

STATUTORY INSTRUMENTS

**2013 No. 644**

**FINANCIAL SERVICES AND MARKETS**

**The Bank of England Act 1998 (Macro-prudential Measures) Order 2013**

*Made* - - - - *13th March 2013*

*Coming into force* - - *1st April 2013*

In accordance with section 9N of the Bank of England Act 1998 <sup>M1</sup>, a draft of this Order has been laid before Parliament and approved by a resolution of each House;

The Treasury, in exercise of the powers conferred by section 9I(2) and 9L of the Bank of England Act 1998 <sup>M2</sup>, make the following Order:

**Marginal Citations**

**M1** 1998 c.11. Inserted by section 4 of the [Financial Services Act 2012 \(c.21\)](#).

**M2** Inserted by section 4 of the Financial Services Act 2012. In relation to the first order under section 9L, subsection (2) does not apply by virtue of paragraph 6 of Schedule 20 to the Financial Services Act 2012.

**Citation, commencement and interpretation**

**1.—(1)** This Order may be cited as the Bank of England Act 1998 (Macro-prudential Measures) Order 2013 and comes into force on 1st April 2013.

**(2)** In this Order—

**F1**  
...

“commercial property exposure” means an exposure which is (to any extent) secured on land or other immoveable property being used primarily for commercial or non-residential purposes;

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

“credit institution” has the meaning given by [<sup>F2</sup>Article 4(1)(1) of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012];

“excluded deposit taker” means—

- (a) a credit union within the meaning of section 31 of the Credit Unions Act 1979 <sup>M3</sup>, or
- (b) a person with permission under Part 4A of FSMA 2000 <sup>M4</sup> to effect or carry out contracts of insurance as principal,

“exposure” means an asset or off-balance sheet item;

“financial sector entity” means any of the following—

- (c) a credit institution,
- (d) an investment firm,
- (e) [<sup>F3</sup>a financial institution within the meaning of Article 4(1)(26) of the capital requirements regulation,]
- (f) an ancillary services undertaking (meaning an undertaking the principal activity of which consists in owning or managing property, managing data-processing services or any other similar activity which is ancillary to the principal activity of one or more credit institutions, investment firms, insurance undertakings or reinsurance undertakings),
- (g) an insurance undertaking,
- (h) a third country insurance undertaking,
- (i) a reinsurance undertaking,
- (j) a third country reinsurance undertaking, or
- (k) an insurance holding company (meaning an undertaking which is not a mixed financial holding company the main business of which is to acquire and hold participating interests in subsidiary undertakings which are exclusively or mainly insurance undertakings, reinsurance undertakings, third country insurance undertakings or third country reinsurance undertakings, and which has at least one subsidiary undertaking which is an insurance undertaking or a reinsurance undertaking),

“financial sector exposure” means—

- (l) an exposure under, or which relates to, a contract with a financial sector entity, or
- (m) an exposure to, or which relates to, the securities or other instruments issued by such an entity,

<sup>F4</sup>  
...

[<sup>F5</sup>“FSMA cost benefit analysis” means—

- (a) an analysis of the costs (including the costs to business activity and the impact on economic growth) and the benefits of any change in rules made pursuant to Part 9A [<sup>F6</sup>or section 192XA] of the Financial Services and Markets Act 2000 <sup>M5</sup>; and
- (b) where those costs and benefits can reasonably be estimated, an estimate of those costs and benefits;]

[<sup>F7</sup>“holding company” means a financial holding company or a mixed financial holding company;]

[<sup>F8</sup>“insurance undertaking” has the meaning given in section 417(1) of the Financial Services and Markets Act 2000;]

“investment firm” has the meaning given by section 424A of FSMA 2000 <sup>M6</sup>;

<sup>F9</sup>  
...

<sup>F10</sup>  
...

“participating interest” has the meaning given by section 421A of FSMA 2000 <sup>M7</sup>;

“PRA-authorized person” has the meaning given by section 2B of FSMA 2000 <sup>M8</sup>;

<sup>F11</sup> ...

