

Draft Order laid before Parliament under section 9N of the Bank of England Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

FINANCIAL SERVICES AND MARKETS

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

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

The Treasury make the following Order in exercise of the powers conferred by sections 9I(2) and 9L of the Bank of England Act 1998(1).

In accordance with section 9N of the Bank of England Act 1998(2), a draft of this Order has been laid before Parliament and approved by a resolution of each House.

Citation and Commencement

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

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

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

Interpretation

2.—(1) In this Order—

“capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending [Directive 2002/87/EC](#) and repealing Directives [2006/48/EC](#) and [2006/49EC\(3\)](#);

(1) Inserted by section 4 of the Financial Services Act 2012.

(2) [1998 c.11](#). Inserted by section 4 of the Financial Services Act 2012 (c.21).

(3) OJ L 176/338, 27.06.2013.

- “CET1 capital” has the meaning given by Article 50 of the capital requirements regulation;
- “consolidated basis” has the meaning given by Article 4(1)(48) of the capital requirements regulation;
- “countercyclical capital buffer rate” has the meaning given in Article 128(7) of the capital requirements directive;
- “Financial Policy Committee” has the meaning given by section 9B of the Bank of England Act 1998(4);
- “G-SII” means a global systemically important institution, as identified by the PRA pursuant to Part 4 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(5);
- “G-SII additional leverage ratio” means a leverage ratio calculated by reference to the rate of the G-SII buffer which the PRA requires a G-SII to maintain;
- “G-SII buffer” has the meaning given by Article 128(3) of the Capital Requirements Directive;
- “individual basis” in relation to a macro-prudential measure applicable to an institution, means the application of that measure in respect of that institution only;
- “investment firm” has the meaning given by section 42A of the Financial Services and Markets Act 2000;
- “leverage ratio” means an institution’s Tier 1 capital divided by its total exposure measure, with this ratio expressed as a percentage;
- “PRA” means the Prudential Regulation Authority;
- “PRA-authorized person” has the meaning given by section 2B of the Financial Services and Markets Act 2000(6);
- “SRB institution” has the meaning given by regulation 34D of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(7);
- “SRB institution additional leverage ratio” means a leverage ratio calculated by reference to the rate of the systemic risk buffers which the PRA requires an SRB institution to maintain pursuant to Part 5A of the Capital Requirements (Capital Buffers and Macro-prudential Measure) Regulations 2014(8);
- “systemic risk buffer” has the meaning given by regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(9);
- “Tier 1 capital” has the meaning given by Article 25 of the capital requirements regulation;
- “total exposure measure” has the meaning given by Article 429 (4) of the Capital Requirements Regulation;
- “UK bank” means a UK institution which has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits but which is not an excluded deposit taker, but excludes—
- (a) a credit union within the meaning of section 31 of the Credit Unions Act 1979(10), or
 - (b) a person with permission under Part 4A of the Financial Services and Markets Act 2000(11) to effect or carry out contracts of insurance as principal;

(4) Inserted by section 4 of the Financial Services Act 2012.

(5) [SI 2014/894](#), amended by [SI 2015/19](#).

(6) Inserted by section 6(1) of the Financial Services Act 2012.

(7) Inserted by [SI 2015/19](#).

(8) [SI 2014/894](#), inserted by [SI 2015/19](#).

(9) Inserted by [SI 2015/19](#).

(10) 1979 c.34.

(11) Inserted by section 11(2) of the Financial Services Act 2012 (c.21).

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

“UK investment firm” means a UK institution which—

- (a) has permission under Part 4A of the Financial Services and Markets Act 2000;
- (b) is a PRA-authorized person by virtue of a designation under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013(12); and
- (c) is an investment firm.

Macro-prudential measures

3. Each of the measures set out in article 4 may be applied on, or by reference to, an individual basis or a consolidated basis.

Macro-prudential measures

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

- (a) a measure to require UK banks and UK investment firms to hold sufficient Tier 1 capital to satisfy a minimum leverage ratio specified by the Financial Policy Committee;
- (b) a measure to expect SRB institutions to hold sufficient Tier 1 capital to satisfy an SRB institution additional leverage ratio specified by the Financial Policy Committee;
- (c) a measure to expect G-SIIs to hold sufficient Tier 1 capital to satisfy a G-SII additional leverage ratio specified by the Financial Policy Committee;
- (d) a measure to expect UK banks and UK investment firms to hold sufficient Tier 1 capital to satisfy a countercyclical leverage ratio buffer specified by the Financial Policy Committee.

(2) The Financial Policy Committee may also specify a minimum proportion of CET1 that shall be held in relation to a measure specified in paragraph (1).

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

Procedural requirements

5.—(1) Paragraph (2) applies if—

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

(2) To the extent that the PRA is implementing the subsequent direction by way of rules pursuant to Part 9A of the Financial Services and Markets Act—

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015 ISBN 978-0-11-112937-1

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

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

The Financial Policy Committee is responsible for monitoring and addressing systemic risks which threaten the stability of the United Kingdom's financial system. One tool available to the FPC is the power to issue directions to the Prudential Regulation Authority and the Financial Conduct Authority (together the regulators). The Financial Policy Committee can only issue directions in relation to macro-prudential measures which have been prescribed by HM Treasury.

The Basel III accord included proposals for capital adequacy standards based on an assessment of financial institutions leverage position (which treats all exposures equally, regardless of their estimated risk). These leverage requirements are designed to strengthen the capital position of financial institutions and to mitigate the risk of future financial crises. The Basel proposals included a minimum standard for all financial institutions with the possibility of additional "buffers" for particular classes of financial institutions, in particular those which are systemically important. These proposals are designed to ensure that financial institutions maintain a minimum amount of capital to absorb losses regardless of the risk profile of their assets.

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

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

The second measure allows the Financial Policy Committee to give a direction which will create an expectation that institutions which are subject to a systemic risk buffer will maintain an additional capital buffer. This requirement reflects the fact that the failure of firms to which this measure applies would present a greater risk to the stability of the financial system and should therefore hold more capital to ensure that they can absorb losses without imperilling the stability of the financial system. This requirement will only be engaged if the PRA has set a strategic risk buffer for individual institutions pursuant to Chapter 2 of Part 5A of Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, which does not come in to force until 1 January 2019. Accordingly article 4(b) of this Order, which contains the measure for specifying the SRB leverage ratio, also comes into force on 1 January 2019.

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

Finally, the fourth measure allows the Financial Policy Committee to give a direction which will create an expectation that UK banks and UK investment firms will hold sufficient capital to maintain a countercyclical leverage buffer. The countercyclical capital buffer will ensure that firms hold enough capital during the upswing of the economic cycle to remain sufficiently protected against uncertainties and risks which may emerge during the upswing. It will act to ensure that financial institutions do not embark on over-exuberant lending. The Financial Policy Committee may specify that the countercyclical leverage buffer can be calculated by reference to the countercyclical capital buffer rates.

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