STATUTORY INSTRUMENTS

2014 No. 3348

FINANCIAL SERVICES AND MARKETS

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(**1**), section 192B(4) of the Financial Services and Markets Act 2000(**2**) and section 230 of the Banking Act 2009(**3**).

The Treasury are designated(**4**) for the purposes of the European Communities Act 1972 in relation to financial services.

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—

"another EEA State" means an EEA State other than the United Kingdom;

(**1**) 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).

(**2**) 2000 c. 8. Section 192B was inserted by the Financial Services Act 2012 (c. 21), section 27, which inserted Part 12A of FSMA.

(**3**) 2009 c. 1.

(**4**) S.I. 2012/1759.

"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 Article 111 of the capital requirements directive—

(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;

"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(**5**);

"the capital requirements regulation" means 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 and amending Regulation (EU) No. 648/2012(**6**);

"college", in relation to a relevant group, except in Chapters 1, 2 and 3 of Part 16—

(a) means the resolution college(**7**) established for that group by—

(i) the Bank under Chapter 2 of that Part; or

(ii) the resolution authority(**8**) established in another EEA State in accordance with Article 88 of the recovery and resolution directive (resolution colleges); and

(b) includes an existing grouping or college used to facilitate the performance of the tasks which would otherwise be performed by a resolution college established for that group;

"competent authority"—

(a) for a participating member State within the meaning given by point (1) of Article 2 (definitions) of Council Regulation (EU) No. 1024/2013 of 15th October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions(**9**)—

(i) in relation to tasks conferred by that Council Regulation on the European Central Bank, means the European Central Bank;

(ii) in relation to any other tasks carried out for prudential supervisory purposes or other purposes relating to the authorisation and supervision of institutions(**10**), has the same meaning as it has for other EEA States;

(b) for any other EEA State, means a public authority or body officially recognised by national law which is empowered by national law to supervise institutions as part of the supervisory system in operation in the EEA State concerned;

"conditions for resolution"—

(**5**) OJ No. L 176, 27.6.2013, p. 338. For corrigenda see OJ No. L 208, 2.8.2013, p. 73.
(**6**) OJ No. L 176, 27.6.2013, p. 1-137. For corrigenda see OJ No. L 208, 2.8.2013, p. 68 and OJ No. L 321, 30.11.2013, p. 6.
(**7**) For the meaning of "resolution college" see the recovery and resolution directive, Article 2.1, point (46).
(**8**) For the meaning of "resolution authority" see the recovery and resolution directive, Article 2.1, point (18).
(**9**) OJ No. L 287, 29.10.2013, p. 63.
(**10**) For the meaning of "institution" see the recovery and resolution directive, Article 2.1, point (23).

(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(**11**) (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(**12**); and

(c) in relation to an undertaking set up in any other EEA State, means the conditions referred to in Article 32.1 of the recovery and resolution directive (conditions for resolution);

"the consolidating supervisor" means the competent authority responsible for the exercise of supervision on the basis of the consolidated situation (within the meaning given by point (47) of Article 4.1 of the capital requirements regulation) of—

(a) an EEA parent institution; or

(b) institutions controlled(**13**) by an EEA parent financial holding company or EEA parent mixed financial holding company;

"critical functions"—

(a) in relation to an undertaking set up in the United Kingdom, has the meaning given in section 3 of the Banking Act 2009(**14**) (interpretation: other expressions); and

(b) in relation to an undertaking set up in any other EEA State, has the meaning given by point (35) of Article 2.1 of the recovery and resolution directive (definitions);

"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(**15**);

"EBA" means the European Banking Authority established by the EBA Regulation;

"the EBA Regulation" means Regulation (EU) No.1093/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC(**16**);

"EEA parent financial holding company" means a parent financial holding company in an EEA State which is not a subsidiary of an institution set up in any EEA State or of another financial holding company or a mixed financial holding company set up in any EEA State;

"EEA parent institution" means a parent institution in an EEA State which is not a subsidiary of another institution set up in any EEA State or of a financial holding company or mixed financial holding company set up in any EEA State;

"EEA parent mixed financial holding company" means a parent mixed financial holding company in an EEA State which is not a subsidiary of an institution set up in any EEA State or of a financial holding company or another mixed financial holding company set up in any EEA State;

(**11**) Section 7 was amended by the Financial Services Act 2012, Schedule 17, paragraphs 1 and 8, and by S.I. 2014/3329.
(**12**) 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.
(**13**) For the meaning of "controlled" (in the definition of "consolidating supervisor") see the definition of "control" in point (37) of Article 4.1 of the capital requirements regulation.
(**14**) 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.
(**15**) OJ No. L 201, 27.7.2012, p. 1-59.
(**16**) OJ No. L 331, 15.12.2010, p. 12.

"EEA parent undertaking" means an EEA parent institution, EEA parent financial holding company or EEA parent mixed financial holding company

"eligible liabilities"—

(a) in relation to an undertaking set up in the United Kingdom, has the meaning given in section 3(1) of the Banking Act 2009; and

(b) in relation to an undertaking set up in any other EEA State, has the meaning given by point (71) of Article 2.1 of the recovery and resolution directive;

"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(**17**);

"FSMA" means the Financial Services and Markets Act 2000;

"group entity", in relation to a relevant group, means the EEA 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 makes provision for—

(a) taking resolution action(**18**) in respect of the group, whether at the level of the parent undertaking or of an institution within the group; or

(b) co-ordinating the application of resolution tools and the exercise of resolution powers(**19**) 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(**20**); and

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

"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;

(**17**) 1998 c. 11. Section 9B was inserted by the Financial Services Act 2012, section 4(1).
(**18**) For the meaning of "resolution action" see the recovery and resolution directive, Article 2.1, point (40).
(**19**) For the meaning of "resolution power" see the recovery and resolution directive, Article 2.1, point (20).
(**20**) 1986 c. 45.

"parent financial holding company in an EEA State" means a financial holding company which is not itself a subsidiary of—

(a) an institution set up in the same EEA State;

(b) another financial holding company set up in the same EEA State; or

(c) a mixed financial holding company set up in the same EEA State;

"parent institution in an EEA State" means an institution which—

(a) has an institution or financial institution as a subsidiary, or holds a participation (within the meaning given by point (35) of Article 4.1 of the capital requirements regulation) in an institution or financial institution, and

(b) is not itself a subsidiary of another institution set up in the same EEA State or a financial holding company or mixed financial holding company set up in the same EEA State;

"parent mixed financial holding company in an EEA State" means a mixed financial holding company which is not itself a subsidiary of—

(a) an institution set up in the same EEA State;

(b) another mixed financial holding company set up in the same EEA State; or

(c) a financial holding company set up in the same EEA State;

"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-authorised person" means a UK authorised person which is a PRA-authorised person within the meaning given by section 2B(5) of FSMA(**21**) (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(**22**);

"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;

"relevant competent authority", in relation to a relevant group, means a competent authority, other than the consolidating supervisor, which has authorised a group entity;

"relevant group" means the group(**23**) constituted by an EEA parent undertaking and its subsidiaries;

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

(a) means the objectives set out in Article 31.2 of the recovery and resolution directive (resolution objectives); and

(b) in relation to the United Kingdom, includes the special resolution objectives set out in section 4 of the Banking Act 2009(**24**);

"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;

(**21**) Section 2B was substituted by the Financial Services Act 2012, section 6(1), which substituted Part 1A of FSMA.
(**22**) OJ No. L 173, 12.6.2014, p. 190.
(**23**) For the meaning of "group" see the recovery and resolution directive, Article 2.1, point (26).
(**24**) Section 4 was amended by S.I. 2014/3329.

"resolution tools"—

(a) means the sale of business tool, the bridge institution tool, the asset separation tool and the bail-in tool(**25**) and any additional tool which—

(i) is conferred by an EEA State on a resolution authority;

(ii) is for use where an institution or other entity meets the conditions for resolution; and

(iii) meets the conditions in Article 37.9(a) and (b) of the recovery and resolution directive (general principles of resolution tools); and

(b) in relation to the United Kingdom, except in article 4, includes the stabilisation options referred to in paragraphs (a), (b), (ba) and (c) of section 1(3) of the Banking Act 2009(**26**) (overview: special resolution regime);

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

"third country" means a State other than an EEA State; and

"UK authorised person" means an authorised person (within the meaning given in section 31 of FSMA(**27**)) which is incorporated in, or formed under the law of, any part of the United Kingdom.

(2) Except where provision is made to the contrary, any expression used in this Order which is defined in Article 2.1 of the recovery and resolution directive and not defined in paragraph (1) has the meaning given in that Article.

(3) In this Order any reference, in relation to a company, undertaking, subsidiary or other entity, to the State in which the entity is set up is a reference to—

(a) the State in which the entity is authorised by a competent authority or, if the State is a third country, by an authority which, in the country concerned, exercises any function equivalent to a function of a competent authority; or

(b) if the entity is not authorised by such an authority, the State in which the entity is incorporated or under whose law (including the law of any part of that State) the entity is formed.

Application of Order

3. This Order lays down 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.

(**25**) For the meaning of these tools see the recovery and resolution directive, Article 2.1, points (58), (60), (55) and (57).

(**26**) 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)).

(**27**) Section 31 was amended by the Financial Services Act 2012, section 11(1).

PART 2

Designation of authorities and competent ministry

Designation of the Bank as resolution authority

4. The Bank is designated in accordance with Article 3 of the recovery and resolution directive (designation of authorities responsible for resolution) as the authority empowered to apply the resolution tools and exercise the resolution powers.

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

5.—(1) The designations in this article are made in accordance with Article 61.2 of the recovery and resolution directive (authorities responsible for determination) for the purpose of any determination required to be made pursuant to Article 59.3 of that directive (requirement to write down or convert capital instruments) in relation to—

(a) an institution which is set up in the United Kingdom and is not part of a group subject to supervision on a consolidated basis in accordance with Article 111 of the capital requirements directive ("UK institution"); or

(b) in the case of a relevant group, a group entity set up in the United Kingdom ("UK group entity").

(2) The FCA is designated as the authority responsible for a relevant decision in relation to a UK institution or UK group entity which is an FCA-regulated bank or an FCA-regulated investment firm.

(3) The PRA is designated as the authority responsible for a relevant decision in relation to a UK institution or UK group entity which is a credit institution(**28**) other than an FCA-regulated bank or an FCA-regulated investment firm.

(4) In relation to a UK group entity which is not an institution—

(a) the PRA is designated as the authority responsible for a relevant decision if—

(i) the entity is a PRA-authorised person;

(ii) where the entity is not a UK authorised person, the PRA is the consolidating supervisor; or

(iii) where the entity is not a UK authorised person and neither the PRA nor the FCA is the consolidating supervisor, there is a PRA-authorised person in the relevant group;

(b) the FCA is designated as the authority responsible for a relevant decision if—

(i) the entity is a UK authorised person but not a PRA-authorised person; or

(ii) where the entity is not a UK authorised person, the FCA is the consolidating supervisor; and

(c) the Bank is designated as the authority responsible for a relevant decision if neither the PRA nor the FCA is responsible for the decision under sub-paragraph (a) or (b).

(5) The Bank is designated as the authority responsible for—

(a) a decision that there is no reasonable prospect that any action other than making the determination would, within a reasonable time, prevent the failure of a UK institution or UK group entity; and

(b) making the determination.

(6) In this article—

(**28**) For the meaning of "credit institution" see the recovery and resolution directive, Article 2.1, point (2).

"FCA-regulated bank" has the meaning given by section 83A(2) of the Banking Act 2009(**29**);

"FCA-regulated investment firm" has the meaning given by section 89A(3) of that Act(**30**); and

"relevant decision", in relation to an institution or group entity, is a decision that the institution or group entity is failing or likely to fail (within the meaning given in Article 32.4 of the recovery and resolution directive).

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

6. The Treasury are designated in accordance with Article 3.5 of the recovery and resolution directive as the ministry responsible for exercising the functions of the competent ministry(**31**) under that directive.

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 Section A of the Annex to the recovery and resolution directive (information to be included in recovery plans) is to be included in a recovery plan or group recovery plan; or

(b) that any information set out in Section A of that Annex or other detail which would otherwise have to be included in a recovery plan or group recovery plan does not have to be included.

(4) The appropriate regulator may determine that a plan drawn up by an institution or an EEA parent undertaking is to be reviewed at intervals of more than one year.

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 information set out in Section B of the Annex to the recovery and resolution directive (information that resolution authorities may ask institutions to provide for the purposes of

(**29**) Section 83A was inserted by the Financial Services Act 2012, Schedule 17, paragraphs 1 and 28; and was amended by S.I. 2014/3329.
(**30**) Section 89A was inserted by the Financial Services Act 2012, section 101(1) and (5); and was amended by S.I. 2014/3329.
(**31**) For the meaning of "competent ministries" see the recovery and resolution directive, Article 2.1, point (22).

drawing up and maintaining resolution plans), 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.

(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 set out in Section C of the Annex to the recovery and resolution directive (matters that the resolution authority is to consider when assessing the resolvability of an institution or group); 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.

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(**32**).

(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).

Provision of information to EBA

10.—(1) The PRA and the FCA must provide EBA with such information as EBA may require about their policy with respect to—

(a) making a determination under article 7(3)(b) or (4); or

(b) any other matter relating to the imposition of simplified obligations.

(2) The Bank must provide EBA with such information as EBA may require about the Bank's policy with respect to—

(a) making a determination under article 8(3)(b), (4)(b) or (5); or

(b) any other matter relating to the imposition of simplified obligations.

(3) In this article "simplified obligations" has the same meaning as in article 9(3).

