

## STATUTORY INSTRUMENTS

# 2014 No. 3348

## FINANCIAL SERVICES AND MARKETS

### <sup>F1</sup>The Bank Recovery and Resolution (No. 2) Order 2014

Made - - - - 18th December 2014  
Laid before Parliament 19th December 2014  
Coming into force in accordance with article 1(2) and (3)

The Treasury make the following Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 <sup>M1</sup>, section 192B(4) of the Financial Services and Markets Act 2000 <sup>M2</sup> and section 230 of the Banking Act 2009 <sup>M3</sup>.

The Treasury are designated <sup>M4</sup> for the purposes of the European Communities Act 1972 in relation to financial services.

#### Textual Amendments

- F1** Order revoked (14.12.2023 for the revocation of art. 227) by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), [Sch. 1 Pt. 2](#) (with s. 1(4)); S.I. 2023/1382, reg. 2(c)(x)

#### Modifications etc. (not altering text)

- C1** Order: power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), ss. 3, 86(3), [Sch. 1 Pt. 2](#); S.I. 2023/779, reg. 2(d)
- C2** Order power to apply (with modifications) conferred (29.8.2023) by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), [Sch. 11 para. 165](#); S.I. 2023/779, reg. 4(ddd)(xiv)

#### Marginal Citations

- M1** 1972 c. 68. Section 2(2) was amended by the [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#), [section 27\(1\)\(a\)](#), and by the [European Union \(Amendment\) Act 2008 \(c. 7\)](#), [section 3](#) and the Schedule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the [European Economic Area Act 1993 \(c. 51\)](#), an order may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).
- M2** 2000 c. 8. Section 192B was inserted by the [Financial Services Act 2012 \(c. 21\)](#), [section 27](#), which inserted Part 12A of FSMA.
- M3** 2009 c. 1.
- M4** S.I. 2012/1759.

## PART 1

### Introductory provisions

#### Citation and commencement

- 1.—(1) This Order may be cited as the Bank Recovery and Resolution (No. 2) Order 2014.
- (2) This Order, except Part 9, comes into force on 10th January 2015.
- (3) Part 9 of this Order comes into force on 1st January 2016.

#### Interpretation

- 2.—(1) In this Order, except where provision is made to the contrary—

<sup>F2</sup>  
...

“appropriate regulator”—

- (a) in relation to an institution which is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F3</sup>the capital requirements regulation and CRR rules]—
  - (i) if the institution is a PRA-authorised person, means the PRA;
  - (ii) if the institution is any other UK authorised person, means the FCA;
- (b) in relation to a relevant group—
  - (i) where the PRA is the consolidating supervisor, means the PRA;
  - (ii) where the FCA is the consolidating supervisor, means the FCA;
  - (iii) where neither the PRA nor the FCA is the consolidating supervisor, means the PRA in relation to a PRA-authorised person and the FCA in relation to any other UK authorised person;

“the Bank” means the Bank of England [<sup>F4</sup>acting otherwise than in its capacity as the Prudential Regulation Authority];

“the 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 supervisions of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC<sup>M5</sup>;

[<sup>F5</sup>“the capital requirements regulation” means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;]

<sup>F6</sup>  
...

[<sup>F7</sup>“competent authority” means the supervisor of an authorised person under FSMA;]

[<sup>F8</sup>“conditions for early intervention” means where—

- (a) an institution infringes the requirements of—
  - (i) the capital requirements regulation [<sup>F9</sup>or CRR rules];
  - (ii) legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to the capital requirements directive;

- (iii) legislation upon which the United Kingdom so relied to meet its obligations with respect to Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments; or
  - (iv) any of Articles 3 to 7, 14 to 17 and 24 to 26 of Regulation (EU) No. 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments; or
- (b) an institution is likely in the near future to infringe those requirements due, amongst other things, to—
- (i) a rapidly deteriorating financial condition, including deteriorating liquidity situation;
  - (ii) increasing level of leverage;
  - (iii) non-performing loans; or
  - (iv) concentrations of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1.5 percentage points;]

“conditions for resolution”—

- (a) in relation to an institution authorised by the PRA or FCA, means the conditions for the exercise of stabilisation powers in section 7 of the Banking Act 2009 <sup>M6</sup> (general conditions for exercise of stabilisation powers);
- (b) in relation to an undertaking set up in the United Kingdom, other than an institution, means the conditions for the exercise of stabilisation powers in section 81B (groups: sale to commercial purchaser and transfer to bridge bank), section 81ZBA (transfer to asset management vehicle) or section 81BA (groups: bail-in option) of the Banking Act 2009 <sup>M7, F10</sup> ...
- (c) <sup>F11</sup> ...;

[<sup>F12</sup>“the consolidating supervisor” has the meaning given in section 6A(9) of the Banking Act 2009];

[<sup>F13</sup>“core business lines” means business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part;]

[<sup>F13</sup>“credit institution” has the meaning given in section 48D(1) of the Banking Act 2009;]

“critical functions”—

- (a) <sup>F14</sup>... has the meaning given in section 3 of the Banking Act 2009 <sup>M8</sup> (interpretation: other expressions); <sup>F14</sup> ...
- (b) <sup>F15</sup> ...;

[<sup>F16</sup>“CRR rules” has the meaning given in section 144A of FSMA;]

[<sup>F17</sup>“deposit” has the meaning given in Article 2(1)(23A) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15th May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012;]

[<sup>F17</sup>“depositor” means the holder or, in the case of a joint account, each of the holders, of a deposit;]

“derivative contract” has the meaning given by point (5) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories <sup>M9</sup>;

<sup>F18</sup> ...

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“eligible liabilities”—

(a) <sup>F19</sup> ... has the meaning given in section 3(1) of the Banking Act 2009; <sup>F20</sup> ...

(b) <sup>F20</sup> ...

[<sup>F21</sup>“extraordinary public financial support” has the meaning given in section 3(1) of the Banking Act 2009;]

“the FCA” means the Financial Conduct Authority”;

“financial holding company” has the meaning given by point (20) of Article 4.1 of the capital requirements regulation;

“financial institution”, except in Part 18, has the meaning given by point (26) of Article 4.1 of the capital requirements regulation;

“Financial Policy Committee” means the Financial Policy Committee of the Bank established by section 9B of the Bank of England Act 1998 <sup>M10</sup>;

“FSMA” means the Financial Services and Markets Act 2000;

[<sup>F22</sup>“group” means a parent undertaking and its subsidiaries;]

“group entity”, in relation to a relevant group, means the [<sup>F23</sup>UK] parent undertaking or a group subsidiary;

“group recovery plan” means a document which provides for measures to be taken in relation to a relevant group to achieve the stabilisation of the group as a whole, or of any institution within the group, where the group or the institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or institution;

“group resolution plan”, in relation to a relevant group, means a document which [<sup>F24</sup>identifies at least one resolution entity and at least one resolution group and which] makes provision for—

(a) [<sup>F25</sup>[<sup>F26</sup>applying the resolution tools or exercising resolution powers] in respect of each resolution entity in the relevant group;]

(b) co-ordinating the application of resolution tools and the exercise of resolution powers <sup>M11</sup> by resolution authorities in respect of group entities that meet the conditions for resolution;

“group subsidiary”, in relation to a relevant group, means a subsidiary within that group which is an institution, a financial institution, a financial holding company or a mixed financial holding company;

“insolvency proceedings” includes—

(a) proceedings under the Insolvency Act 1986 <sup>M12</sup>, and

(b) the procedure in Part 2 of the Banking Act 2009 (bank insolvency) and in Part 3 of that Act (bank administration);

[<sup>F27</sup>“institution” means a credit institution or an investment firm;]

[<sup>F27</sup>“instruments of ownership” means—

- (a) shares,
- (b) other instruments that confer ownership,
- (c) instruments that are convertible into, or give the right to acquire, shares or other instruments of ownership, and
- (d) instruments representing interests in shares or other instruments of ownership;]

[<sup>F28</sup> “investment firm” has the meaning given in section 258A of the Banking Act 2009]

[<sup>F27</sup>“management body” has the meaning given in point (9) of Article 4.1 of the capital requirements regulation;]

“mixed activity holding company” has the meaning given by point (22) of Article 4.1 of the capital requirements regulation;

“mixed financial holding company” has the meaning given by point (21) of Article 4.1 of the capital requirements regulation;

“own funds” has the meaning given by point (118) of Article 4.1 of the capital requirements regulation;

<sup>F29</sup> ...

<sup>F30</sup> ...

<sup>F31</sup> ...

“parent undertaking” has the meaning given by point (15)(a) of Article 4.1 of the capital requirements regulation;

“the PRA” means the Prudential Regulation Authority;

“PRA-authorized person” means a UK authorised person which is a PRA-authorized person within the meaning given by section 2B(5) of FSMA <sup>M13</sup> (the PRA's general objective);

“the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive [82/891/EEC](#), and Directives [2001/24/EC](#), [2002/47/EC](#), [2005/56/EC](#), [2007/36/EC](#), [2011/35/EU](#), [2012/30/EU](#) and [2013/36/EU](#), and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council <sup>M14</sup>[<sup>F32</sup>as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019];

“recovery plan” means a document which provides for measures to be taken by an institution authorised by the PRA or FCA which is not part of a group, following a significant deterioration of the financial position of the institution, in order to restore its financial position;

<sup>F33</sup> ...

“relevant group” means the group <sup>M15</sup> constituted by an [<sup>F34</sup>UK] parent undertaking and its subsidiaries;

[<sup>F35</sup>“resolution entity” means an entity that is identified in a resolution plan or a group resolution plan as an entity in respect of which resolution action might be taken;

“resolution group” means a resolution entity together with any subsidiary where the subsidiary—

- (i) is not a resolution entity itself;
- (ii) is not a subsidiary of another resolution entity; or

(iii) is established in a third country and is stated by the group resolution plan under Part 5 to be included in the resolution group;]

“resolution objectives”, in relation to the application of resolution tools or the exercise of resolution powers—

(a) <sup>F36</sup> ...

(b) [<sup>F37</sup>means] the special resolution objectives set out in section 4 of the Banking Act 2009 <sup>M16</sup>,

“resolution plan” means a document which makes provision relating to the resolution action to be taken in the event that an institution or other person meets the conditions for resolution;

[<sup>F38</sup>“resolution powers” means the powers of the Bank under Part 1 of the Banking Act 2009 other than those exercised in applying the resolution tools;]

“resolution tools”—

(a) <sup>F39</sup> ...

(b) [<sup>F40</sup>means] stabilisation options referred to in paragraphs (a), (b), (ba) and (c) of section 1(3) of the Banking Act 2009 <sup>M17</sup> (overview: special resolution regime);

[<sup>F41</sup>“shareholders” means shareholders or holders of other instruments of ownership;]

“subsidiary” has the meaning given by point (16) of Article 4.1 of the capital requirements regulation;

“third country” means a [<sup>F42</sup>country or territory] other than [<sup>F43</sup>the United Kingdom;]

“UK authorised person” means an authorised person (within the meaning given in section 31 of FSMA <sup>M18</sup>) which is incorporated in, or formed under the law of, any part of the United Kingdom;

[<sup>F44</sup>“UK parent financial holding company” has the meaning given in point (30) of Article 4.1 of the capital requirements regulation;]

[<sup>F44</sup>“UK parent institution” has the meaning given in point (28) of Article 4.1 of the capital requirements regulation;]

[<sup>F44</sup>“UK parent mixed financial holding company” has the meaning given in point (32) of Article 4.1 of the capital requirements regulation;]

[<sup>F44</sup>“UK parent undertaking” means a UK parent institution, UK parent financial holding company or UK parent mixed financial holding company.]

<sup>F45</sup>(2) .....

(3) In this Order any reference, in relation to a company, undertaking, subsidiary or other entity, to the [<sup>F46</sup>country or territory] in which the entity is set up is a reference to—

[<sup>F47</sup>(a) the country or territory (as the case may be) in which the entity is authorised by an authority which, in the country or territory concerned, exercises any function equivalent to a function of the appropriate regulator; or]

(b) if the entity is not authorised by such an authority, the [<sup>F48</sup>country or territory] in which the entity is incorporated or under whose law (including the law of any part of that [<sup>F48</sup>country or territory]) the entity is formed.

[<sup>F49</sup>(4) In this Order any reference to an EU regulation within the meaning of the European Union (Withdrawal) Act 2018 is to be read as a reference to the instrument as it forms part of retained EU law.]

## Textual Amendments

- F2** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in art. 2(1) 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), **19(2)(a)**
- F4** Words in art. 2(1) inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 40**
- F5** Words in art. 2(1) 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), **19(2)(b)**
- F6** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(6)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(c)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F9** Words in art. 2(1) inserted (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), **19(2)(c)**
- F10** Word in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(7)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(7)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in art. 2(1) 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), **19(2)(d)**
- F13** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(9)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(10)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(10)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in art. 2(1) inserted (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), **19(2)(e)**
- F17** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(11)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(12)**; 2020 c. 1, Sch. 5 para. 1(1)

- F19** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(13)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(13)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(14)**; 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(15)**; 2020 c. 1, Sch. 5 para. 1(1)
- F23** Word in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(16)**; 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in art. 2(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(b)(i)**
- F25** Words in art. 2(1) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(b)(ii)**
- F26** Words in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(3), **74(2)**
- F27** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(17)**; 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in art. 2(1) 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), **19(2)(f)**
- F29** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(18)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(18)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(18)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F32** Words in art. 2(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(d)**
- F33** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(19)**; 2020 c. 1, Sch. 5 para. 1(1)
- F34** Word in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(20)**; 2020 c. 1, Sch. 5 para. 1(1)
- F35** Words in art. 2(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(c)**
- F36** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(21)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F37** Word in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(21)(b)**; 2020 c. 1, Sch. 5 para. 1(1)



- F38** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(22)**; 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(23)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F40** Word in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(23)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F41** Words in art. 2(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(24)**; 2020 c. 1, Sch. 5 para. 1(1)
- F42** Words in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(25)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F43** Words in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(25)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F44** Words in art. 2(1) added (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(26)**; 2020 c. 1, Sch. 5 para. 1(1)
- F45** Art. 2(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(27)**; 2020 c. 1, Sch. 5 para. 1(1)
- F46** Words in art. 2(3) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(28)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F47** Art. 2(3)(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(28)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F48** Words in art. 2(3)(b) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(28)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F49** Art. 2(4) inserted (21.12.2018) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(3), **Sch. 3 para. 1(29)**; (as amended by The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 (S.I. 2020/1385), reg. 1(4), **Sch. para. 1(1)(2)(i)(k)(iii)**);

### Marginal Citations

- M5** OJ No. L 176, 27.6.2013, p. 338. For corrigenda see OJ No. L 208, 2.8.2013, p. 73.
- M6** Section 7 was amended by the Financial Services Act 2012, Schedule 17, paragraphs 1 and 8, and by S.I. 2014/3329.
- M7** Section 81B was inserted by the Financial Services Act 2012, section 100; and was amended by S.I. 2014/3329. Section 81ZBA was inserted by S.I. 2014/3329. Section 81BA was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), **Schedule 2**, paragraphs 1 and 7(1); and was amended by S.I. 2014/3329.
- M8** Section 3 was amended by the Financial Services Act 2012, section 96(2) and Schedule 17, paragraphs 1 and 4, and by S.I. 2014/3329.
- M9** OJ No. L 201, 27.7.2012, p. 1-59.
- M10** 1998 c. 11. Section 9B was inserted by the Financial Services Act 2012, section 4(1).
- M11** For the meaning of “resolution power” see the recovery and resolution directive, Article 2.1, point (20).
- M12** 1986 c. 45.

- M13** Section 2B was substituted by the Financial Services Act 2012, section 6(1), which substituted Part 1A of FSMA.
- M14** OJ No. L 173, 12.6.2014, p. 190.
- M15** For the meaning of “group” see the recovery and resolution directive, Article 2.1, point (26).
- M16** Section 4 was amended by [S.I. 2014/3329](#).
- M17** Section 1(3) was substituted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 12(1) and (3); and was amended by [S.I. 2014/3329](#). Paragraphs (a), (b), (ba) and (c) refer to four of the five stabilisation options, namely transfer to a private sector purchaser, transfer to a bridge bank, the bail-in option and transfer to an asset management vehicle (the fifth option is transfer to temporary public ownership referred to in paragraph (d)).
- M18** Section 31 was amended by the Financial Services Act 2012, section 11(1).

**Application of Order**

3. This Order [<sup>F50</sup>imposes on the Bank (designated as the resolution authority in the United Kingdom), the PRA and the FCA (designated as appropriate regulators in the United Kingdom)] procedural and other requirements with respect to planning and taking measures for the purpose of—

- (a) restoring the financial position of—
  - (i) institutions;
  - (ii) relevant groups; and
  - (iii) in relation to relevant groups, specified kinds of parent undertaking and subsidiary (other than institutions); and
- (b) applying the resolution tools and exercising the resolution powers in order to achieve one or more of the resolution objectives in relation to such institutions, groups and undertakings.

**Textual Amendments**

**F50** Words in art. 3 substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 2**; 2020 c. 1, Sch. 5 para. 1(1)

**<sup>F51</sup>PART 2**

**Designation of authorities and competent ministry**

**Textual Amendments**

**F51** Pt. 2 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 3**; 2020 c. 1, Sch. 5 para. 1(1)

**Designation of the Bank as resolution authority**

4. ....

**Designation for the purposes of Article 59 of the recovery and resolution directive**

5. ....

**Designation of the Treasury as the ministry responsible for exercising the functions of the competent ministry**

6. ....

**PART 3**

Recovery and resolution planning

**Recovery planning: preparatory steps and simplified obligations**

7.—(1) For each institution in relation to which Chapter 1 of Part 4 applies the appropriate regulator must determine the date by which the institution is required to draw up a recovery plan.

(2) For each relevant group in relation to which Chapter 2 of Part 4 applies the appropriate regulator must determine the date by which a group recovery plan is to be drawn up.

(3) The appropriate regulator may determine—

(a) that specified information in addition to the information set out in [<sup>F52</sup>Schedule A1] is to be included in a recovery plan or group recovery plan; or

(b) that any information set out in [<sup>F53</sup>that Schedule] or other detail which would otherwise have to be included in a recovery plan or group recovery plan does not have to be included.

[<sup>F54</sup>(3A) The PRA may make technical standards specifying further information to be contained in a recovery plan or a group recovery plan that is to be drawn up by an institution or group entity that is authorised by the PRA.

(3B) The FCA may make technical standards specifying further information to be contained in a recovery plan or a group recovery plan that is to be drawn up by an institution or group entity that is authorised by the FCA.]

(4) The appropriate regulator may determine that a plan drawn up by an institution or [<sup>F55</sup>a UK] parent undertaking is to be reviewed at intervals of more than one year.

[<sup>F56</sup>(4A) The Bank may make technical standards specifying relevant criteria which the appropriate regulator must take into account when exercising its functions under this article.

(4B) In paragraph (4A) “relevant criteria” means criteria that may be used to assess the impact that an institution's failure would have on financial markets, other institutions and on funding conditions.]

**Textual Amendments**

**F52** Words in art. 7(3)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 4(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F53** Words in art. 7(3)(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 4(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F54** Art. 7(3A)(3B) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 4(3)**; 2020 c. 1, Sch. 5 para. 1(1)

- F55** Words in art. 7(4) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 4(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F56** Art. 7(4A)(4B) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

### Resolution planning: preparatory steps and simplified obligations

8.—(1) For each institution in relation to which Chapter 1 of Part 5 applies the Bank must determine the date by which it aims to draw up a resolution plan.

(2) For each relevant group in relation to which Chapter 2 of Part 5 applies the Bank must determine the date by which it aims to draw up a group resolution plan.

(3) The Bank may determine—

- (a) that specified information in addition to the information set out in Schedule 1, in the case of a resolution plan, or Schedule 2, in the case of a group resolution plan, including any of the <sup>F57</sup>additional information specified in Schedule 2A], is to be provided for the purpose of drawing up the plan; or
- (b) that a resolution plan does not need to contain all of the information set out in Schedule 1, or that a group resolution plan does not need to contain all of the information set out in Schedule 2.

<sup>F58</sup>(3A) The Bank may make technical standards specifying relevant criteria which it must take into account when exercising its functions under this article.

(3B) In paragraph (3A) “relevant criteria” means criteria that may be used to assess the impact that an institution's failure would have on financial markets, other institutions and on funding conditions.]

(4) For the purpose of making an assessment of resolvability (within the meaning given in Chapter 1 of Part 6) or an assessment of group resolvability (within the meaning given in Chapter 2 of Part 6), the Bank may determine that it will—

- (a) consider specified matters in addition to the matters <sup>F59</sup>provided for in Schedule 2B]; or
- (b) make the assessment at a lower level of detail than would otherwise be required by article 60(2) or 62(3).

(5) The Bank may determine that it will review a resolution plan or group resolution plan at intervals of more than one year.

#### Textual Amendments

- F57** Words in art. 8(3)(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 5(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F58** Art. 8(3A)(3B) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 5(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F59** Words in art. 8(4)(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 5(4)**; 2020 c. 1, Sch. 5 para. 1(1)

## Consultation with the Financial Policy Committee

9.—(1) The PRA and the FCA must consult the Financial Policy Committee (“the Committee”) before adopting a general policy on the imposition of simplified obligations in respect of any class of undertaking if the policy would, in the opinion of the PRA or FCA, have a material adverse impact on the advancement by the Committee of any of the Committee's objectives under section 9C of the Bank of England Act 1998 <sup>M19</sup>.

(2) The Bank must consult the Committee before adopting a general policy on the imposition of simplified obligations in respect of any class of undertaking if the policy would, in the Bank's opinion, have a material adverse impact on the advancement by the Committee of any of the Committee's objectives under section 9C of the Bank of England Act 1998.

(3) In this article “simplified obligations”—

- (a) in relation to the PRA or FCA, means the less onerous obligations that would result from a determination under article 7(3)(b) or (4);
- (b) in relation to the Bank, means the less onerous obligations that would result from a determination under article 8(3)(b), (4)(b) or (5).

### Marginal Citations

**M19** Section 9C was inserted by the Financial Services Act 2012, section 4(1).

## Provision of information to EBA

<sup>F60</sup>10. ....

### Textual Amendments

**F60** Art. 10 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 6; 2020 c. 1, Sch. 5 para. 1(1)

# PART 4

## Recovery plans

### CHAPTER 1

#### Assessment of recovery plan drawn up by an institution

## Application and interpretation of Chapter 1

11.—(1) This Chapter applies where an institution—

- (a) is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F61</sup>the capital requirements regulation and CRR rules]; and
- (b) submits a recovery plan to the appropriate regulator for assessment <sup>F62</sup>....

(2) In this Chapter “relevant measures” means measures to maintain or restore the viability and financial position of the institution, including measures to—

- (a) reduce its risk profile, including its liquidity risk profile;
- (b) review its structure and strategy;
- (c) enable it to undertake timely recapitalisation;
- (d) change its funding strategy in order to improve the resilience of core business lines and critical functions; and
- (e) change its governance structure.

**Textual Amendments**

- F61** Words in art. 11(1)(a) 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), **19(3)**
- F62** Words in art. 11(1)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 7(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**Assessment of plan**

**12.**—(1) The appropriate regulator must assess the recovery plan within six months beginning with the date on which it receives the plan.

<sup>F63</sup>(2) .....

- (3) The appropriate regulator must—
  - (a) send a copy of the recovery plan to the Bank; and
  - (b) have regard to any recommendations made by the Bank to address any course of action proposed in the plan which could have an adverse impact on the resolvability of the institution.

**Textual Amendments**

- F63** Art. 12(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 8**; 2020 c. 1, Sch. 5 para. 1(1)

**Criteria for assessment**

**13.**—(1) The appropriate regulator must assess whether the recovery plan meets the requirements of [<sup>F64</sup>Schedule A1] and whether the arrangements proposed in the plan—

- (a) would, if implemented, be reasonably likely to maintain or restore the viability and financial position of the institution; and
- (b) would be reasonably likely to be implemented quickly and effectively in situations of financial stress and, as far as possible, without any material adverse impact on the financial system of the United Kingdom.

[<sup>F65</sup>(1A) The PRA and the FCA may each make technical standards relating to the criteria referred to in paragraph (1) for a recovery plan submitted by an institution that it has authorised.]

- (2) In assessing the recovery plan against these criteria, the appropriate regulator must consider—
  - (a) any preparatory measures taken or planned to be taken by the institution;

- (b) the possibility that the plan may have to be implemented at the same time as recovery plans drawn up by other institutions and group recovery plans; and
  - (c) whether the capital and funding structure of the institution is appropriate having regard to the level of complexity of its organisational structure and its risk profile.
- (3) This article has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(a)) with respect to the recovery plan.

#### **Textual Amendments**

- F64** Words in art. 13(1) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 9(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F65** Art. 13(1A) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 9(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### **Revision of plan**

**14.**—(1) The appropriate regulator—

- (a) must notify the institution if, in its assessment, the recovery plan contains any material deficiency or measure which would impede its implementation; and
- (b) may not require the institution to revise the recovery plan without giving it an opportunity to state its opinion on that requirement.

(2) If the appropriate regulator requires the institution to revise the recovery plan, it must allow the institution two months, which it may on application by the institution extend to three months, to prepare a plan which demonstrates that the deficiency or other impediment has been addressed.

#### **Business changes and relevant measures**

**15.**—(1) This article applies where—

- (a) the institution fails to submit a revision of the recovery plan within the time allowed by the appropriate regulator; or
- (b) the appropriate regulator considers that a matter notified under article 14(1) has not been adequately addressed in a revision of the plan and cannot be adequately addressed by directing the institution to make specific changes to the plan.

(2) The appropriate regulator must, in exercise of its powers under FSMA—

- (a) direct the institution to propose changes to its business which would be made with the object of addressing a material deficiency or measure in the recovery plan which would impede its implementation; and
- (b) if the institution fails to propose such changes to its business within the time allowed by the appropriate regulator or the appropriate regulator considers that any changes proposed would not adequately address the impediment, determine whether to direct the institution to take relevant measures.

## CHAPTER 2

Assessment of group recovery plan where the PRA or FCA is the consolidating supervisor

### Application and interpretation of Chapter 2

**16.—**(1) This Chapter applies where, in relation to a relevant group—

- (a) the PRA or FCA is the consolidating supervisor; and
- (b) a group entity submits a group recovery plan to the appropriate regulator for assessment

<sup>F66</sup>  
....

(2) In this Chapter—

“business changes” means changes to the business of a group institution which would be made with the object of addressing an impediment;

“four month period” means four months beginning with the date on which the appropriate regulator transmits a copy of the group recovery plan under article 17;

“group institution” means—

- (a) the [<sup>F67</sup>UK] parent undertaking, if it is an institution;
- (b) a group subsidiary which is an institution;

“impediment”, in relation to the group recovery plan, means any material deficiency or measure in the plan which would impede its implementation;

“relevant matters”, in relation to the assessment of the group recovery plan, means the following matters for decision—

- (c) whether the plan meets the criteria for assessment;
- (d) whether group institutions should be required to draw up and submit recovery plans on an individual basis;
- (e) whether the plan contains an impediment;
- (f) whether a group entity should be required to revise the plan;
- (g) whether an impediment has been adequately addressed in a revision of the plan;
- (h) where an impediment has not been adequately addressed in a revision of the plan, whether it can be adequately addressed by directing a group entity to make specific changes to the plan; and
- (i) where an impediment cannot be adequately addressed by specific changes to the plan or by business changes—
  - (i) whether a group entity should be directed to take relevant measures; and
  - (ii) the terms of any direction to take relevant measures;

“relevant measures” means measures to maintain or restore the viability and financial position of a group institution, including measures to—

- (a) reduce the institution's risk profile, including its liquidity risk profile;
- (b) review its structure and strategy;
- (c) enable it to undertake timely recapitalisation;
- (d) change its funding strategy in order to improve the resilience of core business lines and critical functions; or
- (e) change its governance structure; and

<sup>F68</sup>  
...



### Textual Amendments

- F66** Words in art. 16(1)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 10(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F67** Word in art. 16(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 10(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F68** Words in art. 16(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 10(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

### Duty to transmit a copy of group recovery plan

17.—(1) The appropriate regulator must send a copy of the group recovery plan or, where paragraph (2) has effect in relation to any information, of the plan without that information, to—

- (a) the Bank; [<sup>F69</sup>and]
- <sup>F70</sup>(b) . . . . .
- <sup>F70</sup>(c) . . . . .
- [<sup>F71</sup>(d) the PRA or FCA, where either is not the appropriate regulator but supervises a group entity as an authorised person under FSMA.]
- <sup>F72</sup>(e) . . . . .

(2) This article does not require any information contained in the group recovery plan to be disclosed if its disclosure would be contrary to section 348 of FSMA <sup>M20</sup> (restrictions on disclosure of confidential information by FCA, PRA etc).

### Textual Amendments

- F69** Word in art. 17(1)(a) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 11(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F70** Art. 17(1)(b)(c) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 11(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F71** Art. 17(1)(d) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 11(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F72** Art. 17(1)(e) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 11(d)**; 2020 c. 1, Sch. 5 para. 1(1)

### Marginal Citations

- M20** Section 348 was amended by the [Financial Services Act 2010 \(c. 28\)](#), **section 24(1)** and (2) and Schedule 2, paragraphs 1 and 26; by the [Financial Services Act 2012](#), section 41 and Schedule 12, paragraph 18, and by the [Financial Services \(Banking Reform\) Act 2013](#), section 129 and Schedule 8, paragraph 5.

### Assessment of group recovery plan

**18.**—(1) <sup>F73</sup> ... The appropriate regulator must assess the group recovery plan, and is solely responsible for the assessment.

<sup>F74</sup>(2) .....

<sup>F74</sup>(3) .....