[<sup>F12</sup>“reinsurance undertaking” has the meaning given in section 417(1) of the Financial Services and Markets Act 2000;]

“requirement” includes a requirement to refrain from taking action;

“residential property exposure” means an exposure which is (to any extent) secured on land or other immoveable property being used primarily for residential purposes;

“solo basis”, in relation to a measure, means on the basis of the situation of the undertaking to which the measure applies;

[<sup>F13</sup>“solvency 2 directive” means Directive [2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);]

“subsidiary undertaking” has the meaning given by section 420 of FSMA 2000;

[<sup>F14</sup>“third country insurance undertaking” has the meaning given in regulation 2(1) of the Solvency 2 Regulations 2015;]

[<sup>F15</sup>“third country reinsurance undertaking” means an undertaking which, if its head office were in the United Kingdom, would—

- (a) require permission under Part 4A of the Financial Services and Markets Act 2000 to carry out regulated activities relating to reinsurance, and
- (b) immediately before IP completion day, have required authorisation as a reinsurance undertaking in accordance with Article 14 of the solvency 2 directive;]

“UK bank” means a UK institution which has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits but which is not an excluded deposit taker;

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

“UK investment firm” means a UK institution which—

- (n) has permission under Part 4A of FSMA 2000,
- (o) 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 <sup>M9</sup>, and
- (p) is an investment firm.

#### Textual Amendments

- F1** Words in art. 1(2) omitted (1.1.2014) by virtue of [The Capital Requirements Regulations 2013](#) (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 79(a)**
- F2** Words in art. 1(2) substituted (1.1.2014) by [The Capital Requirements Regulations 2013](#) (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 79(b)**
- F3** Words in art. 1(2) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/1376), regs. 1(3), **14**
- F4** Words in art. 1(2) omitted (1.1.2016) by virtue of [The Solvency 2 Regulations 2015](#) (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 35(2)(a)(i)**
- F5** Words in art. 1(2) inserted (16.12.2016) by [The Bank of England Act 1998 \(Macro-prudential Measures\) Order 2016](#) (S.I. 2016/1240), arts. 1, **5(2)**
- F6** Words in art. 1(2) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021](#) (S.I. 2021/869), arts. 1(2), **2(2)(a)**

- F7** Words in art. 1(2) inserted (21.7.2021) by The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021 (S.I. 2021/869), arts. 1(2), **2(2)(b)**
- F8** Words in art. 1(2) substituted (31.12.2020) by The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297), regs. 1(2), **11(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in art. 1(2) omitted (1.1.2016) by virtue of The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 35(2)(a)(ii)**
- F10** Words in art. 1(2) omitted (21.7.2021) by virtue of The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021 (S.I. 2021/869), arts. 1(2), **2(2)(c)**
- F11** Words in art. 1(2) omitted (1.1.2016) by virtue of The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 35(2)(a)(iii)**
- F12** Words in art. 1(2) substituted (31.12.2020) by The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297), regs. 1(2), **11(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in art. 1(2) inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 35(2)(b)**
- F14** Words in art. 1(2) substituted (31.12.2020) by The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297), regs. 1(2), **11(2)(e)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in art. 1(2) substituted (31.12.2020) by The Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297), regs. 1(2), **11(2)(f)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 7(b)**); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M3** 1979 c.34.
- M4** Inserted by section 11 of the Financial Services Act 2012.
- M5** Inserted by section 24 of the Financial Services Act 2012.
- M6** Inserted by SI 2006/2975; amended by SI 2007/126.
- M7** Inserted by SI 2008/948.
- M8** Inserted by section 6 of the Financial Services Act 2012.
- M9** SI 2013/556.

#### Macro-prudential measures

2.—(1) The measures listed in the first column of the table (and any measure falling within a listed measure) are prescribed in relation to the regulator specified in the second column of the table.

(2) [<sup>F16</sup>Subject to paragraph (3),] each of those measures may be applied on, or by reference to, a solo basis or on, or by reference to, a consolidated basis.

#### Macro-prudential measures

<i>Macro-prudential measure</i>	<i>Regulator</i>
To require UK banks [ <sup>F17</sup> , or their holding companies,] to maintain additional own funds <b>M10</b> by reference to their residential property exposures, commercial property exposures or financial sector exposures or to impose requirements on UK banks [ <sup>F17</sup> , or their holding companies,] by reference to the failure to maintain such additional own funds	PRA
To require UK investment firms which are PRA- <i>authorised persons</i> [ <sup>F18</sup> , or their holding companies,] to maintain additional own funds by reference to their residential property exposures, commercial property exposures or financial sector exposures or to impose requirements on such UK	PRA

investment firms [<sup>F19</sup>, or their holding companies,] by reference to the failure to maintain such additional own funds

To require UK banks [<sup>F17</sup>, or their holding companies,] to treat residential property exposures, commercial property exposures or financial sector exposures as if they gave rise to an increased level of risk specified by the FPC PRA

To require UK investment firms which are PRA-authorised persons [<sup>F18</sup>, or their holding companies,] to treat residential property exposures, commercial property exposures or financial sector exposures as if they gave rise to an increased level of risk specified by the FPC PRA

[<sup>F20</sup>(3) Where a measure listed in the table is applied to the holding company of a UK bank or of a UK investment firm which is a PRA-authorised person, the measure may only be applied to that holding company on, or by reference to, a consolidated basis.]