(**32**) Section 9C was inserted by the Financial Services Act 2012, section 4(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 Article 111 of the capital requirements directive; and

(b) submits a recovery plan to the appropriate regulator for assessment in accordance with Article 6 of the recovery and resolution directive (assessment of recovery plans).

(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.

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.

(2) Where the institution has a significant branch(**33**) in another EEA State, the appropriate regulator must assess the recovery plan, so far as it is relevant to the branch, in consultation with the competent authority established in that State.

(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.

Criteria for assessment

13.—(1) The appropriate regulator must assess whether the recovery plan meets the requirements of Articles 5 and 9 of the recovery and resolution directive (recovery plans and recovery plan indicators) 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.

(**33**) For the meaning of "significant branch" see the recovery and resolution directive, Article 2.1, point (34).

(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.

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 in accordance with Article 8 of the recovery and resolution directive (assessment of group recovery plans).

(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 EEA 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

"UK group entity"—

(a) where the EEA parent undertaking is set up in the United Kingdom, means that undertaking;

(b) where the EEA parent undertaking is set up in another EEA State, means a group subsidiary which is an institution authorised by the PRA or FCA.

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;

(b) EBA;

(c) the resolution authority for any group entity set up in another EEA State;

(d) each relevant competent authority; and

(e) the competent authority established in any EEA State in which a group institution has a significant branch.

(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(**34**) (restrictions on disclosure of confidential information by FCA, PRA etc).

Assessment of group recovery plan

18.—(1) Where every group institution is a UK authorised person, the appropriate regulator must assess the group recovery plan, and is solely responsible for the assessment.

(2) Where any group institution is set up in another EEA State, the appropriate regulator must assess the group recovery plan jointly with the competent authority for that institution and in consultation with EBA.

(3) Where a group institution has a significant branch in another EEA State, the assessment must be made, so far as information contained in the plan is relevant to the branch, in consultation with the competent authority established in that State.

(4) The assessment must take account of—

(a) any recommendations made by the Bank or another resolution authority 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 any EEA State in which a group entity conducts business.

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 Articles 5 and 9 of the recovery and resolution directive (recovery plans and recovery plan indicators) 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 any EEA State.

(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.

(**34**) 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.

(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.

Assessment of plan where every group institution is a UK authorised person

20. Where the appropriate regulator is solely responsible for assessing the group recovery plan, it must conclude the assessment within the four month period, and is for this purpose solely responsible for deciding relevant matters.

Joint assessment of plan

21.—(1) This article applies where the appropriate regulator assesses the group recovery plan jointly with one or more relevant competent authorities.

(2) The appropriate regulator must endeavour to conclude the assessment within the four month period, and must for this purpose endeavour to reach a joint decision on relevant matters.

(3) Where the appropriate regulator and a relevant competent authority ("authority A") are unable to reach a joint decision on a relevant matter, the appropriate regulator—

(a) where the matter concerned is whether to require group institutions to draw up and submit recovery plans on an individual basis, must decide that matter for the group institutions for which it is the competent authority;

(b) must decide any other matter, which it may do either alone or jointly with any relevant competent authority with which it is able to reach a joint decision;

(c) must ensure that a decision under this paragraph takes account of the views and reservations of authority A; and

(d) may not direct a UK group entity to propose business changes or take relevant measures in relation to a group institution for which authority A is the competent authority.

(4) When the appropriate regulator concludes the assessment of the group recovery plan, whether alone or jointly with a relevant competent authority, it must exercise its powers under FSMA, so far as necessary, for the purpose of implementing each decision on relevant matters, including a decision to direct a UK group entity to—

(a) submit a revision of the plan;

(b) propose business changes; or

(c) take relevant measures.

(5) The appropriate regulator must give written notice of each decision under this article to the group entity which submitted the group recovery plan for assessment and each relevant competent authority.

Revision of plan

22. The appropriate regulator—

(a) must notify a UK group entity if the group recovery plan is found on assessment to contain an impediment; and

(b) may not require a UK group entity to revise the plan without giving it an opportunity to state its opinion on that requirement.

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

Business changes and relevant measures

23.—(1) This article applies where—

(a) a UK group entity 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 the entity to make specific changes to the plan.

(2) Subject to articles 21(3)(d) and 25(1) and (2) and the appropriate regulator's duty to endeavour to reach a joint decision on relevant matters, the appropriate regulator must, in exercise of its powers under FSMA—

(a) direct the UK group entity to propose business changes; and

(b) if the entity fails to propose business changes within the time allowed by the appropriate regulator or the appropriate regulator considers that any business changes proposed by the entity would not adequately address the impediment, determine whether to direct the entity to take relevant measures.

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

25.—(1) Paragraph (2) applies where, before the end of the four month period, a relevant competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation (settlement of disagreements between competent authorities in cross-border situations) any matter relating to—

(a) the assessment of the group recovery plan; or

(b) a proposal by the appropriate regulator to direct relevant measures to be taken with the object of—

(i) reducing a group institution's risk profile, including its liquidity risk profile;

(ii) enabling a group institution to undertake timely recapitalisation; or

(iii) changing a group institution's funding strategy in order to improve the resilience of core business lines and critical functions.

(2) The appropriate regulator must—

(a) defer a decision on the matter referred for one month beginning with the date on which the four month period ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(3) The appropriate regulator may, within the four month period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by a relevant competent authority to direct a group institution to take relevant measures with the object of—

(a) reducing the institution's risk profile, including its liquidity risk profile;

(b) enabling it to undertake timely recapitalisation; or

(c) changing its funding strategy in order to improve the resilience of core business lines and critical functions.

(4) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

26. The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation (non-binding mediation) to reach a joint decision on—

(a) the assessment of the group recovery plan;

(b) whether to require group institutions to draw up and submit recovery plans on an individual basis; or

(c) whether to direct a UK group entity to submit a revision of the group recovery plan, make specific changes to the plan, propose business changes or take relevant measures.

CHAPTER 3

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

Application and interpretation of Chapter 3

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

(a) neither the PRA nor the FCA is the consolidating supervisor; and

(b) the PRA or FCA (or each of them) receives a copy of a group recovery plan submitted to the consolidating supervisor for assessment.

(2) In this Chapter—

"business changes", "group institution", "relevant matters", "relevant measures" and "UK group entity" have the same meaning for the relevant group as they have for a relevant group in Chapter 2; and

"four month period" means four months beginning with the date on which the appropriate regulator receives a copy of the group recovery plan.

Purpose of assessment

28.—(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, subject to the imposition of any simplified obligations imposed by the consolidating supervisor under Article 4 of the recovery and resolution directive (simplified obligations for certain institutions), are that—

(a) the plan must satisfy the requirements of Articles 5 and 9 of that directive (recovery plans and recovery plan indicators); and

(b) the arrangements proposed in the plan—

(i) would, if implemented, be reasonably likely to maintain or restore the viability and financial position of group institutions; and

(ii) 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 any EEA State.

Joint assessment of plan

29.—(1) The appropriate regulator must assess the group recovery plan jointly with other relevant competent authorities and the consolidating supervisor and in consultation with EBA.

(2) The appropriate regulator must endeavour to conclude the assessment within the four month period, and must for this purpose endeavour to reach a joint decision on relevant matters.

(3) Where the appropriate regulator concludes a joint assessment of the group recovery plan, it must exercise its powers under FSMA, so far as necessary, for the purpose of implementing a joint decision on relevant matters, including a decision to direct a UK group entity to—

(a) submit a revision of the plan;

(b) propose business changes; or

(c) take relevant measures.

(4) Where the appropriate regulator and the consolidating supervisor—

(a) are able to conclude a joint assessment of the group recovery plan, but

(b) are unable to reach a joint decision on whether to require group institutions to draw up and submit recovery plans on an individual basis,

the appropriate regulator must decide the matter referred to in sub-paragraph (b) for group institutions for which it is the competent authority.

(5) Where the appropriate regulator and the consolidating supervisor are unable to conclude a joint assessment of the group recovery plan, the appropriate regulator may—

(a) require group institutions for which it is the competent authority to draw up and submit recovery plans on an individual basis; or

(b) require those institutions to draw up and submit a single recovery plan for all or any of them.

(6) Where the appropriate regulator requires a single recovery plan to be drawn up and submitted under paragraph (5)(b), the appropriate regulator must assess the plan submitted as if it were a group recovery plan for whose assessment the appropriate regulator was solely responsible under Chapter 2.

Assessment of recovery plans drawn up on an individual basis

30. 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

31.—(1) Paragraph (2) applies where, before the end of the four month period, another competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to direct relevant measures to be taken with the object of—

(a) reducing a group institution's risk profile, including its liquidity risk profile;

(b) enabling a group institution to undertake timely recapitalisation; or

(c) changing a group institution's funding strategy in order to improve the resilience of core business lines and critical functions.

(2) The appropriate regulator must—

(a) defer its decision on the matter referred for one month beginning with the date on which the four month period ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(3) The appropriate regulator may, within the four month period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to—

(a) the assessment of the group recovery plan; or

(b) a proposal by another competent authority to direct relevant measures to be taken with the object of—

(i) reducing a group institution's risk profile, including its liquidity risk profile;

(ii) enabling a group institution to undertake timely recapitalisation; or

(iii) changing a group institution's funding strategy in order to improve the resilience of core business lines and critical functions.

(4) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

32. The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on—

(a) the assessment of the group recovery plan;

(b) whether to require group institutions to draw up and submit recovery plans on an individual basis; or

(c) whether to direct a UK group entity to submit a revision of the group recovery plan, make specific changes to the plan, propose business changes or take relevant measures.

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 or 30.

(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 by a competent authority 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 is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with Article 111 of the capital requirements directive, in accordance with Chapter 1; or

(b) if the institution is a group institution within the meaning given in Chapter 2 or 3, in accordance with Chapter 1 as applied by article 24 or 30.

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

Article	*Modification*
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).

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 UK group entity 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 UK group entity 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 by a competent authority 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 UK group entity 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—

Article	*Modification*
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—

"UK group entity" has the same meaning as in Chapter 2; and

"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).

Review of group recovery plan assessed under Chapter 3

35.—(1) This article applies where, in relation to a relevant group, a group recovery plan has been assessed under Chapter 3.

(2) The appropriate regulator must endeavour to reach a joint decision on the assessment of an up-dated plan as if it were a group recovery plan of which the appropriate regulator has received a copy for assessment under Chapter 3.

(3) The appropriate regulator must make the assessment in accordance with that Chapter, which has effect for that purpose with the modifications specified in the table—

Article	*Modification*
Article 27	Ignore paragraph (1).
Articles 27 to 29, 31 and 32	Each reference to the group recovery plan is a reference to the up-dated plan.

(4) In this article "up-dated plan" means a group recovery plan which—

(a) was assessed by the appropriate regulator under Chapter 3; and

(b) has been reviewed by a group entity (whether or not it has been amended on review).

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 Article 111 of the capital requirements directive.

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 contain the information, and be drawn up with regard to the considerations, set out in Schedule 1.

(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.

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

(a) the appropriate regulator; and

(b) the resolution authority established in any other EEA State in which the relevant institution has a significant branch.

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

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) Where every group entity is set up in the United Kingdom, the Bank must draw up and adopt a group resolution plan, and is solely responsible for the plan.

(2) Where a group entity is set up in another EEA State, the Bank must endeavour within the college to draw up and adopt a group resolution plan jointly with the resolution authority for that entity.

(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 contain the information, and be drawn up with regard to the considerations, set out in Schedule 2.

(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.

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

(a) the appropriate regulator;

(b) each relevant competent authority; and

(c) so far as the plan is relevant to a significant branch which an institution within the relevant group has in another EEA State, the resolution authority established in that State.

(6) A group resolution plan must not have a disproportionate impact on any EEA State.

(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 a resolution authority or competent authority.

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—

(a) to EBA;

(b) where the plan is being drawn up by the Bank jointly with other resolution authorities, to those authorities;

(c) to the authorities which must be consulted under article 40(5).

(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(**35**) (restrictions on disclosure of confidential information).

(3) In this article "relevant information" means information which is provided to the Bank by the appropriate regulator or is otherwise available to the Bank and—

(a) in the case of EBA, is required to enable EBA to exercise its functions in relation to drawing up a group resolution plan;

(b) in the case of the resolution authority for a group entity (other than the Bank), is required for the purpose of drawing up a group resolution plan jointly with the Bank;

(c) in the case of an authority which must be consulted under article 40(5)—

(i) is relevant to a group entity set up in the EEA State in which the authority is established;

(ii) is relevant to a significant branch situated in that State; or

(iii) is otherwise required to enable the authority to make an effective response to consultation by the Bank.

Joint decision on adoption of group resolution plan

42.—(1) Where the Bank endeavours to reach a decision on the adoption of a group resolution plan jointly with one or more other resolution authorities under article 40(2), it must endeavour to reach that decision within four months beginning with the date on which it transmits information under article 41 ("the four month period").

(2) Where the Bank and another resolution authority ("authority A") are unable to reach a joint decision on the adoption of a group resolution plan within the four month period, the Bank must—

(a) decide the contents and details of a group resolution plan for part of the relevant group, which it may do either alone or jointly with any resolution authority with which it is able to reach a joint decision; and

(b) ensure that—

(i) the decision on the contents and details of the plan takes account of views and reservations of authority A; and

(ii) every group entity for which authority A is the resolution authority is excluded from the scope of the plan.

(**35**) Section 89L was inserted by S.I. 2014/3329.

(3) Where another resolution authority (apart from authority A) notifies the Bank that it does not wish to adopt a group resolution plan for part of the relevant group, the Bank must ensure that every group entity for which that authority is the resolution authority is excluded from the scope of the group resolution plan.

(4) The Bank must give the EEA parent undertaking written notice of the adoption of a group resolution plan under this article, including a reasoned account of the decision to adopt the plan.