(4) The assessment must take account of—

- (a) any recommendations made by the Bank <sup>F75</sup>... to address any course of action proposed in the plan which could have an adverse impact on the resolvability of a group institution; and
- (b) the potential impact of the proposed recovery measures on the financial stability of [<sup>F76</sup>the United Kingdom].

#### Textual Amendments

**F73** Words in art. 18(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 12(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F74** Art. 18(2)(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 12(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F75** Words in art. 18(4)(a) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 12(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F76** Words in art. 18(4)(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 12(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

### Purpose of assessment

**19.**—(1) The purpose of the assessment of the group recovery plan is to determine whether the plan meets the criteria for assessment and decide other relevant matters.

(2) The criteria for assessment are that the plan must satisfy the requirements of [<sup>F77</sup>Schedule A1] and that the arrangements proposed in the plan—

- (a) would, if implemented, be reasonably likely to maintain or restore the viability and financial position of group institutions; and
- (b) would be reasonably likely to be implemented quickly and effectively in situations of financial stress and, as far as possible, without any material adverse impact on the financial system of [<sup>F78</sup>the United Kingdom].

[<sup>F79</sup>(2A) The PRA and the FCA may each make technical standards relating to the criteria referred to in paragraph (1) for a group recovery plan submitted by a group entity that it has authorised.]

(3) The appropriate regulator must ensure that the group recovery plan is not assessed without consideration of—

- (a) any preparatory measures taken or planned to be taken by any group entity;
- (b) the possibility that the plan may have to be implemented at the same time as other group recovery plans and recovery plans drawn up by institutions; and
- (c) whether the capital and funding structure of the group institutions is appropriate having regard to the level of complexity of their organisational structure and risk profile.

(4) This article has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(a)) with respect to the group recovery plan.

**Textual Amendments**

- F77** Words in art. 19(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 13(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F78** Words in art. 19(2)(b) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 13(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F79** Art. 19(2A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 13(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**[<sup>F80</sup>Timing of assessment of plan**

**20.** The appropriate regulator must conclude the assessment within the four month period.]

**Textual Amendments**

- F80** Art. 20 substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 14**; 2020 c. 1, Sch. 5 para. 1(1)

**Joint assessment of plan**

<sup>F81</sup>**21.** .....

**Textual Amendments**

- F81** Art. 21 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 15**; 2020 c. 1, Sch. 5 para. 1(1)

**Revision of plan**

**22.** The appropriate regulator—

- (a) must notify a UK [<sup>F82</sup>parent undertaking] if the group recovery plan is found on assessment to contain an impediment; and
- (b) may not require a UK [<sup>F82</sup>parent undertaking] to revise the plan without giving it an opportunity to state its opinion on that requirement.

(2) If the appropriate regulator requires a UK [<sup>F83</sup>parent undertaking] to revise the plan, it must allow [<sup>F84</sup>the undertaking] two months, which it may on application by [<sup>F84</sup>the undertaking] extend to three months, to prepare a plan which demonstrates that the impediment has been addressed.

### Textual Amendments

- F82** Words in art. 22(1) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 16(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F83** Words in art. 22(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 16(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F84** Words in art. 22(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 16(3)**; 2020 c. 1, Sch. 5 para. 1(1)

### Business changes and relevant measures

23.—(1) This article applies where—

- (a) a UK [<sup>F85</sup>parent undertaking] fails to submit a revision of the group recovery plan within the time allowed by the appropriate regulator; or
  - (b) the appropriate regulator considers that an impediment has not been adequately addressed in a revision of the plan and cannot be adequately addressed by directing [<sup>F86</sup>the UK parent undertaking] to make specific changes to the plan.
- (2) <sup>F87</sup>... the appropriate regulator must, in exercise of its powers under FSMA—
- (a) direct the UK [<sup>F88</sup>parent undertaking] to propose business changes; and
  - (b) if [<sup>F89</sup>the UK parent undertaking] fails to propose business changes within the time allowed by the appropriate regulator or the appropriate regulator considers that any business changes proposed by [<sup>F89</sup>the UK parent undertaking] would not adequately address the impediment, determine whether to direct [<sup>F89</sup>the UK parent undertaking] to take relevant measures.

### Textual Amendments

- F85** Words in art. 23(1)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 17(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F86** Words in art. 23(1)(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 17(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F87** Words in art. 23(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 17(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F88** Words in art. 23(2)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 17(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F89** Words in art. 23(2)(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 17(4)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

## Recovery plan for group institution

24. Where the appropriate regulator requires a group institution to draw up and submit a recovery plan on an individual basis, Chapter 1 applies for the purpose of the assessment of the plan, but has effect for that purpose as if each reference to an institution were a reference to the group institution.

## References to EBA

<sup>F90</sup>25. ....

### Textual Amendments

**F90** Art. 25 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 18**; 2020 c. 1, Sch. 5 para. 1(1)

## Requesting the assistance of EBA

<sup>F91</sup>26. ....

### Textual Amendments

**F91** Art. 26 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 18**; 2020 c. 1, Sch. 5 para. 1(1)

## <sup>F92</sup>CHAPTER 3

Assessment of group recovery plan where neither the PRA nor the FCA is the consolidating supervisor

### Textual Amendments

**F92** Pt. 4 Ch. 3 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 19**; 2020 c. 1, Sch. 5 para. 1(1)

## Application and interpretation of Chapter 3

<sup>F92</sup>27. ....

## Purpose of assessment

<sup>F92</sup>28. ....

## Joint assessment of plan

<sup>F92</sup>29. ....

## Assessment of recovery plans drawn up on an individual basis

<sup>F92</sup>30. ....

**References to EBA**

<sup>F92</sup>31. ....

**Requesting the assistance of EBA**

<sup>F92</sup>32. ....

CHAPTER 4

Review of recovery plans and group recovery plans

**Review of recovery plan**

33.—(1) This article applies where a recovery plan drawn up by an institution has been assessed under Chapter 1, including that Chapter as applied by article 24 <sup>F93</sup>....

(2) The appropriate regulator must require the institution to review the recovery plan and make any appropriate amendment at least—

- (a) once a year; or
- (b) if the appropriate regulator has made a determination under article 7(4), at the intervals determined.

(3) The appropriate regulator must require the institution to—

- (a) review the recovery plan where any material change has been made to the legal or organisational structure of the institution or to its business or financial position; and
- (b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.

(4) Where the appropriate regulator considers that the plan ought to be reassessed following a decision <sup>F94</sup>... to prohibit or restrict the provision of financial support under an authorised agreement (within the meaning given in Chapter 4 of Part 7), it may require the institution to review the recovery plan and make any appropriate amendment.

(5) For the purposes of any review of the recovery plan the appropriate regulator may make a determination under article 7(3).

(6) Where the institution submits an up-dated plan for assessment, the appropriate regulator must assess that plan—

- (a) if the institution <sup>F95</sup>... is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F96</sup>the capital requirements regulation and CRR rules], in accordance with Chapter 1; or
- (b) if the institution is a group institution within the meaning given in Chapter 2 <sup>F97</sup>..., in accordance with Chapter 1 as applied by article 24 <sup>F97</sup>....

(7) For the purposes of this article Part 3 and Chapter 1 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 7	In paragraph (3) the reference to a recovery plan is a reference to the up-dated plan.
Article 11	Ignore paragraph (1).

Articles 12 to 15

Each reference to the recovery plan (but not the reference to recovery plans in article 13(2)(b)) is a reference to the up-dated plan.

(8) In this article “up-dated plan” means the recovery plan after it has been reviewed pursuant to this article (whether or not it has been amended on review).

#### Textual Amendments

- F93** Words in art. 33(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 20(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F94** Words in art. 33(4) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 20(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F95** Words in art. 33(6)(a) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 20(4)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F96** Words in art. 33(6)(a) 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), **19(4)**
- F97** Words in art. 33(6)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 20(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Review of group recovery plan assessed under Chapter 2

34.—(1) This article applies where, in relation to a relevant group, a group recovery plan has been assessed under Chapter 2.

(2) The appropriate regulator must require a [<sup>F98</sup>UK parent undertaking] to review the plan and make any appropriate amendment at least—

- (a) once a year; or
- (b) if the appropriate regulator has made a determination under article 7(4), at the intervals determined.

(3) The appropriate regulator must require a [<sup>F99</sup>UK parent undertaking] to—

- (a) review the plan where any material change has been made to the legal or organisational structure of the relevant group or any group entity or to its business or financial position; and
- (b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.

(4) Where the appropriate regulator considers that the plan ought to be reassessed following a decision <sup>F100</sup> ... to prohibit or restrict the provision of financial support under an authorised agreement (within the meaning given in Chapter 4 of Part 7), it may require a [<sup>F101</sup>UK parent undertaking] to review the plan and make any appropriate amendment.

(5) For the purposes of any review of the plan the appropriate regulator may make a determination under article 7(3).

(6) Where a group entity submits an up-dated plan for assessment, the appropriate regulator must assess that plan in accordance with Chapter 2.

(7) For the purposes of this article Part 3 and Chapter 2 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 7	In paragraph (3) the reference to a group recovery plan is a reference to the up-dated plan.
Article 16	Ignore paragraph (1).
Articles 16 to 23, 25 and 26	Each reference to the group recovery plan is a reference to the up-dated plan.

(8) In this article—

<sup>F102</sup> ...

“up-dated plan” means the group recovery plan after it has been reviewed pursuant to this article (whether or not it has been amended on review).

**Textual Amendments**

- F98** Words in art. 34(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 21(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F99** Words in art. 34(3) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 21(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F100** Words in art. 34(4) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 21(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F101** Words in art. 34(4) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 21(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F102** Words in art. 34(8) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 21(4)**; 2020 c. 1, Sch. 5 para. 1(1)

**Review of group recovery plan assessed under Chapter 3**

<sup>F103</sup>35. ....

**Textual Amendments**

- F103** Art. 35 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 22**; 2020 c. 1, Sch. 5 para. 1(1)



## PART 5

### Resolution plans

#### CHAPTER 1

##### Resolution plans for institutions

#### Interpretation of Chapter 1

**36.** In this Chapter “relevant institution” means an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with <sup>F104</sup>the capital requirements regulation and CRR rules].

#### Textual Amendments

**F104** Words in art. 36 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), **19(5)**

#### The Bank's duty to draw up resolution plans

**37.**—(1) The Bank must draw up and adopt a resolution plan for each relevant institution.

(2) Subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to a resolution plan, the plan must<sup>F105</sup>—

- (a) contain the information, and be drawn up with regard to the considerations, set out in Schedule 1; and
- (b) contain information specified in any technical standards made under paragraph (2A).]

<sup>F106</sup>(2A) The Bank may make technical standards relating to information to be contained in the resolution plan for a relevant institution.]

(3) The resolution plan must be drawn up on the basis of the information provided for that purpose by the relevant institution or the appropriate regulator and any other relevant information.

<sup>F107</sup>(3A) The Bank may make technical standards relating to—

- (a) the procedures for the provision of information by the relevant institution or the appropriate regulator under paragraph (3); and
- (b) a minimum set of standard forms and templates for such provision of information.]

(4) For the purpose of drawing up a resolution plan the Bank must consult—

- (a) the appropriate regulator; <sup>F108</sup> ...

<sup>F109</sup>(b) .....

(5) The Bank must provide the relevant institution with a summary of the key elements of the resolution plan.

#### Textual Amendments

**F105** Words in art. 37(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 24(2)**; 2020 c. 1, Sch. 5 para. 1(1)

- F106** Art. 37(2A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 24(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F107** Art. 37(3A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 24(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F108** Word in art. 37(4)(a) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 24(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F109** Art. 37(4)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 24(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**Duty to transmit a copy of the resolution plan**

**38.** The Bank must send a copy of the resolution plan adopted for a relevant institution to the appropriate regulator.

CHAPTER 2

Group resolution plan where the PRA or FCA is the consolidating supervisor

**Application of Chapter 2**

**39.** This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

**The Bank's duty to draw up group resolution plans**

**40.—(1)** <sup>F110</sup>... The Bank must draw up and adopt a group resolution plan, and is solely responsible for the plan.

<sup>F111</sup>(2) .....

(3) Subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to a group resolution plan, the plan must<sup>F112</sup>—

- (a) contain the information, and be drawn up with regard to the considerations, set out in Schedule 2; and
- (b) contain information specified in any technical standards made under paragraph (3A).]

[<sup>F113</sup>(3A) Taking into account the diversity of business models of groups in the United Kingdom, the Bank may make technical standards relating to information to be contained in the group resolution plan.]

(4) The resolution plan must be drawn up on the basis of—

- (a) the information provided for that purpose by a group entity set up in the United Kingdom or by the appropriate regulator; and
- (b) any other relevant information.

[<sup>F114</sup>(4A) The Bank may make technical standards relating to—

- (a) the procedures for the provision of information under paragraph (4)(a); and
- (b) a minimum set of standard forms and templates for such provision of information.]

(5) For the purpose of drawing up a group resolution plan, the Bank must consult—

- (a) the appropriate regulator;

<sup>F115</sup>(b) .....

<sup>F115</sup>(c) .....

(6) A group resolution plan must not have a disproportionate impact on [<sup>F116</sup>the United Kingdom].

[<sup>F117</sup>(6A) In a relevant group, where a mixed-activity holding company has at least one subsidiary which is—

- (a) an institution; and
- (b) a subsidiary of a financial holding company,

the group resolution plan shall provide that the financial holding company is identified as a resolution entity. “Institution” in this subsection has the same meaning as in the capital requirements regulation.]

(7) For the purpose of drawing up a group resolution plan, so far as the plan is relevant to—

- (a) a subsidiary within the relevant group which is set up in a third country, or
- (b) an institution within the relevant group which has a significant branch in a third country,

the Bank may consult the authorities which, in the country concerned, exercise any function equivalent to a function of [<sup>F118</sup>the Bank under Part 1 of the Banking Act 2009 or the PRA or the FCA under FSMA].

[<sup>F119</sup>(8) In paragraph (7)—

“branch” has the meaning given in point (17) of Article 4.1 of the capital requirements regulation; and

“significant branch” shall be construed with regard, in particular, to the following—

- (a) whether the market share of the branch in terms of deposits exceeds 2% in the third country;
- (b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the third country;
- (c) the size and importance of the branch in terms of number of clients within the context of the banking or financial system of the third country.]

#### Textual Amendments

**F110** Words in art. 40(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F111** Art. 40(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F112** Words in art. 40(3) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(4)**; 2020 c. 1, Sch. 5 para. 1(1)

**F113** Art. 40(3A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(5)**; 2020 c. 1, Sch. 5 para. 1(1)

**F114** Art. 40(4A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(6)**; 2020 c. 1, Sch. 5 para. 1(1)

- F115** Art. 40(5)(b)(c) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(7)**; 2020 c. 1, Sch. 5 para. 1(1)
- F116** Words in art. 40(6) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(8)**; 2020 c. 1, Sch. 5 para. 1(1)
- F117** Art. 40(6A) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **31**
- F118** Words in art. 40(7) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(9)**; 2020 c. 1, Sch. 5 para. 1(1)
- F119** Art. 40(8) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(10)**; 2020 c. 1, Sch. 5 para. 1(1)

**Information to be transmitted for the purpose of drawing up group resolution plans**

**41.**—(1) For the purposes of drawing up and adopting a group resolution plan the Bank must send relevant information [<sup>F120</sup>to the appropriate regulator]—

- <sup>F121</sup>(a) . . . . .
- <sup>F121</sup>(b) . . . . .
- <sup>F121</sup>(c) . . . . .

(2) This article does not require any information to be disclosed if its disclosure would be contrary to section 348 of FSMA as applied for the purposes of Part 1 of the Banking Act 2009 (with modifications) by section 89L of that Act <sup>M21</sup> (restrictions on disclosure of confidential information).

- <sup>F122</sup>(3) . . . . .

**Textual Amendments**

- F120** Words in art. 41(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 26(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F121** Art. 41(1)(a)(b)(c) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 26(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F122** Art. 41(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 26(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

- M21** Section 89L was inserted by S.I. 2014/3329.

**Joint decision on adoption of group resolution plan**

- <sup>F123</sup>**42.** . . . . .

**Textual Amendments**

**F123** Art. 42 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 27**; 2020 c. 1, Sch. 5 para. 1(1)

**References to EBA**

<sup>F124</sup>**43.** .....

**Textual Amendments**

**F124** Art. 43 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 27**; 2020 c. 1, Sch. 5 para. 1(1)

**Requesting the assistance of EBA**

<sup>F125</sup>**44.** .....

**Textual Amendments**

**F125** Art. 44 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 27**; 2020 c. 1, Sch. 5 para. 1(1)

**Duty to transmit a copy of the group resolution plan**

**45.** The Bank must send a copy of the group resolution plan to the appropriate regulator <sup>F126</sup>....

**Textual Amendments**

**F126** Words in art. 45 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 28**; 2020 c. 1, Sch. 5 para. 1(1)

<sup>F127</sup>CHAPTER 3

Group resolution plan where neither the PRA nor the FCA is the consolidating supervisor

**Textual Amendments**

**F127** Pt. 5 Ch. 3 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 29**; 2020 c. 1, Sch. 5 para. 1(1)

**Application and interpretation of Chapter 3**

<sup>F127</sup>**46.** .....

**Joint decision on adoption of group resolution plan**

<sup>F127</sup>47. ....

**Failure to reach joint decision: disagreement by the Bank with a joint proposal**

<sup>F127</sup>48. ....

**Failure to reach joint decision: agreement by the Bank with a joint proposal**

<sup>F127</sup>49. ....

**Resolution plan for group entity**

<sup>F127</sup>50. ....

**References to EBA**

<sup>F127</sup>51. ....

**Requesting the assistance of EBA**

<sup>F127</sup>52. ....

CHAPTER 4

Review of resolution plans and group resolution plans

**Review of resolution plan**

53.—(1) The Bank must review a resolution plan and make any appropriate amendment at least—

- (a) once a year; or
- (b) if the Bank has made a determination under article 8(5), at the intervals determined.

(2) The Bank must—

[<sup>F128</sup>(a) review a resolution plan where—

- (i) any material change has been made to the legal or organisational structure of the relevant entity or to its business or financial position; or
- (ii) a change results from the application of the resolution tools or the exercise of the powers under section 6B of the Banking Act 2009 in relation to the relevant entity.]

(b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.

(3) For the purposes of a review of a resolution plan the Bank may make a determination under article 8(3).

(4) The Bank must review a resolution plan and adopt the up-dated plan—

- (a) in the case of an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F129</sup>the capital requirements regulation and CRR rules], in accordance with Chapter 1; <sup>F130</sup>...

<sup>F131</sup>(b) .....

(5) For the purposes of this article Part 3 and Chapter 1 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 8	In paragraph (3) the reference to a resolution plan is a reference to the up-dated plan.
Article 37	Ignore paragraph (1). In paragraph (2)— (a) the reference to a resolution plan is a reference to the up-dated plan; and (b) for “be drawn up” read “the review must be undertaken”. In paragraph (3) for “drawn up” read “reviewed”. In paragraph (4) for “drawing up” read “reviewing”. In paragraph (5) the reference to the resolution plan is a reference to the up-dated plan.
Article 38	The reference to the resolution plan is a reference to the up-dated plan.

(6) In this article—

“relevant entity” means an institution or group entity for which the Bank has adopted a resolution plan;

“resolution plan” means a plan adopted by the Bank under Chapter 1<sup>F132</sup> ...; and

“up-dated plan”, in relation to a resolution plan, means that plan as reviewed in accordance with this article (whether or not it has been amended on review).

#### Textual Amendments

**F128** Art. 53(2)(a) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **34**

**F129** Words in art. 53(4)(a) 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), **19(6)**

**F130** Word in art. 53(4)(a) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 30(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

**F131** Art. 53(4)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 30(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F132** Words in art. 53(6) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 30(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Review of group resolution plan drawn up by the Bank

**54.**—(1) The Bank must review a group resolution plan at least—

(a) once a year; or

(b) if the Bank has made a determination under article 8(5), at the intervals determined.

(2) The Bank must—

- (a) review a group resolution plan where any material change has been made to the legal or organisational structure of the relevant group or any group entity or to its business or financial position; and
- (b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.
- (3) For the purposes of a review of a group resolution plan the Bank may make a determination under article 8(3).
- (4) The Bank must review a group resolution plan and adopt the up-dated plan in accordance with Chapter 2.
- (5) For the purposes of this article Part 3 and Chapter 2 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 8	In paragraph (3) the reference to a group resolution plan is a reference to the up-dated plan.
Article 40	In paragraphs (1) and (2) for “draw up and adopt a” read “review the”. In paragraph (3)— (a) the reference to a group resolution plan is a reference to the up-dated plan; and (b) for “be drawn up” read “the review must be undertaken”. In paragraph (4) for “drawn up” read “reviewed”. In paragraphs (5) and (7) for “drawing up a” read “reviewing the”.
Article 41	F133 ...
[ <sup>F134</sup> Article 45]	[ <sup>F135</sup> The] reference to a group resolution plan is a reference to the up-dated plan.

- (6) In this article—
- “group resolution plan” means a plan adopted by the Bank under Chapter 2; and
- “up-dated plan”, in relation to a group resolution plan, means that plan as reviewed in accordance with this article (whether or not it has been amended on review).

#### Textual Amendments

**F133** Words in art. 54(5) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 31(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F134** Words in art. 54(5) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 31(b) (i)**; 2020 c. 1, Sch. 5 para. 1(1)

**F135** Word in art. 54(5) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 31(b) (ii)**; 2020 c. 1, Sch. 5 para. 1(1)



## Review of group resolution plan drawn up by another resolution authority

<sup>F136</sup>55. ....

### Textual Amendments

**F136** Art. 55 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 32; 2020 c. 1, Sch. 5 para. 1(1)

## CHAPTER 5

### Information and records for resolution planning

#### Information required for resolution planning

**56.**—(1) The regulator must provide the Bank with all information contained in a resolution pack prepared by a relevant person in accordance with rules made by the regulator under FSMA.

(2) This article does not require any information to be disclosed if its disclosure would be contrary to section 348 of FSMA.

(3) In this article—

“regulator” has the meaning given in section 3A(2) of FSMA <sup>M22</sup>;

“relevant person” has the meaning given in subsection (2) of section 137K of FSMA <sup>M23</sup> (rules about resolution packs: duty to consult); and

“resolution pack” has the meaning given in subsection (3) of that section.

### Marginal Citations

**M22** Section 3A was substituted by the Financial Services Act 2012, section 6(1), which substituted Part 1A of FSMA.

**M23** Section 137K was substituted by the Financial Services Act 2012, section 24(1), which substituted Part 9A of FSMA; and, together with the heading, is amended by paragraph 3 of Schedule 3 to this Order.

#### Notice of matters which could necessitate an amendment of a plan

**57.** The PRA and the FCA must notify the Bank without delay of any change of circumstances or other matter coming to their attention which could necessitate an amendment of a resolution plan or group resolution plan.

#### Records of financial contracts

**58.**—(1) The Bank may give directions to a relevant person in relation to maintaining detailed records of financial contracts <sup>M24</sup> to which the relevant person is a party.

(2) A “relevant person” is—

(a) an institution authorised by the PRA or FCA; or

(b) an undertaking set up in the United Kingdom which is a subsidiary of an institution authorised by the PRA or FCA <sup>F137</sup> ...; or

(c) the [<sup>F138</sup>UK] parent undertaking.

[<sup>F139</sup>(2A) “Financial contracts” means—

- (a) securities contracts, including—
    - (i) contracts for the purchase, sale or loan of a security, a group or index of securities;
    - (ii) options on a security or group or index of securities;
    - (iii) repurchase or reverse repurchase transactions on any such security, group or index;
  - (b) commodities contracts, including—
    - (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
    - (ii) options on a commodity or group or index of commodities;
    - (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;
  - (c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
  - (d) swap agreements, including—
    - (i) swaps and options relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
    - (ii) total return, credit spread or credit swaps;
    - (iii) any agreements or transactions that are similar to an agreement referred to in paragraph (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;
  - (e) inter-bank borrowing agreements where the term of the borrowing is three months or less;
  - (f) master agreements for any of the contracts or agreements referred to in sub-paragraphs (a) to (e).]
- (3) A direction given by the Bank may—
- (a) require records of financial contracts to be maintained;
  - (b) specify the details or kinds of detail which are to be recorded;
  - (c) require records of financial contracts to be produced at the request of the Bank;
  - (d) specify a period of time within which a relevant person is to be capable of producing records (“a time-limit”);
  - (e) specify different time-limits for different kinds of financial contract.
- [<sup>F140</sup>(4) The Bank must exercise its functions under this article in accordance with any technical standards under paragraph (5).
- (5) The Bank may make technical standards relating to—
- (a) the circumstances in which it will give a direction under this paragraph; and
  - (b) the information that must be contained in the records required by such a direction.]
- (4) Directions may be given with general effect or with respect to a particular relevant person or class of relevant persons, but may not specify different time-limits for different relevant persons or classes of relevant person.

#### Textual Amendments

- F137** Words in art. 58(2)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 33(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F138** Word in art. 58(2)(c) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 33(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F139** Art. 58(2A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 33(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F140** Art. 58(4)(5) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 33(4)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M24** For the meaning of “financial contracts” see the recovery and resolution directive, Article 2.1, point (100).

## PART 6

### Assessment of resolvability and removal of impediments to resolvability

#### CHAPTER 1

##### Assessment of resolvability of institutions

#### Application and interpretation of Chapter 1

**59.—(1)** This Chapter applies where the Bank draws up a resolution plan for an institution in accordance with Chapter 1 of Part 5, or reviews a resolution plan drawn up in accordance with that Chapter.

(2) In this Chapter “assessment of resolvability” means an assessment of the extent to which it would be feasible and credible to [<sup>F141</sup>apply the resolution tools, exercise resolution powers or take] insolvency proceedings in respect of the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system of [<sup>F142</sup>the United Kingdom] or the continuity of the institution's critical functions.

#### Textual Amendments

- F141** Words in art. 59(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 34(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F142** Words in art. 59(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 34(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**Assessment of resolvability**

60.—(1) For the purpose of drawing up or reviewing the resolution plan the Bank must make an assessment of resolvability.

(2) For the purpose of making the assessment of resolvability the Bank must—

- (a) consider all relevant matters, including the matters set out in [<sup>F143</sup>Schedule 2B and in any technical standards under paragraph (2A);]
- (b) have regard to the circumstances under which the institution may fail or be likely to fail, in particular—
  - (i) supposing that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and
  - (ii) supposing that there is no such a situation or occurrence;
- (c) not assume that the institution will be in receipt of—
  - (i) extraordinary public financial support;
  - (ii) emergency liquidity assistance <sup>M25</sup>; or
  - (iii) any other liquidity assistance provided by the Bank under non-standard collateralisation, tenor and interest rate terms; and
- (d) consult—
  - (i) the appropriate regulator<sup>F144</sup>...
  - <sup>F145</sup>(ii) .....

[<sup>F146</sup>(2A) The Bank may make technical standards providing—

- (a) further examples of relevant matters to be considered; and
- (b) criteria to be examined,

for the purposes of making the assessment of resolvability.]

(3) Paragraph (2) has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to the assessment of resolvability.

(4) The institution is deemed to be resolvable if the Bank concludes that it would be feasible and credible to [<sup>F147</sup>apply the resolution tools, exercise resolution powers or take] insolvency proceedings in respect of the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system of [<sup>F148</sup>the United Kingdom] or the continuity of the institution's critical functions.

<sup>F149</sup>(5) .....

**Textual Amendments**

- F143** Words in art. 60(2)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 35(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F144** Word in art. 60(2)(d)(i) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 35(2)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F145** Art. 60(2)(d)(ii) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 35(2)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

- F146** Art. 60(2A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 35(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F147** Words in art. 60(4) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 35(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F148** Words in art. 60(4) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 35(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F149** Art. 60(5) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 35(5)**; 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

- M25** For the meaning of “extraordinary public financial support” and “emergency liquidity assistance” see the recovery and resolution directive, Article 2.1, points (28 and (29).

CHAPTER 2

Assessment of resolvability of groups

**Application and interpretation of Chapter 2**

**61.—(1)** This Chapter applies where the Bank—

- (a) <sup>F150</sup>... draws up a group resolution plan in accordance with Chapter 2 of Part 5 or reviews a plan drawn up in accordance with that Chapter<sup>F150</sup> ...

<sup>F151</sup>(b) .....

(2) In this Chapter “assessment of group resolvability” means an assessment of the extent to which it would be feasible and credible to [<sup>F152</sup>apply the resolution tools or exercise resolution powers in respect of resolution entities, or take] insolvency proceedings in respect of group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system of [<sup>F153</sup>the United Kingdom] or the continuity of the critical functions of group entities.

**Textual Amendments**

- F150** Words in art. 61(1)(a) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 36(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F151** Art. 61(1)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 36(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F152** Words in art. 61(2) substituted (31.12.2020) by S.I. 2018/1394, Sch. 3 para. 36(3)(a) (as substituted by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **77(2)**)
- F153** Words in art. 61(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 36(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**Assessment of group resolvability where the PRA or FCA is the consolidating supervisor**

62.—(1) This article applies in relation to a relevant group in respect of which the PRA or FCA is the consolidating supervisor.

(2) For the purpose of drawing up or reviewing a group resolution plan the Bank must make an assessment of group resolvability [<sup>F154</sup>in respect of the relevant group and, where there is more than one resolution group in the relevant group, in respect of each resolution group].

