STATUTORY INSTRUMENTS

2020 No. 1406

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020

Made - - - - 26th November 2020
Coming into force in accordance with regulations 1(2) to (4)

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

The Treasury, in exercise of the powers conferred by sections 2(2) of the European Communities Act 1972, section 8(1) of the European Union (Withdrawal) Act 2018(**3**) and section 349 of the Financial Services and Markets Act 2000(**4**), make the following Regulations.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament, in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972, and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

(**1**) S.I. 2012/1759.
(**2**) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.
(**3**) 2018 c. 16, amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(**4**) 2000 c. 8, amended by paragraph 19 of Schedule 12 to the Financial Services Act 2012 (c. 21). There are other amendments to section 349 which are not relevant to these Regulations.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020.

(2) This regulation and regulations 4, 5(5) and 9 to 20 of these Regulations come into force on the day after the day on which they are made.

(3) Regulation 2(7) comes into force—

(a) to the extent necessary for making rules under new section 192V of the Financial Services and Markets Act 2000, on 28th December 2020;

(b) for all other purposes, on 29th December 2020.

(4) The other provisions in these Regulations come into force on 29th December 2020.

PART 2

Directors and Financial Holding Companies

Amendment of the Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000(**5**) is amended as follows.

(2) In section 71B (removal of directors and senior executives), after subsection (2)(**6**) insert—

"(3) If the appropriate regulator is satisfied that the condition in section 71D(4A) is met in relation to a person who is a director of an institution, of a financial holding company or of a mixed financial holding company, the appropriate regulator may require that institution, financial holding company or mixed financial holding company to remove that person from the board of directors."

(3) In section 71D (section 71B and 71C: conditions)(**7**), after subsection (4) insert—

"(4A) The condition in this subsection is met in relation to a director of an institution, of a financial holding company or of a mixed financial holding company, if the director—

(a) is no longer of sufficiently good repute to perform their duties,

(b) no longer possesses sufficient knowledge, skills, experience, honesty, integrity or independence of mind to perform their duties, or

(c) is no longer able to commit sufficient time to perform their duties."

(4) In section 71G (right to refer matters to the Tribunal)—

(a) after subsection (1) insert—

"(1A) An institution, financial holding company or mixed financial holding company which is aggrieved by the imposition of a requirement on that institution or holding company under section 71B(3) may refer the matter to the Tribunal.";

(b) in subsection (4), for "71B" substitute "71B(1) or (2)";

(**5**) 2000 c. 8.
(**6**) Sections 71B to 71I were inserted by S.I. 2016/1239.
(**7**) Section 71D is prospectively amended by S.I. 2019/632.

(c) after subsection (4), insert—

"(5) A director (or former director) of an institution, a financial holding company or a mixed financial holding company who is aggrieved by the imposition of a requirement on that institution or holding company under section 71B(3) may refer the matter to the Tribunal.".

(5) In section 71H (removal of director and senior executives and appointment of temporary manager: procedure)—

(a) in subsection (2)—

(i) in the opening words, after "relevant firm" insert ", institution, financial holding company or mixed financial holding company";

(ii) in paragraph (a), after "firm" insert ", institution, holding company";

(b) in subsection (5), in paragraphs (c)(i), (d), and (f) after "relevant firm" each time it occurs, insert ", the financial holding company, the mixed financial holding company".

(6) In section 71I (sections 71B to 71H: interpretation)(**8**)—

(a) in subsection (4), in the opening words, for "subsections (2) and (3)" substitute "sections 71B to 71H and this section";

(b) in subsection (5), in the definition of "appropriate regulator", after paragraph (c), insert—

"(d) in relation to a financial holding company or mixed financial holding company which is not a parent undertaking—

(i) the PRA, where the holding company is approved by the PRA under Part 12B;

(ii) the FCA in all other cases;".

(7) After Part 12A of the Financial Services and Markets Act 2000(**9**), insert—

"PART 12B

Approval of certain holding companies

Interpretation

192O.—(1) In this Part—

"consolidated basis" has the meaning given in Article 4(1)(48) of the capital requirements regulation;

"designated investment firm" means an investment firm which is for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013(**10**);

"Directive 2013/36/EU UK law" means—

(a) before IP completion day, the law of the United Kingdom which is relied on by the United Kingdom to implement the capital requirements directive and its implementing measures ("the relevant EU provisions"); and

(**8**) Section 71I is prospectively amended by S.I. 2019/632.
(**9**) Part 12A was inserted by section 27 of the Financial Services Act 2012 (c. 21).
(**10**) S.I. 2013/556.

(b) after IP completion day, the law of the United Kingdom which was relied on immediately before that date to implement the relevant EU provisions as it has effect—

(i) on IP completion day, in the case of rules made by the FCA or by the PRA under this Act, and

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

but the law of the United Kingdom does not for these purposes include section 192V rules;

"financial holding company" has the meaning given in Article 4(1)(20) of the capital requirements regulation;

"financial institution" has the meaning given in Article 4(1)(26) of the capital requirements regulation;

"institution" means a credit institution or an investment firm;

"investment firm" has the meaning given in Article 4(1)(2) of the capital requirements regulation;

"mixed financial holding company" has the meaning given in Article 4(1)(21) of the capital requirements regulation;

"parent institution" means an institution which is a parent undertaking;

"parent undertaking" has the meaning given in section 420;

"section 192V rules" means rules made by the PRA under section 192V;

"sub-consolidated basis" has the meaning given in Article 4(1)(49) of the capital requirements regulation;

"subsidiary institution" means an institution which is a subsidiary undertaking.

(2) A "parent financial holding company" or "parent mixed financial holding company" means a financial holding company or a mixed financial holding company which—

(a) is a UK parent financial holding company or a UK parent mixed financial holding company, within the meaning given in Article 4(1)(30) and 4(1)(32) respectively of the capital requirements regulation; or

(b) is required, whether by the PRA by direction under section 192C or otherwise, to comply with the capital requirements regulation and Directive 2013/36/EU UK law on a sub-consolidated basis.

Requirement for approval

192P.—(1) No company may be established in the United Kingdom as a parent financial holding company or a parent mixed financial holding company unless—

(a) the company is approved by the PRA;

(b) the PRA has confirmed that the company is exempt from the requirement for approval under subsection (2); or

(c) the subsidiary undertakings of the company do not include—

(i) a credit institution, or

(ii) a designated investment firm.

(2) A company is exempt from the requirement for approval if—

(a) it is a parent financial holding company and its principal activity is to acquire holdings in subsidiary undertakings; or

(b) it is a parent mixed financial holding company and its principal activity with respect to institutions and financial institutions is to acquire holdings in subsidiary undertakings,

and all of the conditions in subsection (3) are satisfied.