(5) Where a joint decision on the adoption of a group resolution plan is reached within the four month period, the Bank must initiate a reassessment of the plan, including minimum requirements for own funds and eligible liabilities, if one of the resolution authorities (including the Bank) considers that a matter of disagreement about the plan which arose during the four month period impinges on the fiscal responsibilities of the EEA State of which it is the resolution authority.

References to EBA

43.—(1) Where, before the end of the four month period, another resolution authority has referred any matter relating to the adoption of a group resolution plan to EBA in accordance with Article 19 of the EBA Regulation, the Bank must—

(a) defer a decision on the matter referred for one month beginning with the date on which the four month period ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

44.—(1) The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the adoption of a group resolution plan.

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 and each relevant competent authority.

CHAPTER 3

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

Application and interpretation of Chapter 3

46.—(1) This Chapter applies where neither the PRA nor the FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter "relevant college member" means a member of the college, other than the Bank, which is a resolution authority or competent authority.

Joint decision on adoption of group resolution plan

47.—(1) The Bank must endeavour to reach a decision on the adoption of a group resolution plan jointly with the group-level resolution authority(**36**) and other resolution authorities for group entities.

(**36**) For the meaning of "group-level resolution authority" see the recovery and resolution directive, Article 2.1, point (44).

(2) The Bank must endeavour to reach that decision within four months beginning with the date on which the Bank receives information transmitted for the purpose of enabling it to draw up the plan jointly with the group-level resolution authority ("the four month period").

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

48.—(1) This article applies where—

(a) a joint decision on the adoption of a group resolution plan cannot be reached within the four month period; and

(b) the Bank disagrees with the group-level resolution authority's proposal for adopting a group resolution plan.

(2) For each group entity for which it is the resolution authority the Bank must—

(a) draw up and adopt a resolution plan having regard to any views or reservations expressed by a relevant college member during the four month period; and

(b) give notice of its decision to adopt the plan, including a reasoned account of its decision and its reasons for disagreeing with the proposal for adopting a group resolution plan, to all other members of the college.

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

49.—(1) This article applies where—

(a) a joint decision on the adoption of a group resolution plan cannot be reached within the four month period; and

(b) the Bank agrees with the group-level resolution authority's proposal for adopting a group resolution plan.

(2) The Bank must either—

(a) reach a decision jointly with other resolution authorities to adopt a group resolution plan for part of the relevant group; or

(b) notify the group-level resolution authority that it does not wish to adopt a group resolution plan for part of the relevant group.

(3) If the Bank gives notice under paragraph (2)(b), it must draw up and adopt a resolution plan for each group entity for which it is the resolution authority in accordance with article 48 (as if it disagreed with the proposal for adopting a group resolution plan).

Resolution plan for group entity

50. Chapter 1, except article 36, and Schedule 1 apply for the purpose of drawing up and adopting a resolution plan for a group entity, but have effect for that purpose as if each reference to a relevant institution were a reference to a group entity.

References to EBA

51.—(1) Where, before the end of the four month period, another resolution authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the Bank to adopt a resolution plan for a group entity, the Bank must—

(a) defer its decision for one month beginning with the date on which the four month period ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) The Bank may, within the four month period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal—

(a) by the group-level resolution authority for adopting a group resolution plan; or

(b) by another resolution authority for adopting a resolution plan for a group entity.

(3) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

52. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the adoption of a group resolution plan.

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—

(a) review a resolution plan where any material change has been made to the legal or organisational structure of the relevant 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 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 Article 111 of the capital requirements directive, in accordance with Chapter 1; or

(b) in the case of a group entity within the meaning given in Chapter 3, in accordance with Chapter 1 as applied by article 50.

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

Article	*Modification*
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".

Article	*Modification*
	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, including that Chapter as applied by article 50; 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).

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—

Article	*Modification*
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".

Article	*Modification*
	In paragraph (4) for "drawn up" read "reviewed". In paragraphs (5) and (7) for "drawing up a" read "reviewing the".
Article 41	In paragraph (1) for "drawing up and adopting a" read "reviewing the". In paragraph (1)(b) for "drawn up" read "reviewed". In paragraph (3)(a) and (b) for "drawing up a" read "reviewing the".
Articles 42 to 45	Each 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).

Review of group resolution plan drawn up by another resolution authority

55.—(1) This article applies where, in relation to a relevant group—

(a) the Bank is not the group-level resolution authority; and

(b) the group-level resolution authority is responsible jointly with the Bank for reviewing a group resolution plan.

(2) The Bank must endeavour to reach a joint decision on the review of the plan and the adoption of the up-dated plan.

(3) For that purpose Chapter 3 has effect with the modifications specified in the table—

Article	*Modification*
Article 47	In paragraph (1) for "adoption" read "review". In paragraph (2) for "draw up the plan" read "review the group resolution plan".
Articles 48, 49, 51 and 52	Each reference to a group resolution plan is a reference to the up-dated plan.

(4) In this article "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).

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(**37**);

"relevant person" has the meaning given in subsection (2) of section 137K of FSMA(**38**) (rules about resolution packs: duty to consult); and

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

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(**39**) 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 or in another EEA State; or

(c) the EEA parent undertaking.

(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.

(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.

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

(**38**) 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.

(**39**) 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 take resolution action(**40**) or insolvency proceedings in respect of the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system of any EEA State or the continuity of the institution's critical functions.

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 Section C of the Annex to the recovery and resolution directive (matters that the resolution authority is to consider when assessing the resolvability of an institution or group);

(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(**41**); 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; and

(ii) so far as the plan is relevant to a significant branch which an institution within the relevant group has in another EEA State, the resolution authority established in that State.

(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 take resolution action or insolvency proceedings in respect of the institution while

(**40**) For the meaning of "resolution action" see the recovery and resolution directive, Article 2.1, point (40).
(**41**) 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).

avoiding to the maximum extent possible any significant adverse effect on the financial system of any EEA State or the continuity of the institution's critical functions.

(5) The Bank must notify EBA without delay if the institution is not deemed to be resolvable.

CHAPTER 2

Assessment of resolvability of groups

Application and interpretation of Chapter 2

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

(a) alone or jointly with other resolution authorities, 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; or

(b) endeavours to adopt a group resolution plan in accordance with Chapter 3 of Part 5 or reach a joint decision on the review of a plan adopted in accordance with that Chapter.

(2) In this Chapter "assessment of group resolvability" means an assessment of the extent to which it would be feasible and credible to take resolution action or insolvency proceedings in respect of group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system of any EEA State or the continuity of the critical functions of group entities.

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.

(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 Section C of the Annex to the recovery and resolution directive;

(b) have regard to the circumstances under which group 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;

(ii) each relevant competent authority; and

(iii) so far as the plan is relevant to a significant branch which an institution within the relevant group has in another EEA State, the resolution authority established in that State.

(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 is deemed to be resolvable if the Bank concludes that it would be feasible and credible to take resolution action or insolvency proceedings in respect of group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system of any EEA State or the continuity of the critical functions of group entities.

(6) The Bank must notify EBA without delay if the relevant group is not deemed to be resolvable.

(7) Where the Bank draws up or reviews a group resolution plan jointly with other resolution authorities, it must make the assessment of group resolvability within the college—

(a) jointly with those authorities; and

(b) after allowing the other members of the college time to consider the matters requiring assessment.

(8) Where the Bank and another resolution authority ("authority A") are unable to agree a joint assessment of group resolvability, the Bank must—

(a) conclude the assessment, which it may do either alone or jointly with any resolution authority with which it is able to agree a joint assessment; and

(b) ensure that—

(i) the assessment takes account of the views and reservations of authority A; and

(ii) every group entity for which authority A is the resolution authority is excluded from the scope of the assessment.

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

63.—(1) This article applies in relation to a relevant group in respect of which neither the PRA nor the FCA is the consolidating supervisor.

(2) For the purpose of reaching a joint decision on the adoption of a group resolution plan or reviewing a group resolution plan the Bank must make an assessment of group resolvability within the college jointly with the group-level resolution authority(**42**) and other resolution authorities for group entities.

(3) Where the Bank and the group-level resolution authority are unable to agree a joint assessment, the Bank must—

(a) conclude an assessment of resolvability (within the meaning given in Chapter 1) for every group entity for which the Bank is the resolution authority as if the entity were an institution for which the Bank was required to draw up or review a resolution plan under Chapter 1 or 4 of Part 5; and

(b) for that purpose have regard to the views and reservations of the group-level resolution authority.

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—

(**42**) For the meaning of "group-level resolution authority" see the recovery and resolution directive, Article 2.1, point (44).

"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(**43**) (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; and

(c) are required to be submitted by the institution within four months beginning with the date on which it receives the notice ("the four month period").

Notice of determination

65.—(1) The Bank must give notice of a determination to—

(a) the institution concerned;

(b) the appropriate regulator; and

(c) the resolution authority established in any other EEA State in which the institution has a significant branch.

(2) The notice must—

(a) be in writing;

(b) set out the impediments; and

(c) give reasons for the determination.

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 four month 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.

(**43**) Section 3A was inserted by S.I. 2014/3329.

(5) 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 and other EEA States;

(ii) the EEA market for financial services;

(iii) the financial stability of any EEA State or of the EEA as a whole.

(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.

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(**44**)).

(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.

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 EEA 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 either—

(i) a financial holding company or mixed financial holding company set up in another EEA State; or

(ii) a qualifying parent undertaking;

(**44**) This definition was inserted by S.I. 2010/22.

"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 a parent financial holding company in an EEA State or an EEA 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(**45**) (meaning of "qualifying parent undertaking"); and

"remedial measures" means measures to address or remove the impediments.

(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.

Report on substantive impediments to the resolvability of group entities

69.—(1) The Bank, in co-operation with EBA and the appropriate regulator and after consulting the relevant competent authorities, 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.

(2) The Bank must submit its report to—

(a) the EEA parent undertaking;

(b) EBA;

(c) the appropriate regulator;

(d) each relevant competent authority;

(e) the resolution authority for any group entity set up in another EEA State; and

(f) the resolution authority established in any EEA State in which an institution within the relevant group has a significant branch.

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

Suspension of requirement to draw up or review group resolution plan

70.—(1) Where every group entity is set up in the United Kingdom, 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).

(2) Where the plan is being drawn up or reviewed by the Bank jointly with other resolution authorities, the submission of the Bank's report under article 69 has the effect of suspending the Bank's duty to endeavour to reach a joint decision on the adoption or review of the plan.

(3) That duty is revived when a joint decision is reached on the determination of remedial measures.

Determining remedial measures

71.—(1) The EEA parent undertaking may, within four months 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 each of the authorities to which it submitted its report.

(3) Where every group entity is set up in the United Kingdom, 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.

(4) Where the plan is being drawn up or reviewed by the Bank jointly with other resolution authorities, it must consider the assessment of group resolvability within the college and endeavour, jointly with the other resolution authorities and after consulting the supervisory college(**46**) established for the relevant group, to—

(a) confirm the impediments with or without modification;

(b) assess any alternative proposal; and

(c) determine remedial measures—

(i) where the resolution authorities conclude within the college 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 joint decision to specify the measures which are to be taken.

(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 and other EEA States;

(ii) the EEA market for financial services;

(**46**) For the meaning of "supervisory college" see the recovery and resolution directive, Article 2.1, point (52).

(iii) the financial stability of any EEA State or of the EEA as a whole.

(7) Paragraphs (8) and (9) apply where remedial measures determined under paragraph (3) or (4) 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.

Joint decision on impediments to group resolvability and remedial measures

72.—(1) The Bank must endeavour to reach a joint decision on the matters referred to in article 71(4) within four months beginning with the date on which—

(a) the EEA parent undertaking submits observations or an alternative proposal under article 71(1); or

(b) if the EEA parent undertaking does not submit observations or an alternative proposal within the period specified in that article, the date on which it ceases to be entitled to do so.

(2) Where the Bank and another resolution authority ("authority A") are unable to reach a joint decision on a relevant matter within the period referred to in paragraph (1) ("the period for joint decision"), the Bank must—

(a) decide the matter, either alone or jointly with any resolution authority with which it is able to reach a joint decision; and

(b) ensure that—

(i) the decision takes account of the views and reservations of authority A; and

(ii) every group entity for which authority A is the resolution authority is excluded from the scope of the decision and of the plan.

(3) The Bank must give the EEA parent undertaking written notice of a decision under this article, including a reasoned account of the decision.

References to EBA

73.—(1) Where, before the end of the period for joint decision, another resolution authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to prospective remedial measures which consist of, or include, measures for structural change, the Bank must—

(a) defer a decision on the matter referred for one month beginning with the date on which the period for joint decision ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) For the purposes of a reference to EBA of a matter to which this article refers the period for joint decision is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

74. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the matters referred to in article 71(4).

CHAPTER 5

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

Application and interpretation of Chapter 5

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

(a) neither the PRA nor the FCA is the consolidating supervisor; and

(b) the Bank, having made an assessment of group resolvability in accordance with Chapter 2 jointly with the group-level resolution authority and other resolution authorities for group entities, has identified substantive impediments to the resolvability of a group entity ("the impediments").

(2) In this Chapter—

"group entity" and "measures for structural change" have the same meaning for the relevant group as they have for a relevant group in Chapter 4;

"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;

"remedial measures" means measures to address or remove the impediments; and

"report on impediments and remedial measures" means a report prepared by the group-level resolution authority 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.

Suspension of requirement to draw up or review group resolution plan

76.—(1) The receipt by the Bank of a report on impediments and remedial measures has the effect of suspending the Bank's duty to endeavour to reach a decision, jointly with other resolution authorities, on the adoption or review of the plan.

(2) That duty is revived when a joint decision is reached on the determination of remedial measures.