(3) For the purpose of making the assessment of group resolvability the Bank must—

- (a) consider all relevant matters, including the matters set out in [<sup>F155</sup>Schedule 2B and in any technical standards under paragraph (2A)];
- (b) have regard to the circumstances under which [<sup>F156</sup>resolution entities] may meet the conditions for resolution, in particular—
  - (i) supposing that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and
  - (ii) supposing that there is no such a situation or occurrence;
- (c) not assume that any of the group entities will be in receipt of—
  - (i) extraordinary public financial support;
  - (ii) emergency liquidity assistance; or
  - (iii) any other liquidity assistance provided by the Bank under non-standard collateralisation, tenor and interest rate terms; and
- (d) consult—
  - (i) the appropriate regulator;
  - <sup>F157</sup>(ii) .....
  - <sup>F157</sup>(iii) .....

[<sup>F158</sup>(3A) The Bank may make technical standards providing—

- (a) further examples of relevant matters to be considered; and
- (b) criteria to be examined,

for the purposes of making the assessment of group resolvability.]

(4) Paragraph (3) has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to the assessment of group resolvability.

(5) The relevant group [<sup>F159</sup>or a resolution group] is deemed to be resolvable if the Bank concludes that it would be feasible and credible to [<sup>F160</sup>apply the resolution tools or exercise resolution powers in respect of resolution entities, or take] insolvency proceedings in respect of group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system of [<sup>F161</sup>the United Kingdom] or the continuity of the critical functions of group entities.

- <sup>F162</sup>(6) .....
- <sup>F162</sup>(7) .....
- <sup>F162</sup>(8) .....

**Textual Amendments**

**F154** Words in art. 62(2) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **36(a)**

- F155** Words in art. 62(3)(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 37(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F156** Words in art. 62(3)(b) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **36(b)**
- F157** Art. 62(3)(d)(ii)(iii) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 37(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F158** Art. 62(3A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 37(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F159** Words in art. 62(5) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **36(c)(i)**
- F160** Words in art. 62(5) substituted (31.12.2020) by S.I. 2018/1394, Sch. 3 para. 37(4)(a) (as substituted by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **77(3)**)
- F161** Words in art. 62(5) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 37(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F162** Art. 62(6)-(8) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 37(5)**; 2020 c. 1, Sch. 5 para. 1(1)

**Assessment of group resolvability where neither the PRA nor the FCA is the consolidating supervisor**

<sup>F163</sup>**63.** .....

**Textual Amendments**

**F163** Art. 63 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 38**; 2020 c. 1, Sch. 5 para. 1(1)

**CHAPTER 3**

**Removal of impediments to resolvability of institutions**

**Application and interpretation of Chapter 3**

**64.**—(1) This Chapter applies where the Bank, after consulting the appropriate regulator and having made an assessment of resolvability in accordance with Chapter 1, determines that there are substantive impediments to the resolvability of an institution (“the impediments”).

(2) In this Chapter—

“determination” means a determination of a kind referred to in paragraph (1);

“pre-resolution powers” means the powers conferred on the Bank by section 3A of the Banking Act 2009 <sup>M26</sup> (removal of impediments to the exercise of stabilisation powers etc); and

“relevant proposals” means proposals which—

(a) are prepared by an institution to which notice is given under article 65;

- (b) are for taking measures to address or remove the impediments [<sup>F164</sup>including a timetable for doing so]; and
  - (c) are required to be submitted by the institution within [<sup>F165</sup>the response period].
- [<sup>F166</sup>“response period” means—
- (a) in a case [<sup>F167</sup>where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act], two weeks beginning with the date on which the institution received the notice; and
  - (b) in any other case, four months beginning with that date.]

**Textual Amendments**

- F164** Words in art. 64(2) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **37(a)(i)**
- F165** Words in art. 64(2) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **37(a)(ii)**
- F166** Words in art. 64(2) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **37(b)**
- F167** Words in art. 64 substituted (31.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(3), **74(3)**

**Marginal Citations**

- M26** Section 3A was inserted by [S.I. 2014/3329](#).

**Notice of determination**

- 65.**—(1) The Bank must give notice of a determination to—
- (a) the institution concerned; [<sup>F168</sup>and]
  - (b) the appropriate regulator<sup>F169</sup>...
  - <sup>F170</sup>(c) .....
- (2) The notice must—
- (a) be in writing;
  - (b) set out the impediments; and
  - (c) give reasons for the determination.

**Textual Amendments**

- F168** Word in art. 65(1)(a) added (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 39(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F169** Word in art. 65(1)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 39(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)



**F170** Art. 65(1)(c) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 39(2)** (c); 2020 c. 1, Sch. 5 para. 1(1)

### Effect of notice of determination

**66.**—(1) A notice under article 65 has the effect of suspending the Bank's duty to draw up a resolution plan for the institution (or review the resolution plan adopted for the institution) until the Bank has approved relevant proposals or exercised pre-resolution powers.

(2) The Bank, after consulting the appropriate regulator, must assess whether the measures set out in relevant proposals would adequately address or effectively remove the impediments.

(3) Where the institution—

- (a) fails to submit relevant proposals within the [<sup>F171</sup>response] period, or
- (b) the Bank concludes that the measures set out in relevant proposals would not adequately address or effectively remove the impediments,

the Bank must exercise pre-resolution powers with the object of requiring the institution to take specified measures to address or remove the impediments (“remedial measures”).

(4) In a direction given by the Bank for that purpose the Bank must—

- (a) demonstrate how the measures set out in relevant proposals would not adequately address or effectively remove the impediments;
- (b) demonstrate how the remedial measures will adequately address or effectively remove the impediments in a manner proportionate to the burden or restriction imposed by the direction; and
- (c) require the institution to—
  - (i) prepare a plan showing how it will comply with the remedial measures; and
  - (ii) submit that plan within one month beginning on the date of the direction.

(5) [<sup>F172</sup>Where the consent of the appropriate regulator is not required under section 3A(5) of the Banking Act 2009,] the Bank must consult the appropriate regulator and, where appropriate, the Financial Policy Committee before determining remedial measures.

(6) For the purpose of assessing relevant proposals and determining remedial measures the Bank must take account of—

- (a) the threat to financial stability posed by the impediments; and
- (b) the effect of the remedial measures on—
  - (i) the business and financial stability of the institution and its ability to contribute to the economy of the United Kingdom <sup>F173</sup>...;
  - (ii) the [<sup>F174</sup>market in the United Kingdom] for financial services;
  - (iii) the financial stability of [<sup>F175</sup>the United Kingdom].

(7) The Bank must give the institution written notice of the remedial measures, including a reasoned account of its decision to require the institution to take those measures.

### Textual Amendments

**F171** Word in art. 66(3)(a) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **38(a)**

- F172** Words in art. 66(5) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **38(b)**
- F173** Words in art. 66(6)(b)(i) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 40(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F174** Words in art. 66(6)(b)(ii) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 40(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F175** Words in art. 66(6)(b)(iii) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 40(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

### Right of appeal

67.—(1) A person who is aggrieved by—

- (a) a determination,
- (b) the Bank's conclusion that the measures set out in relevant proposals would not adequately address or effectively remove the impediments, or
- (c) the exercise of pre-resolution powers,

may refer the matter to the Tribunal (within the meaning given in section 417(1) of FSMA <sup>M27</sup>).

(2) Part 9 of FSMA (hearings and appeals) has effect in relation to a reference to the Tribunal under paragraph (1) as if it were a reference of a decision of the Bank under FSMA.

#### Marginal Citations

**M27** This definition was inserted by [S.I. 2010/22](#).

## CHAPTER 4

### Removal of impediments to resolvability of group entities where the PRA or FCA is the consolidating supervisor

#### Application and interpretation of Chapter 4

68.—(1) This Chapter applies where, in relation to a relevant group—

- (a) the PRA or FCA is the consolidating supervisor; and
- (b) the Bank, having made an assessment of group resolvability in accordance with Chapter 2, has identified substantive impediments to the resolvability of a group entity (“the impediments”).

(2) In this Chapter—

“group entity” means the [<sup>F176</sup>UK parent undertaking] or a subsidiary within the relevant group which is—

- (a) an institution
- (b) a financial institution; or
- (c) a parent undertaking of an institution which is <sup>F177</sup>...—
  - (i) <sup>F177</sup>...
  - (ii) a qualifying parent undertaking;

“measures for structural change” means—

- (a) measures for changing the legal or operational structure of a group entity in order to ensure, through the application of resolution tools and the exercise of resolution powers, that critical functions can be separated, legally or operationally, from the performance of other functions;
- (b) measures for establishing [<sup>F178</sup>a UK] parent financial holding company; or
- (c) where an institution is a subsidiary of a relevant MAHC, measures for establishing a financial holding company as a parent undertaking of the institution for the purpose of—
  - (i) facilitating the application of resolution tools and the exercise of resolution powers to achieve any of the resolution objectives; or
  - (ii) ensuring that applying the resolution tools and exercising the resolution powers does not have an adverse effect on the non-financial part of the group of the relevant MAHC;

“the plan” means the group resolution plan being drawn up for the relevant group (or the group resolution plan which has been adopted for the group and is being reviewed);

“pre-resolution powers” has the same meaning as in Chapter 3;

“qualifying parent undertaking” has the meaning given by section 192B of FSMA <sup>M28</sup> (meaning of “qualifying parent undertaking”); and

“remedial measures” means measures to address or remove the impediments.

[<sup>F179</sup>“response period” means—

- (a) in a case [<sup>F180</sup>where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act], two weeks beginning with the date on which the institution received the notice; and
- (b) in any other case, four months beginning with that date.]

(3) “Relevant MAHC”, in the definition of “measures for structural change”, means a mixed activity holding company which has at least one subsidiary which—

- (a) is an institution; and
- (b) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company.

#### Textual Amendments

**F176** Words in art. 68(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 41(2)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

**F177** Words in art. 68(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 41(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

**F178** Words in art. 68(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 41(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F179** Words in art. 68(2) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **39**

**F180** Words in art. 68 substituted (31.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(3), **74(4)**

**Marginal Citations**

**M28** Section 192B was inserted by the Financial Services Act 2012, section 27, which inserted Part 12A of FSMA.

**Report on substantive impediments to the resolvability of group entities**

**69.**—(1) The Bank, in co-operation with <sup>F181</sup>... the appropriate regulator <sup>F181</sup>..., must prepare a report which—

- (a) contains an analysis of the impediments;
- (b) proposes remedial measures for the impediments; and
- (c) examines the impact of the remedial measures on the business of the group entities.

[<sup>F182</sup>(2) The Bank must submit its report to the UK parent undertaking and the appropriate regulator.]

**Textual Amendments**

**F181** Words in art. 69(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 42(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F182** Art. 69(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 42(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**Suspension of requirement to draw up or review group resolution plan**

**70.**—(1) <sup>F183</sup>... The submission of the Bank's report under article 69 has the effect of suspending the Bank's duty to draw up or review the plan until the Bank determines remedial measures under article 71(3)(c).

<sup>F184</sup>(2) .....

<sup>F184</sup>(3) .....

**Textual Amendments**

**F183** Words in art. 70(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 43(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F184** Art. 70(2)(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 43(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**Determining remedial measures**

**71.**—(1) The [<sup>F185</sup>UK] parent undertaking may, within [<sup>F186</sup>the response period] beginning with the date on which it receives the Bank's report, submit to the Bank its observations on the report and a proposal to take alternative remedial measures (“alternative proposal”).

(2) The Bank must send such observations and any alternative proposal to [<sup>F187</sup>the appropriate regulator].

- (3) <sup>F188</sup> ... The Bank must—
- (a) confirm the impediments with or without modification;
  - (b) assess any alternative proposal; and
  - (c) determine remedial measures in the exercise of pre-resolution powers—
    - (i) where the Bank concludes that the measures set out in an alternative proposal would adequately address or effectively remove the impediments, by approving that proposal (with or without modification);
    - (ii) otherwise, by specifying the measures which are to be taken.
- <sup>F189</sup>(4) .....
- (5) The Bank must consult the appropriate regulator and, where appropriate, the Financial Policy Committee before determining remedial measures under paragraph (3)(c).
- (6) In considering any matter referred to in paragraph (3) or (4) the Bank must take account of—
- (a) the threat to financial stability posed by the impediments; and
  - (b) the effect of the measures on—
    - (i) the business and financial stability of each group entity and its ability to contribute to the economy of the United Kingdom <sup>F190</sup> ...
    - (ii) the [<sup>F191</sup>market in the United Kingdom] for financial services;
    - (iii) the financial stability of [<sup>F192</sup>the United Kingdom].
- (7) Paragraphs (8) and (9) apply where remedial measures determined under paragraph (3) <sup>F193</sup> ... are to be implemented by a group entity set up in the United Kingdom.
- (8) The Bank must exercise pre-resolution powers with the object of requiring the entity to take the remedial measures.
- (9) In a direction given for that purpose, the Bank—
- (a) if it has specified the measures which are to be taken, must demonstrate how the measures set out in an alternative proposal would not adequately address or effectively remove the impediments;
  - (b) must demonstrate how the remedial measures will adequately address or effectively remove the impediments in a manner proportionate to the burden or restriction imposed by the direction; and
  - (c) must require the entity to—
    - (i) prepare a plan showing how it will comply with the remedial measures; and
    - (ii) submit that plan within one month beginning on the date of the direction.

**Textual Amendments**

- F185** Word in art. 71(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F186** Words in art. 71(1) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **40**
- F187** Words in art. 71(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(3)**; 2020 c. 1, Sch. 5 para. 1(1)

- F188** Words in art. 71(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F189** Art. 71(4) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F190** Words in art. 71(6)(b)(i) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F191** Words in art. 71(6)(b)(ii) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F192** Words in art. 71(6)(b)(iii) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(6)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F193** Words in art. 71(7) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(7)**; 2020 c. 1, Sch. 5 para. 1(1)

### Joint decision on impediments to group resolvability and remedial measures

<sup>F194</sup>**72.** . . . . .

#### Textual Amendments

- F194** Art. 72 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 45**; 2020 c. 1, Sch. 5 para. 1(1)

### References to EBA

<sup>F195</sup>**73.** . . . . .

#### Textual Amendments

- F195** Art. 73 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 45**; 2020 c. 1, Sch. 5 para. 1(1)

### Requesting the assistance of EBA

<sup>F196</sup>**74.** . . . . .

#### Textual Amendments

- F196** Art. 74 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 45**; 2020 c. 1, Sch. 5 para. 1(1)

## F197 CHAPTER 5

Removal of impediments to resolvability of groups where neither the PRA nor the FCA is the consolidating supervisor

### Textual Amendments

**F197** Pt. 6 Ch. 5 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 46**; 2020 c. 1, Sch. 5 para. 1(1)

### Application and interpretation of Chapter 5

F197**75.** .....

### Report on substantive impediments to the resolvability of group entities

F197**75A.** .....

### Suspension of requirement to draw up or review group resolution plan

F197**76.** .....

### Determining remedial measures

F197**77.** .....

### Joint decision on impediments to group resolvability and remedial measures

F197**78.** .....

### Failure to reach joint decision: disagreement by the Bank with joint proposals

F197**79.** .....

### Failure to reach joint decision: agreement by the Bank with joint proposals

F197**80.** .....

### References to EBA

F197**81.** .....

### Requesting the assistance of EBA

F197**82.** .....

## PART 7

### Intra-group financial support

#### CHAPTER 1

Authorisation of agreement for group financial support  
where the PRA or FCA is the consolidating supervisor

#### Application and interpretation of Chapter 1

- 83.**—(1) This Chapter applies where, in relation to a relevant group—
- (a) the PRA or FCA is the consolidating supervisor; and
  - (b) the PRA or FCA (or each of them) receives from the [<sup>F198</sup>UK] parent undertaking an application for authorisation of a group financial support agreement (“the application”).
- (2) In this Chapter—
- <sup>F199</sup> ...
- [<sup>F200</sup>“conditions for financial support” means the following conditions—
- (a) there is a reasonable prospect that the financial support provided significantly redresses the financial difficulties of the group entity receiving the financial support;
  - (b) the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the financial support;
  - (c) the financial support is provided on terms, including consideration, in accordance with Article 19.7 of the recovery and resolution directive;
  - (d) there is a reasonable prospect, on the basis of the information available to the management body of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the financial support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the financial support;
  - (e) if the financial support is given in the form of a guarantee or any form of security and the guarantee or the security is enforced, the condition referred to in paragraph (d) shall apply to the liability arising for the recipient;
  - (f) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the financial support;
  - (g) the provision of the financial support would not create a threat to financial stability in the United Kingdom;
  - (h) the group entity providing the financial support complies, at the time the financial support is provided, with—
    - (i) the requirements relating to capital or liquidity imposed by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to the capital requirements directive; and
    - (ii) the requirements imposed by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to Article 104.2 of the capital requirements directive,
 and the provision of the financial support shall not cause the group entity to infringe those requirements, unless the group entity is authorised by the appropriate regulator on an individual basis;



- (i) the provision of the financial support would not undermine the resolvability of the group entity providing the financial support.]

“financial support” includes—

- (a) a loan, a guarantee, the provision of assets for use as collateral or any combination of these forms of support; and
- (b) provision for support (in any form) in one or more transactions or in a transaction entered into by the group institution which is the intended recipient of the support and any other person;

“group entity” means a relevant parent undertaking or group subsidiary which proposes to enter into the group financial support agreement;

“group financial support agreement” means an agreement—

- (a) which is proposed for the provision of financial support to a group institution which, at any time after the agreement has been concluded, meets the conditions for early intervention; and
- (b) the parties to which include a relevant parent undertaking and one or more group subsidiaries set up in any country [<sup>F201</sup>, other than the United Kingdom, in which the relevant parent undertaking is set up];

“group institution” means a group entity which is an institution;

“group subsidiary” means an undertaking which is—

- (a) a subsidiary of a relevant parent undertaking; and
- (b) an institution or financial institution;

“relevant competent authority” means a competent authority, other than the consolidating supervisor, which has authorised a group entity; and

“relevant parent undertaking” means a [<sup>F202</sup>UK] parent institution, a financial holding company, a mixed financial holding company or a mixed activity holding company.

[<sup>F203</sup>(2A) The PRA and the FCA may each make technical standards relating to conditions (a), (c), (f) and (i) of the definition of “conditions for financial support” provided in paragraph (2) in so far as those conditions apply to a group financial support agreement submitted to it by a UK parent undertaking.]

### Textual Amendments

- F198** Word in art. 83(1)(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 47(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F199** Words in art. 83(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 47(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F200** Words in art. 83(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 47(3)(b)** (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 10(c)(ii)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F201** Words in art. 83(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 47(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F202** Word in art. 83(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 47(3)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

**F203** Art. 83(2A) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 47(4)**; 2020 c. 1, Sch. 5 para. 1(1)

### Review of group financial support agreement and decision on authorisation

**84.**—(1) The appropriate regulator must review the group financial support agreement jointly with the relevant competent [<sup>F204</sup>authority].

(2) The purpose of the review is to determine whether—

(a) the terms of the agreement are compatible with the conditions for financial support, including whether they make provision to ensure that financial support would be given in accordance with those conditions; and

(b) any group institution already meets the conditions for early intervention.

(3) The matter referred to in paragraph (2)(a) is to be determined having regard to the potential impact of the agreement, if it is concluded, on the financial stability of [<sup>F205</sup>the United Kingdom].

(4) The appropriate regulator must refuse the application and prohibit the conclusion of the group financial support agreement if it is determined on review that—

(a) the terms of the agreement are not compatible with the conditions for financial support; or

(b) a group institution already meets the conditions for early intervention.

(5) The appropriate regulator must otherwise grant the application.

#### Textual Amendments

**F204** Word in art. 84(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 48(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F205** Words in art. 84(3) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 48(3)**; 2020 c. 1, Sch. 5 para. 1(1)

### Duty to transmit a copy of application

**85.**—(1) The appropriate regulator must send a copy of the application or, where paragraph (2) has effect in relation to any information, of the application without that information, without delay to [<sup>F206</sup>any] relevant competent authority.

(2) This article does not require any information contained in the application to be disclosed if its disclosure would be contrary to section 348 of FSMA.

#### Textual Amendments

**F206** Word in art. 85(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 49**; 2020 c. 1, Sch. 5 para. 1(1)

### Joint decision with other competent authorities

<sup>F207</sup>**86.** . . . . .

#### Textual Amendments

**F207** Art. 86 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 50**; 2020 c. 1, Sch. 5 para. 1(1)

#### References to EBA

<sup>F208</sup>**87.** .....

#### Textual Amendments

**F208** Art. 87 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 50**; 2020 c. 1, Sch. 5 para. 1(1)

#### Requesting the assistance of EBA

<sup>F209</sup>**88.** .....

#### Textual Amendments

**F209** Art. 88 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 50**; 2020 c. 1, Sch. 5 para. 1(1)

#### Duty to transmit a copy of authorised agreement

**89.** The appropriate regulator must send a copy of the group financial support agreement, if it is authorised, to the Bank <sup>F210</sup>....

#### Textual Amendments

**F210** Words in art. 89 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 51**; 2020 c. 1, Sch. 5 para. 1(1)

#### Amendment of authorised agreement

**90.**—(1) This article applies where—

- (a) the parties to an agreement authorised under this Chapter wish to amend the agreement; and
- (b) rules made by the PRA or FCA under FSMA require the amendment to be authorised before it is made.

(2) If the [<sup>F211</sup>UK] parent undertaking submits to the appropriate regulator an application for authorisation of the amendment (“the amendment application”), the appropriate regulator must treat the amendment application as if it were an application for authorisation of a group financial support agreement.

(3) Articles 84 to 89 apply for that purpose, but have effect in relation to the amendment application as if—

- (a) each reference to a group financial support agreement were a reference to the amendment set out in the amendment application; and
- (b) each reference to the application were a reference to the amendment application.

**Textual Amendments**

**F211** Word in art. 90(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 52(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F212** CHAPTER 2

Authorisation of agreement for group financial support where neither the PRA nor the FCA is the consolidating supervisor

**Textual Amendments**

**F212** Pt. 7 Ch. 2 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 53**; 2020 c. 1, Sch. 5 para. 1(1)

**Application and interpretation of Chapter 2**

**F212**91. ....

**Review of group financial support agreement and decision on authorisation**

**F212**92. ....

**Joint decision with other competent authorities**

**F212**93. ....

**References to EBA**

**F212**94. ....

**Requesting the assistance of EBA**

**F212**95. ....

**Amendment of authorised agreement**

**F212**96. ....

## CHAPTER 3

### Approval of authorised agreements by the members of a UK group entity

#### Interpretation of Chapter 3

97.—(1) In this Chapter—

“authorised agreement” means a group financial support agreement (within the meaning given in Chapter 1) authorised by the PRA [<sup>F213</sup>or FCA], and includes any amendment authorised [<sup>F214</sup>by the PRA or FCA];

“director” includes—

- (a) a director of a company;
- (b) a member of a limited liability partnership; and
- (c) a director of a building society established under the Building Societies Act 1986 <sup>M29</sup>;

“member” includes—

- (a) a shareholder of a company;
- (b) a member of a limited liability partnership; and
- (c) a shareholding or borrowing member of a building society established under the Building Societies Act 1986 (“shareholding member” and “borrowing member” have the meaning given in paragraph 5(2) of Schedule 2 to that Act);

“ordinary resolution”—

- (a) in relation to a resolution passed at a meeting on a show of hands, means a resolution passed by a simple majority of the votes cast by those entitled to vote;
  - (b) in relation to a resolution passed on a poll taken at a meeting, means a resolution passed by members representing a simple majority of the total voting rights of the members who (being entitled to do so) vote on the resolution;
  - (c) in relation to a written resolution, means a resolution passed by members representing a simple majority of the total voting rights of those eligible to vote on a written resolution;
- and

“UK group entity”, in relation to an authorised agreement, means—

- (a) the relevant parent undertaking, if it is set up in the United Kingdom;
- (b) a group subsidiary set up in the United Kingdom.

(2) In this article, for the interpretation of “UK group entity”, the expressions “group subsidiary” and “relevant parent undertaking” have the meaning given in Chapter 1.

#### Textual Amendments

**F213** Words in art. 97 substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 54(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F214** Words in art. 97 substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 54(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

**M29** 1986 c. 53.

### Requirement for approval of authorised agreement

**98.**—(1) An authorised agreement entered into by a UK group entity is only valid in respect of that entity if its members have approved the agreement in accordance with this article.

(2) An authorised agreement is deemed to be approved by the members of a UK group entity if an ordinary resolution approving the agreement is passed by the members—

- (a) present and voting either in person or by proxy at a meeting; or
- (b) by way of a written resolution proposed by the directors of the entity.

(3) An ordinary resolution may not be passed unless the directors of the entity make available to its members a memorandum setting out the proposed resolution and the terms of the authorised agreement—

- (a) in the case of a written resolution, by sending the memorandum to every member at or before the time at which the proposed resolution is submitted to the members;
- (b) in the case of a resolution at a meeting, by making the memorandum available for inspection by the members—
  - (i) at the entity's registered office for not less than fifteen days ending with the date of the meeting; and
  - (ii) at the meeting itself.

### [<sup>F215</sup> Publication of information concerning group financial support agreements

**98A.** The PRA and the FCA may each make technical standards relating to the form and content of any description of entry into a group financial support agreement which the directors of a UK group entity are required to publish by rules made by the PRA or the FCA under Part 9A of FSMA.]

#### Textual Amendments

**F215** Art. 98A inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 55**; 2020 c. 1, Sch. 5 para. 1(1)

### Revocation of authorised agreement

**99.**—(1) This article applies where a UK group entity has entered into an authorised agreement which has been approved in accordance with article 98.

(2) The authorised agreement remains valid in respect of the UK group entity for as long as the members of the entity have not revoked their approval in accordance with this article.

(3) Paragraph (4) applies where at least five per cent. of the members of the entity require the directors to—

- (a) call a general meeting of the entity to determine whether their approval of the authorised agreement should be revoked; or
- (b) circulate a written resolution proposing that the approval should be revoked.

(4) The members' approval of the authorised agreement is revoked if an ordinary resolution revoking it is passed by the members—

- (a) present and voting either in person or by proxy at a general meeting; or
- (b) by way of a written resolution proposed by the directors.

(5) An ordinary resolution may not be passed unless the directors of the entity make available to its members a memorandum setting out the proposed resolution—

- (a) in the case of a written resolution, by sending the memorandum to every member at or before the time at which the proposed resolution is submitted to the members;
- (b) in the case of a resolution at a general meeting, by making the memorandum available for inspection by the members—
  - (i) at the entity's registered office for not less than fifteen days ending with the date of the meeting; and
  - (ii) at the meeting itself.

### **Obligation to provide annual report**

**100.**—(1) The directors of the UK group entity which has entered into an authorised agreement must prepare an annual report on the performance of the agreement and the implementation of any decision taken pursuant to it.

(2) The directors must deliver a copy of the annual report to every member of the entity, electronically or by other means, no later than the first and each subsequent anniversary of the date on which the entity enters into the agreement.

## **CHAPTER 4**

### **Provision of group financial support**

#### **Interpretation of Chapter 4**

**101.**—(1) In this Chapter—

[<sup>F216</sup>“authorised agreement” has the same meaning as in Chapter 3;]

<sup>F217</sup> ...

“conditions for financial support” has the same meaning as in Chapter 1;

“financial support” has the same meaning as in Chapter 1;

“group entity” means a relevant parent undertaking or group subsidiary which has entered into a group financial support agreement authorised by the PRA [<sup>F218</sup>or FCA] (“the agreement”);

“intended recipient” means the group institution named in a relevant notice as the recipient of the financial support referred to in the notice;

“notifying group entity” means the group entity which has given a relevant notice;

“relevant competent authority” means a competent authority, other than the consolidating supervisor, which has authorised a group entity;

[<sup>F219</sup>“relevant notice” means a notice—

- (a) given by a group entity;
- (b) stating an intention to provide financial support under an authorised agreement; and
- (c) required by rules made by the PRA or FCA under Part 9A of FSMA;]

“UK group entity” means a group entity set up in the United Kingdom.

(2) In this article, for the interpretation of “group entity” and “intended recipient”, the expressions “group subsidiary”, “group financial support agreement”, “group institution” and “relevant parent undertaking” have the meaning given in Chapter 1.

**Textual Amendments**

- F216** Words in art. 101(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 56(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F217** Words in art. 101(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 56(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F218** Words in art. 101(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 56(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F219** Words in art. 101(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 56(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

**Relevant notice from UK group entity: decision by the PRA or FCA**

**102.**—(1) Where the PRA or FCA receives a relevant notice from a UK group entity, it must, within five business days beginning with the date on which it receives the notice, decide whether to—

- (a) agree the provision of the financial support to which the notice refers; or
- (b) prohibit or restrict the provision of that financial support on the ground that the conditions for financial support have not been met.

(2) The regulator must give written notice of its decision, including a reasoned account of the decision—

- (a) to the notifying group entity; [<sup>F220</sup>and]
- <sup>F221</sup>(b) . . . . .
- (c) unless the regulator is the consolidating supervisor, to the consolidating supervisor;
- (d) unless the regulator is the competent authority for the intended recipient, to that authority; and
- (e) where the regulator has authorised the intended recipient, to the intended recipient.

(3) In this article “the regulator”—

- (a) where the relevant notice is received from a PRA-authorized person, means the PRA; and
- (b) where the relevant notice is received from any other UK group entity, means the FCA.

[<sup>F222</sup>(4) In this article “business day” has the same meaning as in section 70D(1) of the Banking Act 2009 <sup>F223</sup>.]

**Textual Amendments**

- F220** Word in art. 102(2)(a) added (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 57(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F221** Art. 102(2)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 57(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F222** Art. 102(4) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 57(3)**; 2020 c. 1, Sch. 5 para. 1(1)



**F223** Section 70D inserted by [S.I. 2014/3329](#).

### **Duties of consolidating supervisor where financial support agreed, prohibited or restricted**

**103.**—(1) This article applies where the PRA or FCA is the consolidating supervisor.

<sup>F224</sup>(2) .....