(3) The conditions in this subsection are satisfied if—

(a) the Bank of England has not identified the company as a resolution entity (within the meaning of section 3 of the Banking Act 2009(**11**)) in a group resolution plan under Part 5 of the Bank Recovery and Resolution (No. 2) Order 2014(**12**);

(b) a credit institution or a designated investment firm which is a subsidiary undertaking in the same group as the company—

(i) has been designated by the PRA as responsible to ensure the group's compliance with prudential requirements on a consolidated or sub-consolidated basis, and

(ii) has the power required to discharge those obligations effectively, whether under contractual arrangements with other companies in the group or otherwise;

(c) the company does not take any management, operational or financial decisions affecting—

(i) the group as a whole, or

(ii) any of its subsidiary undertakings which are institutions or financial institutions;

(d) the PRA is satisfied that there is no impediment to the effective supervision of the group on a consolidated or sub-consolidated basis.

(4) For the purposes of this section, a company is established in the United Kingdom if the company is incorporated in, or formed under the law of, any part of the United Kingdom.

Application for approval or exemption

192Q.—(1) An application for—

(a) the PRA's approval for the purposes of section 192P(1)(a); or

(b) confirmation of exemption from the requirement for approval,

must be made by the company concerned.

(2) The application must—

(a) be made in such manner as the PRA may direct; and

(b) contain or be accompanied by the information referred to in subsection (3).

(3) The information referred to in subsection (2) is—

(a) a description of the structural organisation of the group of which the company is part, indicating—

(i) its subsidiary undertakings and parent undertakings, and

(ii) the location and type of activity undertaken by each of the entities within the group;

(b) the identity of at least two individuals who are directors of the company;

(**11**) 2009 c. 1. Section 3 is amended by the Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350. There are other amendments to that section which are not relevant for the purposes of these Regulations.
(**12**) S.I. 2014/3348.

(c) a description as to how each director of the company complies with the requirements that they are of sufficiently good repute, and possess sufficient knowledge, skills and experience, to perform their duties as directors;

(d) where one of the subsidiary undertakings of the company is a credit institution or a designated investment firm—

(i) the identity of any persons who hold, whether directly or indirectly, qualifying holdings (within the meaning of Article 4(1)(36) of the capital requirements regulation), in the credit institution or designated investment firm, and the amounts of those holdings, or

(ii) if no person holds a qualifying holding in the credit institution or designated investment firm, the identity of the 20 largest shareholders in the credit institution or designated investment firm and the amount of their shareholdings;

(e) a description of the internal organisation and the distribution of tasks with the group.

(4) The PRA may, by notice in writing, require the company to provide any further information necessary to enable the PRA to assess whether the conditions referred to in section 192P(2) and (3) or section 192R are fulfilled.

Grant of approval

192R.—(1) When the PRA receives an application from a company under section 192Q, it must decide whether—

(a) to approve the company,

(b) to confirm that the company qualifies for an exemption under section 192P(2) and (3), or

(c) to take one or more of the measures in section 192T.

(2) The PRA may only approve the company under this section where conditions A, B and C are satisfied.

(3) Condition A is that the internal arrangements and distribution of tasks within the group of which the company is part are—

(a) adequate for the purpose of complying with the requirements imposed by Directive 2013/36/EU UK law, section 192V rules and the capital requirements regulation on a consolidated or sub-consolidated basis, and

(b) effective to—

(i) co-ordinate all the subsidiary undertakings of the company, including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

(ii) prevent or manage intra-group conflicts; and

(iii) enforce the group-wide policies set by the company throughout the group.

(4) Condition B is that the structural organisation of the group of which the company is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions and parent institutions as concerns the individual, consolidated and, where appropriate, sub-consolidated obligations to which they are subject.

(5) In assessing whether Condition B is satisfied, the PRA must take into account—

(a) the position of the company within the group;

(b) the shareholding structure of the company, and the group of which it is part; and

(c) the role of the company within the group.

(6) Condition C is that—

(a) the PRA has received the information as to the identity of the shareholders of any credit institution in the group, and the amount of their shareholdings, which is required under Directive 2013/36/EU UK law; and

(b) the directors of the company are of sufficiently good repute, and possess sufficient knowledge, skills and experience to perform their duties as directors.

(7) Where the PRA proposes to refuse approval, or to reject an application for confirmation of exemption, it must give the company a warning notice within four months beginning with—

(a) the date on which it received the application under section 192Q; or

(b) if later (subject to subsection (8) and section 387), the date on which it received any further information requested under section 192Q(4).

(8) When the PRA decides to refuse approval, or to reject an application for an exemption, it must give the company a decision notice within six months of the date on which it received which the application under section 192Q.

Regulator's duty to monitor

192S.—(1) The PRA must monitor whether—

(a) a company approved under section 192R continues to satisfy the conditions in section 192R(3) to (6); and

(b) a company which it has confirmed is exempt from the requirement for approval under section 192P continues to satisfy the conditions for exemption set out in section 192P(2) and (3).

(2) A company which is subject to the requirement for approval under section 192P(1), or exempt from that requirement under section 192P(2), must give the PRA notice in writing of—

(a) any change in the structural organisation of the group; and

(b) any other information required by rules made under section 192J.

Measures

192T.—(1) Where the PRA determines that the conditions in section 192R are not met, or have ceased to be met, by a company which is subject to the requirement for approval under section 192P(1), the PRA must take appropriate measures in relation to the company—

(a) to ensure the continuity and integrity of the consolidated or sub-consolidated supervision of the group of which the company is part (the "relevant group"); and

(b) to ensure that the relevant group complies with the requirements in Directive 2013/36/EU UK law, section 192V rules and the capital requirements regulation on a consolidated or sub-consolidated basis.

(2) Measures taken under subsection (1) may include a direction—

(a) suspending the exercise by the company of voting rights attached to the shares of specified subsidiary institutions held by the company;

(b) requiring the company to transfer its holdings in its subsidiary institutions to its shareholders;

(c) designating another financial holding company, mixed financial holding company or institution within the group as being responsible for a period specified in the direction for ensuring that the group complies with the requirements laid down in Directive

2013/36/EU UK law, section 192V rules and in the capital requirements regulation on a consolidated or sub-consolidated basis;

(d) restricting or prohibiting distributions or interest payments to shareholders;

(e) requiring the company to divest from, or reduce its holdings in, institutions or financial institutions;

(f) requiring the company to submit a plan setting out how it proposes to correct any deficiencies in its compliance with the conditions in section 192R.