Determining remedial measures

77.—(1) This article applies where the Bank has received from the group-level resolution authority—

(a) any observations submitted by the EEA parent undertaking on the report on impediments and remedial measures; or

(b) a proposal by that undertaking to take alternative remedial measures ("alternative proposal").

(2) The Bank must endeavour within the college, jointly with the group-level resolution authority and other resolution authorities for group entities, to—

(a) confirm the impediments with or without modification;

(b) assess any alternative proposal; and

(c) determine remedial measures—

(i) where the resolution authorities conclude within the college 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 joint decision to specify the measures which are to be taken.

(3) In considering any matter referred to in paragraph (2) the Bank must take account of—

(a) the threat to financial stability posed by the impediments; and

(b) the effect of remedial measures determined by joint decision on—

(i) the business and financial stability of each group entity and its ability to contribute to the economy of the United Kingdom and other EEA States;

(ii) the EEA market for financial services;

(iii) the financial stability of any EEA State or of the EEA as a whole.

(4) Paragraphs (5) and (6) apply where remedial measures determined under paragraph (2) are to be implemented by a group entity set up in the United Kingdom.

(5) The Bank must exercise pre-resolution powers with the object of requiring the entity to take the remedial measures.

(6) 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.

Joint decision on impediments to group resolvability and remedial measures

78. The Bank must endeavour to reach a joint decision on the matters referred to in article 77(2) within four months beginning with the date on which—

(a) the EEA parent undertaking submits observations on the report on impediments and remedial measures or an alternative proposal; or

(b) if the EEA parent undertaking does not submit observations or an alternative proposal within four months beginning with the date on which it receives the report, the date on which it ceases to be entitled to do so.

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

79.—(1) This article applies where—

(a) a joint decision on the matters referred to in article 77(2) cannot be reached within the period referred to in article 78 ("the period for joint decision"); and

(b) the Bank disagrees with the group-level resolution authority about any of those matters.

(2) The Bank must exercise pre-resolution powers with the object of requiring any entity for which it is the resolution authority to take specified measures ("the measures") to address or remove the impediments so far as they concern that entity.

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

(a) demonstrate how the measures will adequately address or effectively remove the impediments in a manner proportionate to the burden or restriction imposed by the direction; and

(b) require the entity to—

(i) prepare a plan showing how it will comply with the measures; and

(ii) submit that plan within one month beginning on the date of the direction.

(4) The Bank must consult the appropriate regulator and, where appropriate, the Financial Policy Committee before determining the measures.

(5) For the purpose of determining the measures 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 the entity and its ability to contribute to the economy of the United Kingdom and other EEA States;

(ii) the EEA market for financial services;

(iii) the financial stability of any EEA State or of the EEA as a whole.

(6) The Bank must give the entity written notice of the measures, including a reasoned account of its decision to require the entity to take the measures.

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

80.—(1) This article applies where—

(a) a joint decision on the matters referred to in article 77(2) ("relevant matters") cannot be reached within the period for joint decision; and

(b) the Bank agrees with the group-level resolution authority about those matters.

(2) The Bank must either—

(a) jointly with other resolution authorities decide relevant matters for part of the relevant group; or

(b) notify the group-level resolution authority that it does not wish to reach a joint decision on relevant matters for part of the relevant group.

(3) If the Bank gives notice under paragraph (2)(b), it must determine measures to address or remove the impediments so far as they concern any group entity for which it is the resolution authority in accordance with article 79 (as if it disagreed with the group-level resolution authority about relevant matters).

References to EBA

81.—(1) Where, before the end of the period for joint decision, another resolution authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to

prospective remedial measures which consist of, or include, measures for structural change in respect of a group entity for which the Bank is the resolution authority, the Bank must—

(a) defer its decision on the matter referred for one month beginning with the date on which the period for joint decision ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) The Bank may, within the period for joint decision, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to remedial measures which—

(a) are proposed by the group-level resolution authority or any other resolution authority for a group entity; and

(b) consist of, or include, measures for structural change.

(3) For the purposes of a reference to EBA of a matter to which this article refers the period for joint decision is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

82. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the matters referred to in article 77(2).

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 EEA parent undertaking an application for authorisation of a group financial support agreement ("the application").

(2) In this Chapter—

"conditions for early intervention" means the conditions referred to in Article 27.1 of the recovery and resolution directive (early intervention measures) for which a competent authority is to have at its disposal the measures specified in sub-paragraphs (a) to (h) of that Article;

"conditions for financial support" means the conditions laid down in Chapter 3 of Title 2 of the recovery and resolution directive (intra-group 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 other than the EEA State 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 parent institution in an EEA State, an EEA parent institution, a financial holding company, a mixed financial holding company or a mixed activity holding company.

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 authorities.

(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 any EEA State in which a group entity conducts business.

(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.

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 each 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.

Joint decision with other competent authorities

86.—(1) The appropriate regulator must endeavour to reach a joint decision on the outcome of the review within four months beginning with the date on which it receives the application ("the four month period").

(2) Where a joint decision cannot be reached within the four month period, the appropriate regulator must decide the outcome of the review having regard to the views and reservations of the relevant competent authorities.

(3) The appropriate regulator must give the EEA parent undertaking and each relevant competent authority written notice of a decision on the outcome of the review, including a reasoned account of the decision.

References to EBA

87.—(1) Where, before the end of the four month period, a relevant competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to the review of the group financial support agreement, the appropriate regulator must—

(a) defer a decision on the outcome of the review for one month beginning with the date on which the four month period ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

88. The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the outcome of the review.

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 and to the resolution authority for each group entity which proposes to enter into the agreement and is set up in another EEA State.

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 EEA 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.

CHAPTER 2

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

Application and interpretation of Chapter 2

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

(a) neither the PRA nor the FCA is the consolidating supervisor; and

(b) the consolidating supervisor receives an application for authorisation of a group financial support agreement ("the application") from the EEA parent undertaking.

(2) In this Chapter—

"conditions for financial support" and "conditions for early intervention" have the same meaning as in Chapter 1; and

"financial support", "group entity", "group financial support agreement", "group institution" and "relevant competent authority" have the same meaning for the relevant group as they have for a relevant group in Chapter 1.

Review of group financial support agreement and decision on authorisation

92.—(1) The appropriate regulator must review the group financial support agreement jointly with other relevant competent authorities and the consolidating supervisor.

(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 any EEA State in which a group entity conducts business.

Joint decision with other competent authorities

93. The appropriate regulator must endeavour to reach a joint decision on the outcome of the review within four months beginning with the date on which the consolidating supervisor received the application ("the four month period").

References to EBA

94. The appropriate regulator may, within the four month period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to the review of the group financial support agreement.

Requesting the assistance of EBA

95. The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the outcome of the review.

Amendment of authorised agreement

96.—(1) This article applies where—

(a) the parties to an agreement authorised by the consolidating supervisor wish to amend the agreement; and

(b) the amendment has to be authorised before it is made.

(2) If the consolidating supervisor notifies the appropriate regulator that the EEA parent undertaking has submitted an application for authorisation of the amendment ("the amendment application"), the appropriate regulator must treat the amendment application as if it were an application submitted to the consolidating supervisor for authorisation of a group financial support agreement.

(3) Articles 92 to 95 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) in article 93 the reference to the application were a reference to the amendment application.

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, FCA or other competent authority, and includes any amendment authorised by the competent authority;

"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(**47**);

"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

(**47**) 1986 c. 53.

"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.

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.

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—

"college members" means the members of the college and of the supervisory college(**48**) established for the group;

"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, FCA or other competent authority ("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;

"relevant notice" means notice given by a group entity in accordance with Article 25 of the recovery and resolution directive (right of opposition of competent authorities) of an intention to provide financial support under the agreement; and

"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.

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.

(**48**) For the meaning of "supervisory college" see the recovery and resolution directive, Article 2.1, point (52).

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

(a) to the notifying group entity;

(b) to EBA;

(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-authorised person, means the PRA; and

(b) where the relevant notice is received from any other UK group entity, means the FCA.

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.

(2) Where the appropriate regulator receives notice of a decision by a relevant competent authority to agree, prohibit or restrict the provision of financial support to which a relevant notice refers, the appropriate regulator must inform the other college members of that decision without delay.

(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.

(5) Where the appropriate regulator receives notice of a notifying group entity's decision to provide financial support pursuant to the relevant notice, the appropriate regulator must inform the other college members of that decision without delay.

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

104.—(1) This article applies where—

(a) the PRA or FCA ("the regulator") is a relevant competent authority;

(b) a competent authority other than the regulator prohibits or restricts the provision of financial support to which a relevant notice refers; and

(c) the regulator is the competent authority for the intended recipient.

(2) Where the group recovery plan refers to the provision of group financial support, the regulator may ask the consolidating supervisor for a re-assessment of the plan.

(3) Where the intended recipient has drawn up a recovery plan on an individual basis, the regulator must consider whether to require that plan to be reviewed under article 33.

Requesting the assistance of EBA

105.—(1) This article applies where the PRA or FCA ("the regulator")—

(a) is the consolidating supervisor or the competent authority for the intended recipient; and

(b) has objections to a decision by the competent authority for the notifying group entity to prohibit or restrict the provision of financial support to which a relevant notice refers.

(2) The regulator may, within two days beginning with the date on which it receives notice of that decision, ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to resolve their disagreement about that decision.

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 measure which may be taken by the PRA or FCA in exercise of its powers under FSMA with the object of addressing the conditions referred to in Article 27.1 of the recovery and resolution directive for which a competent authority is to have at its disposal the measures set out in sub-paragraphs (a) to (h) of that Article ("conditions for early intervention"); and

"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 Article 111 of the capital requirements directive(**49**).

Notice that institution meets the conditions for early intervention

108. The appropriate regulator must notify the Bank without delay if it determines that a relevant institution meets the conditions for early intervention.

(**49**) OJ No. L 176, 27.6.2013, p. 338. For corrigenda see OJ No. L 208, 2.8.2013, p. 73.

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) in relation to a UK group entity, has the same meaning as in Chapter 1;

(b) in relation to a non-UK group entity, means a measure of a kind specified in sub-paragraphs (a) to (h) of Article 27.1 of the recovery and resolution directive;

"non-UK group entity" means—

(a) the EEA parent undertaking, if it is set up in another EEA State;

(b) a group subsidiary which is an institution set up in another EEA State; and

"UK group entity" means—

(a) the EEA parent undertaking, if it is set up in the United Kingdom;

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

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 in respect of a UK group entity.

(2) The appropriate regulator must without delay give notice of its proposal to the Bank, the relevant competent authorities and the EBA.

(3) The appropriate regulator may not take a measure for early intervention in respect of a UK group entity without—

(a) allowing three days, beginning with the day on which it gives notice under paragraph (2), for consultation with the relevant competent authorities about the proposal; and

(b) taking account of the potential impact of the measure on group entities set up in another EEA State and the stability of the financial system of that State.

(4) The appropriate regulator must give the recipients of a notice given under paragraph (2) notice of a decision to take a measure for early intervention 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 EEA parent undertaking, if it is not the entity concerned, written notice of its decision to take a measure for early intervention, including a reasoned account of the decision.

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

112.—(1) This article applies where the appropriate regulator receives notice of a proposal by a relevant competent authority to take a measure for early intervention in respect of a non-UK group entity.

(2) If the appropriate regulator decides to assess the impact that the notified measure would have on any group entity or on the relevant group as a whole, it must make the assessment and send it to the relevant competent authority within three days beginning with the day on which it receives the notice referred to in paragraph (1).

Joint decisions about early intervention

113.—(1) Where two or more competent authorities decide to take measures for early intervention, the appropriate regulator must endeavour to reach a decision jointly with the relevant competent authorities on whether to co-ordinate the implementation of such measures.

(2) The appropriate regulator must endeavour to reach a joint decision on that matter—

(a) where it gives notice of a proposal to take a measure for early intervention in respect of a UK group entity ("UK notice") before it receives notice of a proposal by a relevant competent authority to take a measure for early intervention in respect of a non-UK group entity ("non-UK notice"), within five days beginning with the date on which it receives the first non-UK notice;

(b) where it gives a UK notice after it receives the first non-UK notice and before it receives a second non-UK notice, within five days beginning with the date on which it gives the UK notice;

(c) otherwise, within five days beginning with the date on which it receives a second non-UK notice.

(3) The appropriate regulator must give the EEA parent undertaking written notice of a joint decision under this article, including a reasoned account of the decision.

References to EBA

114.—(1) Where, before the end of the period referred to in article 111(3)(a) ("the consultation period"), a relevant competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

(a) defer its decision on the proposal for three days beginning with the date on which the consultation period ends; and

(b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the consultation period ends.

(2) The appropriate regulator may, within the period referred to in article 112(2), refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by a relevant competent authority to take a referable measure in respect of a non-UK group entity.

(3) Paragraphs (4) and (5) apply where no joint decision has been reached under article 113(1) within the period referred to in article 113(2) ("the 5 day period").

(4) Where, before the end of the 5 day period, a relevant competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

(a) defer its decision on the proposal for three days beginning with the date on which the 5 day period ends; and

(b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the 5 day period ends.

(5) The appropriate regulator may, within the 5 day period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by a relevant competent authority to take a referable measure in respect of a non-UK group entity.

(6) For the purposes of a reference to EBA of a matter to which paragraph (4) or (5) refers the 5 day period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

(7) In this article "referable measure" means a measure for early intervention which is also—

(a) a measure of the kind specified in sub-paragraph (a) of Article 27.1 of the recovery and resolution directive relating to information included in a recovery plan or group recovery plan by virtue of points (4), (10), (11) and (19) of Section A of the Annex to that directive (information to be included in recovery plans); or

(b) a measure of the kind specified in sub-paragraph (e) or (g) of Article 27.1 of that directive.