(3) Paragraph (4) applies where—

- (a) a competent authority prohibits or restricts the provision of financial support to which a relevant notice refers;
- (b) the group recovery plan refers to the provision of group financial support; and
- (c) either—
  - (i) the relevant competent authority for the intended recipient asks the appropriate regulator for a re-assessment of the plan; or
  - (ii) the appropriate regulator is the competent authority for the intended recipient.

(4) The appropriate regulator—

- (a) must consider whether to require the group recovery plan to be reviewed under article 34; and
- (b) if the appropriate regulator is the competent authority for the intended recipient and the intended recipient has drawn up a recovery plan on an individual basis, must consider whether to require that plan to be reviewed under article 33.

<sup>F225</sup>(5) .....

#### **Textual Amendments**

**F224** Art. 103(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 58\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

**F225** Art. 103(5) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 58\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

### **Re-assessment of recovery plans by the PRA or FCA where it is not the consolidating supervisor**

<sup>F226</sup>**104.** .....

#### **Textual Amendments**

**F226** Art. 104 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 59](#); 2020 c. 1, Sch. 5 para. 1(1)

### **Requesting the assistance of EBA**

<sup>F227</sup>**105.** .....

### Textual Amendments

**F227** Art. 105 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 59**; 2020 c. 1, Sch. 5 para. 1(1)

### Reciprocal support

**106.** Where the PRA or FCA agrees the provision, with or without restrictions, of the financial support to which a relevant notice refers, the notifying group entity may agree with the intended recipient of that support to receive financial support from the intended recipient.

## PART 8

### Early intervention

#### CHAPTER 1

#### Early intervention with respect to an institution

### Interpretation of Chapter 1

**107.** In this Chapter—

“measure for early intervention” means a [<sup>F228</sup>relevant] measure which may be taken by the PRA or FCA in exercise of its powers under FSMA with the object of addressing the conditions [<sup>F229</sup>for early intervention]; <sup>F230</sup> ...

“relevant institution” means an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F231</sup>the capital requirements regulation and CRR rules][<sup>F232</sup>, and

[<sup>F233</sup>“relevant measure” means a measure—

- (a) requiring an institution to—
  - (i) implement one or more of the arrangements or measures set out in the recovery plan; or
  - (ii) review and (if appropriate) amend a recovery plan in accordance with article 33 when the circumstances that led to early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specified timeframe and to ensure that the conditions referred to in the introductory phase no longer apply;
- (b) requiring the management body of an institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
- (c) requiring the management body of an institution to convene, or, if the management body fails to comply with the requirement, to convene directly, a meeting of shareholders of the institution, and in both cases setting the agenda and requiring certain decisions to be considered for adoption by the shareholders;
- (d) requiring any person to be removed or replaced if an approval is withdrawn from that person under section 63 of FSMA;

- (e) requiring the management body of an institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors in accordance with any recovery plan;
- (f) requiring changes to the institution's business strategy;
- (g) requiring changes to the legal or operational structures of the institution; or
- (h) acquiring (including through on-site inspections) and providing to the Bank all the information necessary to update the resolution plan and preparing for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with section 6E or 48X of the Banking Act 2009;]

“temporary manager” means a temporary manager appointed by the appropriate regulator under section 71C of FSMA].

#### Textual Amendments

- F228** Word in art. 107 inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 60(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F229** Words in art. 107 substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 60(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F230** Word in art. 107 omitted (16.12.2016) by virtue of The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(2)(a)**
- F231** Words in art. 107 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), **19(7)**
- F232** Words in art. 107 inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(2)(b)**
- F233** Words in art. 107 inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 60(4)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Notice that institution meets the conditions for early intervention

**108.**—<sup>[F234]</sup>(1) The appropriate regulator must notify the Bank without delay if it determines that a relevant institution meets the conditions for early intervention <sup>[F235]</sup>or the appointment of a temporary manager].

<sup>[F236]</sup>(2) The PRA and the FCA may each make technical standards relating to the circumstances in which a relevant institution may be taken as meeting the conditions for early intervention.]

#### Textual Amendments

- F234** Art. 108 renumbered as art. 108(1) (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 61(1)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F235** Words in art. 108 inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(3)**
- F236** Art. 108(2) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 61(2)**; 2020 c. 1, Sch. 5 para. 1(1)

## Deadline for compliance with measure for early intervention

**109.** The appropriate regulator may not take a measure for early intervention in respect of a relevant institution without prescribing a date before which the action required to be taken in compliance with the measure is to be completed.

## CHAPTER 2

Early intervention with respect to groups where the PRA or FCA is the consolidating supervisor

### Application and interpretation of Chapter 2

**110.**—(1) This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

“measure for early intervention”—

(a) <sup>F237</sup> ... has the same meaning as in Chapter 1;

(b) <sup>F238</sup> ...

<sup>F239</sup> ...

[<sup>F240</sup>temporary manager” means—

(a) in relation to a UK group entity, a temporary manager appointed by the appropriate regulator under section 71C of FSMA;

(b) <sup>F241</sup> ...]

“UK group entity” means—

(a) the [<sup>F242</sup>UK] parent undertaking<sup>F243</sup> ...;

(b) a group subsidiary which is an institution authorised by the PRA or FCA.

### Textual Amendments

**F237** Words in art. 110(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 62(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F238** Words in art. 110(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 62(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F239** Words in art. 110(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 62(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F240** Words in art. 110 inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(4)**

**F241** Words in art. 110(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 62(4)**; 2020 c. 1, Sch. 5 para. 1(1)

**F242** Word in art. 110(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 62(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F243** Words in art. 110(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 62(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

### Procedure for early intervention in respect of a UK group entity

**111.**—(1) This article applies where the appropriate regulator proposes to take a measure for early intervention [<sup>F244</sup>or appoint a temporary manager] in respect of a UK group entity.

(2) The appropriate regulator must without delay give notice of its proposal to the Bank<sup>F245</sup> ....

<sup>F246</sup>(3) .....

(4) The appropriate regulator must give the [<sup>F247</sup>Bank] notice of a decision to take a measure for early intervention [<sup>F248</sup>or to appoint a temporary manager] in respect of a UK group entity.

(5) The appropriate regulator may not take a measure for early intervention without prescribing a date before which the action required to be taken in compliance with the measure is to be completed.

(6) The appropriate regulator must give the UK group entity referred to in a notice given under paragraph (4) and the [<sup>F249</sup>UK] parent undertaking, if it is not the entity concerned, written notice of its decision to take a measure for early intervention [<sup>F250</sup>or to appoint a temporary manager], including a reasoned account of the decision.

#### Textual Amendments

**F244** Words in art. 111(1) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(5)(a)**

**F245** Words in art. 111(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 63(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F246** Art. 111(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 63(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F247** Word in art. 111(4) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 63(4)**; 2020 c. 1, Sch. 5 para. 1(1)

**F248** Words in art. 111(4) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(5)(c)**

**F249** Word in art. 111(6) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 63(5)**; 2020 c. 1, Sch. 5 para. 1(1)

**F250** Words in art. 111(6) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(5)(c)**

### Procedure for early intervention in respect of a non-UK group entity

<sup>F251</sup>**112.** .....

#### Textual Amendments

**F251** Art. 112 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

### Joint decisions about early intervention

<sup>F252</sup>**113.** .....

**Textual Amendments**

**F252** Art. 113 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

**References to EBA**

<sup>F253</sup>**114.** . . . . .

**Textual Amendments**

**F253** Art. 114 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

**Requesting the assistance of EBA**

<sup>F254</sup>**115.** . . . . .

**Textual Amendments**

**F254** Art. 115 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

<sup>F255</sup>**CHAPTER 3**

Early intervention with respect to groups where neither the PRA nor the FCA is the consolidating supervisor

**Textual Amendments**

**F255** Pt. 8 Ch. 3 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 65**; 2020 c. 1, Sch. 5 para. 1(1)

**Application and interpretation of Chapter 3**

<sup>F255</sup>**116.** . . . . .

**Procedure for early intervention in respect of a UK group entity**

<sup>F255</sup>**117.** . . . . .

**Joint decisions about early intervention**

<sup>F255</sup>**118.** . . . . .

## References to EBA

<sup>F255</sup>119. ....

## Requesting the assistance of EBA

<sup>F255</sup>120. ....

# PART 9

## Minimum requirement for own funds and eligible liabilities

### CHAPTER 1

#### Determination of minimum requirement for an institution

### Interpretation of Chapter 1

121.—(1) In this Chapter—

[<sup>F256</sup>“covered bond” means a regulated covered bond within the meaning of regulation 1(2) of the Regulated Covered Bonds Regulations 2008; and;]

“relevant institution” means an institution, other than a mortgage credit institution, which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F257</sup>the capital requirements regulation and CRR rules].

(2) “Mortgage credit institution” means an institution—

(a) which does not have permission under Part 4A of FSMA to carry on the regulated activity of accepting deposits (within the meaning given by section 22 of that Act, read with Schedule 2 and any order under section 22); and

(b) whose lending—

(i) relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land; and

(ii) is financed by covered bonds <sup>M30</sup>.

#### Textual Amendments

**F256** Words in art. 121(1) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 66(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F257** Words in art. 121(1) 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), **19(8)**

#### Marginal Citations

**M30** For the meaning of “covered bond” see the recovery and resolution directive, Article 2.1, point (96).

### Duties of the Bank in relation to minimum requirement

122.—(1) The Bank must exercise the powers conferred by section 3A of the Banking Act 2009 <sup>M31</sup> (removal of impediments to the exercise of stabilisation powers etc)—

- (a) to ensure that a relevant institution is required at all times to maintain a minimum requirement for own funds and eligible liabilities <sup>F258</sup> ...; and
- (b) with the object of ensuring that at all times the institution meets the minimum requirement specified in a direction given for that purpose.

<sup>F259</sup>(2) .....

#### Textual Amendments

**F258** Words in art. 122(1)(a) omitted (28.12.2020) by virtue of [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **45**

**F259** Art. 122(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 67**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

**M31** Section 3A was inserted by [S.I. 2014/3329](#).

### Determination of minimum requirement

**123.**—(1) This article applies for the purpose of the determination by the Bank of the minimum requirement for own funds and eligible liabilities.

(2) The amount of the relevant institution's total liabilities must include total liabilities under any derivative contracts held by the institution.

(3) An assessment of total liabilities under a derivative contract must take account of the rights of the parties to the contract to set off or net under a title transfer collateral arrangement, set-off arrangement or netting arrangement (within the meaning given by section 48(1)(b), (c) and (d) of the Banking Act 2009).

(4) [<sup>F260</sup>An eligible liability must be excluded] from the amount of the relevant institution's [<sup>F261</sup>own funds and eligible liabilities] if—

- (a) the instrument that creates the liability is not issued or fully paid up;
- (b) the liability is owed to, or secured or guaranteed by, the institution itself;
- (c) the purchase of the instrument that creates the liability was funded directly or indirectly by the institution itself;
- (d) the liability has a remaining maturity of less than one year;
- (e) the liability arises from a derivative contract held by the institution;
- (f) the liability arises from a deposit in respect of which the depositor's rights, in any proceedings relating to the insolvency of the institution, would be preferred to the rights of other creditors; or
- (g) the instrument that creates the liability is governed by the law of a third country and the Bank is not satisfied that a decision by the Bank to convert or write down the liability would be effective under that law.

(5) For the purpose of paragraph (4)(d), where the instrument that creates the liability confers on a party to the instrument a right to the repayment of a sum before maturity, the maturity date is the first date on which that party would become entitled to repayment if the right were exercised.

(6) The determination must be based on an assessment of the [<sup>F262</sup>following criteria—



- (a) the need to ensure that the relevant institution can be resolved by the application of the resolution tools including, where appropriate, by making special bail-in provision within the meaning of section 48B of the Banking Act 2009, in a way that meets the special resolution objectives;
- (b) the need to ensure, in appropriate cases, that the relevant institution has sufficient eligible liabilities to ensure that, if mandatory reduction provision within the meaning of section 6B of the Banking Act 2009 or special bail-in provision were made—
- (i) losses could be absorbed; and
  - (ii) the capital ratio and, as applicable, the leverage ratio, of the relevant institution could be restored,
- to a level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;
- (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under section 48B(10) of the Banking Act 2009 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer—
- (i) the relevant institution has sufficient other eligible liabilities or own funds to ensure that losses could be absorbed; and
  - (ii) the capital ratio and, as applicable, the leverage ratio, of the relevant institution could be restored,
- to the level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;
- (d) the size, the business model, the funding model and the risk profile of the relevant institution; <sup>F263</sup> ...
- (e) the extent to which the failure of the relevant institution would have adverse effects on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities;] <sup>F264</sup> and
- (f) relevant assessment criteria specified in any Commission Regulation containing regulatory technical standards adopted by the European Commission under Article 45.2 of the recovery and resolution directive, so far as they are retained EU law.]
- (7) The Bank must make that assessment in consultation with the appropriate regulator.
- <sup>F265</sup>(8) The Bank may make technical standards relating to assessment criteria upon which it must base a determination of the minimum requirement for own funds and eligible liabilities under this article, article 126 or article 135.]

#### Textual Amendments

- F260** Words in art. 123(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(a)**
- F261** Words in art. 123(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(b)**
- F262** Words in art. 123(6) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **46**
- F263** Word in art. 123(6)(d) omitted (31.12.2020) by virtue of S.I. 2018/1394, Sch. 3 para. 68(2)(a) (as substituted by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **77(4)(a)**)

- F264** Art. 123(6)(f) and word inserted by S.I. 2018/1394, Sch. 3 para. 68(2)(b) (as substituted) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **77(4)(a)**
- F265** Art. 123(8) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 68(3)**; 2020 c. 1, Sch. 5 para. 1(1)

### Review of minimum requirement

**124.**—(1) The Bank must review the minimum requirement for own funds and eligible liabilities when, in accordance with Chapter 4 of Part 5, it reviews the resolution plan (within the meaning given in Chapter 1 or 3 of that Part) adopted for the relevant institution.

(2) Article 123 applies for the purpose of the review, but paragraph (6) of that article has effect for that purpose as if the reference to the determination (of the minimum requirement for own funds and eligible liabilities) were a reference to the re-determination of the requirement on review.

## CHAPTER 2

Determination of minimum consolidated requirement  
where the PRA or FCA is the consolidating supervisor

### Application and interpretation of Chapter 2

**125.**—(1) This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

<sup>F266</sup> ...

“group entity” includes an undertaking which is—

- (a) a parent undertaking of the [<sup>F267</sup>UK] parent undertaking; and
- (b) a mixed activity holding company which has at least one subsidiary which—
  - (i) is an institution; and
  - (ii) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company;

“group institution” means—

- (a) the [<sup>F268</sup>UK] parent undertaking, if it is a relevant institution;
- (b) a group subsidiary which is a relevant institution;
- (c) a group entity, other than an institution, which is—
  - (i) required under article 139 <sup>F269</sup>... to maintain a minimum requirement for own funds and eligible liabilities; <sup>F269</sup> ...
  - (ii) <sup>F270</sup> ...
- (d) where the group resolution plan does not provide for the separate resolution <sup>M32</sup> of a subsidiary set up in a third country, that subsidiary if it would be a relevant institution if it were set up in [<sup>F271</sup>the UK];

“minimum consolidated requirement” means the requirement for a minimum level of own funds and eligible liabilities of the group institutions <sup>F272</sup>...;

“minimum requirement”, in relation to a group institution, means a minimum requirement for own funds and eligible liabilities<sup>F273</sup> ...; and

“netting arrangement”—

- (a) in relation to an institution authorised by the PRA or FCA, means a title transfer collateral arrangement, set-off arrangement or netting arrangement (within the meaning given by section 48(1)(b), (c) and (d) of the Banking Act 2009);
  - (b) <sup>F274</sup> ...
- (3) “Relevant institution”, in the definition of “group institution”, means an institution which—
- (a) if authorised by the PRA or FCA, is not a mortgage credit institution within the meaning given in Chapter 1; and
  - (b) if set up in a country other than the United Kingdom, does not meet criteria which are equivalent in that country to the criteria set out in article 121(2).

#### Textual Amendments

- F266** Words in art. 125(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 69(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F267** Word in art. 125(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 69(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F268** Word in art. 125(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 69(2)(c)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F269** Words in art. 125(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 69(2)(c)(ii)(aa)**; 2020 c. 1, Sch. 5 para. 1(1)
- F270** Words in art. 125(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 69(2)(c)(ii)(bb)**; 2020 c. 1, Sch. 5 para. 1(1)
- F271** Words in art. 125(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 69(2)(c)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F272** Words in art. 125(2) omitted (28.12.2020) by virtue of The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **47(a)**
- F273** Words in art. 125(2) omitted (28.12.2020) by virtue of The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **47(b)**
- F274** Words in art. 125(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 69(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M32** For the meaning of “resolution” see the recovery and resolution directive, Article 2.1, point (1).

#### Determination of minimum consolidated requirement

**126.—(1)** This article applies for the purpose of determining the minimum consolidated requirement [<sup>F275</sup> for each resolution group].

(2) <sup>F276</sup>... The Bank must determine the minimum consolidated requirement, and is solely responsible for the determination.

<sup>F277</sup>(3) .....

(4) The amount of each group institution's total liabilities must include total liabilities under any derivative contracts held by the institution.

(5) An assessment of total liabilities under a derivative contract must take account of the rights of the parties to the contract to set off or net under a netting arrangement.

(6) [<sup>F278</sup>An eligible liability must be excluded] from the amount of the group institution's [<sup>F279</sup>own funds and eligible liabilities] if—

- (a) the instrument that creates the liability is not issued or fully paid up;
- (b) the liability is owed to, or secured or guaranteed by, the institution itself;
- (c) the purchase of the instrument that creates the liability was funded directly or indirectly by the institution itself;
- (d) the liability has a remaining maturity of less than one year;
- (e) the liability arises from a derivative contract held by the institution;
- (f) the liability arises from a deposit in respect of which the depositor's rights, in any proceedings relating to the insolvency of the institution, would be preferred to the rights of other creditors; or
- (g) the instrument that creates the liability is governed by the law of a third country and the Bank is not satisfied that a decision by the Bank to convert or write down the liability would be effective under that law.

(7) For the purpose of paragraph (6)(d), where the instrument that creates the liability confers on a party to the instrument a right to the repayment of a sum before maturity, the maturity date is the first date on which that party would become entitled to repayment if the right were exercised.

(8) The determination—

(a) must be based on an assessment of the [<sup>F280</sup>following criteria—

- (i) the need to ensure that each group institution can be resolved by the application of the resolution tools including, where appropriate, by making special bail-in provision within the meaning of section 48B of the Banking Act 2009, in a way that meets the special resolution objectives;
- (ii) the need to ensure, in appropriate cases, that each group institution has sufficient eligible liabilities to ensure that, if mandatory reduction provision within the meaning of section 6B of the Banking Act 2009 or special bail-in provision were made—
  - (aa) losses could be absorbed; and
  - (ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored,

to a level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;

- (iii) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under section 48B(10) of the Banking Act 2009 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer—

- (aa) each group institution has sufficient other eligible liabilities or own funds to ensure that losses could be absorbed; and
  - (ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored,
    - to the level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;
  - (iv) the size, the business model, the funding model and the risk profile of each group institution; <sup>F281</sup> ...
  - (v) the extent to which the failure of each group institution would have an adverse effect on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities]; <sup>F282</sup> and
  - (vi) relevant assessment criteria specified in any Commission Regulation containing regulatory technical standards adopted by the European Commission under Article 45.2 of the recovery and resolution directive, so far as they are retained EU law.] and
- (b) must take account of any provision made in the group resolution plan for the separate resolution of a subsidiary set up in a third country.
- (9) Where the Bank makes an assessment under paragraph (8)(a) with respect to a group institution authorised by the PRA or FCA, it must make the assessment in consultation with the appropriate regulator.

#### Textual Amendments

- F275** Words in art. 126(1) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **48(a)**
- F276** Words in art. 126(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 70(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F277** Art. 126(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 70(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F278** Words in art. 126(6) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(a)**
- F279** Words in art. 126(6) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(b)**
- F280** Words in art. 126(8)(a) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **48(d)**
- F281** Word in art. 126(8)(a)(iv) omitted (31.12.2020) by virtue of S.I. 2018/1394, Sch. 3 para. 70(4)(a) (as substituted by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **77(5)(a)**)
- F282** Art. 126(8)(a)(vi) and word inserted by virtue of S.I. 2018/1394, Sch. 3 para. 70(4)(b) (as substituted) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **77(5)(a)**)

#### Joint determination

<sup>F283</sup> 127. ....

**Textual Amendments**

**F283** Art. 127 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 71**; 2020 c. 1, Sch. 5 para. 1(1)

**References to EBA: determination of minimum consolidated requirement**

<sup>F284</sup>**128.** . . . . .

**Textual Amendments**

**F284** Art. 128 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 71**; 2020 c. 1, Sch. 5 para. 1(1)

**Review of minimum consolidated requirement**

**129.**—(1) The Bank must review the minimum consolidated requirement [<sup>F285</sup>for each resolution group] when, in accordance with Chapter 4 of Part 5, it reviews the group resolution plan.

(2) [<sup>F286</sup>Article 126 applies] for the purpose of the review, but have effect for that purpose as if each reference to determining (or the determination of) the minimum consolidated requirement were a reference to re-determining (or the re-determination of) the requirement on review.

**Textual Amendments**

**F285** Words in art. 129(1) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **51**

**F286** Words in art. 129(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 72**; 2020 c. 1, Sch. 5 para. 1(1)

<sup>F287</sup>**CHAPTER 3**

Determination of minimum consolidated requirement where neither the PRA nor the FCA is the consolidating supervisor

**Textual Amendments**

**F287** Pt. 9 Ch. 3 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 73**; 2020 c. 1, Sch. 5 para. 1(1)

**Application and interpretation of Chapter 3**

<sup>F287</sup>**130.** . . . . .

### Joint determination of minimum consolidated requirement

<sup>F287</sup>131. ....

### Review of minimum consolidated requirement

<sup>F287</sup>132. ....

## CHAPTER 4

### Determination of minimum requirements for group institutions where the PRA or FCA is the consolidating supervisor

#### Application and interpretation of Chapter 4

**133.**—(1) This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

<sup>F288</sup> ... “group entity” and “minimum requirement” have the same meaning for the relevant group as they have for a relevant group in Chapter 2;

[<sup>F289</sup>“group institution” means an institution, other than a mortgage credit institution within the meaning given in Chapter 1, that—

(a) is authorised by the PRA or FCA and

(b) forms part of a relevant group;]

“minimum consolidated requirement” means the minimum consolidated requirement (within the meaning given in Chapter 2) which is determined for the relevant group;

“netting arrangement” has the same meaning as in Chapter 2;

<sup>F290</sup> ...

<sup>F290</sup> ...

#### Textual Amendments

**F288** Words in art. 133(2) omitted (31.12.2020) by virtue of *The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)*, reg. 1(2), **Sch. 3 para. 74(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F289** Words in art. 133(2) substituted (31.12.2020) by *The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)*, reg. 1(2), **Sch. 3 para. 74(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F290** Words in art. 133(2) omitted (31.12.2020) by virtue of *The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)*, reg. 1(2), **Sch. 3 para. 74(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Duties of the Bank in relation to minimum requirement

**134.**—(1) The Bank must exercise the powers conferred by section 3A of the Banking Act 2009—

(a) to ensure that a [<sup>F291</sup>group institution] is required at all times to maintain a minimum requirement; and

(b) with the object of ensuring that at all times the institution meets the minimum requirement specified in a direction given for that purpose.

F<sup>292</sup>(2) .....

F<sup>292</sup>(3) .....

#### Textual Amendments

**F291** Words in art. 134(1)(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 75(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F292** Art. 134(2)(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 75(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Determination of minimum requirement

**135.**—(1) This article applies for the purpose of determining the minimum requirement for a group institution.

(2) The amount of the institution's total liabilities must include total liabilities under any derivative contracts held by the institution.

(3) An assessment of total liabilities under a derivative contract must take account of the rights of the parties to the contract to set off or net under a netting arrangement.

(4) [<sup>F293</sup>An eligible liability must be excluded] from the amount of the institution's [<sup>F294</sup>own funds and eligible liabilities] if—

- (a) the instrument that creates the liability is not issued or fully paid up;
- (b) the liability is owed to, or secured or guaranteed by, the institution itself;
- (c) the purchase of the instrument that creates the liability was funded directly or indirectly by the institution itself;
- (d) the liability has a remaining maturity of less than one year;
- (e) the liability arises from a derivative contract held by the institution;
- (f) the liability arises from a deposit in respect of which the depositor's rights, in any proceedings relating to the insolvency of the institution, would be preferred to the rights of other creditors; or
- (g) the instrument that creates the liability is governed by the law of a third country and the Bank is not satisfied that a decision by the Bank to convert or write down the liability would be effective under that law.

(5) For the purpose of paragraph (4)(d), where the instrument that creates the liability confers on a party to the instrument a right to the repayment of a sum before maturity, the maturity date is the first date on which that party would become entitled to repayment if the right were exercised.

(6) The determination—

- (a) must be based on an assessment of the criteria set out in [<sup>F295</sup>article 126(8)(a)]; and
- (b) must take account of the minimum consolidated requirement.

(7) <sup>F296</sup>... The Bank must make the assessment under paragraph (6)(a) in consultation with—

- (a) the PRA, if the institution is a PRA-authorized person;
- (b) the FCA, if the institution is any other UK authorised person.



**Textual Amendments**

- F293** Words in art. 135(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(a)**
- F294** Words in art. 135(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(b)**
- F295** Words in art. 135(6)(a) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **53**
- F296** Words in art. 135(7) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 76(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**Joint determination of minimum requirements**

<sup>F297</sup>**136.** . . . . .

**Textual Amendments**

- F297** [Art. 136](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 77**; 2020 c. 1, Sch. 5 para. 1(1)

**References to EBA: determination of minimum requirement**

<sup>F298</sup>**137.** . . . . .

**Textual Amendments**

- F298** [Art. 137](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 77**; 2020 c. 1, Sch. 5 para. 1(1)

**Review of minimum requirements**

**138.**—(1) The Bank must review the minimum requirements for group institutions when, in accordance with Chapter 4 of Part 5, it reviews the group resolution plan.

(2) Articles 134 [<sup>F299</sup>and 135] apply for the purpose of the review, but have effect for that purpose as if each reference to determining (or the determination of) a minimum requirement were a reference to re-determining (or the re-determination of) the requirement on review.

**Textual Amendments**

- F299** Words in art. [138\(2\)](#) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 78(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**Minimum requirement for other group entities set up in the United Kingdom**

139.—(1) The Bank may decide, after consulting the regulator, that a group entity, other than a <sup>F300</sup>group institution], set up in the United Kingdom should be required to maintain a minimum requirement for own funds and eligible liabilities <sup>F301</sup>....

(2) Where the Bank makes a such decision, articles 134 [<sup>F302</sup>, 135 and 138] apply for the purpose of determining and reviewing the requirement and ensuring that the requirement is maintained and met, but have effect for that purpose as if each reference to an institution <sup>F303</sup>... included a reference to the group entity for which the requirement is being (or has been) determined.

(3) In this article “the regulator”—

- (a) where there is a PRA-authorized person and any other UK authorised person in the relevant group, means the PRA and the FCA;
- (b) where there is a PRA-authorized person and no other UK authorised person in the relevant group, means the PRA;
- (c) where there is no PRA-authorized person in the relevant group, means the FCA.

**Textual Amendments**

- F300** Words in art. 139(1) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 79(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F301** Words in art. 139(1) omitted (28.12.2020) by virtue of [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **54**
- F302** Words in art. 139(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 79(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F303** Words in art. 139(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 79(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

<sup>F304</sup>CHAPTER 5

Determination of minimum requirements for group institutions where neither the PRA nor the FCA is the consolidating supervisor

**Textual Amendments**

- F304** Pt. 9 Ch. 5 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 80**; 2020 c. 1, Sch. 5 para. 1(1)

**Application and interpretation of Chapter 5**

<sup>F304</sup>140. ....

**Duties of the Bank in relation to minimum requirement**

<sup>F304</sup>141. ....

## Determination of minimum requirement

<sup>F304</sup>142. ....

## Joint determination of minimum requirements

<sup>F304</sup>143. ....

## References to EBA: determination of minimum requirement

<sup>F304</sup>144. ....

## Review of minimum requirements

<sup>F304</sup>145. ....

## Minimum requirement for other group entities set up in the United Kingdom

<sup>F304</sup>146. ....

### CHAPTER 6

Minimum requirement for own funds and eligible liabilities: other provisions

## Waiver of application of Chapter 4 <sup>F305</sup>...

147.—(1) This article applies in relation to a relevant group.

(2) The Bank may waive the application of Chapter 4 <sup>F306</sup>... in relation to [<sup>F307</sup>a UK parent institution] where it—

- (a) complies with the minimum consolidated requirement determined in accordance with Chapter 2 <sup>F308</sup>...; and
- (b) benefits from the exercise of the discretion laid down in Article 7.3 of the capital requirements regulation.

(3) The Bank may waive the application of Chapter 4 <sup>F309</sup>... in relation to a [<sup>F310</sup>group institution] which is a group subsidiary where—

- (a) both the institution and its parent undertaking are UK authorised persons;
- (b) the supervision of the institution by the PRA or FCA (“the regulator”) is part of the supervision on a consolidated basis of the parent undertaking in accordance with [<sup>F311</sup>the capital requirements regulation and CRR rules];
- (c) the highest level UK institution in the relevant group, if that is not the [<sup>F312</sup>UK parent institution], complies on a sub-consolidated basis with the minimum consolidated requirement determined in accordance with Chapter 2 <sup>F313</sup>...;
- (d) there is no legal or other material impediment, whether actual or foreseeable, to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the institution;
- (e) either—
  - (i) the parent undertaking has satisfied the regulator that no significant risks arise from the institution's operations; or

- (ii) the parent undertaking has satisfied the regulator that the institution is prudently managed, and has declared, with the consent of the regulator, that it guarantees the institution's commitments;
  - (f) the institution is covered by the risk evaluation, measurement and control procedures of the parent undertaking;
  - (g) the parent undertaking holds more than 50 per cent. of the voting rights attached to shares in the capital of the institution or has the right to appoint or remove the majority of the members of the institution's management body (within the meaning given by point (7) of Article 3.1 of the capital requirements directive); and
  - (h) the institution benefits from the exercise of the discretion laid down in Article 7.1 of the capital requirements regulation.
- (4) In this article—
- “parent undertaking”, in relation to a UK institution, means an undertaking which is a parent undertaking of the institution and has no other subsidiary which is also a parent undertaking of the institution; and
- “UK institution” means an institution which is authorised by the PRA or FCA and is not a mortgage credit institution within the meaning given in Chapter 1.

