

---

STATUTORY INSTRUMENTS

---

**2014 No. 3344**

**The Building Societies (Bail-in) Order 2014**

**Amendments to Part 1 of the Banking Act 2009**

2.—(1) Part 1 of the Banking Act 2009(1) is amended as follows.

(2) In section 84(2) (application of Part 1 to building societies: general), for the existing text before the Table substitute—

“This Part applies to building societies (within the meaning of section 119 of the Building Societies Act 1986(3)) as it applies to banks, subject to—

- (a) the provisions of the Table, and
- (b) sections 84A to 84D (which relate to the fourth stabilisation option).”.

(3) After section 84 insert—

**“Bail-in option: building societies**

**84A.**—(1) This section applies for the purpose of the exercise of the fourth stabilisation option (bail-in) in relation to a building society.

(2) Subsection (2A) of section 12A(4) (bail-in option) is to be read as if the provision referred to included provision under this section.

(3) Subsection (1) of section 12AA(5) (bail-in: sequence of write-down and conversion of capital instruments and liabilities) is to be read as if the powers referred to included the powers conferred by this section, sections 84B and 84C and the provisions modified by section 84D.

(4) A resolution instrument with respect to a building society may make—

- (a) provision of the kind mentioned in subsection (5);
- (b) other provision for the purposes of, or in connection with, provision of the kind mentioned in subsection (5) made by that or another instrument.

(5) A resolution instrument may—

- (a) convert the building society into a company, or
- (b) transfer all the property, rights and liabilities of the building society to a company.

(6) In the following provisions of this section, “the successor company”, in relation to a building society, means the company into which the building society is converted, or to which the property, rights and liabilities of the building society are transferred, as a result of provision made under subsection (5).

(7) The provision that may be made under subsection (4)(b) includes—

- (a) provision cancelling shares in the building society;

---

(1) 2009 c.1.

(2) Section 84 was amended by section 21 of the Financial Services Act 2010 (c.28) and S.I. 2014/3329.

(3) 1986 c.53. There are amendments to section 119, but none is relevant.

(4) Section 12A was inserted by paragraph 2 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33) and amended by S.I. 2014/3329.

(5) Section 12AA was inserted by S.I. 2014/3329.

- (b) provision cancelling membership rights in the building society;
- (c) provision converting shares in the building society into deposits with the successor company;
- (d) provision conferring rights and imposing liabilities in place of cancelled shares and membership rights;
- (e) provision requiring the FCA to cancel the building society's registration under the Building Societies Act 1986 at a time specified in or determined in accordance with the instrument;
- (f) provision that any person approved for the purposes of Part 5 of the Financial Services and Markets Act 2000<sup>(6)</sup> (performance of regulated activities) in relation to the building society immediately before the resolution instrument is made continues to be approved for those purposes in relation to the successor company (but without affecting the powers of the FCA or PRA to vary or withdraw an approval);
- (g) provision which could be included in a property transfer instrument by virtue of—
  - (i) section 34(7) and (8)<sup>(7)</sup> (property held on trust), or
  - (ii) section 36(1) to (5) (continuity).
- (8) The provision that may be made under subsection (4)(b) also includes—
  - (a) in a case where the resolution instrument makes provision under subsection (5)(a), provision for the successor company on its incorporation to be wholly owned by a company specified in the instrument;
  - (b) in a case where the resolution instrument makes provision under subsection (5)(b) transferring the property, rights and liabilities of the building society to a company which is wholly owned by another company, provision relating to that other company;
  - (c) in either case, provision—
    - (i) for the transfer of liabilities from the successor company to the other company mentioned in paragraph (a) or (b) (“the parent undertaking”), and for the creation of corresponding liabilities of the successor company to the parent undertaking;
    - (ii) replacing a liability (of any form) of the building society or the successor company with a liability or security (of any form or class) of the parent undertaking.
- (9) A company may not be specified under subsection (8)(a) unless it is (or is to be) wholly owned by—
  - (a) the Bank of England,
  - (b) a resolution administrator appointed under section 62B(1)<sup>(8)</sup>, or
  - (c) a person nominated by the Bank of England.
- (10) Where a resolution instrument makes provision under subsection (5), section 37 (licences) applies as if the references to a property transfer instrument were references to the resolution instrument.
- (11) A resolution instrument may provide for different provision made under this section by the instrument to take effect at different times.
- (12) In this section—

---

<sup>(6)</sup> 2000 c.8.

<sup>(7)</sup> Section 34(7) was amended, and section 34(8) was inserted, by section 98 of the Financial Services Act 2012 (c.21).

<sup>(8)</sup> Section 62B was inserted by S.I. 2014/3329.

“company” means a company as defined in section 1(1) of the Companies Act 2006<sup>(9)</sup> which is a public company limited by shares;

“deposit” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), but ignoring the exclusions in article 6.