Requesting the assistance of EBA

115. The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the matter referred to in article 113(1).

CHAPTER 3

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

Application and interpretation of Chapter 3

116.—(1) This Chapter applies where neither the PRA nor the FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter "measure for early intervention" and "UK group entity" have the same meaning for the relevant group as they have for a relevant group in Chapter 2.

Procedure for early intervention in respect of a UK group entity

117.—(1) This article applies where the appropriate regulator proposes to take a measure for early intervention in respect of a UK group entity.

(2) The appropriate regulator must without delay give notice of its proposal to the Bank, other relevant competent authorities, the consolidating supervisor and the EBA.

(3) The appropriate regulator must not take a measure for early intervention in respect of a UK group entity without—

(a) allowing three days, beginning with the day on which it gives notice under paragraph (2), for consultation with the consolidating supervisor about the proposal; and

(b) taking account of—

(i) any assessment by the consolidating supervisor of the impact that the measure would have on any group entity or on the relevant group as a whole; and

(ii) the potential impact of the measure on group entities set up in another EEA State and the stability of the financial system of that State.

(4) The appropriate regulator must give the recipients of a notice given under paragraph (2) notice of a decision to take a measure for early intervention in respect of a UK group entity.

(5) The appropriate regulator may not take a measure for early intervention in respect of a UK group entity 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 EEA parent undertaking, if it is not the entity concerned, written notice of its decision to take a measure for early intervention, including a reasoned account of the decision.

Joint decisions about early intervention

118.—(1) Where the appropriate regulator and one or more other competent authorities decide to take measures for early intervention, the appropriate regulator must endeavour to reach a decision jointly with those authorities on whether to co-ordinate the implementation of such measures.

(2) The appropriate regulator must endeavour to reach a joint decision on that matter within five days beginning with the date on which it receives notice from the consolidating supervisor that one or more other competent authorities have decided to take measures for early intervention.

References to EBA

119.—(1) Where, before the end of the period referred to in article 117(3)(a) ("the consultation period"), the consolidating supervisor has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

(a) defer its decision on the proposal for three days beginning with the date on which the consultation period ends; and

(b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the consultation period ends.

(2) Paragraphs (3) and (4) apply where no joint decision has been reached under article 118(1) within the period referred to in article 118(2) ("the 5 day period").

(3) Where, before the end of the 5 day period, another competent authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by the appropriate regulator to take a referable measure in respect of a UK group entity, the appropriate regulator must—

(a) defer its decision on the proposal for three days beginning with the date on which the 5 day period ends; and

(b) ensure that the decision conforms with any decision taken by EBA under Article 19.3 of the EBA Regulation within three days beginning with the date on which the 5 day period ends.

(4) The appropriate regulator may, within the 5 day period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to a proposal by another competent authority to take a referable measure in respect of a group entity.

(5) For the purposes of a reference to EBA of a matter to which paragraph (3) or (4) refers the 5 day period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

(6) In this article "referable measure" has the same meaning as in article 114(7).

Requesting the assistance of EBA

120. The appropriate regulator may ask EBA to assist the competent authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the matter referred to in article 118(1).

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 "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 Article 111 of the capital requirements directive.

(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(**50**).

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(**51**) (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 expressed as a percentage of the institution's total liabilities and own funds; 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.

(2) The Bank must inform EBA of the minimum requirement for own funds and eligible liabilities determined for each relevant institution.

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

(**50**) For the meaning of "covered bond" see the recovery and resolution directive, Article 2.1, point (96).
(**51**) Section 3A was inserted by S.I. 2014/3329.

arrangement or netting arrangement (within the meaning given by section 48(1)(b), (c) and (d) of the Banking Act 2009).

(4) A liability must be excluded from the amount of the relevant institution's own funds or 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 criteria set out in Article 45.6 of the recovery and resolution directive (application of the minimum requirement).

(7) The Bank must make that assessment in consultation with the appropriate regulator.

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—

"four month period" means four months beginning with the date on which the Bank gives notice of its provisional determination of the minimum consolidated requirement under article 126(3);

"group entity" includes an undertaking which is—

(a) a parent undertaking of the EEA 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 EEA 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 or 146 to maintain a minimum requirement for own funds and eligible liabilities; or

(ii) required by a resolution authority other than the Bank to maintain a minimum requirement for own funds and eligible liabilities;

(d) where the group resolution plan does not provide for the separate resolution(**52**) of a subsidiary set up in a third country, that subsidiary if it would be a relevant institution if it were set up in an EEA State;

"minimum consolidated requirement" means the requirement for a minimum level of own funds and eligible liabilities of the group institutions expressed as a percentage of the total liabilities and own funds of those institutions;

"minimum requirement", in relation to a group institution, means a minimum requirement for own funds and eligible liabilities expressed as a percentage of the institution's total liabilities and own funds; 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) in relation to an institution set up in any other EEA State, has the meaning given by point (98) of Article 2.1 of the recovery and resolution directive.

(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).

Determination of minimum consolidated requirement

126.—(1) This article applies for the purpose of determining the minimum consolidated requirement.

(2) Where every group entity is set up in the United Kingdom, the Bank must determine the minimum consolidated requirement, and is solely responsible for the determination.

(3) Where a group entity is set up in another EEA State, the Bank must—

(a) make a provisional determination of the minimum consolidated requirement;

(b) give notice of the provisional determination to the resolution authority established in that EEA State; and

(c) endeavour within the college to determine the minimum consolidated requirement jointly with that resolution authority.

(**52**) For the meaning of "resolution" see the recovery and resolution directive, Article 2.1, point (1).

(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) A liability must be excluded from the amount of the group institution's own funds or 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 criteria set out in Article 45.6 of the recovery and resolution directive; 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.

Joint determination

127.—(1) Where the Bank endeavours to determine the minimum consolidated requirement jointly with one or more other resolution authorities under article 126(3)(c), it must endeavour to make the determination within the four month period.

(2) Where the Bank and another resolution authority ("authority A") are unable within the four month period to make a joint determination of the minimum consolidated requirement, the Bank—

(a) must make the determination, either alone or jointly with any resolution authority with which it is able to make a joint determination; and

(b) in relation to a group institution for which authority A is the resolution authority, must ensure that the determination takes account of authority A's assessment of that institution against the criteria for determining the minimum requirement for a group institution.

(3) The Bank must give the EEA parent undertaking written notice of the determination made under this article, including a reasoned account of the determination.

References to EBA: determination of minimum consolidated requirement

128.—(1) Where, before the end of the four month period, another resolution authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to the prospective determination of the minimum consolidated requirement, the Bank must—

(a) defer the determination for one month beginning with the date on which the four month period ends; and

(b) ensure that the requirement determined is not less than the requirement specified in any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Review of minimum consolidated requirement

129.—(1) The Bank must review the minimum consolidated requirement when, in accordance with Chapter 4 of Part 5, it reviews the group resolution plan.

(2) Articles 126 to 128 apply 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.

CHAPTER 3

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

Application and interpretation of Chapter 3

130.—(1) This Chapter applies where neither the PRA nor the FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter "group entity" and "minimum consolidated requirement" have the same meaning for the relevant group as they have for a relevant group in Chapter 2.

Joint determination of minimum consolidated requirement

131.—(1) The Bank must endeavour within the college to determine the minimum consolidated requirement jointly with the group-level resolution authority(**53**) and other resolution authorities for group entities.

(2) The Bank must endeavour to make that determination within four months beginning with the date on which the group-level resolution authority gives the Bank notice of its provisional determination of the minimum consolidated requirement.

(3) The Bank may, within that period, refer any matter relating to the prospective determination of the minimum consolidated requirement to EBA in accordance with Article 19 of the EBA Regulation.

Review of minimum consolidated requirement

132.—(1) This article applies where the group-level resolution authority reviews the group resolution plan.

(**53**) For the meaning of "group-level resolution authority" see the recovery and resolution directive, Article 2.1, point (44).

(2) Article 131 applies for the purpose of reviewing the minimum consolidated requirement, but has effect for that purpose as if the reference to determining (and each reference to the determination of) the requirement were a reference to re-determining (or the re-determination of) the requirement on review.

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—

"four month period", "group entity" and "minimum requirement" have the same meaning for the relevant group as they have for a relevant group in Chapter 2;

"group institution" means a UK institution or a non-UK institution;

"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;

"non-UK institution" means—

(a) the EEA parent undertaking, if it is a relevant institution set up in another EEA State;

(b) a group subsidiary which is a relevant institution set up in another EEA State;

(c) a group entity, other than an institution, which is required by a resolution authority other than the Bank to maintain a minimum requirement for own funds and eligible liabilities; and

"UK institution" means—

(a) the EEA parent undertaking, if it is a relevant institution authorised by the PRA or FCA;

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

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 UK 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.

(2) Where the relevant group includes a non-UK institution, the Bank must—

(a) make a provisional determination of the minimum requirement for each UK institution;

(b) give notice of that provisional determination to the resolution authority for the non-UK institution;

(c) endeavour within the college to determine jointly with that resolution authority the minimum requirements for each UK institution and the non-UK institution.

(3) The Bank must inform EBA of the minimum requirement determined for each UK institution.

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) A liability must be excluded from the amount of the institution's own funds or 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 Article 45.6 of the recovery and resolution directive; and

(b) must take account of the minimum consolidated requirement.

(7) Where the determination is for a UK institution, the Bank must make the assessment under paragraph (6)(a) in consultation with—

(a) the PRA, if the institution is a PRA-authorised person;

(b) the FCA, if the institution is any other UK authorised person.

Joint determination of minimum requirements

136.—(1) Where the Bank endeavours to determine minimum requirements for group institutions jointly with one or more other resolution authorities under article 134(2)(c), it must endeavour to make the determination within the four month period.

(2) Where the Bank and other resolution authorities are unable within the four month period to make a joint determination of minimum requirements for group institutions, the Bank must determine the minimum requirements for UK institutions.

(3) The Bank must give the EEA parent undertaking and each UK institution written notice of the determination of the institution's minimum requirement, including a reasoned account of the determination.

References to EBA: determination of minimum requirement

137.—(1) The Bank may, within the four month period, refer any matter relating to the prospective determination of a minimum requirement for a non-UK institution to EBA in accordance with Article 19 of the EBA Regulation.

(2) Paragraph (1) does not apply where a prospective determination is within one percentage point of the minimum consolidated requirement.

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 to 137 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.

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 UK institution, set up in the United Kingdom should be required to maintain a minimum requirement for own funds and eligible liabilities expressed as a percentage of the entity's total liabilities and own funds.

(2) Where the Bank makes a such decision, articles 134 to 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, except a reference to a non-UK institution, 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-authorised person and any other UK authorised person in the relevant group, means the PRA and the FCA;

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

(c) where there is no PRA-authorised person in the relevant group, means the FCA.

CHAPTER 5

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

Application and interpretation of Chapter 5

140.—(1) This Chapter applies where neither the PRA nor the FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

"four month period" means four months beginning with the date on which the group-level resolution authority gives the Bank notice of its provisional determination of the minimum consolidated requirement as referred to in article 131(2);

"group entity" and "minimum requirement" have the same meaning for the relevant group as they have for a relevant group in Chapter 2;

"group institution", "non-UK institution" and "UK institution" have the same meaning for the relevant group as they have for a relevant group in Chapter 4; and

"netting arrangement" has the same meaning as in Chapter 2.

Duties of the Bank in relation to minimum requirement

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

(a) to ensure that a UK 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.

(2) The Bank must—

(a) make a provisional determination of the minimum requirement for each UK institution;

(b) give notice of that provisional determination to the group-level resolution authority and other resolution authorities for non-UK institutions;

(c) endeavour within the college to determine jointly with those authorities the minimum requirements for each UK institution and each non-UK institution.

(3) The Bank must inform EBA of the minimum requirement determined for each UK institution.

Determination of minimum requirement

142.—(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) A liability must be excluded from the amount of the institution's own funds or 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 Article 45.6 of the recovery and resolution directive; and

(b) must take account of the minimum consolidated requirement (within the meaning given in Chapter 2) which is determined for the relevant group.

(7) Where the determination is for a UK institution, the Bank must make the assessment under paragraph (6)(a) in consultation with—

(a) the PRA, if the institution is a PRA-authorised person;

(b) the FCA, if the institution is any other UK authorised person.

Joint determination of minimum requirements

143.—(1) Where the Bank endeavours to determine minimum requirements for group institutions jointly with one or more other resolution authorities under article 142(2)(c), it must endeavour to make the determination within the four month period.

(2) Where the Bank and other resolution authorities are unable within the four month period to make a joint determination of minimum requirements for group institutions, the Bank must determine the minimum requirements for UK institutions having regard to any views or reservations expressed by the group-level resolution authority during the four month period.

(3) The Bank must give each UK institution written notice of the determination of its minimum requirement, including a reasoned account of the determination.

References to EBA: determination of minimum requirement

144.—(1) Where, before the end of the four month period, the group-level resolution authority has referred any matter relating to the prospective determination of a minimum requirement for a UK institution to EBA in accordance with Article 19 of the EBA Regulation, the Bank must—

(a) defer the determination for one month beginning with the date on which the four month period ends; and

(b) ensure that the requirement determined is not less than the requirement specified in any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Review of minimum requirements

145.—(1) This article applies where the group-level resolution authority reviews the group resolution plan.

(2) Articles 141 to 144 apply for the purpose of reviewing the minimum requirements for group institutions, but have effect for that purpose as if the reference to determining (and each reference to the determination of) the requirements were a reference to re-determining (or the re-determination of) the requirements on review.

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

146.—(1) The Bank may decide, after consulting the regulator (within the meaning given by article 139(3)), that a group entity, other than an institution, set up in the United Kingdom should be required to maintain a minimum requirement for own funds and eligible liabilities expressed as a percentage of the entity's total liabilities and own funds.