#### Textual Amendments

- F305** Words in art. 147 heading omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F306** Words in art. 147(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(3)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F307** Words in art. 147(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(3)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F308** Words in art. 147(2)(a) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F309** Words in art. 147(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(4)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F310** Words in art. 147(3) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(4)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F311** Words in art. 147(3)(b) 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), **19(9)**
- F312** Words in art. 147(3)(c) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(4)(c)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F313** Words in art. 147(3)(c) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 81(4)(c)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

## Meeting minimum requirement through contractual bail-in instruments etc

148.—(1) This article applies where—

- (a) a minimum requirement is determined in accordance with Chapter 1 for an institution authorised by the PRA or FCA;
- (b) a minimum requirement is determined in accordance with Chapter 4 <sup>F314</sup>... for an undertaking set up in the United Kingdom; or
- (c) a minimum consolidated requirement is determined in accordance with Chapter 2 <sup>F315</sup>... for a relevant group.

(2) The Bank may determine that a minimum requirement or minimum consolidated requirement to which this article applies must be met partially through contractual bail-in instruments or composed wholly or partially of own funds or a specified kind of liability.

(3) In this article “contractual bail-in instrument” means an instrument which —

- (a) contains a contract term that where the Bank decides to apply the stabilisation option referred to in paragraph (c) of section 1(3) of the Banking Act 2009 <sup>M33</sup> (the bail-in option) in respect of the institution, undertaking or relevant group concerned, the instrument is to be written down or converted to the extent required before other eligible liabilities are written down or converted; and
- (b) is subject to a binding subordination agreement, undertaking or provision under which, in the event that normal insolvency proceedings are commenced, the instrument ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding on the date of commencement of the insolvency proceedings have been repaid.

[<sup>F316</sup>(4) “Normal insolvency proceedings” has the meaning given in section 3(1) of the Banking Act 2009.]

### Textual Amendments

**F314** Words in art. 148(1)(b) omitted (31.12.2020) by virtue of *The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)*, reg. 1(2), **Sch. 3 para. 82(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F315** Words in art. 148(1)(c) omitted (31.12.2020) by virtue of *The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)*, reg. 1(2), **Sch. 3 para. 82(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F316** Art. 148(4) inserted (31.12.2020) by *The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)*, reg. 1(2), **Sch. 3 para. 82(3)**; 2020 c. 1, Sch. 5 para. 1(1)

### Marginal Citations

**M33** Section 1(3) was substituted by the *Financial Services (Banking Reform) Act 2013*, Schedule 2, paragraphs 1 and 12(1) and (3); and was amended by *S.I. 2014/3329*.

## PART 10

### Requirement to write down or convert capital instruments

#### Application and interpretation of Part

149.—(1) This Part applies in relation to a relevant group.

## (2) In this Part—

“alternative measure” means—

- (a) a measure for early intervention within the meaning given in Chapter 1 of Part 8;
- (b) [<sup>F317</sup>a power of the FCA or PRA by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to] Article 104.1 of the capital requirements directive (supervisory powers); or
- (c) a transfer of funds or capital from a parent undertaking;

<sup>F318</sup> ...

“Case 2”—

- (a) in relation to a bank, means Case 2 set out in subsection (3) of section 6A of the Banking Act 2009 (cases where mandatory write-down, conversion, etc applies);
- (b) in relation to a banking group company, means Case 2 set out in subsection (4) of section 81AA of that Act <sup>M34</sup> (cases where mandatory write-down, conversion, etc applies: banking group companies);

“Case 3”, in relation to a bank, means Case 3 set out in section 6A(4) of that Act;

“Case 4”, in relation to a bank, means Case 4 set out in section 6A(5) of that Act;

“Case 5”—

- (a) in relation to a bank, means Case 5 set out in section 6A(6) of that Act;
- (b) in relation to a banking group company, means Case 3 set out in section 81AA(8) of that Act;

<sup>F318</sup> ...

“recognised capital instruments” means Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments which have been recognised for the purpose of meeting the own funds requirements (within the meaning given in section 3(1) of the Banking Act 2009 <sup>M35</sup>) of institutions on an individual and a consolidated basis; and

“UK group entity” means a group entity which is a bank or banking group company and has issued recognised capital instruments.

## (3) In this article, for the interpretation of expressions defined in paragraph (2)—

“Additional Tier 1 instruments”, “Common Equity Tier 1 instruments” and “Tier 2 instruments” have the meaning given in section 3(1) of the Banking Act 2009 <sup>M36</sup> (interpretation: other expressions);

“bank” has the meaning given by section 2 of the Banking Act 2009 <sup>M37</sup> (interpretation: “bank”), but includes—

- (a) a building society within the meaning given in section 119 of the Building Societies Act 1986; and
- (b) an investment firm within the meaning given in section 258A of the Banking Act <sup>M38</sup> (“investment firm”);

“banking group company” has the meaning given by section 81D of that Act <sup>M39</sup>; and

“group entity” includes an undertaking which is—

(a) <sup>F319</sup> ...

- (b) a mixed activity holding company.

**Textual Amendments**

- F317** Words in art. 149(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 83(2)(a)** (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 10(c)(iii)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F318** Words in art. 149(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 83(2)(b)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F319** Words in art. 149(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 83(3)**; 2020 c. 1, **Sch. 5 para. 1(1)**

**Marginal Citations**

- M34** Sections 6A and 81AA were inserted by [S.I. 2014/3329](#).
- M35** Section 3 was amended by the Financial Services Act 2012, section 96(2) and Schedule 17, paragraphs 1 and 4, and by [S.I. 2014/3329](#), which inserted the definition of “own funds requirements”.
- M36** These definitions were inserted by [S.I. 2014/3329](#).
- M37** Section 2 was amended by the Financial Services Act 2012, sections 101(1) and (3) and 102(1) and (3) and Schedule 17, paragraph 3, and by [S.I. 2011/2832](#).
- M38** Section 258A was inserted by the Financial Services Act 2012, section 101(1) and (7). See [S.I. 2014/1832](#), which was made under subsection (2)(b). No other order has been made under that subsection.
- M39** Section 81D was inserted by the Financial Services Act 2012, section 100(5); and was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 7(3), and by [S.I. 2014/3329](#).

**Determinations [<sup>F320</sup> under section 6A and 81AA of the Banking Act 2009]: preliminary steps for UK group entities**

**150.**—(1) Before the Bank makes a determination that Case 2, 4 or 5 is satisfied in relation to a UK group entity, the Bank must give notice that it is considering whether to make that determination (“a Case 2, 4 or 5 notice”) without delay [<sup>F321</sup>to the appropriate regulator].

(2) Before the Bank makes a determination <sup>F322</sup>... that Case 3 is satisfied in relation to a UK group entity, the Bank must give notice that it is considering whether to make that determination (“a Case 3 notice”) without delay [<sup>F323</sup>to the appropriate regulator].

- (3) Where the Bank gives a Case 2, 4 or 5 notice or a Case 3 notice, it must—
  - (a) send with the notice an explanation of its reasons for considering whether to make the determination concerned; and
  - (b) after consulting the authorities to which the notice has been given assess whether—
    - (i) any alternative measure is available;
    - (ii) any alternative measure which is available could feasibly be taken; and
    - (iii) there is any reasonable prospect that any alternative measure which is available and could feasibly be taken would, within a reasonable time, avoid the need for the determination.

<sup>F324</sup>(4) .....

<sup>F324</sup>(5) .....

**Textual Amendments**

- F320** Words in art. 150 heading substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 84(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F321** Words in art. 150(1) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 84(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F322** Words in art. 150(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 84(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F323** Words in art. 150(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 84(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F324** Art. 150(4)(5) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 84(5)**; 2020 c. 1, Sch. 5 para. 1(1)

**Regulator to take alternative measures**

**151.**—(1) Where, in the Bank's assessment, there is a reasonable prospect that an alternative measure which is available and could feasibly be taken would, within a reasonable time, avoid the need for the determination referred to in a Case 2, 4 or 5 notice or a Case 3 notice—

- (a) the Bank must notify the regulator of that fact; and
  - (b) except where the measure is a transfer of funds from a parent undertaking, the regulator must take the alternative measure in exercise of its powers under FSMA.
- (2) In this article “the regulator”—
- (a) where there is a PRA-authorized person and any other UK authorised person in the relevant group, means the PRA and the FCA;
  - (b) where there is a PRA-authorized person and no other UK authorised person in the relevant group, means the PRA;
  - (c) where there is no PRA-authorized person in the relevant group, means the FCA.

**Determination that Case 2, 3, 4 or 5 is satisfied**

**152.**—(1) This article applies where, in the Bank's assessment, there is no reasonable prospect that any alternative measure which is available and could feasibly be taken would, within a reasonable time, avoid the need for the determination referred to in a Case 2, 4 or 5 notice or a Case 3 notice.

- (2) <sup>F325</sup> ... The Bank must decide whether to make the determination referred to in the notice.
- <sup>F326</sup>(3) .....
- <sup>F326</sup>(4) .....

**Textual Amendments**

- F325** Words in art. 152(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 85(2)**; 2020 c. 1, Sch. 5 para. 1(1)



**F326** Art. 152(3)(4) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 85(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**Joint determination under Article 59(3)(c) of the recovery and resolution directive in relation to a non-UK group entity**

<sup>F327</sup>**153.** . . . . .

**Textual Amendments**

**F327** Art. 153 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 86**; 2020 c. 1, Sch. 5 para. 1(1)

**PART 11**

**Removal of procedural impediments to application of bail-in tool**

**Interpretation of Part**

**154.** In this Part—

“Common Equity Tier 1 instruments” has the meaning given in section 3(1) of the Banking Act 2009 <sup>M40</sup>; and

[<sup>F328</sup>“relevant capital instruments” has the meaning given in section 3(1) of the Banking Act 2009;]

“UK entity” means—

- (a) an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F329</sup>the capital requirements regulation and CRR rules]; or
- (b) in relation to a relevant group, a group entity set up in the United Kingdom.

**Textual Amendments**

**F328** Words in art. 154 inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 87(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F329** Words in art. 154 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), **19(10)**

**Marginal Citations**

**M40** This definition was inserted by S.I. 2014/3329.

**Requirement to increase or remove limit on share capital**

**155.—(1)** This article applies where—

- (a) the memorandum of association of a UK entity which is a company includes a statement of the amount of the entity's authorised share capital; and
- (b) the resolution plan being drawn up for the entity or the group resolution plan being drawn up for the relevant group of which the entity is the [<sup>F330</sup>UK] parent undertaking or a group subsidiary includes provision for the application in respect of the entity of the stabilisation option referred to in paragraph (c) of section 1(3) of the Banking Act 2009 (the bail-in option).
- (2) The Bank must determine whether it is appropriate to require the entity to alter the memorandum for the purpose of increasing the amount of authorised share capital or removing the statement of that amount.
- (3) For this purpose the Bank must have regard to the provision which the plan concerned is to make in relation to resolution [<sup>F331</sup>tools and resolution powers] and to the matters referred to in paragraphs (4) and (5).
- (4) The amount of authorised share capital must be adequate to ensure that where the Bank exercises a relevant power, the entity is able to issue new shares or other instruments of ownership to facilitate the conversion of liabilities into shares or other instruments of ownership.
- (5) The amount of the authorised share capital must not be less than the sum of [<sup>F332</sup>the following amounts—
- (a) the amount by which the Bank has assessed that Common Equity Tier 1 instruments must be reduced and relevant capital instruments must be written down or converted pursuant to section 6B, 12AA, 48Y or 81AA of the Banking Act 2009; and
- (b) the aggregate amount assessed by the Bank pursuant to section 6E or 48X of that Act.]
- (6) The Bank must make the determination under paragraph (2) when it draws up the resolution plan <sup>F333</sup>....
- (7) In this article “relevant power” means the power conferred by sections 12A (bail-in option), 48B (special bail-in provision) and 81BA (bail-in option) of the Banking Act 2009 <sup>M41</sup> to convert the entity's eligible liabilities into Common Equity Tier 1 instruments of—
- (a) the entity; or
- (b) a parent undertaking of the entity.

#### Textual Amendments

- F330** Word in art. 155(1)(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 88\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F331** Words in art. 155(3) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 88\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F332** Words in art. 155(5) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 88\(4\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F333** Words in art. 155(6) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 88\(5\)](#); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M41** Sections 12A, 48B and 81BA were inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1, 2, 4 and 7(1); and were amended by [S.I. 2014/3329](#).

## Removal of impediments to the conversion of liabilities into shares

**156.** Where the articles or memorandum of association of a UK entity which is a company confer pre-emption rights on shareholders, require the consent of shareholders to an increase in capital or make any other provision which could prevent or otherwise impede the conversion of any liabilities of the company into shares or other instruments of ownership, the Bank must determine whether it is necessary to require the entity to alter the articles or memorandum with the object of removing the impediment created by the provision concerned.

## [<sup>F334</sup>PART 11A

### Contractual recognition of bail-in

#### Textual Amendments

**F334** Pt. 11A inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 89**; 2020 c. 1, Sch. 5 para. 1(1)

### Contractual recognition of bail-in: technical standards

**156A.**—(1) The Bank may make technical standards relating to requirements concerning the contractual recognition of bail-in.

(2) Technical standards under paragraph (1) may include provision specifying—

- (a) liabilities that must be excluded from these requirements; or
- (b) the content of the contractual term that is comprised in these requirements.

(3) In exercising its functions under this article the Bank must take into account the different business models of banks.]

## PART 12

### Treatment of derivative contracts where bail-in option is applied

#### Application and interpretation of Part

**157.**—(1) This Part applies where the Bank has decided to apply the stabilisation option referred to in paragraph (c) of section 1(3) (the bail-in option) in relation to liabilities arising from a derivative contract.

(2) In this Part each reference to a section is a reference to a section of the Banking Act 2009.

#### Liabilities arising from derivative contracts

**158.**—(1) This article applies for the purposes of valuing a derivative contract and the liabilities arising from it under section 6E(1) <sup>M42</sup> (pre-resolution valuation), a provisional valuation by the Bank under section 6E(3) or a valuation under section 48X <sup>M43</sup> (replacement of Bank's provisional valuation).

(2) Where the parties to the contract have rights to set off or net under a title transfer collateral arrangement, set-off arrangement or netting arrangement (within the meaning given by section 48(1)

(b), (c) and (d)), the Bank must ensure that the value of the contract and of the liabilities arising from it are determined—

- (a) on a net basis in accordance with the terms of the contract; and
- (b) in accordance with—
  - (i) appropriate methodologies for determining the value of classes of derivative contracts, including transactions that are subject to netting arrangements;
  - (ii) principles for establishing the time at which the value of a derivative position should be established; and
  - (iii) appropriate methodologies for comparing with each other the following amounts—
    - (aa) the loss in value that would result from closing out a derivative contract and making special bail-in provision (within the meaning given by section 48B) in respect of that contract; and
    - (bb) the reduction in the liabilities of the institution which is subject to the special bail-in provision as a result of making that provision in respect of the derivative contract.

[<sup>F335</sup>(3) Subject to paragraph (4), the Bank may make technical standards specifying—

- (a) appropriate methodologies for the purposes of paragraph (2)(b)(i);
- (b) principles for the purposes of paragraph (2)(b)(ii); or
- (c) appropriate methodologies for the purposes of paragraph (2)(b)(iii).

(4) When exercising its functions under paragraph (3) in relation to derivative contracts that are subject to a netting arrangement, the Bank must take into account the methodology for close-out set out in the netting arrangement.]

#### Textual Amendments

**F335** Art. 158(3)(4) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 90(2)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

**M42** Section 6E was inserted by [S.I. 2014/3329](#).

**M43** Section 48X was inserted by [S.I. 2014/3329](#).

## PART 13

### Preparation of business reorganisation plans after application of bail-in tool

#### CHAPTER 1

##### Assessment of business reorganisation plan drawn up by an institution

#### Application and interpretation of Chapter 1

**159.**—(1) This Chapter applies where—

- (a) an institution is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F336</sup>the capital requirements regulation and CRR rules];

- (b) the Bank has made a resolution instrument under section 12A of the Banking Act 2009<sup>M44</sup> (bail-in option) in respect of the institution; and
- (c) the management body [<sup>F337</sup>of the institution or the] resolution administrator submits a business reorganisation plan to the Bank for assessment in accordance with [<sup>F338</sup>section 48H of the Banking Act 2009] (business reorganisation plan).

(2) In this Chapter—

F339 ...

F339 ...

“resolution administrator” means the individual or body corporate appointed by the Bank under section 62B of the Banking Act 2009<sup>M45</sup> as the resolution administrator of the institution.

**Textual Amendments**

- F336** Words in art. 159(1)(a) 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), **19(11)**
- F337** Words in art. 159(1)(c) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 91(2)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F338** Words in art. 159(1)(c) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 91(2)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F339** Words in art. 159(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 91(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

- M44** Section 12A was inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 2; and was amended by [S.I. 2014/3329](#).
- M45** Section 62B was inserted by [S.I. 2014/3329](#).

**Assessment of business reorganisation plan**

**160.** The Bank must assess the business reorganisation plan jointly with the appropriate regulator within one month beginning with the date on which it receives the plan.

**Purpose of assessment**

**161.—(1)** The purpose of the assessment of the business reorganisation plan is to determine whether the plan meets the criteria for assessment.

(2) The Bank must approve the plan when the Bank and the appropriate regulator are satisfied that the plan meets the criteria for assessment.

(3) The criteria for assessment are that—

[<sup>F340</sup>(a) the plan must include the details specified in—

- (i) section 48H(2) of the Banking Act 2009;
- (ii) any technical standards made under paragraph (4)(a);]

<sup>F341</sup>(b) .....

- (c) the arrangements proposed in the plan would, if implemented, be reasonably likely to restore the long-term viability of the institution or of part of its business.
- [<sup>F342</sup>(d) the arrangements proposed in the plan must be based on realistic assumptions as to the economic and financial market conditions under which the institution will operate;
- (e) the plan must take account of the current state of the financial markets and their future prospects, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the institution's main vulnerabilities;
- (f) the assumptions made in the plan must be compared with appropriate sector-wide benchmarks;
- (g) the plan meets any further criteria specified in technical standards made under paragraph (4)(b).]
- [<sup>F343</sup>(4) The Bank may make technical standards specifying—
  - (a) further details to be included in business reorganisation plans; or
  - (b) further criteria for the assessment of business reorganisation plans.]

#### Textual Amendments

- F340** Art. 161(3)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 92(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F341** Art. 161(3)(b) omitted (31.12.2020) by virtue of [The State Aid \(Revocations and Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1470\)](#), reg. 1(2), **Sch. 2 para. 15(2)** (with Sch. 3)
- F342** Art. 161(3)(d)-(g) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 92(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F343** Art. 161(4) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 92(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Revision of plan

- 162.**—(1) The Bank—
- (a) must notify the management body or resolution administrator if the business reorganisation plan is found on assessment to contain any material deficiency or measure which would impede its implementation or the object of restoring the long-term viability of the institution or of part of its business; and
  - (b) may not require the management body or resolution administrator to revise the plan without giving it an opportunity to state its opinion on that requirement.
- (2) If the Bank requires the management body or resolution administrator to revise the plan, the Bank—
- (a) must allow two weeks for the preparation of a plan which demonstrates that the impediment has been addressed;
  - (b) within one week beginning with the date on which a revised plan is submitted, must notify the management body or resolution administrator whether the impediment has been adequately addressed in the revised plan; and
  - (c) if the impediment has not been adequately addressed in the revised plan, must direct the management body or resolution administrator to make specific changes to the plan.

## CHAPTER 2

### Assessment of business reorganisation plan drawn up by a single group entity

#### Application and interpretation of Chapter 2

**163.**—(1) This Chapter applies where, in relation to a relevant group—

- (a) the Bank has made a resolution instrument under section 12A of the Banking Act 2009 in respect of a single group entity which is not an institution (“the relevant entity”); and
- (b) the management body [<sup>F344</sup>of the relevant entity or the] resolution administrator submits a to the Bank for assessment <sup>F345</sup>....

(2) In this Chapter “business reorganisation plan” [<sup>F346</sup>has the meaning given in section 48H of the Banking Act 2009, as applied by section 81BA of that Act] and “resolution administrator” [<sup>F347</sup>has the] same meaning for the relevant entity as [<sup>F348</sup>it has] for an institution in Chapter 1.

#### Textual Amendments

- F344** Words in art. 163(1)(b) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 93(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F345** Words in art. 163(1)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 93(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F346** Words in art. 163(2) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 93(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F347** Words in art. 163(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 93(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F348** Words in art. 163(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 93(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Assessment etc of business reorganisation plan

**164.** Chapter 1 applies for the purpose of the assessment and approval of the business reorganisation plan, but has effect for that purpose with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 159	Ignore this article.
Articles 160,161 and 162	Each reference to an institution is a reference to the relevant entity. <sup>F349</sup> ... <sup>F349</sup> ...

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### Textual Amendments

**F349** Words in art. 164 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 94\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

## CHAPTER 3

Assessment of business reorganisation plan drawn up for relevant group where the PRA or FCA is the consolidating supervisor

### Application and interpretation of Chapter 3

**165.**—(1) This Chapter applies where, in relation to a relevant group—

- (a) the PRA or FCA is the consolidating supervisor;
- (b) a relevant bail-in power has been exercised in respect of two or more group entities; and
- (c) a group entity submits a business reorganisation plan to the Bank for assessment in accordance with [<sup>F350</sup>section 48H of the Banking Act 2009 (including that section as applied in consequence of the provision made by section 81BA, 83A, 84 or 89A of that Act)].

(2) In this Chapter—

<sup>F351</sup>  
...

“four month period” means four months beginning with the date on which the Bank [<sup>F352</sup>receives the business reorganisation plan under paragraph (1)(c)];

“group institution” means—

- (a) the [<sup>F353</sup>UK] parent undertaking, if it is an institution;
- (b) a group subsidiary which is an institution;

“impediment”, in relation to the business reorganisation plan, means any material deficiency or measure in the plan which would impede its implementation or the object of restoring the long-term viability of any group entity (or of part of its business) or of the whole or part of the relevant group;

[<sup>F354</sup>“relevant bail-in power” in relation to a group entity means the power in section 12A(2) of the Banking Act 2009;]

“the regulator”—

- (a) where there is a PRA-authorized person and any other UK authorised person in the relevant group, means the PRA and the FCA;
- (b) where there is a PRA-authorized person and no other UK authorised person in the relevant group, means the PRA;
- (c) where there is no PRA-authorized person in the relevant group, means the FCA;

“relevant matters”, in relation to the assessment of the business reorganisation plan, means the following matters for decision—

- (a) whether the plan meets the criteria for assessment;
- (b) whether group entities should be required to draw up and submit business reorganisation plans on an individual basis;
- (c) whether the plan contains an impediment;



- (d) whether a group entity should be required to revise the plan;
- (e) whether an impediment has been adequately addressed in a revision of the plan; and
- (f) where an impediment has not been adequately addressed in a revision of the plan, how it can be adequately addressed by directing a group entity to make specific changes to the plan; and

F355 ...

**Textual Amendments**

- F350** Words in art. 165(1)(c) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F351** Words in art. 165(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F352** Words in art. 165(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F353** Word in art. 165(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F354** Words in art. 165(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(3)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F355** Words in art. 165(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(3)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

**Duty to transmit a copy of business reorganisation plan**

F356 **166.** .....

**Textual Amendments**

- F356** Art. 166 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 96**; 2020 c. 1, Sch. 5 para. 1(1)

**Assessment of business reorganisation plan**

**167.—(1)** <sup>F357</sup> ... The Bank must assess the business reorganisation plan jointly with the regulator.

<sup>F358</sup>(2) .....

<sup>F358</sup>(3) .....

### Textual Amendments

- F357** Words in art. 167(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 97(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F358** Art. 167(2)(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 97(3)**; 2020 c. 1, Sch. 5 para. 1(1)

### Purpose of assessment

**168.**—(1) The purpose of the assessment of the business reorganisation plan is to determine whether the plan meets the criteria for assessment and decide other relevant matters.

(2) The Bank must approve the plan when the Bank and the regulator <sup>F359</sup>... are satisfied that the plan meets the criteria for assessment.

(3) The criteria for assessment are that—

[<sup>F360</sup>(a) the plan must include the details specified in section 48H(2) of the Banking Act 2009;]

<sup>F361</sup>(b) .....

(c) the arrangements proposed in the plan would, if implemented, be reasonably likely to restore the long-term viability of the group entities, or parts of the business of the group entities, in respect of which a relevant bail-in power has been exercised and of the whole or part of the relevant group.

[<sup>F362</sup>(d) the arrangements proposed in the plan must be based on realistic assumptions as to the economic and financial market conditions under which the group entities will operate;

(e) the plan must take account of the current state of the financial markets and their future prospects, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the group entities' main vulnerabilities; and

(f) the assumptions made in the plan must be compared with appropriate sector-wide benchmarks.]

### Textual Amendments

- F359** Words in art. 168(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 98(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F360** Art. 168(3)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 98(3) (a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F361** Art. 168(3)(b) omitted (31.12.2020) by virtue of [The State Aid \(Revocations and Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1470\)](#), reg. 1(2), **Sch. 2 para. 15(3)** (with Sch. 3)
- F362** Art. 168(3)(d)-(f) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 98(3) (b)**; 2020 c. 1, Sch. 5 para. 1(1)

### Assessment of plan where every group entity is set up in the United Kingdom

**169.** Where the Bank assesses the business reorganisation plan jointly with the regulator, the assessment must be concluded within the four month period.

## Joint assessment of plan

<sup>F363</sup>170. ....

### Textual Amendments

**F363** Art. 170 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 99**; 2020 c. 1, Sch. 5 para. 1(1)

## Revision of plan

171. The Bank—

- (a) must notify a <sup>F364</sup>... group entity if the business reorganisation plan is found on assessment to contain an impediment; and
  - (b) may not require a <sup>F364</sup>... group entity to revise the plan without giving it an opportunity to state its opinion on that requirement.
- (2) If the Bank requires a <sup>F364</sup>... group entity to revise the plan, the Bank—
- (a) must allow two weeks for the preparation of a plan which demonstrates that the impediment has been addressed;
  - (b) within one week beginning with the date on which a revised plan is submitted, must notify the entity whether the impediment has been adequately addressed in the revised plan; and
  - (c) if the impediment has not been adequately addressed in the revised plan, must direct the entity to make specific changes to the plan.

### Textual Amendments

**F364** Word in art. 171 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 100(2)**; 2020 c. 1, Sch. 5 para. 1(1)

## Assessment of business reorganisation plans drawn up on an individual basis

172. Where the Bank requires a group entity to draw up and submit a business reorganisation plan on an individual basis, Chapter 1 applies for the purpose of the assessment of the plan, but has effect for that purpose as if each reference to an institution were a reference to the group entity.

## References to EBA

<sup>F365</sup>173. ....

### Textual Amendments

**F365** Art. 173 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 101**; 2020 c. 1, Sch. 5 para. 1(1)

**Requesting the assistance of EBA**

<sup>F366</sup>**174.** .....

**Textual Amendments**  
**F366** Art. 174 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 101**; 2020 c. 1, Sch. 5 para. 1(1)

<sup>F367</sup>**CHAPTER 4**

Assessment of business reorganisation plan drawn up for relevant group where neither the PRA nor the FCA is the consolidating supervisor

**Textual Amendments**  
**F367** Pt. 13 Ch. 4 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 102**; 2020 c. 1, Sch. 5 para. 1(1)

**Application and interpretation of Chapter 4**

<sup>F367</sup>**175.** .....

**Purpose of assessment**

<sup>F367</sup>**176.** .....

**Joint assessment of plan**

<sup>F367</sup>**177.** .....

**Assessment of business reorganisation plans drawn up on an individual basis**

<sup>F367</sup>**178.** .....

**References to EBA**

<sup>F367</sup>**179.** .....

**Requesting the assistance of EBA**

<sup>F367</sup>**180.** .....

## PART 14

### Procedural obligations where an undertaking is failing or likely to fail

#### Interpretation of Part

181. In this Part—

[<sup>F368</sup>“crisis prevention measure” has the meaning given in section 48Z(1) of the Banking Act 2009;]

“the regulator”—

- (a) in relation to an undertaking which is a PRA-authorized person, means the PRA; and
- (b) in relation to any other undertaking, means the FCA.

[<sup>F369</sup>“supervisory measure” means a power of the FCA or PRA by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to Article 104.1 of the capital requirements directive;]

“undertaking” means—

- (c) an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [<sup>F370</sup>the capital requirements regulation and CRR rules];
- (d) in relation to a relevant group, a group entity set up in the United Kingdom; or
- (e) a mixed activity holding company set up in the United Kingdom.