#### **Further provision: conversion of building society into company**

**84B.**—(1) This section applies where a resolution instrument makes provision under section 84A(5)(a).

(2) The resolution instrument must—

- (a) state the company’s proposed name;
- (b) set out the terms of the memorandum of association of the company;
- (c) set out the terms of the articles of association of the company (to the extent that these are not to be supplied by the default application of model articles: see section 20 of the Companies Act 2006);
- (d) contain the statements and information required to be included in or to accompany an application for a certificate under section 761 of the Companies Act 2006 (public company: requirement as to minimum share capital).

(3) The conversion into the successor company takes effect on the registration of the company under the Companies Act 2006.

(4) The successor company is to be treated as the same person in law as the building society.

(5) The documents required by section 9 of the Companies Act 2006 (registration documents) to be delivered to the registrar (within the meaning of that Act) include a copy of the resolution instrument.

(6) In section 13 of the Companies Act 2006 (statement of compliance) and section 14 of that Act (registration), the reference to the requirements of that Act is to be read as a reference to the requirements of that Act as modified by this section.

(7) If the resolution instrument complies with subsection (2)(d), an application for a trading certificate is to be taken to have been made in accordance with section 762 of the Companies Act 2006 (procedure for obtaining trading certificate).

(8) In this section—

“company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares;

“the successor company”, in relation to a building society, means the company into which the building society is converted as a result of provision made under section 84A(5)(a).

#### **Further provision: transfer of business of building society to company**

**84C.**—(1) A transfer under section 84A(5)(b) must be to a company which immediately before the transfer is wholly owned by—

- (a) the Bank of England,
- (b) a resolution administrator appointed under section 62B(1),
- (c) a person nominated by the Bank of England, or
- (d) a company which is itself wholly owned by a person within paragraphs (a) to (c).

---

<sup>(9)</sup> 2006 c.46.

(2) Where a resolution instrument has made provision under section 84A(5)(b), the building society is dissolved at such time as may be specified in or determined in accordance with the instrument.

(3) In this section, “company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares.

**Bail-in option: modifications of this Act and other legislation**

**84D.**—(1) Where a resolution instrument makes provision under section 84A(5) with respect to a building society, the exercise of the fourth stabilisation option involves the making (in that or a subsequent resolution instrument) of provision or proposals of any kind mentioned in section 12A(3) to (6)—

- (a) with respect to the successor company, or
- (b) where provision made under section 84A includes provision under subsection (8) of that section, with respect to the successor company or its specified parent undertaking.

(2) For the purpose of the making of provision or proposals as mentioned in subsection (1) (a) or (b)—

- (a) the Table in section 84 does not apply, and
- (b) the provisions in the first column of the following Table apply—
  - (i) in relation to the successor company, or
  - (ii) in a case within subsection (1)(b), in relation to the successor company or its specified parent undertaking,

as they apply in relation to a bank, but subject to the modifications in the third column of the Table.

**Table**

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 12A	Bail-in option	Treat references in subsection (4) to securities issued by a specified bank as references to securities issued by the building society, or by the successor company or its specified parent undertaking.  For subsection (8) substitute— “(8) Subsection (8ZA) applies where— (a) the Bank of England has exercised the power in subsection (4) to transfer securities to a resolution administrator; or (b) by virtue of section 84A, 84B or 84C securities of a successor company or a specified parent undertaking are held by— (i) the resolution administrator, (ii) the Bank of England, (iii) a subscriber to the memorandum of association of a company into which the building society is converted in accordance with section 84B, or

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
		<p>(iv) a person nominated for the purposes of section 84C(1)(c).</p> <p>(8ZA) The Bank of England must exercise its functions under this Part (see, in particular, section 48V) with a view to ensuring that any securities—</p> <ul style="list-style-type: none"> <li>(a) held by a person in the capacity of a resolution administrator,</li> <li>(b) held by the Bank of England,</li> <li>(c) held by a person as a result of being a subscriber to the memorandum of association of a company into which the building society is converted in accordance with section 84B,</li> <li>(d) held by a person as a result of being nominated by the Bank of England for the purposes of section 84C(1)(c),</li> </ul> <p>are so held only for so long as is, in the Bank of England’s opinion, appropriate having regard to the special resolution objectives.”.</p>
Section 12AA	Bail-in: sequence of write-down and conversion of capital instruments and liabilities	In relation to the result to be achieved, treat any reference to an instrument or liability of the bank as a reference to an instrument or liability of the building society immediately before the making of the first resolution instrument under section 84A in respect of it.
Section 17(10)	Effect of transfer	
Section 18	Continuity	
Section 41A(11), and any other provision so far as relating to property transfer instruments under section 41A(2)	Transfer of property subsequent to resolution instrument	
Section 48B(12)	Special bail-in provision	The provision that may be made in accordance with section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes provision replacing a liability (of any form) of the building society or its successor company with a liability of the successor company’s specified parent undertaking.