(3) Where the PRA determines that a company which it has confirmed is exempt from the requirement for approval under section 192P no longer satisfies the conditions for exemption under section 192P(3), it must direct that company to apply for approval for the purposes of section 192P(1)(a).

Directions: procedure

192U.—(1) If the PRA proposes to give a direction under section 192T, or gives such a direction with immediate effect, it must give written notice to—

(a) the financial holding company or mixed financial holding company to which the direction is given (or to be given); and

(b) any authorised person or recognised investment exchange who will, in the opinion of the PRA, be significantly affected by the direction.

(2) In the following provisions of this section "notified person" means a person to whom notice under subsection (1) is given.

(3) A direction under section 192T takes effect—

(a) immediately, if the notice under subsection (1) states that that is the case;

(b) on such other date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(4) A direction may be expressed to take effect immediately (or on a specified date) only if the PRA reasonably considers that it is necessary for the direction to take effect immediately (or on that date).

(5) The notice under subsection (1) must—

(a) give details of the direction;

(b) state the PRA's reasons for the direction and for its determination as to when the direction takes effect;

(c) inform the notified person that the person may make representations to the PRA within such period as may be specified in the notice (whether or not the notified person has referred the matter to the Tribunal); and

(d) inform the notified person of the person's right to refer the matter to the Tribunal.

(6) The PRA may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by any notified person, the PRA decides—

(a) to give the direction proposed; or

(b) if the direction has been given, not to revoke the direction,

it must give each of the notified persons written notice.

(8) If, having considered any representations made by any notified person, the PRA decides—

(a) not to give the direction proposed,

(b) to give a different direction, or

(c) to revoke a direction which has effect,

it must give each of the notified persons written notice.

(9) A notice given under subsection (7) must inform the notified person of the person's right to refer the matter to the Tribunal.

(10) A notice under subsection (8)(b) must comply with subsection (5).

(11) If a notice informs the notified person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of subsection (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Rules imposing consolidated or sub-consolidated requirements

192V.—(1) The PRA may make rules applying to financial holding companies and mixed financial holding companies which are approved under section 192R, or designated under section 192T(2)(c), where it appears to the PRA to be necessary or expedient to do so—

(a) to secure the application of requirements in Directive 2013/36/EU UK law or the capital requirements regulation to the group of which the holding company forms part on a consolidated or a sub-consolidated basis; and

(b) to advance any of its objectives.

(2) Subject to subsection (3), rules made under this section may not modify, amend or revoke any retained direct EU legislation, except retained direct EU legislation which takes the form of PRA rules.

(3) Subsection (2) does not prevent the PRA from making rules to apply provisions in the capital requirements regulation to financial holding companies and mixed financial holding companies with or without modification.

(4) Section 141A (power to make consequential amendments of references to rules etc) applies to the exercise by the PRA of its power under this section to make, alter or revoke its rules as it applies in relation to the exercise by the PRA of its power under Part 9A to make, alter or revoke its rules.

Consultation between regulators

192W. The PRA must consult the FCA before—

(a) approving an application under section 192Q; or

(b) giving a notice under section 192U(1) or (8)(b) to the financial holding company or mixed financial company of a group which includes an institution which is not a PRA-authorised person.

References to Tribunal

192X.—(1) A reference may be made to the Tribunal by—

(a) a company which is aggrieved by the decision of the PRA under section 192R to refuse approval, or to reject an application for an exemption; or

(b) a notified person who is aggrieved by the exercise by the PRA of its powers in relation to directions under section 192T.

(2) "Notified person" means a person to whom notice under section 192U(1) has been given, or ought to have been given.

Power to impose penalty or issue censure

192Y.—(1) This section applies if the PRA is satisfied that a company which is or has been a financial holding company or a mixed financial holding company ("the company") has contravened a requirement imposed by—

(a) this Part;

(b) a direction given to the company by the PRA under section 192T;

(c) section 192V rules; or

(d) Parts 3, 4, 6, 7 or 7A of the capital requirements regulation.

(2) The PRA may impose a penalty of such amount as it considers appropriate on—

(a) the company; or

(b) any person who was knowingly concerned in the contravention.

(3) The PRA may, instead of imposing a penalty on a person, publish a statement censuring the person.

(4) The PRA may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 192Z.

(5) "The limitation period" means the period of 3 years beginning with the first day on which the PRA knew of the contravention.

(6) For this purpose the PRA is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

Procedure and right to refer to Tribunal

192Z.—(1) If a regulator proposes to take action against a person under section 192Y, it must give the person a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If the regulator decides to take action against a person under section 192Y, it must give the person a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the regulator decides to take action against a person under section 192Y, the person may refer the matter to the Tribunal.

Duty on publication of statement

192Z1. After a statement under section 192Y(3) is published, the regulator must send a copy of the statement to—

(a) the person in respect of whom it is made; and

(b) any person to whom a copy of the decision notice was given under section 393(4).

Directions and penalties: statement of policy

192Z2.—(1) The PRA must prepare and issue a statement of policy with respect to—

(a) the taking of measures, including directions, under section 192T;

(b) the imposition of penalties under section 192Y;

(c) the amount of penalties under that section.

(2) The PRA's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention;

(b) the extent to which the contravention was deliberate or reckless; and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The PRA may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the PRA must issue the altered or replacement statement.

(5) In imposing, or deciding whether to impose a penalty under section 192Y(2) in the case of any particular contravention, the PRA must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

(6) A statement under this section must be published by the PRA in the way appearing to the PRA to be best calculated to bring it to the attention of the public.

(7) The PRA may charge a reasonable fee for providing a person with a copy of the statement published under this section.

(8) The PRA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

Statement of policy relating to directions: procedure

192Z3.—(1) Before issuing a statement of policy under section 192Z2, the PRA must—

(a) consult the FCA; and

(b) publish a draft of the proposed statement in the way appearing to the PRA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the PRA within a specified time.

(3) Before issuing the proposed statement, the PRA must have regard to any representations made to it in accordance with subsection (2).

(4) If the PRA issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (2) in a way which is, in the opinion of the PRA, significant, the PRA must—

(a) consult the FCA again before issuing it; and

(b) in addition to complying with subsection (4), publish details of the difference.

(6) The PRA may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).

(7) This section also applies to a proposal to alter or replace a statement.".

(8) In section 392 (application of sections 393 and 394)(**13**)—

(a) in paragraph (a), after "192L(1)" insert ", 192R(8), 192Z(1)";

(b) in paragraph (b), after "192L(4)" insert ", 192R(9), 192Z(4)".

(9) In section 395(13) (the FCA's and the PRA's procedures)(**14**), after paragraph (bc) insert—

"(bd) section 192U(1), (7) or (8);".

