Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Bank of England Act 1998 (Macro-prudential Measures) Order 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 1240

FINANCIAL SERVICES AND MARKETS

The Bank of England Act 1998 (Macro-prudential Measures) Order 2016

Made - - - - 15th December 2016

Coming into force in accordance with article 1

The Treasury make the following Order in exercise of the powers conferred by section 9I(2) and 9L of the Bank of England Act 1998 [F1].

In accordance with section 9L(2) of the Bank of England Act 1998, the Treasury have consulted with the Financial Policy Committee of the Bank of England.

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

F1 1998 c.11; sections 9A to 9Z were inserted by section 4 of the Financial Services Act 2012 (c.21).

Citation and commencement

1. This Order may be cited as the Bank of England Act 1998 (Macro-prudential Measures) Order 2016 and comes into force on the day after the day on which it was made.

Interpretation

2. In this Order—

"the 1998 Act" means the Bank of England Act 1998;

"borrower" means a person who receives credit, and includes a person acting jointly with others, and a person acting as a trustee who receives credit jointly with other trustees;

"buy-to-let mortgage contract" means a contract that, at the time it is entered into, satisfies the following conditions–

(a) the lender provides credit to the borrower;

(b) the obligation of the borrower to repay is secured by a mortgage on land in any EEA state;

(c) at least 40% of the land is used, or is intended to be used, as or in connection with a dwelling on the basis of a rental agreement; and

(d) the borrower, or any related person, are, for the duration of the buy-to-let mortgage contract, prevented from occupying any part of the land which is used, or is intended to be used, as a dwelling;

"buy-to-let property" means the land which is the security for a buy-to-let mortgage contract;

"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 a direction given by the Financial Policy Committee under section 9H of the 1998 Act; and

(b) where those costs and benefits can reasonably be estimated and it is reasonably practicable to produce an estimate, an estimate of those costs and benefits;

"credit" includes a cash loan, and any other form of financial accommodation;

"excluded buy-to-let mortgage contract" means a buy-to-let mortgage contract under which a borrower obtains credit from a lender in relation to land, on which there are no dwellings at the time the buy-to-let mortgage contract is entered into, with the intention, or principal intention, of constructing new buildings on that land which will be used as dwellings;

"FCA" has the meaning given by section 1A of the Financial Services and Markets Act 2000 [F2];

"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 of the Financial Services and Markets Act 2000 [F3]; and

(b) where those costs and benefits can reasonably be estimated, an estimate of those costs and benefits;

"interest coverage ratio" means the ratio of the expected monthly rental income from a buy-to-let property to the monthly interest payments as estimated by the lender at the time of deciding to provide credit to the borrower;

"lender" means a person providing credit by way of business;

"loan-to-value percentage" means the total amount of credit outstanding on a buy-to-let property under all buy-to-let mortgage contracts expressed as a percentage of the total value of the buy-to-let property;

"PRA" has the meaning given by section 2A of the Financial Services and Markets Act 2000 [F4];

"related person" means, in relation to a borrower or (in the case of credit provided to trustees) in relation to a beneficiary of the trust—

(a) that person's spouse or civil partner;

(b) a person (whether or not of the opposite sex) whose relationship with that person has substantially the same characteristics of a relationship between husband and wife or between civil partners; or

(c) that person's parent, brother, sister, child, grandparent or grandchild;

"relevant buy-to-let mortgage contracts" means all buy-to-let mortgage contracts, other than excluded buy-to-let mortgage contracts;

"relevant regulated person" means a regulated person who enters into buy-to-let mortgage contracts.

F2 Inserted by section 6(1) of the Financial Services Act 2012.
F3 Inserted by section 24 of the Financial Services Act 2012.
F4 Inserted by section 6(1) of the Financial Services Act 2012.

Macro-prudential measures

3.—(1) The measures in paragraphs (2) and (3) are prescribed in relation to the FCA and PRA.

(2) Where the Financial Policy Committee considers it proportionate on the basis of a cost-benefit analysis, a measure to require relevant regulated persons to ensure that, in relation to relevant buy-to-let mortgage contracts which are entered into after the date of the direction, no more than a specified proportion have a loan-to-value percentage greater than a specified maximum loan-to-value percentage.

(3) Where the Financial Policy Committee considers it proportionate on the basis of a cost-benefit analysis, a measure to require relevant regulated persons to ensure that, in relation to relevant buy-to-let mortgage contracts which are entered into after the date of the direction, no more than a specified proportion have an interest coverage ratio less than a specified minimum interest coverage ratio.

(4) In paragraphs (2) and (3), "specified" means specified by the Financial Policy Committee in a direction given under section 9H of the 1998 Act.

(5) In paragraphs (2) and (3), references to "interest coverage ratio" and "loan-to-value percentage" are references to those matters as calculated by a lender when deciding whether to provide credit to a borrower.

Disapplication of procedural requirements

4.—(1) Paragraph (2) applies if—

(a) the Financial Policy Committee has given a direction to the PRA or the FCA under section 9H of the 1998 Act which specifies a maximum loan-to-value percentage or a minimum interest coverage ratio ("the first direction");

(b) the Financial Policy Committee revokes the first direction; and

(c) within a reasonable period of time after the revocation of the first direction, the Financial Policy Committee gives another direction to the PRA or the FCA under section 9H of the 1998 Act ("the subsequent direction") which is in substance identical to the first direction except in relation to the values specified in the direction.

(2) To the extent that the subsequent direction is implemented by way of rules pursuant to Part 9A of the Financial Services and Markets Act 2000 then—

(a) sections 138I (Consultation by the FCA), 138K (Consultation: mutual societies), and 139A(3) (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 [F5] do not apply to the FCA, but the FCA must undertake and publish, at the same time as the subsequent direction is implemented, a FSMA cost-benefit analysis relating to changes implemented pursuant to the subsequent direction; and

(b) sections 138J (Consultation by the PRA) and 138K (Consultation: mutual societies) of the Financial Services and Markets Act 2000 [F6] do not apply to the PRA, but the PRA must undertake and publish, at the same time as the subsequent direction is implemented, a FSMA cost-benefit analysis relating to changes implemented pursuant to the subsequent direction.

F5 Sections 138I, 138K and 139A were all inserted by section 24 (Rules and Guidance) of the Financial Services Act 2012 (c.21).

F6 Sections 138J and 138K of the Financial Services and Markets Act 2000 were inserted by section 24 of the Financial Services Act 2012.