(10) Sections 17 and 18 were amended by paragraphs 14 and 15 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2014/3329](#).

(11) Section 41A was inserted by paragraph 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by [S.I. 2014/3329](#).

(12) Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by [S.I. 2014/3329](#).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 48C	Meaning of “protected deposit”	
Section 48D	General interpretation of section 48B	
Section 48E	Report on special bail-in provision	
Section 48F	Power to amend definition of “excluded liabilities”	
Section 48G	Priority between creditors	Treat the reference in subsection (1) to the treatment of liabilities on an insolvency as a reference to the treatment of liabilities on the insolvency of a building society.
Section 48H	Business reorganisation plans	Treat the reference in subsection (2)(a) to the bank as a reference to the building society.
Section 48L	Powers in relation to securities	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 48N	Directors and senior managers	Treat references to a director or senior manager of a specified bank as references to a director or senior manager of the building society or of the successor company or its specified parent undertaking.
Section 48O	Directions in or under resolution instrument	Treat references to a director of the bank as references to a director of the building society or of the successor company or its specified parent undertaking.
Section 48P	Orders for safeguarding certain financial arrangements	
Section 48Q	Continuity	
Section 48R	Execution and registration of instruments etc.	
Section 48S	Resolution instruments: general matters	
Section 48T	Resolution instruments: procedure	On the first occasion on which the power to make a resolution instrument is exercised in relation to a building society, treat the first reference in subsection (1) to a bank as a reference to the building society.
Section 48U	Supplemental resolution instruments	Treat the reference in subsection (1) to a bank as a reference to the building society.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 48V	Onward transfer	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 48W	Reverse transfer	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 48X(13)	Replacement of Bank's provisional valuation	Treat the first reference in subsection (2)(a) to the bank as a reference to the building society.
Section 48Y	Consequences of a replacement valuation	Treat the first reference in subsection (1) to the bank as a reference to the building society.
Section 48Z	Termination rights etc.	This section applies to contracts and other agreements entered into by the building society or by the successor company or its specified parent undertaking.
Section 49(14)	Compensation orders	Treat references to transferors as including references to the shareholding members of the building society.
Section 52A(15)	Compensation orders: bail-in option	
Section 53(16)	Onward and reverse transfers etc.	
Section 54(17)	Independent valuer: compensation scheme order or bail-in compensation order	
Section 55(18)	Independent valuer: supplemental	
Section 56(19)	Independent valuer: money	
Section 57(20)	Valuation principles	Treat the reference in subsection (4) to a bank as a reference to the building society.  Treat the reference in subsection (5) to a transferor as including a reference to a shareholding member of the building society.

---

(13) Sections 48X to 48Z were inserted by [S.I. 2014/3329](#).

(14) Section 49 was amended by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(15) Section 52A was inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(16) Section 53 was amended by section 97 of the Financial Services Act 2012, paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2014/3329](#).

(17) Section 54 was amended by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2014/3329](#).

(18) Section 55 was amended by section 21 of the Financial Services Act 2010.

(19) Section 56 was amended by section 21 of the Financial Services Act 2010 and paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(20) Section 57 was amended by the paragraph 26 of Schedule 17 to the Financial Services Act 2012 and paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 58(21)	Resolution fund	
Section 59	Third party compensation: discretionary provision	Treat the reference in subsection (1) to a transferor as including a reference to a shareholding member of the building society.
Section 60A(22)	Further mandatory provision: bail-in provision	
Section 60B	Principle of no less favourable treatment	Treat references to pre-resolution shareholders and creditors of a bank as references to persons who were shareholding members of, or creditors of, the building society, immediately before the coming into effect of the first resolution instrument to be made in respect of the building society.  Treat references to the bank as references to the building society.
Section 61(23)	Sources of compensation	
Section 62(24)	Procedure	
Section 62A(25)	Independent valuer: sections 6E and 48X	
Sections 62B to 62E	Resolution administrator	
Sections 63, 64 and 66 to 70(26) where they apply in relation to a resolution instrument or in relation to a property transfer instrument under section 41A(2)	Continuity obligations	Treat references in sections 66(1A) and 68(1)(a) to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.

(21) Section 58 was amended by [S.I. 2014/3329](#).

(22) Sections 60A and 60B were inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013. Section 60B was amended by [S.I. 2014/3329](#).

(23) Section 61 was amended by paragraph 41 of Schedule 2 to the Financial Services Act 2010 and paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(24) Section 62 was amended by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(25) Sections 62A to 62E were inserted by [S.I. 2014/3329](#).