(10) In section 417(1) (definitions)(**15**), at the end of the definition of "capital requirements directive" insert ", as it had effect immediately before IP completion day".

Amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

3. In article 6(1)(a) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**16**), for paragraph (iv), substitute—

"(iv) National Savings and Investments;".

Amendment of the Capital Requirements Regulations 2013

4.—(1) The Capital Requirements Regulations 2013(**17**) are amended as follows.

(2) In regulation 2, in the definition of "capital requirements directive", at the end insert "as that directive is amended by Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures(**18**)";

(3) In regulation 4, for paragraph (a), substitute—

"(a) the PRA is responsible for—

(i) all the functions of a competent authority in respect of PRA-authorised persons and financial holding companies and mixed financial holding companies approved or designated by the PRA under—

(aa) Part 12B of FSMA, or

(bb) regulation 5 of the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020;

(ii) the application of Article 124(2) and Article 164(6) of the capital requirements regulation;".

Transitional provisions

5.—(1) Paragraphs (2) to (7) apply to a company ("C") which—

(**13**) Section 392 was amended by paragraph 31 of Schedule 9 to the Financial Services Act 2012 (c. 21). There are other amendments to section 392 which are not relevant to these Regulations.
(**14**) The opening words in section 395 were amended by section 17(3) of the Financial Services Act 2012. Sub-paragraph (bc) was inserted by S.I. 2009/534. There are other amendments to subsection (13) which are not relevant to these Regulations.
(**15**) The definition of "capital requirements directive" was inserted by S.I. 2013/3115.
(**16**) S.I. 2001/544. There are other amending instruments, but none is relevant.
(**17**) S.I. 2013/3115, amended by S.I. 2018/1401.
(**18**) OJ L150, 7.6.2019, p. 253.

(a) is established in the United Kingdom as a parent financial holding company or a parent mixed financial holding company on 29th December 2020; and

(b) requires approval or confirmation of an exemption from the Prudential Regulation Authority ("PRA") under section 192P of the Financial Services and Markets Act 2000 ("FSMA").

(2) C is to be treated as having an approval to be established in the United Kingdom as a parent financial holding company or parent mixed financial holding company (as the case may be).

(3) C's approval under paragraph (2) lapses—

(a) on 28th June 2021, if C has not submitted an application to the PRA under section 192Q of FSMA before that date; or

(b) on the earlier of—

(i) the day on which C's application under section 192Q of FSMA is finally determined, or

(ii) 31st December 2021.

(4) For the purposes of this regulation, an application is finally determined—

(a) when the application is withdrawn;

(b) when the PRA approves C, or confirms that C is exempt from the requirement for approval, under section 192R of FSMA;

(c) where the PRA refuses approval, or rejects an application for confirmation of exemption, and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;

(d) where the PRA refuses approval, or rejects an application for confirmation of exemption, and the matter is referred to the Tribunal, the date on which the reference is determined by the Tribunal or has otherwise ended.

(5) The PRA may designate one or more financial holding companies, mixed financial holding companies or institutions within the group of which the holding company or institution forms part as being responsible for ensuring that the group complies with the requirements laid down in Directive 2013/36/EU UK law and in the capital requirements regulation on a consolidated or sub-consolidated basis until such time as C's application has been finally determined.

(6) For the purposes of sections 71B to 71H of FSMA, in relation to a holding company designated under paragraph (5) which is not a parent undertaking, "appropriate regulator" means the PRA.

(7) For the purposes of this regulation—

(a) "consolidated basis", "Directive 2013/36/EU UK law", "financial holding company", "mixed financial holding company", "institution", "parent financial holding company", "parent mixed financial holding company" and "sub-consolidated basis" have the meanings given in section 192O of FSMA (inserted by regulation 2(7));

(b) "capital requirements regulation" has the meaning given in section 417 of FSMA;

(c) "group" has the meaning given in section 421 of FSMA.

(8) In relation to rules made under section 192V of FSMA, the requirements of section 138J of that Act (consultation) may be satisfied by things done before 28th December 2020 as well as by things done on or after that date.

PART 3

Confidential Information

Amendment of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

6.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**19**) are amended as follows.

(2) In regulation 2(**20**), insert at the appropriate places—

""capital requirements directive information" means confidential information received by the PRA—

(a) before IP completion day in the course of discharging its functions as the competent authority under the capital requirements directive;

(b) after IP completion day in the course of exercising its functions in or under the Act or retained EU law which functions are equivalent to the functions as the competent authority set out in the capital requirements directive;";

""PRA worker" means—

(a) a person who is or has been employed by the PRA; or

(b) an auditor or expert instructed by the PRA;".

(3) In regulation 9(**21**), after paragraph (4), insert—

"(4A) Paragraph (4) does not apply where regulation 10C applies to the disclosure of confidential information.".

(4) After regulation 10B(**22**), insert—

"**Disclosure of capital requirements directive information to International Financial Institutions**

10C.—(1) Subject to the conditions in paragraph (2), the PRA or a PRA worker is permitted to disclose capital requirements directive information to an organisation specified in the first column of Part 6 of Schedule 1 for the purpose of enabling or assisting that organisation to discharge any of the functions listed beside it in the second column of Part 6 of Schedule 1.

(2) The conditions are as follows—

(a) the organisation must make an explicit request for the confidential information;

(b) the request is precise as to the nature, scope and format of the confidential information and the means of its disclosure or transmission;

(c) the confidential information requested is necessary for the performance of the specific tasks of the organisation making the request and does not go beyond the functions conferred on that organisation;

(d) the organisation making the request justifies it by reference to its tasks; and

(e) to the extent that the disclosure of confidential information involves processing of personal data, any processing of personal data by the organisation making the request complies with the UK GDPR.

(**19**) S.I. 2001/2188.
(**20**) There are amendments to regulation 2 which are not relevant to these Regulations.
(**21**) Paragraph (4) was inserted by S.I. 2010/2628 and substituted by S.I. 2013/3115. A further substitution by S.I. 2019/681 comes into force on IP completion day. There are other amendments to regulation 9 which are not relevant to these Regulations.
(**22**) Regulation 10B was inserted by S.I. 2014/3348.

(3) In this regulation, "the UK GDPR" has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(10) and (14) of that Act)."

