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**Changes to legislation:** There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Cross Heading: Transfers of property. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 2

#### BAIL-IN STABILISATION OPTION

#### PART 1

#### AMENDMENTS OF BANKING ACT 2009

##### *Transfers of property*

5 (1) After section 41 insert—

**“41A Transfer of property subsequent to resolution instrument**

- (1) This section applies where the Bank of England has made a resolution instrument.
- (2) The Bank of England may make one or more property transfer instruments in respect of property, rights or liabilities of the bank.
- (3) Sections 7 and 8A do not apply to a property transfer instrument under subsection (2).
- (4) Before making a property transfer instrument under subsection (2) the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.”

- (2) In section 42 (supplemental property transfer instruments)—
  - (a) in subsection (1) for “12(2)” substitute “ 12(2) or 41A(2) ”;
  - (b) in subsection (4) for “and 8” substitute “ , 8 and 8A ”;
  - (c) in subsection (6) for “or 12(2)” substitute “ , 12(2) or 41A(2) ”.

(3) After section 44 insert—

**“44A Bail in: reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 41A(2) (“the original instrument”).
- (2) The Bank of England may make one or more bail-in reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.

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- (3) A bail-in reverse property transfer instrument is a property transfer instrument which—
  - (a) provides for a transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, or could be or could have been, transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).
- (4) The Bank of England may make a bail-in reverse property transfer instrument only with the written consent of the transferee under the original instrument.
- (5) Sections 7 and 8A do not apply to a bail-in reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (6) Before making a bail-in reverse property transfer instrument the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Section 42 (supplemental instruments) applies where the Bank of England has made a bail-in reverse property transfer instrument.

#### **44B Property transfer instruments: special bail-in provision**

- (1) A property transfer instrument under section 12(2) or 41A(2), or an associated supplemental property transfer instrument, may make special bail-in provision with respect to the bank (see section 48B).
- (2) The reference in subsection (1) to an “associated” supplemental property transfer instrument is to a supplemental property transfer instrument in relation to which the original instrument (as defined in section 42(1)) is a property transfer instrument under section 12(2) or 41A(2).
- (3) In the case of a property transfer instrument under section 12(2), or a supplemental property transfer instrument in relation to which the original instrument is a property transfer instrument under section 12(2), the power under subsection (1) to make the provision described in section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes power to make provision replacing a liability (of any form) of the bank mentioned in subsection (1) with a security (of any form or class) of the bridge bank mentioned in section 12(1).
- (4) Where securities of the bridge bank (“B”) are, as a result of subsection (3), held by a person other than the Bank of England, that does not prevent B from being regarded for the purposes of this Part (see particularly section 12(1)) as being wholly owned by the Bank of England, as long as the Bank of England continues to hold all the ordinary shares issued by B.

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#### **44C Report on special bail-in provision**

- (1) This section applies where the Bank of England makes a property transfer instrument containing provision made in reliance on section 44B.
  - (2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision was made in the case of the liabilities concerned.
  - (3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.
  - (4) The insolvency treatment principles are that where an instrument includes special bail-in provision—
    - (a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and
    - (b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.
  - (5) A report must comply with any other requirements as to content that may be specified by the Treasury.
  - (6) A report must be made as soon as reasonably practicable after the making of the property transfer instrument to which it relates.
  - (7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.”
- (4) In section 48A (creation of liabilities), in subsection (1), after “44(4)(c)” insert “ , 44A(3)(b) ”.

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#### **Commencement Information**

**II** Sch. 2 para. 5 in force at 31.12.2014 by S.I. 2014/3160, art. 2(1)(b)

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