

### SCHEDULE 3

#### Amendments of the Bank Recovery and Resolution (No.2) Order 2014

#### **Minimum requirement for own funds and eligible liabilities: determination of minimum requirement for an institution**

**68.**—(1) Article 123 (determination of minimum requirement) is amended as follows.

(2) In paragraph (6), for the words from “criteria” to the end substitute—  
“following criteria—

- (a) the need to ensure that the relevant institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in option referred to in section 1(3)(c) 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 special bail-in provision were made—
    - (i) losses could be absorbed; and
    - (ii) the Common Equity Tier 1 capital 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 and to sustain market confidence in the relevant institution;
  - (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 to ensure that losses could be absorbed; and
    - (ii) the Common Equity Tier 1 capital ratio of the relevant institution could be restored, to a level necessary to enable it to continue to comply with the conditions for authorisation and to continue to carry out the activities for which it is authorised under Part 4A of FSMA;
  - (d) the size, the business model, the funding model and the risk profile of the relevant institution;
  - (e) the extent to which the scheme manager could be required to contribute to the financing of resolution in accordance with section 214B of FSMA;
  - (f) 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 with the rest of the financial system through contagion to other institutions;
  - (g) 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
  - (h) any assessment criteria specified in technical standards made under subsection (8).”.
- (3) After paragraph (7) insert—
- “(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.”.