(5) In Schedule 1—

(a) in the table in Part 3(**23**), after the entry commencing "An authority responsible for maintaining the stability" insert—

"A financial intelligence unit in a third country	Its functions as such
An authority in a third country responsible for the application of rules on structural separation within a banking group	Its functions as such"

(b) at the end, insert—

"PART 6

Organisation	*Functions*
International Monetary Fund	Its functions in relation to assessments for the Financial Sector Assessment Program
World Bank	Its functions in relation to assessments for the Financial Sector Assessment Program
Bank for International Settlements	Its functions in relation to quantitative impact studies
Financial Stability Board	Its surveillance functions"

PART 4

Capital Buffers and Macro-prudential Measures

Amendment of the Capital Requirements Regulations 2013

7. In regulation 34 of the Capital Requirements Regulations 2013(**24**)—

(a) in paragraph (3)—

(i) at the end of sub-paragraph (b), insert "and";

(ii) at the end of sub-paragraph (c), omit "and";

(iii) omit sub-paragraph (d);

(b) after paragraph (3), insert—

"(3A) In making the assessment required by paragraph (3), the FCA must also take into account their assessment of systemic risk."

(**23**) Part 3 of Schedule 1 was amended by S.I. 2014/3348 and 2019/681.
(**24**) S.I. 2013/3115, amended by S.I. 2018/1401.

Amendment of the Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015

8.—(1) The Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015(**25**) is amended as follows.

(2) In article 2(1)—

(a) after the definition of "PRA-authorised person", insert—

> ""relevant O-SII has the meaning given in regulation 34 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(**26**);";

(b) omit the definition of "SRB institution";

(c) omit the definition of "SRB institution additional leverage ratio";

(d) in the appropriate place, insert—

> ""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;";

(e) omit the definition of "systemic risk buffer";

(f) in the appropriate place, insert—

> ""O-SII buffer" has the meaning given by regulation 34 of the Capital Requirements (Capital Buffers and Macro-prudential Measure) Regulations 2014;".

(3) In article 4(1)(b)—

(a) for "SRB institutions" substitute "relevant O-SIIs";

(b) for "SRB institution" substitute "O-SII".

Amendment of the Capital Requirements (Amendment) (EU Exit) Regulations 2018

9. The Capital Requirements (Amendment) (EU Exit) Regulations 2018(**27**) are amended in accordance with regulations 10 to 20.

Commencement

10. In regulation 1, after paragraph (2), insert—

> "(2A) Regulations 35(2)(c), (f) and (2A), 50, 51(za), (a), (b)(i), and (c), 52A, 53(b)(i), 53A, 56, 57(a), (b)(i), (iii) and (iv), 58A, 59 and 60 come into force on 29th December 2020.".

Supervisory review and evaluation process

11. In regulation 21, in new regulation 34A(1), for sub-paragraphs (a) to (c), substitute—

> "(a) in the case of the PRA—
>
> (i) risks to which that institution is or might be exposed, and
>
> (ii) risks revealed by stress testing, taking account of the nature, scale and complexity of that institution's activities;
>
> (b) in the case of the FCA—

(**25**) S.I. 2015/905. There are other amending instruments, but none is relevant.
(**26**) S.I. 2014/894, as amended pursuant to these Regulations.
(**27**) S.I. 2018/1401.

(i) the risks referred to in paragraph (a), and

(ii) the risks that institution poses to the UK financial system."

Application of supervisory measures to institutions with similar risk profiles

12. In regulation 23, in new regulation 35A, for "competent authority" substitute "FCA".

Interpretation

13. In regulation 35—

(a) in paragraph (2)—

(i) before sub-paragraph (a), insert—

"(za) for the definition of "appropriate regulator", substitute—

""appropriate regulator" means—

(a) the PRA, in relation to PRA-authorised persons and financial holding companies and mixed financial holding companies approved or designated by the PRA under—

(i) Part 12B of FSMA, or

(ii) regulation 5 of the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020;

(b) the FCA in relation to any other person;""

(ii) in sub-paragraph (a), in the new definition of "capital conservation buffer", after paragraph (a), insert—

"(aa) in relation to a parent financial holding company and a parent mixed financial holding company, a capital conservation buffer the holding company is required to calculate under rules made by the PRA under section 192V of FSMA;";

(iii) in sub-paragraph (c), in the new definition of "combined buffer requirement", after paragraph (b), insert—

"(ba) an O-SII buffer;";

(iv) in sub-paragraph (e), in the new definition of "institution-specific countercyclical capital buffer", after paragraph (a), insert—

"(aa) in relation to a parent financial holding company or a parent mixed financial holding company, a countercyclical capital buffer which the holding company is required to calculate under rules made by the PRA under section 192V of FSMA;";

(v) after sub-paragraph (e), insert—

"(ea) before the definition of "systemic risk buffer", insert—

""parent financial holding company" and "parent mixed financial holding company" have the meanings given in section 192O(2) of FSMA;";"

(vi) in sub-paragraph (f), in the new definition of "systemic risk buffer", for "34A(1)" substitute "34C(1)";

(vii) in sub-paragraph (g), omit ""O-SII buffer"";

(b) after paragraph (2), insert—

"(2A) For the definition of "O-SII buffer" substitute—

""O-SII buffer" has the meaning given in regulation 34ZA.""

Overview

14. In regulation 38, in paragraph (1) of new regulation 7—

(a) in the opening words, omit "for how the Bank";

(b) after the opening words, insert—

"(a) for how the Bank—";

(c) renumber sub-paragraphs (a) and (b) as paragraphs (i) and (ii) of the sub-paragraph (a) so inserted;

(d) after the new sub-paragraph (a), insert—

"(b) for how the PRA is to apply institution-specific countercyclical capital buffers to parent financial holding companies and parent mixed financial holding companies.".

Countercyclical capital buffer

15. After regulation 47, insert—

"**Regulation 19A (institution-specific countercyclical capital buffer and holding companies)**

47A.—(1) After regulation 19, insert—

"**Application of the institution-specific countercyclical capital buffer to holding companies**

19A. Where the PRA makes rules under section 192V of FSMA requiring a parent financial holding company or a parent mixed financial holding company (a "holding company") to calculate an institution-specific countercyclical capital buffer—

(a) the buffer rate set by the FPC under regulation 10, or recognised or set under regulation 15, is to apply to the holding company as it applies to a UK institution;

(b) the date set by the FPC for the application—

(i) of a change in the buffer rate under regulation 11, or

(ii) of a buffer rate recognised or set under regulation 15,

is to apply to the holding company as it applies to a UK institution.""

G-SIIs

16.—(1) In regulation 50, in the new paragraph (2), for sub-paragraphs (a) to (d), substitute—

"(a) a group, the parent undertaking of which is—

(i) a UK parent institution,

(ii) a UK parent financial holding company, or

(iii) a UK parent mixed financial holding company, or

(b) an institution authorised in the United Kingdom which is not a subsidiary of a body mentioned in sub-paragraph (a)(i) to (iii).”