#### Textual Amendments

- F16** Words in art. 2(2) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **2(3)**
- F17** Words in art. 2(2) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **2(4)**
- F18** Words in art. 2(2) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **2(5)**
- F19** Words in art. 2(2) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **2(6)**
- F20** Art. 2(3) inserted (21.7.2021) by [The Bank of England Act 1998 \(Macro-prudential Measures\) \(Amendment\) Order 2021 \(S.I. 2021/869\)](#), arts. 1(2), **2(7)**

#### Marginal Citations

- M10** Articles 56 to 67 of the banking consolidation directive describe what the unconsolidated own funds of a credit institution are, for regulatory purposes, to consist of.

### Disapplication of procedural requirements

3.—(1) Paragraph (2) applies if—

- (a) the FPC has given a direction to the PRA under section 9H of the Act which specifies an increase in additional own funds or an increase in the level of risk that exposures specified in the direction are to be treated as giving rise to (“the first direction”),
- (b) the FPC subsequently revokes the first direction, and
- (c) immediately after that revocation the FPC gives another direction to the PRA under section 9H of the Act (“the subsequent direction”) which is in substance identical to the first direction except in relation to the increase specified in the direction.

[<sup>F21</sup>(2) To the extent that the PRA is implementing the subsequent direction, sections 138J and 138K of the Financial Services and Markets Act 2000 do not apply, but the PRA must undertake and publish, at the same time as the subsequent direction is implemented, a FSMA cost-benefit analysis to changes implemented pursuant to the subsequent direction.]

(3) For the purposes of this article, it is immaterial whether the increase is specified by reference to a figure, a proportion, a percentage or otherwise.

**Textual Amendments**

**F21** Art. 3(2) substituted (16.12.2016) by [The Bank of England Act 1998 \(Macro-prudential Measures\) Order 2016 \(S.I. 2016/1240\)](#), arts. 1, **5(3)**

[<sup>F22</sup>**Review**

- 4.—(1) The Treasury must from time to time—
- (a) carry out a review of articles 1 to 3,
  - (b) set out the conclusions of the review in a report, and
  - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by those articles,
  - (b) assess the extent to which those objectives are achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) The first report under this article must be published before the end of the period of five years beginning with the day on which this article comes into force.
- (4) Reports under this article are afterwards to be published at intervals not exceeding five years.]

**Textual Amendments**

**F22** Art. 4 inserted (16.12.2016) by [The Bank of England Act 1998 \(Macro-prudential Measures\) Order 2016 \(S.I. 2016/1240\)](#), arts. 1, **5(4)**

*Anne Milton*  
*David Evennett*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order prescribes 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 Order specifies the imposition of requirements by the Prudential Regulation Authority on UK banks and UK investment firms to maintain additional own funds (in other words, capital requirements) by reference to residential property exposures, commercial property exposures or financial sector exposures. The Order also specifies the imposition of requirements by reference to the failure to maintain such own funds. Such requirements might for example include an obligation not to make certain discretionary payments. The Order also specifies the imposition of requirements by the Prudential Regulation Authority on UK banks and UK investment firms to treat such exposures as if they gave rise to an increased level of risk.

The Financial Policy Committee may give directions that any such requirements are to be imposed either on a solo basis (by reference to the position of the undertakings which are the subject of the direction) or on a consolidated basis (by reference to the position of the undertakings which are the subject of the direction, taken together with relevant members of that undertaking's group). The Financial Policy Committee will, under section 9H of the 1998 Act, be able to direct the Prudential Regulation Authority to implement the measures prescribed by the Order in relation to UK banks and UK investment firms which are PRA-authorised persons (as defined by section 2B of the Financial Services and Markets Act 2000 (c.8) (“FSMA”)).

Article 3 provides that where the Financial Policy Committee gives a direction which specifies a particular increase (for example an increase in the risk weighting to be applied to residential property exposures) and subsequently gives another direction which is identical in substance to the first direction except in relation to the level of the increase, the Prudential Regulation Authority need not comply with the obligation under section 138J of FSMA to include a cost benefit analysis when consulting on rules that the Prudential Regulation Authority proposes to make to implement the subsequent direction.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk) and is published alongside the Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).

**Changes to legislation:**

There are currently no known outstanding effects for the The Bank of England Act 1998 (Macro-prudential Measures) Order 2013.