(2) Where the Bank makes a such decision, articles 141 to 145 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, except a reference to a non-

UK institution, included a reference to the group entity for which the requirement is being (or has been) determined.

CHAPTER 6

Minimum requirement for own funds and eligible liabilities: other provisions

Waiver of application of Chapter 4 or 5

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

(2) The Bank may waive the application of Chapter 4 or 5 in relation to an EEA parent institution which is a UK institution where it—

(a) complies with the minimum consolidated requirement determined in accordance with Chapter 2 or 3; 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 or 5 in relation to a UK 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 Article 111 of the capital requirements directive(**54**);

(c) the highest level UK institution in the relevant group, if that is not the EEA parent institution, complies on a sub-consolidated basis with the minimum consolidated requirement determined in accordance with Chapter 2 or 3;

(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

(**54**) OJ No. L 176, 27.6.2013, p. 338. For corrigenda see OJ No. L 208, 2.8.2013, p. 73.

"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.

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 or 5 for an undertaking set up in the United Kingdom; or

(c) a minimum consolidated requirement is determined in accordance with Chapter 2 or 3 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(**55**) (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.

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) a measure referred to in Article 104.1 of the capital requirements directive (supervisory powers); or

(c) a transfer of funds or capital from a parent undertaking;

"appropriate authority" means the authority authorised under the law of another EEA State to make the determinations referred to in Article 59.3 of the recovery and resolution directive;

"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);

(**55**) 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.

(b) in relation to a banking group company, means Case 2 set out in subsection (4) of section 81AA of that Act(**56**) (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;

"non-UK group entity" means a group entity which is set up in another EEA State and has issued recognised capital instruments;

"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(**57**)) 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(**58**) (interpretation: other expressions);

"bank" has the meaning given by section 2 of the Banking Act 2009(**59**) (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(**60**) ("investment firm");

"banking group company" has the meaning given by section 81D of that Act(**61**); and

"group entity" includes an undertaking which is—

(a) a parent undertaking of the EEA parent undertaking; and

(b) a mixed activity holding company.

Determinations pursuant to Article 59.3 of the recovery and resolution directive: 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—

(**56**) Sections 6A and 81AA were inserted by S.I. 2014/3329.
(**57**) 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".
(**58**) These definitions were inserted by S.I. 2014/3329.
(**59**) 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.
(**60**) 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.
(**61**) 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.

(a) to the consolidating supervisor; and

(b) if neither the PRA nor the FCA is not the consolidating supervisor, to the appropriate authority in the EEA State in which the consolidating supervisor is established.

(2) Before the Bank makes a determination (where appropriate, jointly with the appropriate authority in the EEA State in which the consolidating supervisor is established) 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—

(a) to the consolidating supervisor;

(b) unless the PRA or the FCA is the consolidating supervisor, to the appropriate authority in the EEA State in which the consolidating supervisor is established;

(c) to the competent authority established in an EEA State in which a relevant non-UK group entity is set up; and

(d) unless the competent authority referred to in sub-paragraph (c) is the appropriate authority in the State in which it is established, to the appropriate authority in that State.

(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.

(4) Where the Bank is considering whether to make a determination that Case 3, 4 or 5 is satisfied in relation to a UK group entity, it must take account of the potential financial impact of the determination in any other EEA State in which that entity conducts business.

(5) In paragraph (2)(c) "relevant non-UK group entity" means a non-UK group entity whose recognised capital instruments are to be written down or converted by the Bank under section 6B of the Banking Act 2009(**62**) (mandatory write-down, conversion, etc of capital instruments) if the determination set out in the Case 3 notice is made.

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-authorised person and any other UK authorised person in the relevant group, means the PRA and the FCA;

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

(**62**) Section 6B was inserted by S.I. 2014/3329.

(c) where there is no PRA-authorised 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) If the notice is a Case 2, 4 or 5 notice, the Bank must decide whether to make the determination referred to in the notice.

(3) If the notice is a Case 3 notice and the PRA or FCA is the consolidating supervisor, the Bank must decide whether to make the determination referred to in the notice.

(4) If the notice is a Case 3 notice and neither the PRA nor the FCA is the consolidating supervisor—

(a) the Bank must endeavour to reach a decision jointly with the appropriate authority in the EEA State in which the consolidating supervisor is established whether to make the determination referred to in the notice; and

(b) if the Bank and that appropriate authority are unable to reach a joint decision on whether to make the determination, the Bank must not make the determination.

Joint determination under Article 59(3)(c) of the recovery and resolution directive in relation to a non-UK group entity

153.—(1) This article applies where—

(a) the PRA or FCA is the consolidating supervisor; and

(b) the Bank receives a relevant notice from the appropriate authority in another EEA State.

(2) "Relevant notice" is a notice stating—

(a) that the appropriate authority is considering whether to make a determination in relation to a non-UK group entity that—

(i) the entity is viable; and

(ii) the relevant group will not be viable unless the authority exercises power pursuant to Article 59 of the recovery and resolution directive to write down or convert the recognised capital instruments issued by the entity; and

(b) that in the authority'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 that determination.

(3) The Bank must endeavour to reach a decision jointly with the authority from which it has received the relevant notice whether that authority may make the determination referred to in the notice.

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(**63**); and

"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 Article 111 of the capital requirements directive; or

(b) in relation to a relevant group, a group entity set up in the United Kingdom.

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 EEA 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 action(**64**) 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 the amounts specified in Article 47.3(b) and (c) of the recovery and resolution directive (treatment of shareholders in bail-in or write down or conversion of capital instruments).

(6) The Bank must make the determination under paragraph (2) when it draws up the resolution plan or when the group resolution plan is drawn up within the college.

(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(**65**) 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.

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.

(**63**) This definition was inserted by S.I. 2014/3329.
(**64**) For the meaning of "resolution action" see the recovery and resolution directive, Article 2.1, point (40).
(**65**) 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.

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)(**66**) (pre-resolution valuation), a provisional valuation by the Bank under section 6E(3) or a valuation under section 48X(**67**) (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.

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—

(**66**) Section 6E was inserted by S.I. 2014/3329.
(**67**) Section 48X was inserted by S.I. 2014/3329.

(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 Article 111 of the capital requirements directive;

(b) the Bank has made a resolution instrument under section 12A of the Banking Act 2009(**68**) (bail-in option) in respect of the institution; and

(c) the management body or resolution administrator submits a business reorganisation plan to the Bank for assessment in accordance with Article 52 of the recovery and resolution directive (business reorganisation plan).

(2) In this Chapter—

"business reorganisation plan" means a plan which sets out measures to restore the long-term viability of the institution or of part of its business;

"management body" means the institution's management body (within the meaning given by point (7) of Article 3.1 of the capital requirements directive); and

"resolution administrator" means the individual or body corporate appointed by the Bank under section 62B of the Banking Act 2009(**69**) as the resolution administrator of the institution.

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—

(a) the plan must satisfy the requirements set out in paragraphs 4 and 5 of Article 52 of the recovery and resolution directive;

(b) the plan must be compatible with the restructuring plan that the institution is required to submit to the European Commission under the Union State aid framework(**70**); and

(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.

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.

(**68**) 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.
(**69**) Section 62B was inserted by S.I. 2014/3329.
(**70**) For the meaning of "Union State aid framework" see the recovery and resolution directive, Article 2.1, point (53).

(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 (within the meaning given by point (7) of Article 3.1 of the capital requirements directive) or resolution administrator submits a business reorganisation plan to the Bank for assessment in accordance with Article 52 of the recovery and resolution directive.

(2) In this Chapter "business reorganisation plan" and "resolution administrator" have the same meaning for the relevant entity as they have for an institution in Chapter 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—

Article	*Modification*
Article 159	Ignore this article.
Articles 160,161 and 162	Each reference to an institution is a reference to the relevant entity. Where the relevant entity is not a UK authorised person, each reference to the appropriate regulator— (a) if the consolidating supervisor is the PRA or FCA, is a reference to the consolidating supervisor; (b) if neither the PRA nor the FCA is the consolidating supervisor and there is a PRA-authorised person in the relevant group, is a reference to the PRA; and (c) if neither the PRA nor the FCA is the consolidating supervisor and there is a UK authorised person in the relevant group (but not a PRA-authorised person), is a reference to the FCA. Where neither the PRA nor the FCA is the consolidating supervisor and there is no UK authorised person in the

Article	*Modification*
	relevant group, the Bank is solely responsible for assessing and approving the business reorganisation plan.

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 Article 52 of the recovery and resolution directive.

(2) In this Chapter—

"business reorganisation plan" means a plan which sets out measures 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;

"four month period" means four months beginning with the date on which the Bank transmits a copy of the business reorganisation plan under article 166;

"group institution" means—

(a) the EEA 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;

"relevant bail-in power"—

(c) in relation to a UK group entity, means the power in section 12A(2) of the Banking Act 2009;

(d) in relation to a group entity set up in another EEA State, means power to apply the bail-in tool in respect of that entity for the purpose described in sub-paragraph (a) of Article 43.2 of the recovery and resolution directive (the bail-in tool: recapitalisation);

"the regulator"—

(a) where there is a PRA-authorised person and any other UK authorised person in the relevant group, means the PRA and the FCA;

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

(c) where there is no PRA-authorised 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

"UK group entity"—

(a) where the EEA parent undertaking is set up in the United Kingdom, means that undertaking; and

(b) where the EEA parent undertaking is set up in another EEA State, means a group subsidiary which is a UK authorised person or a qualifying parent undertaking within the meaning given by section 192B of FSMA(**71**).

Duty to transmit a copy of business reorganisation plan

166.—(1) The Bank must send a copy of the business reorganisation plan or, where paragraph (2) has effect in relation to any information, of the plan without that information, to—

(a) EBA;

(b) the resolution authority for any group entity set up in another EEA State; and

(c) the resolution authority established in any EEA State in which a group institution has a significant branch(**72**).

(2) This article does not require any information contained in the business reorganisation plan to be disclosed if its disclosure would be contrary to section 348 of FSMA(**73**) (restrictions on disclosure of confidential information by FCA, PRA etc).

Assessment of business reorganisation plan

167.—(1) Where every group entity is set up in the United Kingdom, the Bank must assess the business reorganisation plan jointly with the regulator.

(2) Where any group entity is set up in another EEA State, the Bank must assess the business reorganisation plan jointly with the resolution authority for that entity.

(3) Where a group institution has a significant branch in another EEA State, the assessment must be made, so far as information contained in the plan is relevant to the branch, in consultation with the resolution authority established in that State.

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 or the Bank and other resolution authorities with which the Bank has made a joint assessment of the plan are satisfied that the plan meets the criteria for assessment.

(3) The criteria for assessment are that—

(**71**) 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.
(**72**) For the meaning of "significant branch" see the recovery and resolution directive, Article 2.1, point (34).
(**73**) Section 348 was amended by the Financial Services Act 2010, 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.

(a) the plan must satisfy the requirements set out in paragraphs 4 and 5 of Article 52 of the recovery and resolution directive;

(b) the plan must be compatible with the restructuring plan that must be submitted to the European Commission with respect to the relevant group under the Union State aid framework; and

(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.

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

170.—(1) This article applies where the Bank assesses the business reorganisation plan jointly with one or more other resolution authorities.

(2) The Bank must endeavour to conclude the assessment within the four month period, and must for this purpose endeavour to reach a joint decision on relevant matters.

(3) Where the Bank and another resolution authority ("authority A") are unable to reach a joint decision on a relevant matter, the Bank—

(a) where the matter concerned is whether to require group entities to draw up and submit business reorganisation plans on an individual basis, must decide that matter for the group entities for which it is the resolution authority;

(b) must decide any other matter, which it may do either alone or jointly with any other resolution authority with which it is able to reach a joint decision; and

(c) must ensure that a decision under this paragraph takes account of the views and reservations of authority A.

(4) When the Bank concludes the assessment of the business reorganisation plan, whether alone or jointly with another resolution authority, it must exercise its powers under the Banking Act 2009, so far as necessary, for the purpose of implementing each decision on relevant matters, including a decision to direct a UK group entity to—

(a) submit a revision of the plan; or

(b) make specific changes to the plan.

(5) The Bank must give written notice of each decision under this article to the group entity which submitted the business reorganisation plan for assessment and the other resolution authorities.

Revision of plan

171. The Bank—

(a) must notify a UK group entity if the business reorganisation plan is found on assessment to contain an impediment; and

(b) may not require a UK group entity to revise the plan without giving it an opportunity to state its opinion on that requirement.

(2) If the Bank requires a UK 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.

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

173.—(1) Where, before the end of the four month period, another resolution authority has referred to EBA in accordance with Article 19 of the EBA Regulation any matter relating to the assessment of the business reorganisation plan, the Bank must—

(a) defer a decision on the matter referred for one month beginning with the date on which the four month period ends; and

(b) ensure that the decision conforms with any decision taken by EBA before the end of that month under Article 19.3 of the EBA Regulation.

(2) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

174. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on—

(a) the assessment of the business reorganisation plan;

(b) whether to require group entities to draw up and submit business reorganisation plans on an individual basis; or

(c) whether to direct a UK group entity to submit a revision of the business reorganisation plan or make specific changes to the plan.

CHAPTER 4

Assessment of business reorganisation plan drawn up for relevant group where neither the PRA nor the FCA is the consolidating supervisor

Application and interpretation of Chapter 4

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

(a) neither the PRA nor the FCA is the consolidating supervisor;

(b) a relevant bail-in power has been exercised in respect of two or more group entities; and

(c) the Bank receives a copy of a business reorganisation plan submitted to the group-level resolution authority(**74**) for assessment in accordance with Article 52 of the recovery and resolution directive.