(2) In regulation 51—

(a) after the opening words, insert—

“(za) in paragraph (1)—

(i) for “particular body”, substitute “particular group or body”,

(ii) for “relevant body”, both times it occurs, substitute “relevant institution”;”;

(b) in paragraph (a), in the new paragraph (2), for “Where the relevant body” substitute “Where the parent undertaking of the relevant institution”;

(c) for paragraph (b), substitute—

“(b) in paragraph (3)—

(i) in sub-paragraph (a), for “to which the relevant body belongs” substitute “concerned”,

(ii) in sub-paragraph (e) omit the words from “, including” to the end.”;

(d) after paragraph (b), insert—

“(c) in paragraph (5), for “relevant body”, each time it occurs, substitute “relevant institution”.”.

(3) After regulation 52, insert—

“**Regulation 25 (re-allocation in exercise of sound supervisory judgment)**

52A. In regulation 25(a)—

(a) after “determine that”, insert “a group or”;

(b) after “fact that” insert “the group or”.”

(4) In regulation 53, for paragraph (b), substitute—

“(b) in paragraph (5)—

(i) for the “bodies concerned” substitute “to the UK parent institution, UK parent financial holding company, UK parent mixed financial holding company or institution concerned”,

(ii) omit “, the Commission, the ESRB and EBA”.”

(5) After regulation 53, insert—

“**Regulation 27 (Appeals)**

53A. In regulation 27—

(a) in paragraph (1)—

(i) in sub-paragraph (a), after “the person”, insert “or a group for which the person is UK parent institution, UK parent financial holding company, UK parent mixed financial holding company (a “relevant group”),”,

(ii) in sub-paragraph (b), after “person”, insert “or the relevant group”;

(b) in paragraph (2), at the end, insert “or the relevant group”.”

O-SIIs

17.—(1) In regulation 56—

(a) in the opening words, for "(a) to (c)" substitute "(a) to (d)";

(b) for the new sub-paragraphs (a) to (c), substitute—

"(a) a group, the parent undertaking of which is—

(i) a UK parent institution,

(ii) a UK parent financial holding company, or

(iii) a UK parent mixed financial holding company, or

(b) an institution.".

(2) In regulation 57, for the words from "in paragraph (2)(b)" to the end, substitute—

"—

(a) in paragraph (1)—

(i) for "particular body", substitute "particular group or body",

(ii) for "relevant body", both times it occurs, substitute "relevant institution";

(b) in paragraph (2)—

(i) for "relevant body", each time it occurs, substitute "relevant institution",

(ii) in sub-paragraph (b), omit "or the European Union",

(iii) in sub-paragraph (c), for "relevant body's" substitute "relevant institution's",

(iv) in sub-paragraph (d), after "or" insert ", in the case of an institution,"".

(3) In regulation 58, for paragraph (c), substitute—

"(c) in paragraph (3)—

(i) for the "bodies concerned" substitute "to the UK parent institution, UK parent financial holding company, UK parent mixed financial holding company or institution concerned",

(ii) omit ", the Commission, the ESRB and EBA".".

(4) After regulation 58, insert—

"**Regulation 33 (Appeals)**

58A. In regulation 33, after "the person", insert "or a group for which the person is UK parent institution, UK parent financial holding company, or UK parent mixed financial holding company (a relevant group"),"."

O-SII Buffers

18. In regulation 59, for the new regulation 34, substitute—

"PART 5ZA

O-SII Buffers

CHAPTER 1

Interpretation and power to impose O-SII buffer

Interpretation

34.—(1) For the purposes of this Part, a relevant O-SII is an O-SII, or part of an O-SII, which is—

(a) a ring-fenced body within the meaning of section 142A of FSMA(**28**);

(b) a large building society; or

(c) a financial holding company or a mixed financial holding company which—

(i) has a ring-fenced body or a large building society as a subsidiary; and

(ii) is required, whether by the PRA by a direction under section 192C of FSMA or otherwise, to comply with the requirements of the capital requirements regulation and Directive 2013/36/EU UK law on a sub-consolidated basis.

(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 (1)(c), "Directive 2013/36/EU UK law", "financial holding company" and "mixed financial holding company" have the meanings given in section 192O of FSMA.

(4) 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(**29**);

(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)(**30**) of the Building Societies Act 1986.

(5) For the purposes of this Part—

"buffer rate" has the meaning given in regulation 34ZA(2);

"FPC framework" has the meaning given in regulation 34ZB(1);

"O-SII buffer" has the meaning given in regulation 34ZA(1).

Power for the PRA to require an O-SII buffer to be maintained

34ZA.—(1) The PRA may require a relevant O-SII to maintain Common Equity Tier 1 capital, to be known as an "O-SII buffer".

(2) The amount of capital which the PRA may require a relevant O-SII to hold ("the buffer rate") must be expressed as a percentage of the relevant O-SII's total risk exposure amount calculated in accordance with Article 92(3) of the capital requirements regulation.

(**28**) Section 142A was inserted by section 4(1) of the Financial Services (Banking Reform) Act 2013 (c. 33).
(**29**) 1986 c. 53. The definition of "deferred shares" was amended by S.I. 2001/2617. The definition of "deposit" and "share" were substituted by paragraph 53(1) of Schedule 7 to the Building Societies Act 1997 (c. 32).
(**30**) Subsection (10) was inserted by paragraph 2 of Schedule 9 to the Financial Services (Banking Reform) Act 2013.

CHAPTER 2

United Kingdom buffer rates for O-SIIs

O-SII buffer rates: The FPC framework

34ZB.—(1) The FPC must have a framework for O-SII 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 relevant O-SII might pose a risk to the financial system;

(b) a methodology for measuring the criteria and giving a relevant O-SII a single score in relation to the criteria; and

(c) in relation to each score that an O-SII may receive, a buffer rate that corresponds to the score.

(3) In paragraph (2)(a), a relevant O-SII is in distress only if it experiences a significant deterioration in its financial situation.

(4) In paragraph (2)(a) the criteria to be specified must each be—

(a) measurable; and

(b) capable of being applied to a relevant O-SII 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

may be expressed by way of a formula, an algorithm, a graph or a table.

(7) The Bank must publish each element of the FPC framework, together with the FPC's justification for each element.

Determination by PRA of buffer rates for individual relevant O-SIIs

34ZC.—(1) The PRA may, in relation to each relevant O-SII, determine—

(a) whether or not to set a buffer rate for the O-SII; and

(b) where it does set a buffer rate, subject to paragraph (3), 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 relevant O-SII—

(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 relevant O-SII ("a framework buffer rate") by—

(a) applying the methodology of the FPC framework to obtain a score for the relevant O-SII; and

(b) ascertaining to what buffer rate the score corresponds under the FPC framework.