#### Textual Amendments

**F368** Words in art. 181 inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 103(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F369** Words in art. 181 inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 103(3)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(c)(vi)**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F370** Words in art. 181 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), **19(12)**

#### Matters to be notified by the regulator to the Bank

182. The regulator must notify the Bank if—

- (a) an undertaking notifies the regulator that the undertaking is failing or likely to fail (within the meaning given in [<sup>F371</sup>section 7(5C) of the Banking Act 2009]); or
- (b) the regulator requires an undertaking to take crisis prevention measures <sup>M46</sup> or a [<sup>F372</sup>supervisory measure].

#### Textual Amendments

**F371** Words in art. 182(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 104(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F372** Words in art. 182(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 104(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

**M46** For the meaning of “crisis prevention measures” see the recovery and resolution directive, Article 2.1, point (101).

**Notification that an undertaking is failing or likely to fail**

**183.**—(1) Where the regulator is satisfied that an undertaking is failing or likely to fail, it must give notice of that fact to the Bank.

(2) Where the Bank is satisfied, having regard to timing and other relevant circumstances, that it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the undertaking that will prevent the failure of the undertaking, the Bank must give notice of that fact to the regulator.

(3) The Bank must also give notice of that fact—

<sup>F373</sup>(a) .....

<sup>F373</sup>(b) .....

(c) to the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of FSMA);

(d) to the Treasury [<sup>F374</sup>; and]

(e) to the Financial Policy Committee<sup>F375</sup> ...

<sup>F376</sup>(f) .....

<sup>F377</sup>(4) .....

(5) This article does not require any information to be disclosed if its disclosure would be contrary to section 348 of FSMA.

**Textual Amendments**

**F373** Art. 183(3)(a)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F374** Word in art. 183(3)(d) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F375** Word in art. 183(3)(e) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

**F376** Art. 183(3)(f) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

**F377** Art. 183(4) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(3)**; 2020 c. 1, Sch. 5 para. 1(1)

## **Duty to send copy of share transfer instrument etc to members and creditors of institution**

**184.**—(1) This article applies where, in respect of an undertaking—

- (a) the Bank has applied one or more of the resolution tools; or
- (b) the Treasury have made a share transfer order for the purpose of taking the undertaking into temporary public ownership.

(2) Except where securities issued by the undertaking have been admitted to trading on a regulated market (within the meaning given in section 103(1) of FSMA), the Bank must send a copy of any property transfer instrument, resolution instrument, share transfer instrument, share transfer order or third-country instrument made in respect of the undertaking to the members and creditors of the undertaking who are known to the Bank.

(3) In this article—

“member” includes—

- (a) a shareholder of a company;
- (b) a member of a limited liability partnership; and
- (c) a shareholding or borrowing member of a building society established under the Building Societies Act 1986 <sup>M47</sup> (“shareholding member” and “borrowing member” have the meaning given in paragraph 5(2) of Schedule 2 to that Act);

“property transfer instrument” means a property transfer instrument (within the meaning given by section 33 <sup>M48</sup>) made under section 11 (private sector purchaser), section 41A <sup>M49</sup> (transfer of property subsequent to resolution instrument), section 42 <sup>M50</sup> (supplemental instruments), section 42A <sup>M51</sup> (private sector purchaser: reverse property transfer), section 43 <sup>M52</sup> (onward transfer), section 44 <sup>M53</sup> (resolution company: reverse property transfer) or section 44A <sup>M54</sup> (bail-in: reverse property transfer);

“resolution instrument” means a resolution instrument made under section 12A (bail-in option), section 48U (supplemental resolution instruments), section 48V (onward transfer) or section 48W (reverse transfer) <sup>M55</sup>;

“share transfer instrument” means a share transfer instrument (within the meaning given by section 15) made under section 11, section 26 <sup>M56</sup> (supplemental instruments), section 26A <sup>M57</sup> (private sector purchaser: reverse share transfer), section 30 <sup>M58</sup> (resolution company: share transfers) or section 31 <sup>M59</sup> (resolution company: reverse share transfer);

“share transfer order” means a share transfer order (within the meaning given by section 16) made by the Treasury under section 13 <sup>M60</sup> (temporary public ownership), section 27 <sup>M61</sup> (supplemental orders), section 28 <sup>M62</sup> (onward transfer) or section 29 <sup>M63</sup> (reverse share transfer); and

“third-country instrument” has the meaning given in section 89I(4) <sup>M64</sup>.

(4) In paragraph (3) each reference to a section is a reference to a section of the Banking Act 2009.

### **Marginal Citations**

**M47** 1986 c. 53.

**M48** Section 33 was amended by [S.I. 2014/3329](#).

**M49** Section 41A was inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 5(1); and was amended by [S.I. 2014/3329](#).

**M50** Section 42 was amended by [S.I. 2014/3329](#).

**M51** Section 42A was inserted by the Financial Services Act 2012, section 97(1) and (5).

- M52** Section 43 was amended by the Financial Services Act 2012, Schedule 17, paragraph 22, and by [S.I. 2014/3329](#).
- M53** Section 44 was amended by the Financial Services Act 2012, section 97 and Schedule 17, paragraph 23, by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraph 16, and by [S.I. 2014/3329](#).
- M54** Section 44A was inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 5(3); and was amended by [S.I. 2014/3329](#).
- M55** Sections 12A, 48U, 48V and 48W were inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1, 2 and 4; and were amended by [S.I. 2014/3329](#).
- M56** Section 26 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 14, and by [S.I. 2014/3329](#).
- M57** Section 26A was inserted by the Financial Services Act 2012, section 97(1) and (2).
- M58** Section 30 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 18, and by [S.I. 2014/3329](#).
- M59** Section 31 was amended by the Financial Services Act 2012, section 97(4)(a) and (b), section 97(4)(c) and Schedule 17(1), paragraph 12, and by [S.I. 2014/3329](#).
- M60** Section 13 was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraph 13, and by [S.I. 2014/3329](#).
- M61** Section 27 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 15.
- M62** Section 28 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 16.
- M63** Section 29 was amended by the Financial Services Act 2012, section 97(3) and Schedule 17(1), paragraph 17.
- M64** Section 89I was inserted by [S.I. 2014/3329](#).

#### [<sup>F378</sup>Notifications under articles 182, 183 and 184

**184A.**—(1) The PRA and the FCA may each make technical standards specifying the procedures for, and contents of notifications under article 182 or 183(1) in circumstances where it is the regulator.

(2) The Bank may make technical standards specifying—

- (a) the procedures for, and contents of notifications under article 183(2); or
- (b) the procedures for sending documents under article 184.]

#### Textual Amendments

- F378** [Art. 184A](#) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 106**; 2020 c. 1, Sch. 5 para. 1(1)

## PART 15

### Applications to the court in relation to resolution action

#### Stay of legal proceedings

**185.**—(1) Where—

- (a) the Bank has made a mandatory reduction instrument or exercised a stabilisation power in relation to any bank, building society, investment firm or banking group company (“institution under resolution”),



- (b) the institution under resolution is a party to legal proceedings before any court in the United Kingdom, and
  - (c) the Bank reasonably considers that a stay of those proceedings is necessary for an effective application of the resolution tools or the stabilisation powers,
- the Bank may apply to that court for a stay of the proceedings.

(2) In this article—

“bank” has the meaning given by section 2 of the Banking Act 2009 <sup>M65</sup>;

“banking group company” has the meaning given in section 81D of the Banking Act 2009 <sup>M66</sup>;

“building society” has the meaning given in section 119 of the Building Societies Act 1986;

“mandatory reduction instrument” has the meaning given in section 6B(1) of the Banking Act 2009 <sup>M67</sup>; and

“stabilisation powers” has the meaning given in section 1(4) of the Banking Act 2009 <sup>M68</sup>.

#### Marginal Citations

**M65** Section 2 was amended by the Financial Services Act 2012, sections 101(1) and (3) and 102(1) and (3) and Schedule 17, paragraph 3, and by [S.I. 2011/2832](#).

**M66** Section 81D was inserted by the Financial Services Act 2012, section 100(5); and was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 7(3), and by [S.I. 2014/3329](#).

**M67** Section 6B was inserted by [S.I. 2014/3329](#).

**M68** Section 1(4) was substituted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 12(1) and (4); and was amended by [S.I. 2014/3329](#).

#### Remedies on judicial review

**186.**—(1) Where an application is made for judicial review of a decision of the Bank to exercise the stabilisation powers in relation to an institution under resolution (“relevant proceedings”)—

- (a) a ruling by the court that the decision is unlawful shall not affect—
  - (i) a relevant transfer,
  - (ii) special bail-in provision (within the meaning given by section 48B of the Banking Act 2009), or
  - (iii) provision under section 48L of that Act in relation to securities issued by the institution under resolution,made by a stabilisation instrument made by the Bank pursuant to that decision; and
- (b) the court may not quash any provision in a stabilisation instrument made by the Bank if that provision makes—
  - (i) a relevant transfer;
  - (ii) special bail-in provision; or
  - (iii) provision under section 48L of the Banking Act 2009 in relation to securities issued by the institution under resolution.

(2) For the purposes of paragraph (1)—

- (a) “stabilisation instrument” means—
  - (i) a share transfer instrument,
  - (ii) a property transfer instrument,

- (iii) a resolution instrument, or
- (iv) a third-country instrument,

made by the Bank in the exercise of the stabilisation powers provided for in section 1(4) of the Banking Act 2009, and for these purposes “share transfer instrument”, “property transfer instrument”, “resolution instrument” and “third country instrument” have the meaning given in article 184;

- (b) a transfer is a “relevant transfer” if it transfers to any person—
  - (i) property, rights or liabilities of the institution under resolution or of a relevant resolution company; or
  - (ii) securities issued by the institution under resolution or by a relevant resolution company;
- (c) for the purposes of sub-paragraph (b)—
  - (i) “resolution company” has the meaning given by section 29A of the Banking Act 2009 <sup>M69</sup>; and
  - (ii) a resolution company is a relevant resolution company if property, rights or liabilities of the institution under resolution have been transferred to it.

(3) For the purposes of this article “institution under resolution” has the meaning given in article 185.

(4) Paragraph (1) does not affect the power of the court, subject to section 244 of the Banking Act 2009 <sup>M70</sup> (immunity), to award damages as a remedy in relevant proceedings.

**Marginal Citations**

- M69** Section 29A was inserted by [S.I. 2014/3329](#).
- M70** Section 244 was amended by the Financial Services Act 2012, Schedule 2, paragraph 3, and by [S.I. 2014/3329](#).

**F379 PART 16**

**Cross-border group resolution**

**Textual Amendments**

- F379** Pt. 16 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 107**; 2020 c. 1, Sch. 5 para. 1(1)

**CHAPTER 1**

**General provisions**

**Principles for reaching decisions which may have an impact in two or more EEA States**

187. ....

**Information exchange**

188. ....

**Requirements for group resolution schemes**

189. ....

CHAPTER 2

Resolution colleges

**Application of Chapter 2**

190. ....

**Duty to establish a resolution college**

191. ....

**Membership of resolution college**

192. ....

**Functioning of resolution college**

193. ....

**Use of an existing resolution college**

194. ....

CHAPTER 3

European resolution colleges

**Application of Chapter 3**

195. ....

**Establishment and functioning of a European resolution college**

196. ....

**Recognition of third-country resolution action**

197. ....

**Use of an existing resolution college**

198. ....

CHAPTER 4

Group resolution involving a group subsidiary where the PRA or FCA is the consolidating supervisor

**Application and interpretation of Chapter 4**

199. ....

**Assessment of impact of notified measures**

200. ....

**Joint decision on adoption of group resolution scheme**

201. ....

**Requesting the assistance of EBA**

202. ....

CHAPTER 5

Group resolution involving a group subsidiary where neither the PRA nor the FCA is the consolidating supervisor

**Application Chapter 5**

203. ....

**Bank decision that group subsidiary meets the conditions for resolution**

204. ....

**Joint decision on adoption of group resolution scheme**

205. ....

**Failure to reach joint decision: disagreement by the Bank with joint proposals**

206. ....

**Requesting the assistance of EBA**

207. ....

CHAPTER 6

Group resolution where EEA parent undertaking is set up in the United Kingdom

**Application and interpretation of Chapter 6**

208. ....

**Bank decision that EEA parent undertaking meets the conditions for resolution**

209. ....

**Joint decision on adoption of group resolution scheme**

210. ....

**Requesting the assistance of EBA**

211. ....

**CHAPTER 7**

Group resolution where EEA parent undertaking is set up in another EEA State

**Application of Chapter 7**

212. ....

**Joint decision on adoption of group resolution scheme**

213. ....

**Failure to reach joint decision: disagreement by the Bank with joint proposals**

214. ....

**Requesting the assistance of EBA**

215. ....

**PART 17**

Modified application of company law to banks etc in resolution

**Interpretation of Part**

216.—(1) In this Part—

[<sup>F380</sup>“applying the public equity support tool” means participating in the recapitalisation of an institution or an entity by providing capital to the institution or entity in exchange for Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments;]

[<sup>F380</sup>“Common Equity Tier 1 instruments”, “Additional Tier 1 instruments” and “Tier 2 instruments” have the meanings given in section 3(1) of the Banking Act 2009;]

“the use of resolution tools, powers and mechanisms” means—

- (a) the exercise by the Bank or the Treasury of a stabilisation power (within the meaning given in section 1(4) of the Banking Act 2009);
- (b) the making by the Bank of a mandatory reduction instrument (within the meaning given in section 6B of that Act <sup>M71</sup>); or
- (c) [<sup>F381</sup>the exercise by the Treasury of its powers under section 228 of the Banking Act 2009, subject to the requirements of the capital requirements regulation [<sup>F382</sup>and CRR rules], where the Treasury is applying the public equity support tool; and]

“UK-registered company” has the meaning given in section 1158 of the Companies Act 2006 <sup>M72</sup> (meaning of UK-registered company).

<sup>F383</sup>(2) .....

(3) For the purposes of this Part a company is a company under resolution if it is a UK-registered company which is subject to the use of resolution tools, powers and mechanisms.

(4) But such a company is not a company under resolution if—

- (a) it has ceased to be subject to the exercise of a stabilisation power or the application of the public equity support tool; and
- (b) the results which are to be achieved by an instrument made in respect of the company under Part 1 of the Banking Act 2009 have been achieved.

#### Textual Amendments

**F380** Words in art. 216(1) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 108(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F381** Words in art. 216(1) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 108(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

**F382** Words in art. 216(1) inserted (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), **19(13)**

**F383** Art. 216(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 108(3)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

**M71** Section 6B was inserted by [S.I. 2014/3329](#).

**M72** [2006 c. 46](#).

#### Shadow directorship

**217.**—(1) A relevant person is not to be treated, in relation to a company under resolution, as—

- (a) a shadow director for the purposes of the enactments specified in paragraph (3);
- (b) a person who discharges managerial responsibilities for the purposes of those enactments (unless that person has been appointed as a director); or
- (c) a director by virtue of paragraph (b) of the definition of “director” given in section 417(1) of FSMA (a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act).

(2) “Relevant persons” are—

- (a) the Bank; <sup>F384</sup>...
- (b) persons who are employed by, or act on behalf of, the Bank.

[<sup>F385</sup>(c) a resolution administrator appointed under section 62B of the Banking Act 2009; and]

[<sup>F385</sup>(d) a temporary manager appointed under section 71C of the Financial Services and Markets Act 2000.]

(3) The specified enactments are—

- (a) the Companies Act 2006;
- (b) the Insolvency Act 1986 <sup>M73</sup>;

- (c) the Company Directors Disqualification Act 1986<sup>M74</sup>; and
- (d) FSMA.

**Textual Amendments**

**F384** Word in art. 217(2)(a) omitted (16.12.2016) by virtue of [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(15)(a)**

**F385** Art. 217(2)(c)(d) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(15)(b)**

**Marginal Citations**

**M73** 1986 c. 45.

**M74** 1986 c. 46.

**Modified application of legislation on cross-border mergers**

<sup>F386</sup>**218.** . . . . .

**Textual Amendments**

**F386** Art. 218 omitted (31.12.2020) by virtue of [The Companies, Limited Liability Partnerships and Partnerships \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/348\)](#), reg. 2, **Sch. 3 para. 36**; 2020 c. 1, Sch. 5 para. 1(1)

**Modified application of the Companies Act 2006 (disapplication of [<sup>F387</sup>Takeover Rules])**

**219.**—<sup>F388</sup>(1) . . . . .

(2) Part 28 of the Companies Act 2006 (Takeovers etc) has effect as if, in section 943 (rules), after subsection (1) there were inserted—

[<sup>F389</sup>“(1ZA) Rules made in accordance with paragraph 7(1) and (2) of Part 2 of Schedule 1C] must provide that they do not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014).”.

**Textual Amendments**

**F387** Words in art. 219 heading substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 110(2)**; 2020 c. 1, Sch. 5 para. 1(1)

**F388** Art. 219(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 110(3)**; 2020 c. 1, Sch. 5 para. 1(1)

**F389** Words in art. 219(2) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 110(4)**; 2020 c. 1, Sch. 5 para. 1(1)

### Modified application of the Companies Act 2006 (disapplication of other <sup>F390</sup>requirements)

- 220.**—<sup>F391</sup>(1) .....
- <sup>F391</sup>(2) .....
- <sup>F391</sup>(3) .....
- (4) <sup>F392</sup> ... The Companies Act 2006 applies with the modifications set out in Schedule 4 <sup>F392</sup> ....
- (5) <sup>F393</sup> ... The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 <sup>M75</sup> applies as if in Schedule 2 (transitional provisions and savings) after paragraph 43 (power of directors to allot shares etc: private company with only one class of shares (s. 550)) there were inserted—

“**43A.** Paragraph 43 does not apply in relation to an existing company or a transitional company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014.”.

<sup>F394</sup>(6) .....

#### Textual Amendments

- F390** Word in art. 220 heading substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 111(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F391** Art. 220(1)-(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 111(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F392** Words in art. 220(4) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 111(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F393** Words in art. 220(5) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 111(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F394** Art. 220(6) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 111(6)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M75** S.I. 2008/2860. There are amendments, but none is relevant.

### <sup>F395</sup>Modified application of the Companies Act 2006 (shareholders’ rights)

**220A.**—(1) The provisions of the Companies Act 2006 concerning the rights of shareholders to call general meetings and to amend the articles of association of the company apply to traded companies to which Part 1 of the Banking Act 2009 applies with the following modifications.

- (2) “Traded company” has the meaning given in section 360C of the Companies Act 2006.
- (3) Section 21 (amendment of articles) has effect as if, after subsection (3) there were inserted—
- “**(4)** A traded company (within the meaning of section 360C) to which Part 1 of the Banking Act 2009 applies may also amend its articles in accordance with section 307B.”



(4) Section 307A (notice required of general meeting: certain meetings of traded companies), has effect as if, at the beginning of subsection (1), there were inserted “Subject to section 307B,”.

(5) Part 13 (resolutions and meetings) has effect as if after section 307A there were inserted—

**“Notice required of general meeting: traded companies meeting the conditions for early intervention**

**307B.**—(1) Where the conditions in subsections (2) and (3) are satisfied, the members of a traded company to which Part 1 of the Banking Act 2009 applies may, by a resolution passed at a general meeting by a majority of two-thirds of those voting in person or by proxy—

- (a) require the company to call a general meeting to pass a resolution to increase the company’s share capital, provided that the meeting is to be called by notice of at least 10 days;
- (b) amend the company’s articles of association to permit a general meeting to be called to consider a proposal to increase the company’s share capital by notice of at least 10 days.

(2) The condition in this subsection is satisfied if—

- (a) the company has infringed, or is likely in the near future to infringe—
  - (i) a relevant requirement within the meaning of section 204A of the Financial Services and Markets Act 2000; or
  - (ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments; or
- (b) the conditions for appointment of a temporary manager under section 71C(1) of the Financial Services and Markets Act 2000 (temporary manager) are met in relation to the company.

(3) The condition in this subsection is satisfied if an increase in the share capital of the company is necessary to prevent the conditions in section 7 of the Banking Act 2009 for the exercise of the stabilisation powers provided for in Part 1 of that Act being met in relation to the company.”]

**Textual Amendments**

**F395** Art. 220A inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(16)**

## PART 18

### Treasury support for investment firms

#### Investment firms to be treated as financial institutions

**221.** An investment firm within the meaning given in section 258A of the Banking Act 2009 <sup>M76</sup> (“investment firm”) is to be treated as a financial institution for the purposes of section 228 (Consolidated Fund) and 229 (National Loans Fund) of that Act.

**Marginal Citations**

**M76** Section 258A was inserted by the Financial Services Act 2012, section 101(1) and (7); and was amended by [S.I. 2013/3115](#). Also, see [S.I. 2014/1832](#), which was made under subsection (2)(b).

**PART 19**

Miscellaneous provisions

**Continuity**

<sup>F396</sup>**222.** .....

**Textual Amendments**

**F396** [Art. 222](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 112](#); 2020 c. 1, Sch. 5 para. 1(1)

**Duty to co-operate**

**223.**—(1) The Bank, the PRA and the FCA must ensure that all persons who are responsible for performing relevant functions under authority delegated by the Bank, PRA or FCA co-operate closely with one another in the course of performing those functions.

[<sup>F397</sup>(2) “Relevant functions” means any functions conferred on the Bank, the PRA or the FCA by or under—

- (a) Part 1 of the Banking Act 2009;
- (b) section 17 of the Financial Services (Banking Reform) Act 2013;
- (c) any Regulations adopted under the recovery and resolution directive;
- (d) this Order.]

**Textual Amendments**

**F397** [Art. 223\(2\)](#) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 113\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

**Non-binding co-operation arrangements in line with EBA framework arrangements**

<sup>F398</sup>**224.** .....

**Textual Amendments**

**F398** [Art. 224](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 114](#); 2020 c. 1, Sch. 5 para. 1(1)

## Duty to inform EBA of imposition of penalties

<sup>F399</sup>225. ....

### Textual Amendments

**F399** Art. 225 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 114**; 2020 c. 1, Sch. 5 para. 1(1)

## PART 20

### Amendments

#### Amendments of primary and secondary legislation

**226.** Schedule 3, which contains amendments of primary and secondary legislation, has effect.

## PART 21

### Review

#### Review

<sup>F1</sup>227. ....

### Textual Amendments

**F1** Order revoked (14.12.2023 for the revocation of art. 227) by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 1 Pt. 2** (with s. 1(4)); S.I. 2023/1382, reg. 2(c)(x)

*Mark Lancaster*  
*Gavin Barwell*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

[<sup>F400</sup>SCHEDULE A1

Articles 7(3), 13(1) &amp; 19(2)

## Information to be contained in a recovery plan or group recovery plan

**Textual Amendments**

**F400** Sch. A1 inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 116**; 2020 c. 1, Sch. 5 para. 1(1)

1. In this Schedule—
  - (a) “entity” means, in relation to the drawing up of—
    - (i) a recovery plan for an institution, the institution;
    - (ii) a group recovery plan for a relevant group, the group entities;
  - (b) except where provision is made to the contrary, “plan” means a recovery plan or a group recovery plan.
2. A plan must include—
  - (a) a summary of its key elements and a summary of the overall capacity of the entity to restore its financial position following a significant deterioration;
  - (b) a summary of any material changes to the entity, including any change to its legal or organisational structure or its business or financial position, which has occurred since the date on which the plan was last revised;
  - (c) a communication and disclosure plan outlining how the entity intends to manage any potentially negative market reactions;
  - (d) a range of capital and liquidity actions required to maintain or restore the viability and financial position of the entity;
  - (e) an estimation of the time required for the execution of each material aspect of the plan;
  - (f) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of the impact on the rest of the group (where applicable), customers and counterparties;
  - (g) identification of critical functions;
  - (h) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the entity;
  - (i) a detailed description of how recovery planning is integrated into the corporate governance structure of the entity as well as the policies and procedures governing the approval of the plan and identification of the persons in the organisation responsible for preparing and implementing the plan;
  - (j) arrangements and measures to conserve or restore the entity's own funds;
  - (k) arrangements and measures to ensure that the entity has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility of transferring liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;
  - (l) arrangements and measures to reduce risk and leverage;
  - (m) arrangements and measures to restructure liabilities;
  - (n) arrangements and measures to restructure business lines;

- (o) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;
  - (p) arrangements and measures necessary to maintain the continuous functions of the entity's operational processes, including infrastructure and information technology services;
  - (q) preparatory arrangements to facilitate the sale of assets or business lines in a time-frame appropriate for the restoration of financial soundness;
  - (r) any other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;
  - (s) preparatory measures that the entity has taken or plans to take in order to facilitate the implementation of the plan, including those necessary to enable the timely recapitalisation of the entity;
  - (t) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.
3. The plan must provide for measures to be taken by the entity to restore its financial position following a significant deterioration of its financial situation.
4. In drawing up the plan the entity must not assume any access to or receipt of extraordinary public financial support.
5. The plan must include, where applicable, an analysis of the conditions under which the entity may apply for the use of the Bank's facilities.
6. The analysis must identify the assets of the entity which would be expected to qualify as collateral for the use of the Bank's facilities.
7. The plan must include possible measures which could be taken by the entity where the conditions for early intervention are met.
8. The plan must include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.
9. The plan must contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the entity's specific conditions including system-wide events and stress specific to individual legal persons and to groups.
10. The plan must provide evidence that the management body of the entity has assessed and approved it before submitting it to the appropriate regulator.
11. The plan must include an appropriate framework of indicators established by the entity which identifies the points at which appropriate actions referred to in the plan may be taken.
12. The indicators may be of a qualitative or quantitative nature relating to the entity's financial position and shall be capable of being monitored easily.
13. The plan must provide details of appropriate arrangements which the entity has put in place for the regular monitoring of the indicators.
14. An entity may—
- (a) take action under its plan where the relevant indicator has not been met, but where the management body of the entity considers action to be appropriate in the circumstances; or
  - (b) refrain from taking such an action where the relevant indicator has been met, but the management body of the entity does not consider action to be appropriate in the circumstances.
15. The entity must without delay notify the appropriate regulator of a decision under paragraph 14(a) or (b).]

## SCHEDULE 1

Article 37(2)

## Information to be contained in a resolution plan

**Impediments to the effectiveness of resolution action**

1. A resolution plan must—
  - (a) identify and assess any material impediments to the effectiveness of [<sup>F401</sup>the application of resolution tools or the exercise of resolution powers] or the achievement of the resolution objectives; and
  - (b) unless the Bank determines that it is unnecessary or disproportionate, outline action that could be taken to address the impediments in accordance with [<sup>F402</sup>Part 6].

**Textual Amendments**

**F401** Words in Sch. 1 para. 1(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 117\(2\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)

**F402** Words in Sch. 1 para. 1(b) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 117\(2\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

**The context for resolution action**

- 2.—(1) In drawing up a resolution plan the Bank must have regard to the different circumstances under which the relevant institution may fail or be likely to fail.
- (2) The circumstances to which the Bank must have regard include the following—
  - (a) that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and
  - (b) that there is no such a situation or occurrence.
- (3) In drawing up a resolution plan the Bank must not assume that the relevant institution will be in receipt of—
  - (a) extraordinary public financial support other than financing arrangements made in accordance with [<sup>F403</sup>section 228 or 229 of the Banking Act 2009];
  - (b) emergency liquidity assistance <sup>M77</sup>; or
  - (c) any other liquidity assistance provided by the Bank under non-standard collateralisation, tenor and interest rate terms.

**Textual Amendments**

**F403** Words in Sch. 1 para. 2(3)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 117\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

**M77** For the meaning of “extraordinary public financial support” and “emergency liquidity assistance” see the recovery and resolution directive, Article 2.1, points (28 and (29).

### **Application for the use of the Bank's facilities**

3.—(1) A resolution plan must contain an analysis of the conditions under which the relevant institution may apply for the use of the Bank's facilities.

(2) The analysis must—

- (a) take account of the different circumstances set out in the plan under which the institution may fail or be likely to fail; and
- (b) identify the assets of the institution which would be expected to qualify as collateral for the use of the Bank's facilities.

### **Options for applying the resolution tools and exercising the resolution powers**

4.—(1) A resolution plan must set out (in addition to the analysis made under paragraph 3) options for applying the resolution tools and exercising the resolution powers or taking insolvency proceedings in respect of the relevant institution.

(2) The plan must include—

- (a) a summary of its key elements;
- (b) a summary of any material changes to the institution, including any change to its legal or organisational structure or its business or financial position, which has occurred since the preparation of the plan or the date on which the plan was last revised;
- (c) a demonstration of how the institution's core business lines and critical functions could be separated, legally or economically, in order to secure continuity in the event of the failure of the institution;
- (d) an estimation of the time required for the execution of each material element of the plan;
- (e) a detailed description of the assessment of resolvability made by the Bank in accordance with Chapter 1 of Part 6;
- (f) a description of any measures required by the Bank for addressing or removing impediments to resolvability in accordance with Chapter 3 of Part 6;
- (g) a description of the process for determining the value and marketability of the institution's assets, core business lines and critical functions;
- (h) a detailed description of the arrangements made for ensuring that information required by the Bank for drawing up and implementing the plan is kept up to date and can be provided by the institution at any time;
- (i) an explanation of how options for applying the resolution tools and exercising the resolution powers could be financed (without the assumption that the institution would be in receipt of the support or assistance referred to in paragraph 2(3));
- (j) a detailed description of the different strategies that could be adopted for applying the resolution tools and exercising the resolution powers according to the different circumstances under which the institution may fail or be likely to fail and any time constraints that may be applicable;
- (k) a description of factors which are critically inter-related;
- (l) an description of the available options for maintaining access to payments and clearing services and other relevant infrastructure;
- (m) an assessment of the portability of clients' positions;
- (n) an analysis of the impact that the implementation of the plan would have on the employees of the institution, including an assessment of costs associated with such impact;

- (o) a description of procedures envisaged for consulting employees when applying the resolution tools and exercising the resolution powers, taking account of applicable arrangements for dialogue, including dialogue with trade unions and workers' representatives;
  - (p) a plan for media and public communication;
  - (q) the minimum requirement for own funds and eligible liabilities determined in accordance with Chapter 1 of Part 9 and, where applicable, a deadline for meeting that requirement [<sup>F404</sup>that is set having regard to the deadline set to ensure compliance with the rules relied upon by the United Kingdom for transposition of Article 104b of [Directive 2013/36/EU](#)];
  - (r) where applicable, the minimum requirement for own funds and contractual bail-in instruments (within the meaning given in article 148(3)) and a deadline for meeting that requirement [<sup>F405</sup>that is set having regard to the deadline set to ensure compliance with the rules relied upon by the United Kingdom for transposition of Article 104b of [Directive 2013/36/EU](#)];
  - (s) a description of the institution's operations and systems which are essential for the maintaining in working order its infrastructure, information technology and other operational processes; and
  - (t) any opinion expressed by the institution about any of these elements or any other matter included in the plan.
- (3) Where appropriate and reasonably practicable, the elements of the plan set out in subparagraph (2) are to be quantified.