(**74**) For the meaning of "group-level resolution authority" see the recovery and resolution directive, Article 2.1, point (44).

(2) In this Chapter—

"business reorganisation plan", "relevant bail-in power", "relevant matters" and "UK group entity" have the same meaning for the relevant group as they have for a relevant group in Chapter 3; and

"four month period" means four months beginning with the date on which the Bank receives a copy of the business reorganisation plan.

Purpose of assessment

176.—(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 criteria for assessment are that—

(a) the plan must satisfy the requirements set out in paragraphs 4 and 5 of Article 52 of the recovery and resolution directive;

(b) the plan must be compatible with the restructuring plan that must be submitted to the European Commission with respect to the relevant group under the Union State aid framework; and

(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.

Joint assessment of plan

177.—(1) The Bank must assess the business reorganisation plan jointly with other resolution authorities for group entities.

(2) The Bank must endeavour to conclude the assessment within the four month period, and must for this purpose endeavour to reach a joint decision on relevant matters.

(3) Where the Bank concludes a joint assessment of the business reorganisation plan, it must exercise its powers under the Banking Act 2009, so far as necessary, for the purpose of implementing each decision on relevant matters, including a decision to direct a UK group entity to—

(a) submit a revision of the plan; or

(b) make specific changes to the plan.

(4) Where the Bank and the group-level resolution authority—

(a) are able to conclude a joint assessment of the business reorganisation plan, but

(b) are unable to reach a joint decision on whether to require group entities to draw up and submit business reorganisation plans on an individual basis,

the Bank must decide the matter referred to in sub-paragraph (b) for group entities for which it is the resolution authority.

(5) Where the Bank and the group-level resolution authority are unable to conclude a joint assessment of the business reorganisation plan, the Bank must either—

(a) require group entities for which it is the resolution authority to draw up and submit business reorganisation plans on an individual basis; or

(b) require those entities to draw up and submit a single business reorganisation plan for all of them.

(6) Where the Bank requires a single business reorganisation plan to be drawn up and submitted under paragraph (5)(b), the Bank must assess the plan submitted as if it were a business reorganisation plan which the Bank was required to assess jointly with the regulator under Chapter 3.

Assessment of business reorganisation plans drawn up on an individual basis

178. 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

179.—(1) The Bank may, within the four month period, refer to EBA in accordance with Article 19 of the EBA Regulation any matter relating to the assessment of the business reorganisation plan.

(2) For the purposes of a reference to EBA of a matter to which this article refers the four month period is deemed to be the conciliation phase referred to in Article 19.2 of the EBA Regulation.

Requesting the assistance of EBA

180. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on—

(a) the assessment of the business reorganisation plan;

(b) whether to require group entities to draw up and submit business reorganisation plans on an individual basis; or

(c) whether to direct a UK group entity to submit a revision of the business reorganisation plan or make specific changes to the plan.

PART 14

Procedural obligations where an undertaking is failing or likely to fail

Interpretation of Part

181. In this Part—

"the regulator"—

(a) in relation to an undertaking which is a PRA-authorised person, means the PRA; and

(b) in relation to any other undertaking, means the FCA.

"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 Article 111 of the capital requirements directive;

(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.

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 Article 32.4 of the recovery and resolution directive); or

(b) the regulator requires an undertaking to take crisis prevention measures(**75**) or a measure referred to in Article 104.1 of the capital requirements directive.

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—

(a) where the undertaking is a group entity and the regulator is not the consolidating supervisor for the relevant group concerned, to the consolidating supervisor and the group-level resolution authority;

(b) to the resolution authority and competent authority established in any other EEA State in which the undertaking has a significant branch or operates a place of business;

(c) to the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of FSMA);

(d) to the Treasury in their capacity of—

(i) the person in charge of financing arrangements made in accordance with Article 100 of the recovery and resolution directive for the purpose of ensuring the effectiveness of resolution action by the Bank; and

(ii) competent ministry;

(e) to the Financial Policy Committee; and

(f) to the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24th November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board(**76**).

(4) Where the undertaking is part of a group subject to supervision on a consolidated basis in accordance with Article 111 of the capital requirements directive, the Bank is not required to give notice under paragraph (3) to any person referred to in that paragraph who is also a member of the college.

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

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

(**75**) For the meaning of "crisis prevention measures" see the recovery and resolution directive, Article 2.1, point (101).
(**76**) OJ No. L 331, 15.12.2010, p. 1.

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(**77**) ("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(**78**)) made under section 11 (private sector purchaser), section 41A(**79**) (transfer of property subsequent to resolution instrument), section 42(**80**) (supplemental instruments), section 42A(**81**) (private sector purchaser: reverse property transfer), section 43(**82**) (onward transfer), section 44(**83**) (resolution company: reverse property transfer) or section 44A(**84**) (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)(**85**);

"share transfer instrument" means a share transfer instrument (within the meaning given by section 15) made under section 11, section 26(**86**) (supplemental instruments), section 26A(**87**) (private sector purchaser: reverse share transfer), section 30(**88**) (resolution company: share transfers) or section 31(**89**) (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(**90**) (temporary public ownership), section 27(**91**) (supplemental orders), section 28(**92**) (onward transfer) or section 29(**93**) (reverse share transfer); and

"third-country instrument" has the meaning given in section 89I(4)(**94**).

(4) In paragraph (3) each reference to a section is a reference to a section of the Banking Act 2009.

(**77**) 1986 c. 53.
(**78**) Section 33 was amended by S.I. 2014/3329.
(**79**) 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.
(**80**) Section 42 was amended by S.I. 2014/3329.
(**81**) Section 42A was inserted by the Financial Services Act 2012, section 97(1) and (5).
(**82**) Section 43 was amended by the Financial Services Act 2012, Schedule 17, paragraph 22, and by S.I. 2014/3329.
(**83**) 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.
(**84**) 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.
(**85**) 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.
(**86**) Section 26 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 14, and by S.I. 2014/3329.
(**87**) Section 26A was inserted by the Financial Services Act 2012, section 97(1) and (2).
(**88**) Section 30 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 18, and by S.I. 2014/3329.
(**89**) 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.
(**90**) Section 13 was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraph 13, and by S.I. 2014/3329.
(**91**) Section 27 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 15.
(**92**) Section 28 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 16.
(**93**) Section 29 was amended by the Financial Services Act 2012, section 97(3) and Schedule 17(1), paragraph 17.
(**94**) Section 89I was inserted by S.I. 2014/3329.

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(**95**);

"banking group company" has the meaning given in section 81D of the Banking Act 2009(**96**);

"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(**97**); and

"stabilisation powers" has the meaning given in section 1(4) of the Banking Act 2009(**98**).

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.

(**95**) 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.
(**96**) 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.
(**97**) Section 6B was inserted by S.I. 2014/3329.
(**98**) 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.

(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(**99**); 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(**100**) (immunity), to award damages as a remedy in relevant proceedings.

PART 16

Cross-border group resolution

CHAPTER 1

General provisions

Principles for reaching decisions which may have an impact in two or more EEA States

187.—(1) This article applies where any decision made or action taken pursuant to the recovery and resolution directive by the Bank, the PRA, the FCA or the Treasury, in the Treasury's capacity of competent ministry, may have an impact on the financial system of another EEA State.

(2) The person who has the function of making the decision or taking the action concerned must exercise the function having regard to the general principles set out in Article 87 of that directive (general principles regarding decision-making involving more than one EEA State).

Information exchange

188.—(1) This article applies where, in relation to a relevant group—

(**99**) Section 29A was inserted by S.I. 2014/3329.
(**100**) Section 244 was amended by the Financial Services Act 2012, Schedule 2, paragraph 3, and by S.I. 2014/3329.

(a) a resolution college(**101**) is established by the Bank in accordance with this Part or by another resolution authority;

(b) a European resolution college(**102**) is established jointly by the Bank and other resolution authorities; or

(c) an existing grouping, resolution college or European resolution college is used to facilitate the performance of the tasks which would otherwise be performed by a newly established resolution college or European resolution college.

(2) Where the Bank establishes the college or decides that an existing grouping or college is to be used to facilitate the performance of the tasks that a newly established college would otherwise perform, the Bank is responsible for co-ordinating the flow of information among members of the college or grouping, and must provide in a timely manner such information as is required to facilitate the performance of tasks by the members.

(3) The Bank, the PRA and the FCA must, so far as they are able to do so, meet any request by other resolution authorities and competent authorities which are members of the college or grouping for information which is relevant to the performance of any tasks or functions of those members under the recovery and resolution directive.

(4) The Bank must provide the Treasury with information which—

(a) is relevant to the performance of tasks by the members of the college or grouping; and

(b) either—

(i) relates to a decision which requires the Treasury's consent or a decision or matter which is subject to consultation with the Treasury or must be notified to the Treasury; or

(ii) may have an implication for public funds.

(5) Where the Bank receives any information for the purposes of the recovery and resolution directive from an authority in a third country, it may not disclose that information without the consent of that authority.

(6) This article does not require any information to be disclosed if its disclosure—

(a) by the PRA or FCA, would be contrary to section 348 of FSMA; or

(b) by the Bank, would be contrary to that section as applied for the purposes of Part 1 of the Banking Act 2009 (with modifications) by section 89L of that Act.

Requirements for group resolution schemes

189. Where the Bank proposes a group resolution scheme(**103**) for a relevant group or endeavours to reach a joint decision with other resolution authorities on the adoption of a group resolution scheme proposed by another resolution authority, the Bank, acting jointly with the other authorities concerned, must ensure that the scheme—

(a) takes account of—

(i) the group resolution plan; and

(ii) any resolution plans adopted for group subsidiaries;

(b) is in line with the measures adopted in those plans, except where an assessment of the circumstances indicates that the resolution objectives would be achieved more effectively by different or modified measures;

(**101**) For the meaning of "resolution college" see the recovery and resolution directive, Article 2.1, point (46).
(**102**) For the meaning of "European resolution college" see Article 89.1 of the recovery and resolution directive.
(**103**) For the meaning of "group resolution scheme" see the recovery and resolution directive, Article 2.1, point (45).

(c) outlines what resolution action(**104**) is to be taken by each resolution authority in order to achieve the resolution objectives compatibly with the principles set out in Article 34 of the recovery and resolution directive (general principles governing resolution);

(d) specifies how resolution action by the resolution authorities is to be co-ordinated; and

(e) establishes a financing plan which takes account of—

(i) the principles set out in the group resolution plan for determining how responsibility for financing group resolution would be shared among the EEA States in which group entities were set up by means of contributions from financing arrangements made in accordance with Article 100 of the recovery and resolution directive (requirement to establish resolution financing arrangements); and

(ii) the requirements for mutualisation of national financing arrangements set out in Article 107 of that directive (mutualisation of national financing arrangements in the case of a group resolution).

CHAPTER 2

Resolution colleges

Application of Chapter 2

190.—(1) This Chapter applies in relation to a relevant group.

(2) The Bank must co-operate closely with the other members of a resolution college established by the Bank under this Chapter or by another resolution authority.

(3) The remaining articles of this Chapter apply where the PRA or FCA is the consolidating supervisor in relation to the relevant group.

Duty to establish a resolution college

191.—(1) Subject to article 194, the Bank must establish a resolution college for the relevant group in order to—

(a) facilitate the performance of the Bank's duties as the group-level resolution authority(**105**);

(b) facilitate the performance of the tasks set out in paragraph (2);

(c) ensure that there is appropriate co-operation and co-ordination with the authorities established in third countries which exercise any function equivalent to a function of a resolution authority; and

(d) provide a forum for the discussion of issues relating to cross-border group resolution(**106**).

(2) The resolution college is to facilitate the performance of the following tasks by its members—

(a) exchanging information which is relevant for the drawing up a group resolution plan, for taking preparatory and preventative measures and for group resolution;

(b) drawing up a group resolution plan pursuant to Articles 12 and 13 of the recovery and resolution directive (group resolution plans);

(c) assessing the resolvability of the relevant group pursuant to Article 16 of that directive (assessment of resolvability for groups);

(d) exercising powers to address or remove impediments to the resolvability of the relevant group pursuant to Article 18 of that directive (powers to address or remove impediments to resolvability: group treatment);

(**104**) For the meaning of "resolution action" see the recovery and resolution directive, Article 2.1, point (40).
(**105**) For the meaning of "group-level resolution authority" see the recovery and resolution directive, Article 2.1, point (44).
(**106**) For the meaning of "group resolution" see the recovery and resolution directive, Article 2.1, point (42).

(e) deciding on the need to make a group resolution scheme pursuant to Article 91 or 92 of that directive (group resolution involving a subsidiary of the group);

(f) reaching agreement on proposals for a group resolution scheme;

(g) co-ordinating public communication about the strategy for group resolution, including any group resolution scheme;

(h) co-ordinating the use of financing arrangements established under Title VII of the recovery and resolution directive (financing arrangements); and

(i) setting minimum requirements for own funds and eligible liabilities for the relevant group and for group subsidiaries pursuant to Article 45 of that directive (application of the minimum requirement).

Membership of resolution college

192.—(1) The resolution college established by the Bank under article 191 is to consist of the following members—

(a) the Bank;

(b) the resolution authority for a group entity set up in another EEA State;

(c) the resolution authority established in any EEA State in which an institution within the relevant group has a significant branch(**107**);

(d) the competent authority established in an EEA State whose resolution authority is a member of the resolution college;

(e) any person who is selected by a competent authority which is a member of the resolution college to represent the central bank of the EEA State of that competent authority (except where the central bank is the competent authority);

(f) the competent ministries(**108**) of the EEA States whose resolution authorities are members of the resolution college (except where a competent ministry is a resolution authority);

(g) the authority which is responsible for the deposit guarantee scheme(**109**) made by each EEA State whose resolution authority is a member of the resolution college; and

(h) EBA for the purpose only of contributing to the promotion and monitoring of the efficient, effective and consistent functioning of the resolution college taking account of international standards.