Step 3—setting a buffer rate for a relevant O-SII 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 a relevant O-SII, even if it has derived a framework buffer rate for the institution of 0% under Step 2;

(b) set a buffer rate for a relevant O-SII which is different to the framework buffer rate derived for the institution under Step 2; or

(c) set no buffer rate for a relevant O-SII, 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 relevant O-SIIs 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 relevant O-SII, 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 relevant O-SII, the PRA must set the rate so derived as the buffer rate for the institution.

(3) Where paragraph (4) applies, the PRA may not apply an O-SII buffer rate to a relevant O-SII which exceeds the lower of—

(a) the sum of—

(i) the higher of the G-SII or the O-SII buffer rate applicable to the group at consolidated level, and

(ii) 1% of the total risk exposure amount calculated in accordance with Article 92(3) of the capital requirements regulation; and

(b) 3% of the total risk exposure amount calculated in accordance with Article 92(3) of the capital requirements regulation.

(4) This paragraph applies where the relevant O-SII is a subsidiary of—

(a) a G-SII; or

(b) an O-SII, which is subject to an O-SII buffer on a consolidated basis.

(5) Where a group is subject on a consolidated basis to both a G-SII buffer and an O-SII buffer, only the higher buffer is to apply.

CHAPTER 3

Date of application and calculation of O-SII buffer

Date of application

34ZD.—(1) Where the PRA sets a buffer rate for a relevant O-SII under regulation 34ZC, the PRA must decide the date from which the O-SII must apply that rate in the calculation of its O-SII buffer.

(2) Where the PRA has set a buffer rate for a relevant O-SII under regulation 34ZC and determines that a buffer rate is no longer to be set for the O-SII under that regulation, the PRA must decide the date from which this takes effect.

Calculation of buffer

34ZE.—(1) The PRA must require a relevant O-SII to calculate its O-SII buffer by applying the buffer rate set for it under regulation 34ZC to all its exposures.

(2) The PRA must require the relevant O-SII, 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 34ZC(2); and

(b) apply the buffer rate equally to all exposures, regardless of where they are located.

CHAPTER 4

Publication, Review and Appeals

Publication: United Kingdom buffer rates

34ZF.—(1) Where the PRA sets a buffer rate for a relevant O-SII under regulation 34ZC, the PRA must publish the following information—

(a) the relevant O-SII to which the buffer rate applies;

(b) the buffer rate;

(c) the justification for setting the buffer rate;

(d) the date from which the relevant O-SII must apply the buffer rate;

(e) the level of consolidation to be used in the calculation of the O-SII buffer (as determined under Step 1 of regulation 34ZC(2)); and

(f) the fact that the O-SII buffer applies to exposures located anywhere in the world.

(2) Where the PRA determines that a buffer rate is no longer to be set for a relevant O-SII under regulation 34ZC, the PRA must publish the following information—

(a) the fact that the buffer rate is no longer set;

(b) the fact that the relevant O-SII is no longer required to maintain an O-SII buffer;

(c) the justification for ceasing to set the buffer rate; and

(d) the date from which the relevant O-SII 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 34ZC(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.

Review

34ZG.—(1) The FPC must review the elements of the FPC framework at least every second year.

(2) The PRA must review the following matters at least once every year—

(a) a buffer rate set under regulation 34ZC;

(b) a decision not to set a buffer rate under regulation 34ZC.

Appeals

34ZH.—(1) A person who is aggrieved by a decision of the PRA under regulation 34ZC 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 34ZC(2); and

(b) the exercise of the PRA's discretion in Step 3 of regulation 34ZC(2)."

Systemic risk buffer: amendments

19.—(1) In regulation 60, for the new Part 5A, substitute—

"PART 5A

Systemic Risk Buffer

Interpretation

34A. In this Part—

"institution" means—

(a) a credit institution, or

(b) an investment firm which is for the time being designated by the PRA under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013(**31**);

"recognition decision" means a decision by the PRA to recognise a third country buffer rate;

"relevant entity" has the meaning given in regulation 34C(1);

"systemic risk buffer" has the meaning given in regulation 34C(1);

"third country buffer rate" has the meaning given in regulation 34B.

Third country buffer rates: recognition

34B.—(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

(**31**) S.I. 2013/556. Article 3 was amended by S.I. 2013/3115; 2017/701 and 2019/632.

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.

Requirement to maintain a systemic risk buffer

34C.—(1) The PRA may require an institution, a UK parent financial holding company, or a UK parent mixed financial holding company (a "relevant entity") to hold additional Common Equity Tier 1 capital ("a systemic risk buffer") in relation to some or all of the exposures referred to in regulation 34G, in order to prevent or mitigate macro-prudential or systemic risks which are not covered—

(a) under the capital requirements regulation; or

(b) by the countercyclical capital buffer, the G-SII buffer or the O-SII buffer provided for in these Regulations.

(2) If the PRA imposes a requirement on a relevant entity under paragraph (1), the PRA must specify—

(a) the exposures or subset of exposures to which that requirement relates;

(b) the buffer rate to be applied to those exposures.

(3) The only buffer rates that the PRA may specify for the purposes of paragraph (2) are 0.5%, 1%, 1.5%, 2%, 2.5%, 3%, 3.5%, 4%, 4.5% and 5%.

(4) For the purposes of this regulation, a risk is a "macro-prudential or systemic risk" if it is a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in the United Kingdom.

(5) The PRA may impose a requirement under paragraph (1) on all relevant entities, or on relevant entities of a specified description, and may impose different requirements in relation to different relevant entities or classes of exposures.

Third country rates: application to relevant entities

34D.—(1) The PRA may require a relevant entity which has exposures located in a third country, in relation to which a recognition decision is in effect, to apply the third country buffer rate, in relation to its total exposures in that country.

(2) The powers in paragraph (1), in relation to a recognition decision which is limited to relevant entities of a specified description (in accordance with regulation 34B(3)), apply only to relevant entities falling within the description.

(3) Where a relevant entity is required to apply a third country buffer rate under paragraph (1), the PRA must specify, to the relevant entity concerned, the basis to be applied in valuing exposures from one of the following bases—

(a) an individual basis;

(b) a sub-consolidated basis; or

(c) a consolidated basis.

(4) Where the PRA require a relevant entity to apply a third country buffer rate under paragraph (1)—

(a) if the third country buffer rate addresses different risks to the systemic risk buffer rate applied under regulation 34C (the "regulation 34C rate"), the third country buffer rate may be applied cumulatively with the systemic risk buffer rate;

(b) if the third country buffer rate addresses the same risks as the regulation 34C rate, only the higher buffer rate is to be applied.

(5) The PRA may revoke a requirement imposed under paragraph (1).