**Textual Amendments**

**F404** Words in Sch. 1 para. 4(2)(q) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **58**

**F405** Words in Sch. 1 para. 4(2)(r) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **58**

## SCHEDULE 2

Article 40(3)

## Information to be contained in a group resolution plan

**The context for resolution action**

1.—(1) In drawing up a group resolution plan the Bank must have regard to the different circumstances under which group entities may meet the conditions for resolution.

(2) The circumstances to which the Bank must have regard include the following—

- (a) that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and
- (b) that there is no such a situation or occurrence.

(3) In drawing up a group resolution plan the Bank must not assume that any group entity will be in receipt of—

- (a) extraordinary public financial support other than financing arrangements made in accordance with [<sup>F406</sup>section 228 or 229 of the Banking Act 2009];
- (b) emergency liquidity assistance <sup>M78</sup>, or



- (c) any other liquidity assistance provided by the Bank or any other central bank under non-standard collateralisation, tenor and interest rate terms.

#### Textual Amendments

**F406** Words in Sch. 2 para. 1(3)(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 118(2); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

**M78** For the meaning of “emergency liquidity assistance” see the recovery and resolution directive, Article 2.1, point (29).

### Contents of group resolution plan

2. A group resolution plan must—
- (a) set out the resolution [<sup>F407</sup>tools that would be applied, the resolution powers that would be exercised] or insolvency proceedings that would be taken in respect of [<sup>F408</sup>each resolution entity in the relevant group];
- [<sup>F409</sup>(b) set out the implications of sub-paragraph (a) for—
- (i) the other group entities in the same resolution group as the resolution entity; and
- (ii) any other resolution group in the relevant group;]
- (c) include a consideration of measures for facilitating the purchase by a third party of the relevant group as a whole or of separate business lines or activities delivered by any group entity [<sup>F410</sup>or any resolution group];
- (d) identify and assess potential impediments in relation to the relevant group as a whole to—
- (i) the co-ordination of [<sup>F411</sup>the application of resolution tools or the exercise of resolution powers];
- (ii) the effectiveness of [<sup>F411</sup>the application of resolution tools or the exercise of resolution powers] or the achievement of the resolution objectives;
- (e) where any subsidiary within the relevant group is set up in a third country, set out—
- (i) arrangements for co-ordinating [<sup>F412</sup>the application of resolution tools or the exercise of resolution powers], and co-operating, with the authorities which, in the country concerned, exercise any function equivalent to a function of [<sup>F413</sup>the Bank under Part 1 of the Banking Act 2009 or a] competent authority; and
- (ii) the implications of such co-ordination for the resolution <sup>M79</sup> of that subsidiary and group entities;
- (f) set out measures which the Bank considers it would be necessary to take to facilitate group resolution <sup>M80</sup>, including by the legal or economic separation of specified functions or business lines of [<sup>F414</sup>resolution entities];
- (g) set out any other measures which the Bank would take or considers it would be necessary to take to facilitate group resolution in respect of [<sup>F415</sup>each resolution group in] the relevant group;
- (h) a detailed description of the assessment of resolvability made in respect of the relevant group in accordance with Chapter 2 of Part 6; [<sup>F416</sup>and]

*Changes to legislation:* There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014. (See end of Document for details)

- (i) explain how the [<sup>F417</sup>application of resolution tools or the exercise of resolution powers] set out in the plan could be financed (without the assumption that any group entity would be in receipt of the support or assistance referred to in paragraph 1(3))<sup>F418</sup> ...

<sup>F419</sup>(j) .....

**Textual Amendments**

- F407** Words in Sch. 2 para. 2(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F408** Words in Sch. 2 para. 2(a) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **59(a)**
- F409** Sch. 2 para. 2(b) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **59(b)**
- F410** Words in Sch. 2 para. 2(c) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **59(c)**
- F411** Words in Sch. 2 para. 2(d)(i)(ii) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F412** Words in Sch. 2 para. 2(e)(i) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(c)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F413** Words in Sch. 2 para. 2(e)(i) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(c)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F414** Words in Sch. 2 para. 2(f) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **59(d)**
- F415** Words in Sch. 2 para. 2(g) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **59(e)**
- F416** Word in Sch. 2 para. 2(h) added (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F417** Words in Sch. 2 para. 2(i) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(e)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F418** Word in Sch. 2 para. 2(i) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(e)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F419** Sch. 2 para. 2(j) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(3)(f)**; 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

- M79** For the meaning of “resolution” see the recovery and resolution directive, Article 2.1, point (1).
- M80** For the meaning of “group resolution” see the recovery and resolution directive, Article 2.1, point (42).

<sup>F420</sup>3. ....

#### Textual Amendments

**F420** Sch. 2 para. 3 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(4)**; 2020 c. 1, Sch. 5 para. 1(1)

[<sup>F421</sup>4. In this Schedule, “group resolution” means—

(a) the taking of resolution action at the level of—

(i) a parent undertaking; or

(ii) an institution,

which forms part of a group that is subject to consolidated supervision in accordance with [<sup>F422</sup>the capital requirements regulation and CRR rules]; or

(b) the co-ordination of the application of resolution tools and the exercise of resolution powers by the Bank in relation to resolution entities that meet the conditions for resolution.]

#### Textual Amendments

**F421** Sch. 2 para. 4 added (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 118(5)** (as amended by S.I. 2020/1350, regs. 1(2), **77(7)**); 2020 c. 1, **Sch. 5 para. 1(1)**

**F422** Words in Sch. 2 para. 4 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), **19(14)**

### [<sup>F423</sup>SCHEDULE 2A

Article 8(3)(a)

Additional information which may be required for the purposes of a resolution plan or group resolution plan

#### Textual Amendments

**F423** Sch. 2A inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 119**; 2020 c. 1, Sch. 5 para. 1(1)

1. In this Schedule, “entity” means in relation to the drawing up of—

(a) a resolution plan for an institution, the institution;

(b) a group resolution plan for a relevant group, the group entities.

2. The additional information referred to in article 8(3)(a) is as follows—

(a) a detailed description of the entity's organisational structure including a list of all legal persons contained in this structure;

(b) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;

- (c) the location, jurisdiction of incorporation, licensing and senior management of each legal person;
- (d) a mapping of the entity's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;
- (e) a detailed description of the components of the entity's liabilities, separating, as a minimum by types and amounts of short-term and long-term debt, secured, unsecured and subordinated liabilities;
- (f) details of those liabilities of the entity that are eligible liabilities;
- (g) an identification of the processes needed to determine to whom the entity has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
- (h) a description of the off-balance sheet exposures of the entity, including a mapping to its critical operations and core business lines;
- (i) the material hedges of the entity including a mapping to legal persons;
- (j) identification of the major or most critical counterparties of the entity as well as an analysis of the impact of the failure of major counterparties in the entity's financial situation;
- (k) each system on which the entity conducts a material number or value amount of trades, including a mapping to the entity's legal persons, critical operations and core business lines;
- (l) each payment, clearing or settlement system of which the entity is directly or indirectly a member, including a mapping to the entity's legal persons, critical operations and core business lines;
- (m) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the entity, including a mapping to the entity's legal persons, critical operations and core business lines;
- (n) an identification of the owners of the systems identified in paragraph (m), related service level agreements and any software and systems or licences, including a mapping to their legal entities, critical operations and core business lines;
- (o) an identification and mapping of the legal persons and interconnections and interdependencies among the different legal persons such as—
  - (i) common or shared personnel, facilities and systems;
  - (ii) capital, funding or liquidity arrangements;
  - (iii) existing or contingent credit exposures;
  - (iv) cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
  - (v) risks transfers and back-to-back trading arrangements and service level agreements;
- (p) the competent authority for each legal person;
- (q) the member of the management body responsible for providing the information necessary to prepare the plan as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
- (r) a description of the arrangements that the entity has in place to ensure that, in the event of resolution, the Bank will have all the necessary information, as determined by the Bank, for applying the resolution tools and resolution powers;

- (s) all the agreements entered into by the entity with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
- (t) a description of possible liquidity sources for supporting resolution; and
- (u) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.]

[<sup>F424</sup>SCHEDULE 2B

Articles 60(2)(a) and 62(3)(a)

Matters that the Bank is to consider when assessing resolvability

**Textual Amendments**

**F424** Sch. 2B inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 119; 2020 c. 1, Sch. 5 para. 1(1)

1. In this Schedule—
  - (a) “back-to-back transaction” means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;
  - (b) “entity” means, in relation to an assessment of resolvability of—
    - (i) an institution in accordance with article 60(2)(a), the institution;
    - (ii) a relevant group in accordance with article 62(3)(a), the group entities;
  - (c) “intra-group guarantee” means a contract by which one group entity guarantees the obligations of another group entity to a third party.
2. The matters referred to in articles 60(2)(a) and 62(3)(a) are—
  - (a) the extent to which the entity is able to map core business lines and critical operations to legal persons;
  - (b) the extent to which legal and corporate structures are aligned with core business lines and critical operations;
  - (c) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
  - (d) the extent to which the service agreements that the entity maintains are fully enforceable in the event of resolution of the entity;
  - (e) the extent to which the governance structure of the entity is adequate for managing and ensuring compliance with the entity's internal policies with respect to its service level agreements;
  - (f) the extent to which the entity has a process for the transition of the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
  - (g) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

**Changes to legislation:** *There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014. (See end of Document for details)*

- (h) the adequacy of the management information systems in ensuring that the Bank is able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
- (i) the capacity of the management information systems to provide the information essential for the effective resolution of the entity at all times even under rapidly changing conditions;
- (j) the extent to which the entity has tested its management information systems under stress scenarios as defined by the Bank;
- (k) the extent to which the entity can ensure the continuity of its management information systems both for the affected entity and the new entity in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;
- (l) the extent to which the entity has established adequate processes to ensure that it provides the Bank with the information necessary to identify depositors and the amounts covered by the Financial Services Compensation Scheme established under Part 15 of FSMA in respect of deposits;
- (m) where the entity uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
- (n) where the entity engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;
- (o) the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;
- (p) the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
- (q) the amount and type of eligible liabilities of the entity;
- (r) where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;
- (s) the existence and robustness of service level agreements;
- (t) whether authorities in third countries have the resolution tools necessary to support resolution actions by the Bank, and the scope for coordinated action between the Bank and authorities in third countries.
- (u) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the resolution tools available and the entity's structure;
- (v) the extent to which the group structure allows the Bank to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value or the group as a whole;
- (w) the arrangements and means through which resolution could be facilitated in the case of groups that have subsidiaries established in different jurisdictions;
- (x) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that authorities in third countries may take;
- (y) the extent to which the impact of the entity's resolution on the financial system and on confidence in financial markets can be adequately evaluated;

- (z) the extent to which the resolution of the entity could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;
- (aa) the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers; and
- (bb) the extent to which the resolution of the entity could have a significant effect on the operation of payment and settlement systems.]

## SCHEDULE 3

Article 226

### Amendments

## PART 1

### Amendments of FSMA

#### Amendments of FSMA

1. FSMA is amended as follows.

#### Recovery plans

- 2.—(1) Section 137J<sup>M81</sup> (rules about recovery plans: duty to consult) is amended as follows.
  - (2) In subsection (1) for “each”, in both places where it appears, substitute “ a ”.
  - (3) For subsections (2) to (5) substitute—
    - “(2) “Relevant person” means—
      - (a) an institution authorised in the UK; or
      - (b) a qualifying parent undertaking within the meaning given by section 192B<sup>M82</sup>.
    - (3) A “recovery plan” is a document which provides for measures to be taken—
      - (a) by an institution authorised in the UK which is not part of a group, following a significant deterioration of the financial position of the institution, in order to restore its financial position; or
      - (b) in relation to a group, to achieve the stabilisation of the group as a whole, or of any institution within the group, where the group or institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or institution.
  - (4) For the purposes of subsection (3)(a) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.”.
- (4) In subsection (6), after the definition of “authorised person”, insert—
  - ““institution” means—
    - (a) a credit institution within the meaning given by Article 2.1(2) of Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms<sup>M83</sup>; or
    - (b) an investment firm within the meaning given by Article 2.1(3) of that directive;“institution authorised in the UK” means an institution which is an authorised person and—

**Changes to legislation:** There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014. (See end of Document for details)

- (a) a bank within the meaning given by section 2 of the Banking Act 2009<sup>M84</sup>;
- (b) a building society within the meaning given in section 119 of the Building Societies Act 1986<sup>M85</sup>; or
- (c) an investment firm within the meaning given by section 258A<sup>M86</sup> of the Banking Act 2009;”.

#### Marginal Citations

**M81** Section 137J was substituted by the Financial Services Act 2012, section 24(1).

**M82** Section 192B was inserted by the Financial Services Act 2012, section 27. For Condition C (a parent undertaking must be a financial institution of a prescribed kind (section 192B(4)) see S.I. 2013/165.

**M83** OJ No. L 173, 12.6.2014, p. 190.

**M84** Section 2 was amended by the Financial Services Act 2012, sections 101(1) and (3) and 102(1) and (3) and Schedule 17, paragraph 3, and by S.I. 2011/2832.

**M85** 1986 c. 53.

**M86** Section 258A was inserted by the Financial Services Act 2012, section 101(1) and (7). See S.I. 2014/1832, which was made under subsection (2)(b). No other order has been made under that subsection.

#### Rules about resolution packs: duty to consult

**3.—(1)** Section 137K<sup>M87</sup> (PRA rules about resolution plans: duty to consult) is amended as follows.

(2) In subsection (1)—

(a) for the words “the PRA”—

(i) where they first appear, substitute “either regulator”;

(ii) where they appear after “resolution plan,”, substitute “ the regulator ”; and

(b) for the word “each”, in both places where it appears, substitute “ a ”.

(3) In subsections (1) and (3) for “resolution plan” substitute “ resolution pack ”.

(4) For subsection (2) substitute—

“(2) “Relevant person” has the same meaning as in section 137J(2).”.

(5) After subsection (6) insert—

“(7) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.”.

(6) Accordingly, for the heading substitute “ Rules about resolution packs: duty to consult ”.

#### Marginal Citations

**M87** Section 137K was substituted by the Financial Services Act 2012, section 24(1).

#### Special provision relating to adequacy of resolution plans

**4.** Section 137M<sup>M88</sup> (special provision relating to adequacy of resolution plans) is repealed.



#### Marginal Citations

**M88** Section 137M was substituted by the Financial Services Act 2012, section 24(1).

### Recovery plans and resolution packs: restriction on duty of confidence

5.—(1) Section 137N<sup>M89</sup> (recovery plans and resolution plans: restriction on duty of confidence) is amended as follows.

(2) For the words “resolution plan”, wherever they appear, substitute “ resolution pack ”.

(3) In subsection (2) after “authorised person” insert “ or a qualifying parent undertaking ”.

(4) In subsection (3)(a) and (b) for “that plan” substitute “ that plan or pack ”.

(5) In subsection (5) after the definition of “authorised person” insert—  
““qualifying parent undertaking” means—

(a) a qualifying parent undertaking within the meaning given by section 192B; or

(b) an undertaking which—

(i) is a parent undertaking of an institution (within the meaning given in section 137J(6)<sup>M90</sup>) authorised in another EEA State; and

(ii) would be a qualifying parent undertaking within the meaning given by section 192B if the institution were a qualifying authorised person within the meaning given by section 192A(1)<sup>M91</sup>.”.

(6) Accordingly, in the heading for “resolution plans” substitute “ resolution packs ”.

#### Marginal Citations

**M89** Section 137N was substituted by the Financial Services Act 2012, section 24(1).

**M90** Subsection (6) of section 137J is amended by paragraph 2(4) of this Schedule.

**M91** Section 192A was inserted by the Financial Services Act 2012, section 27.

## PART 2

### Amendments of other primary legislation

#### Amendment of the Financial Services (Banking Reform) Act 2013

6. In section 17 of the Financial Services (Banking Reform) Act 2013<sup>M92</sup> (bail-in stabilisation option)—

(a) in subsection (3)(e) for “bail-in administrator” substitute “ resolution administrator ”;

(b) in subsection (5)—

(i) omit the definition of “bail-in administrator”;

(ii) after the definition of “company” insert—

““resolution administrator” is to be read in accordance with sections 62B to 62E of the Banking Act 2009.”.

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**Marginal Citations**

**M92** 2013 c.33.

## PART 3

### Amendments of secondary legislation

#### Financial Markets and Insolvency (Settlement Finality) Regulations 1999

7. In the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 <sup>M93</sup>, in regulation 2(2), after sub-paragraph (b) insert—

“(2A) For the purposes of these regulations, references to insolvency proceedings do not include crisis prevention measures or crisis management measures taken in relation to an undertaking under the recovery and resolution directive unless—

- (a) express provision is made in a contract to which that undertaking is a party that crisis prevention measures or crisis management measures taken in relation to the undertaking are to be treated as insolvency proceedings; and
- (b) the substantive obligations provided for in the contract containing that provision (including payment and delivery obligations and provision of collateral) are no longer being performed.

(2B) For the purposes of paragraph (2A)—

- (a) “crisis prevention measure” and “crisis management measure” have the meaning given in section 48Z of the Banking Act 2009 <sup>M94</sup>; and
- (b) “recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.”.

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**Marginal Citations**

**M93** S.I. 1999/2979. There are amendments, but none is relevant.

**M94** Section 48Z was inserted by S.I. 2014/3329.

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

8.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 <sup>M95</sup> are amended as follows.

(2) In regulation 2 <sup>M96</sup>—

- (a) in the definition of “single market restrictions” after paragraph (l) add—
  - “(m) articles 84 and 98 of the recovery and resolution directive;”; and
- (b) in the appropriate place insert—

““EEA resolution authority” means an authority designated by another EEA state in accordance with Article 3 of the recovery and resolution directive;”;

““foreign resolution authority” means an authority in a territory which is not, and does not form part of, an EEA state which exercises functions in relation to third-country resolution action (within the meaning of section 89H of the Banking Act 2009), including planning for such action, corresponding to one or more functions exercisable by an EU resolution authority pursuant to the recovery and resolution directive;”;

““recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms; ”,<sup>M97</sup>

““recovery and resolution directive information” means confidential information received by—

- (a) the Bank of England in the course of discharging its functions as a resolution authority under the recovery and resolution directive;
- (b) the FCA or PRA in the course of discharging their functions as competent authorities under the recovery and resolution directive;
- (c) a person appointed by the Bank of England under section 62B (resolution administrator) of the Banking Act 2009 <sup>M98</sup> to act as resolution administrator in the course of discharging that person's functions as such;”.

(3) In regulation 8 <sup>M99</sup>—

- (a) at the end of paragraph (b) omit “and”; and
- (b) at the end of paragraph (c) insert—
  - “; and
  - (d) recovery and resolution directive information.”.

(4) In regulation 9 <sup>M100</sup>—

- (a) in paragraph (1), for “and (4)” substitute “ (4) and (5) ”;
- (b) in paragraph (2) for “the condition in paragraph (2ZA) is met or the conditions in (2B) are met” substitute “ the conditions in paragraphs (2ZA), (2B) or in paragraph (2C) are met ”; and
- (c) after paragraph (2B) insert—
  - “(2C) The condition in this paragraph is that the conditions in Article 98 of the recovery and resolution directive for the exchange of information with authorities in a third country are met.”; and
- (d) after paragraph (4), insert—
  - “(5) Paragraph (1) does not permit the disclosure of recovery and resolution directive information to any person unless the assessment required in regulation 10B has been carried out.”.

(5) After regulation 10, insert—

**“Disclosure of recovery and resolution directive information**

**10A.**—(1) The Bank of England may disclose recovery and resolution directive information to any person for the purpose of enabling the Bank to prepare for and carry out the functions given to it under—

- (a) Parts 1, 2 and 3 of the Banking Act 2009, or
- (b) the Investment Bank Special Administration Regulations 2011 <sup>M101</sup>,

provided that any such disclosure is made subject to the conditions in paragraph (2), and following the assessment required in regulation 10B.

(2) A disclosure made by the Bank of England under paragraph (1) must be made subject to—

- (a) a requirement that the information disclosed is kept confidential and not disclosed to any other person without the consent of the Bank; and
- (b) restrictions imposed by the Bank as to the way in which the information may be used.

(3) A resolution administrator appointed under section 62B of the Banking Act 2009 may disclose recovery and resolution directive information to a regulator.

### Assessment of effects of disclosure

**10B.**—(1) Before any disclosure is made of recovery and resolution directive information the person disclosing that information must—

- (a) assess the possible effects of disclosing the information in question on—
  - (i) the public interest in relation to financial, monetary or economic policy;
  - (ii) the commercial interests of natural and legal persons;
  - (iii) the purpose of any investigation, inspection or audit to which the information is relevant; and
- (b) where the information in question relates to the recovery plan or resolution plan of any undertaking, assess the effects of the disclosure of any part of that recovery plan or resolution plan.

(2) In this regulation—

“recovery plan” means a recovery plan drawn up and maintained in accordance with Article 5 of the recovery and resolution directive or a group recovery plan drawn up and maintained in accordance with Article 7 of that directive; and

“resolution plan” means a resolution plan drawn up in accordance with Article 10 of the recovery and resolution directive or a group recovery plan drawn up in accordance with Articles 12 and 13 of that directive.”.

(6) In regulation 11 <sup>M102</sup> after paragraph (f) insert—

“(g) recovery and resolution directive information.”.

(7) In Schedule 1 <sup>M103</sup>—

(a) in Part 1—

(i) after the entry beginning “The Bank of England” in the first column insert “The Bank of England”, and in the second column insert “Its functions under Parts 1, 2 and 3 of the Banking Act 2009 and under the Investment Bank Special Administration Regulations 2011 <sup>M104</sup>”;

(ii) in the entry beginning “An official receiver appointed under section 399 of the Insolvency Act 1986”, in the second column after paragraph (ii) insert “or (iii) banking group companies (as defined in section 81D of the Banking Act 2009) <sup>M105</sup>”;

(iii) after the entry beginning “An official receiver appointed under section 399 of the Insolvency Act 1986” in the first column insert “A person appointed in judicial or administrative proceedings in an EEA State or a State which is not an EEA State, pursuant to a law relating to insolvency, to administer the reorganisation or the liquidation of a debtor's assets or affairs”, and in the second column insert “That person's functions as such”;

- (iv) in the entry beginning “An auditor of an authorised person”, in the first column after “authorised person” insert “ or banking group company (as defined in section 81D of the Banking Act 2009) ”;
  - (v) after the entry beginning “An auditor of an authorised person” in the first column insert “ A person appointed to carry out a statutory audit of a company within the meaning of Article 2.1 of Directive 2006/43/EC of the European Parliament and of the Council of 17th May 2006 on statutory audits and consolidated accounts <sup>M106</sup> ”, and in the second column insert “ That person's functions as such ”;
- (b) in Part 2—
- (i) after the entry for “An EEA regulatory authority” in the first column insert “ An EEA resolution authority ”, and in the second column insert “ Its functions under the recovery and resolution directive ”;
  - (ii) after the entry for “An EEA resolution authority” (inserted by sub-paragraph (i)) in the first column) insert “ An authority responsible for maintaining the stability of the financial system in an EEA State through macro-prudential regulation ”, and in the second column insert “ Its functions as such ”; and
- (c) in Part 3 after the entry for “A non-EEA regulatory authority” in the first column insert “ A foreign resolution authority ”, and in the second column insert “ Its functions as such ”.

#### Marginal Citations

**M95** S.I. 2001/2188.

**M96** Amended by S.I. 2003/693, 2003/2066, 2004/1862, 2004/3379, 2006/3413, 2010/2628, 2012/916, 2012/917, 2012/2554, 2013/472 and 2013/1773.

**M97** OJ No. L 173, 12.6.2014, p. 190.

**M98** Section 62B was inserted by S.I. 2014/3329.

**M99** Regulation 8 was amended by S.I. 2003/504, 2006/3413 and 2012/916.

**M100** Regulation 9 was amended by S.I. 2003/693, 2004/3379, 2006/3221, 2006/3413, 2010/2628, 2011/1613, 2012/916, 2013/472, 2013/1773 and S.I. 2013/3115.

**M101** S.I. No. 2011/245.

**M102** Regulation 11 was amended by S.I. 2003/2066, 2006/3413, 2011/1613, 2012/916 and 2013/504.

**M103** Schedule 1 was amended by S.I. 2001/3437, 2001/3624, 2003/2174, 2003/2817, 2005/3071, 2006/3413, 2011/1265, 2012/916, 2013/472, 2013/3115, 2014/549, 2014/883 and 2014/2879.

**M104** S.I. 2011/245.

**M105** 2009 c. 1. Section 81D was inserted by the Financial Services Act 2012 (c. 21), s.100.

**M106** OJ No. L 157, 9.6.2006, p. 87.

### Financial Collateral Arrangements (No 2) Regulations 2003

9.—(1) The Financial Collateral Arrangements (No 2) Regulations 2003 <sup>M107</sup> are amended as follows.

(2) In regulation 3 <sup>M108</sup>—

(a) in paragraph (1)—

(i) omit the definition of “enforcement event”;

(ii) after the definition of “non-natural person” insert—

““recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.”; and

(b) after paragraph (1) insert—

“(1A) For the purpose of these Regulations—

- (a) “enforcement event” means an event of default, or (subject to sub-paragraph (b)) any similar event as agreed between the parties, on the occurrence of which, under the terms of a financial collateral agreement or by operation of law, the collateral taker is entitled to realise or appropriate financial collateral or a close-out netting provision comes into effect;
- (b) a crisis management measure or crisis prevention measure taken in relation to an entity under the recovery and resolution directive shall not be considered to be an enforcement event pursuant to an agreement between the parties if the substantive obligations provided for in that agreement (including payment and delivery obligations and provision of collateral) continue to be performed; and
- (c) for the purposes of sub-paragraph (b) “crisis prevention measure” and “crisis management measure” have the meaning given in section 48Z of the Banking Act 2009.”.

(3) In regulation 12, after paragraph (4) insert—

“(5) Nothing in this regulation prevents the Bank of England imposing a restriction on the effect of a close out netting provision in the exercise of its powers under Part 1 of the Banking Act 2009.”

(4) After regulation 18 insert—

**“Restrictions on enforcement of financial collateral arrangements, etc.**

**18A.**—(1) Nothing in regulations 16 and 17 <sup>M109</sup> prevents the Bank of England imposing a restriction—

- (a) on the enforcement of financial collateral arrangements, or
- (b) on the effect of a security financial collateral arrangement, close out netting provision or set-off arrangement,

in the exercise of its powers under Part 1 of the Banking Act 2009.

(2) For the purpose of paragraph (1) “set-off arrangement” has the meaning given in Article 2.1(99) of the recovery and resolution directive.”.

**Marginal Citations**

**M107** S.I. 2003/3226.

**M108** Regulation 3 was amended by S.I. 2010/2993.

**M109** Regulations 12, 16 and 17 were amended by S.I. 2010/2993.

**Credit Institutions (Reorganisation and Winding up) Regulations 2004**

**10.**—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004 <sup>M110</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the appropriate place insert—

““recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms;”;

““stabilisation instrument” means any of the following—

- (a) a “mandatory reduction instrument” made under section 6B of the Banking Act 2009<sup>M111</sup>,
- (b) a “resolution instrument” made under section 12A of the Banking Act 2009<sup>M112</sup>;
- (c) a “share transfer instrument” as defined in section 15 of the Banking Act 2009;
- (d) a “share transfer order” as defined in section 16 of the Banking Act 2009;
- (e) a “property transfer instrument” as defined in section 33 of the Banking Act 2009<sup>M113</sup>, or
- (f) a “third country instrument” made under section 89H of the Banking Act 2009<sup>M114</sup>,”;

(b) for the definition of “EEA regulator” substitute—

““EEA regulator” means—

- (a) a competent authority (within the meaning given by point (40) of Article 4(1) of the capital requirements regulation) established in an EEA State; or
  - (b) the resolution authority (within the meaning given by point (18) of Article 2(1) of the recovery and resolution directive) established in an EEA State;”;
- (c) for the definition of “directive reorganisation measure” substitute—

““directive reorganisation measure” means a reorganisation measure as defined in Article 2 of the reorganisation and winding up directive which was adopted or imposed on or after the 5th May 2004, or any other measure to be given effect in or under the law of the United Kingdom pursuant to Article 66 of the recovery and resolution directive;”;

(d) for the definition of “the reorganisation and winding up directive” substitute—

““the reorganisation and winding up directive” means Directive [2001/24/EC](#) of the European Parliament and of the Council of 4th April 2001 on the reorganisation and winding up of credit institutions<sup>M115</sup> as amended by Article 117 of the recovery and resolution directive;”.

(3) In regulation 3 (prohibition against winding up etc EEA credit institutions in the United Kingdom) after paragraph (7) insert—

“(7A) A stabilisation instrument shall not be made in respect of an EEA credit institution.”.

(4) In regulation 10 (notification to EEA regulators), in paragraph (3) after “it appears to” insert “the Bank of England, ”.