(26) Sections 63, 66, 67 and 68 were amended by paragraphs 17, 18, 19 and 20 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and sections 63, 64, 66, 67, 68 and 70 were amended by [S.I. 2014/3329](#).



<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 70A(27)	Suspension of obligations	
Section 70B	Restriction of security interests	
Section 70C	Suspension of termination rights	
Section 70D	Suspension: general provisions	
Section 71(28)	Pensions	This section applies in relation to a pension scheme of the building society or of the successor company.
Section 73	Disputes	
Section 74	Tax	This section enables regulations to make provision in relation to the building society, the successor company or its specified parent undertaking.
Section 75(29)	Power to change law	Treat the reference in subsection (5)(b) to building societies as including a reference to successor companies and their specified parent undertakings.
Section 78A(30)	Pre-conditions for financial assistance: duty of Bank to give information	
Section 80A(31)	Transfer for bail-in purposes: report	Treat the reference in subsection (1) to a bank as a reference to the building society.
Section 81A(32)	Accounting information to be included in reports under sections 80, 80A(2)(b) and 81	
Sections 83ZA to 83Z2(33)	Information, investigation and enforcement	
Section 89K(34)	Insolvency proceedings	Treat the references in paragraphs (a) and (b) of subsection (1) to a relevant firm as references to the building society.
Section 89L	Restrictions on disclosure	

---

(27) Sections 70A to 70D were inserted by [S.I. 2014/3329](#).

(28) Sections 71, 73 and 74 were amended by paragraphs 21, 23 and 24 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2014/3329](#).

(29) Section 75 was amended by sections 101 and 102 of the Financial Services Act 2012 and [S.I. 2013/504](#).

(30) Section 78A was inserted by [S.I. 2014/3329](#).

(31) Section 80A was inserted by paragraph 25 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(32) Section 81A was inserted by section 99 of the Financial Services Act 2012 and amended by paragraph 26 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2014/3329](#).

(33) Sections 83ZA to 83ZY were inserted by [S.I. 2014/3329](#).

(34) Sections 89K, 89L and 89M were inserted by [S.I. 2014/3329](#).

---

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
	confidential information	
Section 89M	Giving of notices, documents etc. under Part 1	

(3) Any statutory instrument made under a provision specified in the first column of the Table in subsection (2) applies—

- (a) to the successor company, or
- (b) in a case within subsection (1)(b), to the successor company or the specified parent undertaking,

as it applies in relation to a bank, but subject to modifications corresponding to those applying to the provision under which it is made and as if references to a provision modified by subsection (2) or (5) were references to that provision as so modified.

(4) Subsection (3) does not apply where the instrument—

- (a) states that it does not apply, or
- (b) makes express provision about building societies or their successor companies.

(5) Where a resolution instrument makes provision under section 84A in respect of a building society—

- (a) section 81BA(35) (groups: bail-in option) applies with the following modifications—
  - (i) references to a banking group company are to be read as references to a subsidiary of the building society, and
  - (ii) the power in subsection (1) of that section is to be exercised only where the Bank of England has exercised the stabilisation power in accordance with section 12A(2) in respect of the parent building society;
- (b) section 81CA applies as if references to a banking group company were references to a subsidiary of the building society or of the successor company; and
- (c) section 81D(36) (interpretation: “banking group company”) does not apply.

(6) Sections 97 to 102D of the Building Societies Act 1986(37) (transfer of business of building society to commercial company) do not apply where a resolution instrument makes provision under section 84A.

(7) Section 103 of the Building Societies Act 1986(38) (cancellation of registration) does not apply where a resolution instrument makes provision under section 84A(7)(e).

(8) In this section—

“company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares;

---

(35) Sections 81BA and 81CA were inserted by paragraph 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by S.I. 2014/3329.

(36) Section 81D was inserted by section 100 of the Financial Services Act 2012 and amended by paragraph 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(37) 1986 c.53, amended by section 1 of the Building Societies (Joint Account Holders) Act 1995 (c.5); sections 30, 31, 40 and 41 of and Schedules 7 and 9 to the Building Societies Act 1997 (c.32); section 1 of the Building Societies (Distributions) Act 1997 (c.41); Schedule 6 to the Mental Capacity Act 2005 (c.9); Schedule 16 to the Companies Act 2006; Schedule 9 to the Financial Services (Banking Reform) Act 2013; and S.I. 2001/2617, 2001/3649, 2007/2194, 2008/1519, 2009/1941 and 2013/496.

(38) Section 103 was amended by S.I. 2001/2617, 2009/805 and 2013/496.

“specified parent undertaking” means a company by which in accordance with provision falling within paragraph (a) or (b) of section 84A(8) the successor company is (or is to be) wholly owned;

“the successor company”, in relation to a building society, means the company into which the building society is converted, or to which the property, rights and liabilities of the building society are transferred, as a result of provision made under section 84A(5).”