute “Part 1 of Schedule 2 to the Regulated Activities Order”.
- (38) For point (51) (definition of ‘initial capital’) substitute—
- “(51) ‘initial capital’ means the amount and types of own funds specified—
- (a) for credit institutions in rule 12.1 of the Definition of Capital Part of the PRA rulebook; and
 - (b) for investment firms—
 - (i) where it applies, in rule 12.1 of the Definition of Capital Part of the PRA rulebook; or
 - (ii) otherwise, as the case may be, in—
 - (aa) rules 3.1.6, 3.1.8 and 3.1.9 of the FCA’s Prudential sourcebook for Investment Firms; or
 - (bb) rules 9.2.4, 9.2.5 and 9.2.8 of the FCA’s Interim Prudential sourcebook for Investment Businesses;”.
- (39) In point (75) (definition of ‘residential property’) omit “, including the right to inhabit an apartment in housing cooperatives located in Sweden”.
- (40) In point (77) (definition of ‘applicable accounting framework’) for “[Directive 86/635/EEC](#)” substitute “[Directive 86/635/EEC](#) UK law”.
- (41) For point (87) (definition of ‘multilateral trading facility’) substitute—
- “(87) ‘multilateral trading facility’ has the meaning given in Article 2(1)(14) of Regulation 600/2014/EU;”.
- (42) For point (92) (definition of ‘regulated market’) substitute—
- “(92) ‘regulated market’ has the meaning given in Article 2(1)(13A) of Regulation 600/2014/EU;”.
- (43) For point (101) (definition of ‘basic own funds’) substitute—
- “(101) ‘basic own funds’ has the meaning given in the PRA rulebook;”.
- (44) For point (102) (definition of ‘Tier 1 own-fund insurance items’) substitute—
- “(102) ‘Tier 1 own-fund insurance items’ means basic own-fund items of insurance undertakings and reinsurance undertakings where those items are classified in Tier 1 in accordance with rule 3.1 of the Own Funds Part of the PRA rulebook;”.
- (45) In point (103) (definition of ‘additional Tier 1 own-fund insurance items’)—
- (a) for “undertakings subject to the requirements of [Directive 2009/138/EC](#)” substitute “insurance undertakings and reinsurance undertakings”;
 - (b) omit “within the meaning of [Directive 2009/138/EC](#)”;
 - (c) for “Article 94(1) of that Directive” substitute “rule 3.1 of the Own Funds Part of the PRA rulebook”;
 - (d) for the words from “the delegated acts” to the end substitute “Article 82(3) of the Commission Delegated Regulation (EU) 2015/35 of 10th October 2014 supplementing [Directive 2009/138/EC](#) of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) Text”.
- (46) For point (104) (definition of ‘Tier 2 own-fund insurance items’) substitute—

“(104) ‘Tier 2 own-fund insurance items’ means basic own-fund items of insurance undertakings and reinsurance undertakings where those items are classified in Tier 2 in accordance with rule 3.2 of the Own Funds Part of the PRA rulebook;”.

(47) In point (105) (definition of ‘Tier 3 own-fund insurance items’)—

(a) for “undertakings subject to the requirements of [Directive 2009/138/EC](#)” substitute “insurance undertakings and reinsurance undertakings”;

(b) for the words from “within the meaning of” to the end substitute “in accordance with rule 3.3 of the Own Funds Part of the PRA rulebook”.

(48) Omit point (111) (definition of ‘financial undertaking’).

(49) For point (112) (definition of ‘funds for general banking risk’) substitute—

“(112) ‘funds for general banking risk’ means those amounts which a credit institution decides to put aside to cover the particular risks associated with banking where this is permitted under the applicable accounting framework;”.

(50) Omit point (127) (definition of ‘cross-guarantee scheme’).

(51) In point (128) (definition of ‘distributable item’) for “accounts.” substitute “accounts;”.

(52) After point (128), insert—

“(128A) ‘CRR covered bonds’ means bonds issued by a credit institution which—

(a) has its registered office in the UK; and

(b) is subject by law to special public supervision designed to protect bondholders and in particular protection under which—

(i) sums deriving from the issue of the bond must be invested in conformity with the law in assets;

(ii) during the whole period of validity of the bond, those sums are capable of covering claims attaching to the bond; and

(iii) in the event of failure of the issuer, those sums would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest;

(128B) ‘[Directive 86/635/EEC](#) UK law’ means the law of the United Kingdom or any part of it which immediately before exit day implemented [Directive 86/635/EEC](#), and its implementing measures—

(i) as they have effect on exit day, in the case of rules made by the FCA or the PRA under the Financial Services and Markets Act 2000; and

(ii) as amended from time to time, in all other cases.

(128C) ‘internal approaches’ means—

(a) the internal ratings-based approach referred to in Article 143(1);

(b) the internal models approach referred to in Article 221;

(c) the own estimates approach referred to in Article 225;

(d) the advanced measurement approaches referred to in Article 312(2);

(e) the internal model method referred to in Article 283 and 363; and

(f) the internal assessment approach referred to in Article 259(3) of this Regulation;

(128D) ‘SME’ means a micro, small and medium-sized enterprise as defined in Articles 1 to 6 of the Annex to Commission Recommendation 2003/361/EC of 6th May 2003 with the following amendments—

- (a) in article 3 (types of enterprise taken into consideration in calculating staff numbers and financial amounts), in paragraph (5) for “by national or Community rules” substitute “under the law of the United Kingdom (or any part of it)”;
- (b) in article 5 (staff headcount), in paragraph (b) for “national law” substitute “the law of the United Kingdom (or any part of it)”;

(128E) ‘systemically important institution’ means a UK parent institution, a UK parent financial holding company, a UK parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk;

(128F) ‘UK deposit guarantee scheme’ means a deposit protection scheme established by the PRA and managed by the Financial Services Compensation Scheme Limited.”(9).

(53) After paragraph 1, insert—

“(1A) In this Regulation—

“Bank” means the Bank of England;

“FCA” means the Financial Conduct Authority;

“Financial Policy Committee” means the Financial Policy Committee of the Bank;

“FSMA” means the Financial Services and Markets Act 2000;

“Part 4A permission” means a permission given by the FCA or PRA under Part 4A of FSMA or having effect as if so given;

“PRA” means the Prudential Regulation Authority;

“Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”(10).

(9) In point 128B, [Directive 86/635/EEC](#) of 8th December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions, OJ L. 372, 31.12.1986, p1 - 17.

(10) The Financial Services and Markets Act [2000 c.8](#); Part 4A inserted by Financial Services Act [2012 c.21](#); The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, [S.I. 2001/544](#).