(6) Where the PRA decides that a relevant entity must apply a third country buffer rate, the regulator must decide the date from which the relevant entity must apply the third country buffer rate.

(7) Where the PRA revokes a requirement that a relevant entity maintain a third country buffer, the regulator must decide the date from which the relevant entity must cease to apply the third country buffer rate.

Calculation of the systemic risk buffer

34E.—(1) Relevant entities must calculate the amount of the systemic risk buffer in accordance with the following formula—

$$SRB = (R_T \times E_T) + \left(\sum_I R_I \times E_I\right)$$

where—

"SRB" is the systemic risk buffer;

"R_T"is the buffer rate applicable to the amount of the total risk exposure of a relevant entity;

"E_T" is the amount of the total risk exposure of the relevant entity calculated in accordance with Article 92(3) of the capital requirements regulation;

"I" is the index denoting the subset of exposures specified by the PRA under regulation 34C(2);

"R_I" is the buffer rate applicable to the amount of the risk exposure of I;

"E_I" is the risk exposure amount of a relevant entity for I calculated in accordance with Article 92(3) of the capital requirements regulation.

(2) The PRA may require a relevant entity to maintain a systemic risk buffer on—

(a) an individual basis;

(b) a sub-consolidated basis; or

(c) a consolidated basis.

Cumulative buffers

34F.—(1) Where a relevant entity is subject to a systemic risk buffer, applied in accordance with this Part, subject to paragraph (2), that buffer is to be cumulative with the O-SII buffer applied under Part 5ZA or the G-SII buffer set under Part 4.

(2) The sum of the systemic risk buffer rate and the O-SII buffer rate or G-SII buffer rate may not exceed 5%.

Systemic risk buffer exposures

34G. A systemic risk buffer may apply to the following exposures—

(a) all exposures located in the United Kingdom;

(b) the following sectoral exposures located in the United Kingdom—

(i) all retail exposures to natural persons which are secured by residential property,

(ii) all exposures to legal persons which are secured by mortgages on commercial immoveable property,

(iii) all exposures to natural persons other than those specified in sub-paragraph (i),

(iv) all exposures to legal persons other than those specified in sub-paragraph (ii);

(c) all exposures located in a third country;

(d) sectoral exposures referred to in paragraph (b) which are located in a third country;

(e) a specified subset of the exposures referred to in paragraphs (a) to (d).

Notifications

34H.—(1) Where the PRA gives or revokes a recognition decision under regulation 34B, 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.

(2) When the relevant entity to which one or more systemic risk buffers apply is a subsidiary undertaking of a parent undertaking which is incorporated under the law of a third country, the PRA must notify the competent authority of the third country concerned of any requirements imposed on the relevant entity under regulation 34C.

(3) Where a systemic risk buffer is applied to exposures in a third country, the PRA must notify the competent authority of the third country concerned.

Publication: systemic risk buffer

34I.—(1) Where the PRA requires a relevant entity to maintain a systemic risk buffer under regulation 34C, it must publish the following information on its website—

(a) the systemic risk buffer rate;

(b) the relevant entities to which the systemic risk buffer applies;

(c) the exposures to which the systemic risk buffer rate applies;

(d) the justification for setting or resetting the systemic risk buffer rate;

(e) the date from which the relevant entities are to apply the setting or the resetting of the systemic risk buffer rate; and

(f) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

(2) The PRA must not publish information under paragraph (1)(d) if publication might jeopardise the stability of the financial system.

(3) Where the PRA revokes a requirement that a relevant entity maintain a systemic risk buffer rate under regulation 34C, 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 relevant entity may cease to apply the systemic risk buffer rate.

Publication: third country buffer rates

34J.—(1) Where the PRA recognises a third country buffer rate under regulation 34B, it must publish—

(a) the buffer rate; and

(b) the justification for recognising the buffer rate.

(2) Where the PRA requires a relevant entity to apply a third country buffer rate under regulation 34D, it must publish—

(a) the date from which the relevant entity 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 third country buffer; and

(d) the justification for its decision under regulation 34D(1).

(3) The PRA must not publish information under paragraph (1)(b) or (2)(d) if publication might jeopardise the stability of the financial system.

(4) Where the PRA revokes a requirement that a relevant entity apply a third country buffer rate under regulation 34D, 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 relevant entity may cease to apply the third country buffer rate.

Review

34K. The PRA must review the following matters at least once every second year—

(a) the decision to require a relevant entity or class of relevant entities to maintain a systemic risk buffer under regulation 34C(1);

(b) a buffer rate set under regulation 34C(2);

(c) the exposures, or subset of exposures, to which that buffer rate is applied;

(d) a decision that a relevant entity must maintain a third country buffer under regulation 34D;

(e) a decision as to the level of consolidation to apply in relation to the application of a third country buffer rate under regulation 34D(3).

Appeals

34L.—(1) A person who is aggrieved by a decision of the PRA under regulation 34C may refer the matter to the Tribunal.

(2) The scope of such an appeal is limited to the buffer rate set under regulation 34C(2).”

Combined buffer requirement

20. After regulation 60, insert—

"**Combined buffer requirement**

60A. In regulation 35, after "institutions" insert ", parent financial holding companies and parent mixed financial holding companies"."

James Morris
Maggie Throup
Two of the Lords Commissioners of Her Majesty's Treasury

26th November 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in part, Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 ("CRDV"), amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (O.J. L150, 7.6.2019, p.253). Part 2 provides power for the PRA to remove a person from the board of directors of an institution or financial holding company or mixed financial holding company where the person concerned no longer satisfies the requirements for such directors, and inserts a new Part 12B into the Financial Services and Markets Act 2000 (c. 8) introducing a requirement for certain financial holding companies and mixed financial holding companies to be approved.

Part 3 amends the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) to permit the PRA to disclose information to certain international bodies as required by Article 1(14) of CRDV, which introduced a new Article 58a into Directive 2013/36/EU.

Part 4 amends the Capital Requirements (Amendment) (EU Exit) Regulations 2018, exercising powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) ("the 2018 Act") as well as section 2(2) of the European Communities Act 1972 (c. 68). They ensure that the amendments made by those Regulations to the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 (S.I. 2014/894) properly reflect the amendments required to implement CRDV, providing for a new capital buffer for certain other systemically important institutions (O-SIIs), and amending the provisions relating to the capital conservation buffer, institution-specific countercyclical capital buffer, and the systemic risk buffer. They also address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular the deficiencies under paragraphs (b), (c), (e), (f) and (g) of section 8(2) of the 2018 Act).

An impact assessment has not been produced, as no, or no significant, impact on the private, voluntary or public sector is foreseen.