(5) In regulation 18 (disclosure of confidential information received from an EEA regulator)—

- (a) in paragraph (2) for “(3) and (4)” substitute “ (3), (4) and (5) ”;
- (b) in paragraph (4) omit “directive”; and
- (c) after paragraph (4) insert—

“(5) The sections of the 2000 Act specified in paragraph (2) apply with the modifications set out in section 89L of the Banking Act 2009<sup>M116</sup> where that section applies.”.

(6) In regulation 19 (application of Part 4), in paragraph (1)—

- (a) after sub-paragraph (c) delete “or”; and
- (b) after sub-paragraph (d) add—

“or

- (e) where a stabilisation instrument is made in respect of a UK credit institution.”.

- (7) In regulation 21 (interpretation of Part 4)—
- (a) in paragraph (1)(b) after “administration, winding up,” insert “ making of a stabilisation instrument ”;
  - (b) after paragraph (2)(c) delete “and”; and
  - (c) after paragraph (2)(d) add—
    - “and
    - (e) in a case where a stabilisation instrument is made, the date on which that instrument is made.”.
- (8) In regulation 29 (regulated markets) for paragraph (2) substitute—
- “(2) For the purposes of this regulation “regulated market” has the meaning given by point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments <sup>M117</sup>.”.
- (9) For regulation 34 (netting agreements) substitute—

**“Netting agreements**

- 34.**—(1) The effects of a relevant reorganisation or a relevant winding up on a netting agreement shall be determined in accordance with the law applicable to that agreement.
- (2) Nothing in paragraph (1) affects the application of—
- (a) section 48Z of the Banking Act 2009 <sup>M118</sup>;
  - (b) section 70C of the Banking Act 2009 <sup>M119</sup>;
  - (c) Articles 68 and 71 of the recovery and resolution directive or the law of any EEA State (other than the United Kingdom) transposing these provisions; or
  - (d) any instrument made under the provisions referred to in sub-paragraph (a) or (b).”.
- (10) For regulation 35 (repurchase agreements) substitute—

**“Repurchase agreements**

- 35.**—(1) Subject to regulation 33, the effects of a relevant reorganisation or a relevant winding up on a repurchase agreement shall be determined in accordance with the law applicable to that agreement.
- (2) Nothing in paragraph (1) affects the application of—
- (a) section 48Z of the Banking Act 2009 <sup>M120</sup>;
  - (b) section 70C of the Banking Act 2009 <sup>M121</sup>;
  - (c) Articles 68 and 71 of the recovery and resolution directive or the law of any EEA State (other than the United Kingdom) transposing these provisions; or
  - (d) any instrument made under the provisions referred to in sub-paragraph (a) or (b).”.
- (11) In regulation 36 (interpretation of Part 5), in paragraph (1)(a)—
- (a) after paragraph (ii) delete “or”; and
  - (b) at the end add—
    - “or
    - (iv) the making of a stabilisation instrument.”.
- (12) In regulation 38 (disclosure of confidential information: third country credit institution)—
- (a) in paragraph (3), for “(4), (5) and (6)” substitute “ (4), (5), (6) and (8) ”;



(b) in paragraph (6) omit “directive”; and

(c) after paragraph (7), add—

“(8) The sections of the 2000 Act specified in paragraph (3) apply with the additional modifications set out in section 89L of the Banking Act 2009 <sup>M122</sup> where that section applies.”.

(13) After regulation 38 (disclosure of confidential information: third country credit institution) insert—

## “PART 6

### Application to Investment Firms

#### Interpretation of this Part

**39.** In this Part—

- (a) “EEA investment firm” means an investment firm as defined in point (2) of Article 4(1) of the capital requirements regulation whose head office is in an EEA State other than the United Kingdom; and
- (b) “UK investment firm” means an investment firm as defined in subsections (1) and (2)(a) of section 258A of the Banking Act 2009.

#### Application to UK investment firms

**40.** These Regulations apply to UK investment firms as if such firms were UK credit institutions, subject to the modifications set out in this Part.

#### Application to EEA investment firms

**41.** These Regulations apply to EEA investment firms as if such firms were EEA credit institutions, subject to the modifications set out in this Part.

#### Withdrawal of authorisation

**42.** Paragraph (3) of regulation 11 (withdrawal of authorisation) applies to UK investment firms as if the reference in that paragraph to section 55J of the 2000 Act <sup>M123</sup> included a reference to any other power of the FCA or PRA under that Act to vary or cancel any permission of a body or firm.

#### Reorganisation measures and winding-up proceedings in respect of EEA investment firms effective in the United Kingdom

**43.** Regulation 5 (reorganisation measures and winding-up proceedings in respect of EEA credit institutions effective in the United Kingdom) applies to EEA investment firms as if, in paragraph (6), the phrase “relevant EEA State” meant the EEA State under the law of which the reorganisation is adopted or imposed, or the winding-up proceedings are opened, as the case may be.

## **PART 7**

### **Application to Group Companies**

#### **Interpretation of this Part**

**44.** In this Part—

(a) “EEA group company” means—

- (i) a financial institution as defined in point (26) of Article 4(1) of the capital requirements regulation,
- (ii) a parent undertaking as defined in point (15)(a) of Article 4(1) of the capital requirements regulation, or
- (iii) any other firm within the scope of Article 1(1) of the recovery and resolution directive,

the head office of which is in an EEA State other than the United Kingdom and which is not otherwise subject to these Regulations; and

(b) “UK group company” means—

- (i) a financial institution as defined in point (26) of Article 4(1) of the capital requirements regulation that is authorised by the PRA or FCA,
- (ii) a parent undertaking as defined in Article 4(1)(15)(a) of the capital requirements regulation, or
- (iii) any other firm within the scope of Article 1(1) of the recovery and resolution directive,

the head office of which is in the United Kingdom and which is not otherwise subject to these Regulations.

#### **Application to UK group companies**

**45.** These Regulations apply to UK group companies with respect to which a stabilisation instrument has been made, as if they were UK credit institutions.

#### **Application to EEA group companies**

**46.** These Regulations apply to EEA group companies with respect to which one or more of the resolution tools or resolution powers provided for in the recovery and resolution directive have been applied, as if they were EEA credit institutions, subject to the modifications set out in this Part.

#### **Reorganisation measures and winding-up proceedings in respect of EEA group companies effective in the United Kingdom**

**47.** Regulation 5 (reorganisation measures and winding-up proceedings in respect of EEA group companies effective in the United Kingdom) applies to EEA group companies as if, in paragraph (6), the phrase “relevant EEA State” meant the EEA State under the law of which the reorganisation is adopted or imposed, or the winding-up proceedings are opened, as the case may be.

## PART 8

### Application to Third Country Investment Firms

#### Interpretation of this Part

**48.** In this Part “third country investment firm” means an investment firm as defined in point (2) of Article 4(1) of the capital requirements regulation whose head office is not in an EEA State.

#### Application to third country investment firms

**49.** Part 5 of these Regulations applies to third country investment firms as if such firms were third country credit institutions (within the meaning given by regulation 36(1)(b) (interpretation of Part 5)).”.

#### Marginal Citations

**M110** S.I. 2004/1045, as amended by S.I. 2007/108, 2007/126, 2007/830, 2011/1043, 2011/1265, 2013/472 and 2013/3115.

**M111** Section 6B was inserted by S.I. 2014/3329.

**M112** Section 12A was inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 2; and was amended by S.I. 2014/3329.

**M113** Section 33 was amended by S.I. 2014/3329.

**M114** Section 89H was inserted by S.I. 2014/3329.

**M115** OJ No. L 125, 5.5.2001, p. 15.

**M116** Section 89L was inserted by S.I. 2014/3329.

**M117** OJ No. L 173, 12.6.2014, p. 349.

**M118** Section 48Z is inserted by S.I. 2014/3329.

**M119** Section 70C is inserted by S.I. 2014/3329.

**M120** Section 48Z is inserted by S.I. 2014/3329.

**M121** Section 70C is inserted by S.I. 2014/3329.

**M122** Section 89L was inserted by S.I. 2014/3329.

**M123** Section 55A to 55Z4 were inserted by the Financial Services Act 2012, section 11; and was amended by S.I. 2013/1773 and 2013/3115.

#### Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013

**11.**—(1) The Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013 <sup>M124</sup> is amended as follows.

(2) In article 1(2) (interpretation)—

(a) for the definition of “financial holding company” substitute—

““financial holding company” has the meaning given by Article 4(1)(20) of the capital requirements regulation;”;

(b) for the definition of “financial institution” substitute—

““financial institution” has the meaning given by Article 4(1)(26) of the capital requirements regulation;”;

(c) after the definition of “insurance undertaking” insert—

““investment firm” has the meaning given by Article 4(1)(2) of the capital requirements regulation;

- “mixed activity holding company” means a parent undertaking which—
- (a) is not a credit institution, an investment firm, a financial holding company or a mixed financial holding company; and
  - (b) has at least one subsidiary which is a credit institution or an investment firm;”;
- and
- (d) after the definition of “reinsurance undertaking” insert—
- ““relevant MAHC” means a mixed activity holding company which has at least one subsidiary which—
- (a) is an institution; and
  - (b) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company;”.

(3) In article 2 (prescribed financial institutions)—

    - (a) in paragraph (2) at the end insert—
      - “(d) a mixed activity holding company for the purposes set out in paragraph (3) and (4);
      - (e) a relevant MAHC for the purpose set out in paragraph (5).”.
    - (b) after paragraph (2) insert—
      - “(3) The first purpose is enabling the FCA or PRA to make rules under section 192JB<sup>M125</sup> of FSMA in relation to the provision of financial support to other members of the group of a mixed activity holding company which encounter or are likely to encounter financial difficulties.
      - (4) The second purpose is enabling the FCA or PRA to make rules which require a mixed activity holding company to notify it that the company is failing or likely to fail (within the meaning given in Article 32.4 of the recovery and resolution directive).
      - (5) The third purpose is enabling the FCA or PRA to make rules which require a relevant MAHC, in any agreement which creates a liability, to include a contractual term by which a party to the agreement to whom the liability is owed—
        - (a) recognises that the liability may be subject to the exercise by the Bank of England of power to make—
          - (i) a mandatory reduction instrument (within the meaning given in section 6B of the Banking Act 2009); or
          - (ii) a resolution instrument under section 12A, 48U, 48V or 48W of that Act<sup>M126</sup>; and
        - (b) agrees to be bound by any reduction of the principal or outstanding amount due or by any conversion or cancellation effected by the exercise of that power.
      - (6) Rules made for the purpose set out in paragraph (5) may not be brought into force before 1st January 2016.”.

**Marginal Citations**

**M124** [S.I. 2013/165](#), as amended by [S.I. 2013/3115](#).

**M125** [Section 192JB](#) was inserted by the Financial Services (Banking Reform) Act 2013, section 133; and was amended by [S.I. 2014/3329](#).

**M126** [Sections 12A, 48U, 48V](#) and [48W](#) were inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1, 2 and 4; and were amended by [S.I. 2014/3329](#).

## Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

**12.**—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013<sup>M127</sup> is amended as follows.

(2) In article 1 after the definition of “EuVECA Regulation” insert—

“recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms;”.

(3) In article 2—

(a) in paragraph (4) after sub-paragraph (b) insert—

“(c) any directly applicable regulation made under the recovery and resolution directive.”;

(b) in paragraph (6) after sub-paragraph (d) insert—

“(e) any directly applicable regulation made under the recovery and resolution directive.”; and

(c) after paragraph (8) insert—

“(9) Directly applicable regulations made under the recovery and resolution directive are specified qualifying EU provisions for the purpose of sections 66(2A) and 192K(1) (c) of the Act<sup>M128</sup>.”.

(4) In article 3—

(a) in paragraph (2) after sub-paragraph (h) insert—

“(i) any directly applicable regulation made under the recovery and resolution directive.”; and

(b) in paragraph (3) after sub-paragraph (f) insert—

“(g) in relation to a contravention of a requirement imposed by any directly applicable regulation made under the recovery and resolution directive—

(i) if the authorised person concerned is a PRA-authorised person, either the PRA or the FCA;

(ii) in any other case, the FCA.”.

(5) In article 5—

(a) in paragraph (2) after sub-paragraph (h) insert—

“(i) any directly applicable regulation made under the recovery and resolution directive.”; and

(b) in paragraph (5) after sub-paragraph (g) insert—

“(h) in relation to a contravention of a requirement imposed by any directly applicable regulation made under the recovery and resolution directive—

(i) if the person concerned is a PRA-authorised person, or a parent undertaking of a PRA-authorised person, either the PRA or the FCA;

(ii) in any other case, the FCA.”.

(6) In article 6—

(a) in paragraph (2) after sub-paragraph (j) insert—

“(k) any directly applicable regulation made under the recovery and resolution directive.”; and

(b) in paragraph (4) after sub-paragraph (d) insert—

**Changes to legislation:** There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014. (See end of Document for details)

“(e) any directly applicable regulation made under the recovery and resolution directive.”.

**Marginal Citations**

**M127** S.I. 2013/419, as amended by SI 2013/1773.

**M128** Section 192K(1)(c) was inserted by S.I. 2014/3329.

**Capital Requirements Regulations 2013**

**13.** In the Capital Requirements Regulations 2013<sup>M129</sup>, in regulation 7 (co-operation with EBA) omit paragraph (2).

**Marginal Citations**

**M129** S.I. 2013/3115.

SCHEDULE 4

Article 220(4)

Modified application of the Companies Act 2006 to banks etc in resolution

**Modifications etc. (not altering text)**

**C3** Sch. 4 applied (with modifications) (31.12.2023) by The Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023 (S.I. 2023/1313), regs. 1(2), 5

**PART 1**

Provisions concerning the exercise of certain rights of shareholders in listed companies

**1.** In relation to a company under resolution, this Part modifies the application of provisions of the Companies Act 2006<sup>M130</sup> which concern the exercise of certain rights of shareholders in listed companies<sup>M131</sup>.

**Marginal Citations**

**M130** 2006 c. 46.

**M131** The modifications have effect in relation to provisions of the Act inserted, substituted or amended by S.I. 2009/1632.

**2.** Section 145 (effect of provisions of articles as to enjoyment or exercise of members' rights) has effect as if, in subsection (3), paragraphs (ea) and (ga) were omitted.

**3.** Section 153 (exercise of rights where shares held on behalf of others: members' requests) has effect as if, in subsection (1), paragraph (ba) were omitted.

4. Section 282 (ordinary resolutions) has effect as if, in subsection (4), for “, by proxy or in advance (see section 322A)” there were substituted “ or by proxy ”.
5. Section 283 (special resolutions) has effect as if, in subsection (5), for “, by proxy or in advance (see section 322A)” there were substituted “ or by proxy ”.
6. Section 284 (votes: general rules) has effect as if, in subsection (5), the entry for section 322A were omitted.
7. Section 303 (members' power to require directors to call general meeting) has effect as if—
  - (a) in subsection (2)(a) and (b) for “5%” there were substituted “ the required percentage ”; and
  - (b) after subsection (2) there were inserted—

“(3A) The required percentage is 10%, except that in the case of a private company it is 5% if more than twelve months have elapsed since the end of the last general meeting—

    - (a) which was called in pursuance of a requirement under this section, or
    - (b) in relation to which any members of the company had (by virtue of an enactment, the company's articles or otherwise) rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been so called at their request.”.
8. Section 307 (notice required of general meeting) has effect as if subsections (A1) and (A2) were omitted.
9. Part 13 (resolutions and meetings) has effect as if section 307A (notice required of general meeting: certain meetings of traded companies) were omitted.
10. Section 311 (contents of notices of meetings) has effect as if—
  - (a) in subsection (2) the words “In relation to a company other than a traded company,” were omitted; and
  - (b) subsection (3) were omitted.
11. Part 13 has effect as if the following sections were omitted—
  - (a) section 311A (traded companies: publication of information in advance of general meeting); and
  - (b) section 319A (traded companies: questions at meetings).
12. Section 327 (notice required of appointment of proxy etc) has effect as if—
  - (a) subsection (A1) were omitted; and
  - (b) in subsection (1) for “The following provisions apply in the case of traded companies and other companies as regards” there were substituted “ This section applies to ”.
13. Section 330 (notice required of termination of proxy's authority) has effect as if—
  - (a) subsection (A1) were omitted; and
  - (b) in subsection (1) for “The following provisions apply in the case of traded companies and other companies as regards” there were substituted “ This section applies to ”.
14. Part 13 has effect as if section 333A (traded company: duty to provide electronic address for receipt of proxies etc) were omitted.
15. Section 334 (application to class meetings) has effect as if—
  - (a) in subsection (1) for “subsections (2) to (3)” there were substituted “ subsections (2) and (3) ”;

- (b) in subsection (2)—
    - (i) after paragraph (a) there were inserted “and”; and
    - (ii) after paragraph (b) the word “and” and paragraph (c) were omitted; and
  - (c) subsection (2A) were omitted.
- 16.** Section 336 (public companies and traded companies: annual general meeting) has effect as if—
- (a) subsection (1A) were omitted;
  - (b) in subsections (2) and (3), in each place where they appear, the words “or (1A)” were omitted; and
  - (c) in the heading the words “and traded companies” were omitted.
- 17.** Section 337 (public companies and traded companies: notice of AGM) has effect as if—
- (a) in subsection (1) the words “or a private company that is a traded company” were omitted;
  - (b) in subsection (2) the words “of a public company that is not a traded company” were omitted;
  - (c) subsection (3) were omitted; and
  - (d) in the heading the words “and traded companies” were omitted.
- 18.** Part 13 has effect as if the following sections were omitted—
- (a) section 338 (public companies: members' power to require circulation of resolutions for AGMs); and
  - (b) section 338A (traded companies: members' power to include other matters in business dealt with at AGM).
- 19.** Section 341 (results of poll to be made available on website) has effect as if—
- (a) in subsection (1) the words “that is not a traded company” were omitted; and
  - (b) subsections (1A) and (1B) were omitted.
- 20.** Section 352 (application of provisions to class meetings) has effect as if for subsections (1) and (1A) there were substituted—
- “(1) The provisions of—
- (a) section 341 (results of poll to be made available on website), and
  - (b) sections 342 to 351 (independent report on poll),
- apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.”.
- 21.** Section 360 (computation of periods of notice etc: clear day rule) has effect as if, in subsection (1)—
- (a) the entry for section 307A(1), (4), (5) and (7)(b) were omitted
  - (b) after the entry for section 314(4)(d) there were inserted “and”; and
  - (c) the entries for sections 337(3), 338(4)(d)(i) and 338A(5) were omitted.
- 22.** Section 360A (electronic meetings and voting) has effect as if subsections (2) and (3) were omitted.
- <sup>[F425]</sup>**23.** Part 13 has effect as if the following sections were omitted—
- (a) section 360AA (traded companies: confirmation of receipt of electronic voting);



- (b) section 360B (traded companies: requirements for participating in and voting at general meetings); and
- (c) section 360BA (traded companies: right to confirmation of vote after a general meeting).]

#### Textual Amendments

**F425** Sch. 4 para. 23 substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **60**

## PART 2

### Provisions concerning mergers and divisions of public limited liability companies

**24.** In relation to a company under resolution, Part 27 of the Companies Act 2006 (mergers and divisions of public companies) has effect as if, in section 902 (application of this Part), for subsection (3) there were substituted—

“(3) This Part does not apply where the company in respect of which the compromise or arrangement is proposed—

- (a) is being wound up; or
- (b) is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014<sup>M132</sup>.”.

#### Marginal Citations

**M132** See article 216(3) of this Order.

## PART 3

### Provisions concerning the maintenance and alteration of a company's share capital

**25.** In relation to a company under resolution, this Part modifies the application of provisions of the Companies Act 2006 made—

- (a) for the co-ordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital; or
- (b) for equivalent purposes in relation to companies to which the Safeguards Directive does not apply.

**26.** Section 550 (power of directors to allot shares etc: private company with only one class of shares) has effect as if—

- (a) the existing provision were subsection (1); and
- (b) after that provision there were inserted—

“(2) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, any provision in the company's articles which prohibits the directors from exercising the power referred to in subsection (1) is to be disregarded.”.

**27.** Section 551 (power of directors to allot shares etc: authorisation by company) has effect as if after subsection (9) there were inserted—

“(10) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014—

- (a) the maximum amount of shares that may be allotted under the authorisation may be exceeded where necessary for the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order) in relation to the company;
- (b) if the maximum amount is exceeded, the statement of that amount made in the authorisation is deemed to have been increased under subsection (4) by the amount of the excess;
- (c) the authorisation does not expire until it is renewed or revoked after the company has ceased to be a company under resolution; and
- (d) the authorisation may not be revoked or varied while the company is a company under resolution.”.

**28.** Part 17 (a company's share capital) has effect as if the following sections were omitted—

- (a) section 561 (existing shareholders' right of pre-emption); and
- (b) section 568 (exclusion of pre-emption right: articles conferring corresponding right).

**29.** Section 569 (disapplication of pre-emption rights: private company with only one class of shares) has effect as if it provided that a determination made under subsection (1)(b) does not have effect.

**30.** Section 570 (disapplication of pre-emption rights: directors acting under general authorisation) has effect as if it provided that a determination made under subsection (1)(b) does not have effect.

**31.** Section 571 (disapplication of pre-emption rights by special resolution) has effect as if, in subsection (1)—

- (a) after paragraph (a) “, or” were omitted; and
- (b) paragraph (b) were omitted.

**32.** Section 586 (public companies: shares must be at least one-quarter paid-up) has effect as if for subsection (2) there were substituted—

“(2) This does not apply to shares allotted—

- (a) in pursuance of an employers' share scheme; or
- (b) by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014) in relation to a company which is a company under resolution for the purposes of Part 17 of that Order.”.

**33.** Section 593 (public company: valuation of non-cash consideration for shares) has effect as if after subsection (2) there were inserted—

“(2A) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, subsection (1) does not prevent the allotment of shares by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order), and for the purposes of the Companies Acts such a share is deemed to be fully paid up.”.

**34.** Section 617 (alteration of share capital of limited company) has effect as if, in subsection (5), at the end there were inserted—

- “(f) the alteration of the share capital of a company, which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2)

Order 2014, by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order)”.

**35.** Section 618 (sub-division or consolidation of shares) has effect—

- (a) as if subsection (3) were omitted; and
- (b) where the articles of a company under resolution would otherwise exclude or restrict the exercise of any power conferred by that section, as if that section provided that the exclusion or restriction does not have effect.

**36.** Section 656 (public companies: duty of directors to call meeting on serious loss of capital) has effect as if at the end there were inserted—

“(7) This section does not apply to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014 (“the Order”).

(8) Where the net assets of such a company became half or less of its called-up share capital before the date on which the company became a company under resolution—

- (a) the duty of the directors to call a general meeting of the company under subsection (1) ceases to have effect on that date;
- (b) a general meeting which has been called under subsection (1) but has not yet taken place is deemed to have been cancelled on that date; and
- (c) any resolution passed at such a meeting which has taken place is subject to the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Order) in relation to the company.”.

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## EXPLANATORY NOTE

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

This Order is one of the instruments which implements Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ No. L 173, 12.6.2014, p. 190) (“the Directive”). The Directive requires EEA States to have powers to manage the failure of credit institutions, investment firms and companies in the same group as a credit institution or investment firm as an alternative to insolvency.

This Order lays down procedural and other requirements with respect to planning and taking measures for the purpose of—

- restoring the financial position of credit institutions and investment firms and prescribed kinds of parent and subsidiary companies; and
- achieving one or more resolution objectives, which include protecting and enhancing the stability of the financial and banking system, ensuring the continuation of critical functions and protecting depositors and public funds.

In the United Kingdom a credit institution is a bank or a building society and an investment firm is a body of the kind described in section 258A of the Banking Act 2009 (c. 1) (“the Act”). In the Directive credit institutions and investment firms are called “institutions”. The Directive applies to institutions and group companies throughout the EEA.

The Directive sets out the measures that may be taken for these purposes (“resolution tools” and “resolution powers”). In the United Kingdom they include—

- the stabilisation options referred to in paragraphs (a), (b), (ba) and (c) of section 1(3) of the Act (transfer to a private sector purchaser, transfer to a bridge bank, the bail-in option and transfer to an asset management vehicle);
- the powers exercisable by the Bank of England (“the Bank”), the Prudential Regulation Authority (“the PRA”), the Financial Conduct Authority (“the FCA”) or the Treasury under Part 1 of the Act (special resolution regime); and
- the Treasury's general law power to re-capitalise a bank or other undertaking (the public equity support tool described in Article 57 of the Directive).

Article 2 contains definitions.

The expression “appropriate regulator” is defined separately for—

- institutions which are not part of a group which is subject to the requirements of the Directive; and
- groups which are subject to those requirements (“relevant groups”) and UK authorised persons which are part of a relevant group.

A “competent authority” is a public authority which has the function of supervising institutions as part of the supervisory system in operation in an EEA State.

The “consolidating supervisor” is the competent authority responsible for the exercise of supervision on the basis of the consolidated situation of institutions which are part of a relevant group (“consolidating situation” has the meaning given by point (47) of Article 4.1 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms (OJ No. L 176, 27.6.2013, p. 1-137)).

Part 2 designates the Bank as the authority empowered to apply the resolution tools and exercise the resolution powers, and designates the FCA, PRA and the Bank for different purposes in connection with the exercise of power to write down or convert capital instruments. It also designates the Treasury as the ministry responsible for exercising the functions of the competent ministry under the Directive.

Part 3 makes general provision for recovery and resolution planning, including provision for applying less onerous obligations than would otherwise be applicable under Part 4 or 5.

In Parts 4, 5, 6, 8, 9 and 13 provision is made first for institutions authorised by the PRA or FCA which are not part of a relevant group, secondly for relevant groups for which the PRA or FCA is the consolidating supervisor, and thirdly for relevant groups for which the consolidating supervisor is in another EEA State. In Parts 7, 10 and 16 (which apply only to relevant groups) different provision is made for groups for which the PRA or FCA is the consolidating supervisor and groups for which the consolidating supervisor is in another EEA State.

Part 4 lays down the procedure to be followed by the appropriate regulator for assessing and reviewing recovery plans and group recovery plans and taking measures to maintain or restore the viability or financial position of an institution.

Parts 5 and 6 lay down the procedure to be followed by the Bank for the adoption and review of resolution plans and group resolution plans, for making assessments of resolvability for those purposes and for the removal of impediments to resolvability.

Part 7 lays down procedure for authorising agreements for the provision of financial support to a group entity which is an institution and meets the conditions for early intervention referred to in Article 27.1 of the Directive. Group financial support may be provided by a parent undertaking of a prescribed kind, which includes a mixed activity holding company, or by a prescribed kind of subsidiary. Provision is made for—

- the authorisation of agreements for group financial support by competent authorities;

— the approval of authorised agreements by parent and subsidiary undertakings set up in the UK; and

— the provision of financial support under authorised agreements.

Part 8 lays down the procedure to be followed by the appropriate regulator for determining whether measures for early intervention should be taken with respect to institutions and group entities. A measure for early intervention is a measure of a kind specified in sub-paragraphs (a) to (h) of Article 27.1 of the Directive.

Part 9 provides for the determination of the minimum requirement for own funds and eligible liabilities for institutions and group entities, and the determination of the minimum level of own funds and eligible liabilities of group institutions expressed as a percentage of the total liabilities and own funds of those institutions.

Part 10 lays down the procedure to be followed by the Bank for writing down or converting capital instruments of group entities under section 6B of the Act.

Part 11 makes provision about the removal of procedural impediments to the application of the bail-in tool referred to in section 1(3)(c) of the Act.

Part 12 makes provision about the treatment of derivative contracts where the bail-in option is applied by the Bank.

Part 13 lays down the procedure to be followed by the Bank for assessing business reorganisation plans drawn up by institutions and group entities following the application of bail-in option.

Part 14 lays down the procedure to be followed by the PRA, the FCA and the Bank where an undertaking is failing or likely to fail (within the meaning given in Article 32.4 of the Directive).

Part 15 makes provision for a stay of legal proceedings and with respect to remedies on judicial review where the Bank takes measures of a kind referred to in that Part when applying resolution tools or exercising resolution powers.

Part 16 makes provision about cross-border group resolution. It lays down requirements for the establishment and operation of resolution colleges and European resolution colleges, and lays down the procedure to be followed by the Bank for the adoption of plans drawn up for the purposes of group resolution in accordance with Article 91 of the Directive.

Part 17 applies company law with modifications to UK-registered companies which are subject to the application of resolution tools or the exercise resolution powers, including the application by the Treasury of the public equity support tool described in Article 57 of the Directive. Part 17 and Schedule 4 remove obstacles to the effectiveness of the tools and powers.

Part 18 makes provision to enable the Treasury to give support to investment firms under section 228 or 229 of the Act.

Part 19 makes miscellaneous provision.

Part 20 and Schedule 3 amend primary and secondary legislation. The amendments include—

— amendments of Chapter 1 of Part 9A of the Financial Services and Markets Act 2000 (c. 8) (rule-making powers of the FCA and the PRA) to reflect provision made in the Directive about recovery plans and resolution plans; and

— amendments of the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013 (S.I. 2013/165) to ensure that powers exercisable in relation to parent undertakings under Part 12A of the Financial Services and Markets Act 2000 are exercisable, so far as necessary, in relation to parent undertakings within the scope of the Directive.

Article 227 requires the Treasury to review the operation and effect of this Order and to publish a report within five years beginning with the date on which it comes into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Order should remain as it is, or be revoked or amended. A further instrument would be needed to revoke or amend the Order.

A Transposition Table setting out how the Directive is transposed into UK law is available from HM Treasury, 1 Horseguards Road, London, SW1A 2HQ or on <http://www.hm-treasury.gov.uk>. An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

**Changes to legislation:**

There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014.