(2) EBA is to have no right to vote on any matter which is for decision within the resolution college by voting.

(3) Where the Bank is satisfied that the requirements set out in Article 98 of the recovery and resolution directive (exchange of confidential information) are met in relation to an authority in a relevant country which exercises any function equivalent to a function of a resolution authority, the Bank may at the request of that authority invite it to participate as an observer in the resolution college.

(4) In paragraph (3) "relevant country" means a third country in which—

(a) the EEA parent undertaking or a group subsidiary which is an institution has a subsidiary which would be an institution if it were set up in an EEA State; or

(b) the EEA parent undertaking, if it is an institution, has a significant branch;

(c) a group subsidiary which is an institution has a significant branch.

(**107**) For the meaning of "significant branch" see the recovery and resolution directive, Article 2.1, point (34).
(**108**) For the meaning of "competent ministries" see the recovery and resolution directive, Article 2.1, point (22).
(**109**) For the meaning of "deposit guarantee scheme" see the recovery and resolution directive, Article 2.1, point (72).

Functioning of resolution college

193.—(1) The Bank must—

(a) in consultation with the other members of the resolution college established under article 191, make written arrangements and procedures for the functioning of the college;

(b) co-ordinate all activities of the college;

(c) convene and chair its meetings;

(d) inform the other members, in advance, about the organisation of any meeting and the main items on the agenda;

(e) notify the other members of meetings being planned, so that they can request an invitation;

(f) decide which members and observers are to be invited to attend any meeting; and

(g) inform the other members in a timely manner of the decisions taken at, or any other outcome of, each meeting.

(2) In deciding which members and observers are to be invited to attend any meeting of the resolution college, the Bank must take account of—

(a) the matters that need to be considered or decided; and

(b) the relevance of these matters for each member or each person who may be invited to be an observer, including their potential impact on the stability of the financial system of the EEA State in which that member or other person is established.

(3) But the Bank must invite a resolution authority to attend a meeting of the resolution college if the agenda for that meeting includes for discussion or decision any matter which is subject to joint decision making or concerns a group entity set up in the EEA State in which that authority is established.

Use of an existing resolution college

194.—(1) The Bank is not under a duty to establish a resolution college for a relevant group ("the group") if—

(a) it is satisfied that an existing grouping or college of resolution authorities and other persons, including a resolution college established for a different relevant group—

(i) could facilitate the performance in relation to the group of the functions and tasks set out in article 191 ("the additional purpose"); and

(ii) would, if used for the additional purpose, observe in all material respects the same requirements relating to membership, participation, functioning and information exchange as a resolution college established for the group by the Bank; and

(b) it decides that the existing grouping or college is to be used for the additional purpose.

(2) Where paragraph (1) applies—

(a) this Chapter, except article 191(1), applies in relation to the existing grouping or college, where it is used for the additional purpose, but has effect for that purpose as if each reference to the resolution college were a reference to the existing grouping or college; and

(b) this Order, except this Chapter, has effect in relation to the group as if each reference to the college included a reference to the existing grouping or college.

CHAPTER 3

European resolution colleges

Application of Chapter 3

195. This Chapter applies where a third-country institution(**110**) or third-country parent undertaking has—

(a) set up a Union subsidiary in the United Kingdom and at least one other EEA State; or

(b) established significant branches in the United Kingdom and at least one other EEA State.

Establishment and functioning of a European resolution college

196.—(1) Subject to article 198, the Bank acting jointly with the resolution authorities established in other EEA States in which—

(a) a Union subsidiary has been set up; or

(b) a significant branch is situated,

must establish a European resolution college in accordance with Article 89 of the recovery and resolution directive (European resolution colleges).

(2) The Bank must co-operate closely with other members of the European resolution college in order to facilitate the performance in relation to the Union subsidiaries and, so far as relevant, of the significant branches, of functions and tasks equivalent to the functions and tasks which must be performed in relation to a relevant group in accordance with Article 88 of the recovery and resolution directive (resolution colleges).

(3) Paragraph (4) applies where the Union subsidiaries are subsidiaries of a financial holding company and supervision on the basis of the consolidated situation (within the meaning given by point (47) of Article 4.1 of the capital requirements regulation) is exercised by the PRA or FCA.

(4) The Bank must chair meetings of the European resolution college and perform the other functions of a chair of the college.

Recognition of third-country resolution action

197.—(1) This article applies where a European resolution college facilitates the performance of the task referred to in Article 94 of the recovery and resolution directive (recognition and enforcement of third-country resolution proceedings) of reaching a joint decision on whether to recognise third-country resolution action in respect of a third-country institution or third-country parent undertaking.

(2) This article also applies where the third-country institution or third-country parent undertaking has assets, rights or liabilities which are governed by the law of two or more EEA States (whether or not a Union subsidiary has been set up or a significant branch has been established in those States).

(3) The resolution authority established in each of those EEA States may be a member of the European resolution college even though no Union subsidiary is set up and no significant branch is established in the State concerned.

(4) Where the members of the European resolution college reach a joint decision on the recognition of third-country resolution action, the Bank must ensure that the third-country instrument made under section 89H(2) of the Banking Act 2009(**111**) (recognition of third-country resolution actions)—

(**110**) For the meaning of "third-country institution", "third-country parent undertaking" and "Union subsidiary" see the recovery and resolution directive, Article 2.1, points (86), (87) and (84).
(**111**) Section 89H was inserted by S.I. 2014/3329.

(a) recognises the action,

(b) refuses to recognise the action, or

(c) recognises part of the action and refuses to recognise the remainder,

as appropriate for securing that it conforms with the joint decision.

(5) Where the members of the European resolution college are unable to reach a joint decision on the recognition of third-country resolution action, the Bank, before making its decision under section 89H(2) of the Banking Act 2009, must give due consideration to—

(a) the interests of the other EEA States whose resolution authorities are members of the college; and

(b) the potential impact of recognising the third-country resolution action on other group entities and on the financial stability of those States and of the third country concerned.

(6) In this article "third-country resolution action" has the meaning given in section 89H(7) of the Banking Act 2009.

Use of an existing resolution college

198.—(1) Article 196(1) does not apply where the Bank and other resolution authorities concerned—

(a) are satisfied that an existing grouping or college of resolution authorities and other persons, including a resolution college established for a relevant group—

(i) could facilitate the performance of the functions and tasks of a European resolution college; and

(ii) would, if used for that purpose, observe in all material respects the same requirements relating to membership, participation, functioning and information exchange as a newly established European resolution college; and

(b) decide that the existing grouping or college is to be used for that purpose.

(2) Where paragraph (1) applies, this Chapter, except article 196(1), applies in relation to the existing grouping or college, where it is used to facilitate the performance of the tasks of a European resolution college, but has effect for that purpose as if each reference to the European resolution college were a reference to the existing grouping or college.

CHAPTER 4

Group resolution involving a group subsidiary where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 4

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

(a) the PRA or FCA is the consolidating supervisor; and

(b) the Bank gives a relevant notice or receives a relevant notice from another resolution authority.

(2) In this Chapter—

"the failing subsidiary" means the group subsidiary named in a relevant notice;

"relevant assessment", in relation to notified measures, means an assessment of the impact that the measures would have on other group entities, including an assessment of whether the measures would make it likely that a group entity set up in an EEA State other than the State in which the failing subsidiary is set up would meet the conditions for resolution; and

"relevant notice" means a notice which—

(a) communicates to the members of the college a decision that a group subsidiary meets the conditions for resolution; and

(b) proposes measures for taking resolution action or insolvency proceedings in respect of that subsidiary ("notified measures").

Assessment of impact of notified measures

200.—(1) The Bank must make a relevant assessment of the notified measures in consultation with the other members of the college.

(2) Where the Bank has given a relevant notice and the relevant assessment is that the notified measures would not make it likely that another group entity would meet the conditions for resolution, the Bank may take the notified measures.

(3) Where the result of the relevant assessment is that the notified measures would make it likely that another group entity would meet the conditions for resolution, the Bank must make a proposal for a group resolution scheme.

(4) In paragraphs (2) and (3) the reference to another group entity is a reference to a group entity set up in an EEA State other than the State in which the failing subsidiary is set up.

(5) The Bank must make a proposal under paragraph (3) within—

(a) 24 hours beginning with the time at which it gives or receives the relevant notice; or

(b) where the Bank has not given the relevant notice, such longer period as the resolution authority for the failing subsidiary may allow for making the relevant assessment.

Joint decision on adoption of group resolution scheme

201.—(1) The Bank must endeavour to reach a joint decision on the adoption of a group resolution scheme with the other resolution authorities which are members of the college.

(2) Where the Bank and another resolution authority ("authority A") are unable to reach a joint decision on the adoption of a group resolution scheme, the Bank must—

(a) decide the contents and details of a group resolution scheme for part of the relevant group, which it may do either alone or jointly with any resolution authority with which it is able to reach a joint decision; and

(b) ensure that—

(i) the decision on the contents and details of the scheme takes account of views and reservations of authority A; and

(ii) every group entity for which authority A is the resolution authority is excluded from the scope of the scheme.

(3) Where another resolution authority (apart from authority A) notifies the Bank that it does not wish to adopt a group resolution scheme for part of the relevant group, the Bank must ensure that every group entity for which that authority is the resolution authority is excluded from the scope of the group resolution scheme.

Requesting the assistance of EBA

202. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the adoption of a group resolution scheme for the relevant group.

CHAPTER 5

Group resolution involving a group subsidiary where
neither the PRA nor the FCA is the consolidating supervisor

Application Chapter 5

203. This Chapter applies where, in relation to a relevant group—

(a) neither the PRA nor the FCA is the consolidating supervisor; and

(b) the Bank decides that a group subsidiary meets the conditions for resolution ("the failing subsidiary").

Bank decision that group subsidiary meets the conditions for resolution

204.—(1) The Bank must give the group-level resolution authority and the other members of the college a notice—

(a) stating that it has decided that the failing subsidiary meets the conditions for resolution; and

(b) proposing measures for taking resolution action or insolvency proceedings in respect of the failing subsidiary.

(2) The Bank may take the notified measures unless it receives a proposal for a group resolution scheme from the group-level resolution authority within—

(a) 24 hours beginning with the time at which it gives a notice under paragraph (1); or

(b) such longer period as it may allow the group-level resolution authority for making a relevant assessment.

(3) Where the Bank receives a proposal for a group resolution scheme within the period referred to in paragraph (2), it must defer a decision to take the notified measures or other resolution action or measures in respect of the failing subsidiary until it has taken steps to reach a joint decision on the adoption of a group resolution scheme under article 205.

(4) In this article "relevant assessment" means an assessment of the impact that the notified measures would have on other group entities, including an assessment of whether the measures would make it likely that a group entity set up in another EEA State would meet the conditions for resolution.

Joint decision on adoption of group resolution scheme

205. The Bank must endeavour to reach a joint decision on the adoption of a group resolution scheme with the group-level resolution authority and other resolution authorities which are members of the college.

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

206.—(1) Where the Bank, having taken account of the group resolution plan and any resolution plans adopted for group subsidiaries—

(a) disagrees with a proposal for a group resolution scheme, or

(b) considers that it needs to take independent resolution action or other measures in respect of the failing subsidiary in the interest of financial stability,

it must give the group-level resolution authority and the other members of the college a notice which set outs in detail its reasons for disagreement or independent action and what resolution action or other measures it intends to take in respect of the failing subsidiary.

(2) The Bank must include in its reasons for disagreement an assessment of the potential impact of the resolution action or other measures that it intends to take in respect of the failing subsidiary on other group entities and on the financial stability of other EEA States whose resolution authorities are members of the college.

(3) The Bank must take resolution action and other measures in respect of the failing subsidiary in close co-operation with the other members of the college with a view to ensuring that there is a co-ordinated strategy for applying the resolution tools and exercising the resolution powers(**112**) in respect of group entities.

(4) Co-operation under paragraph (3) includes informing the other members of the college regularly and fully about the action and other measures being taken and progress being made.

Requesting the assistance of EBA

207. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the adoption of a group resolution scheme for the relevant group.

CHAPTER 6

Group resolution where EEA parent undertaking is set up in the United Kingdom

Application and interpretation of Chapter 6

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

(a) the EEA parent undertaking is set up in the United Kingdom; and

(b) the Bank decides that the EEA parent undertaking meets the conditions for resolution.

(2) In this Chapter "relevant subsidiary" means a group subsidiary set up in another EEA State.

Bank decision that EEA parent undertaking meets the conditions for resolution

209.—(1) The Bank must give the other members of the college a notice—

(a) stating that it has decided that the EEA parent undertaking meets the conditions for resolution; and

(b) proposing measures for taking resolution action or insolvency proceedings in respect of that undertaking ("notified measures").

(2) The notified measures may include the implementation of a group resolution scheme adopted for the relevant group if any of the conditions set out in paragraphs (3) to (6) is met.

(3) Condition 1 is that the notified measures, even if they did not include the implementation of the group resolution scheme, would make it likely that a relevant subsidiary would meet the conditions for resolution.

(4) Condition 2 is that the notified measures, if they did not include the implementation of the group resolution scheme, would be unlikely to achieve the resolution objectives.

(5) Condition 3 is that another resolution authority which is a member of the college has determined that a relevant subsidiary meets the conditions for resolution.

(6) Condition 4 is that it would be appropriate to implement the group resolution scheme having regard to the beneficial impact this is likely to have on relevant subsidiaries.

(7) Where the notified measures do not include the implementation of a group resolution scheme, the Bank must—

(**112**) For the meaning of "resolution power" see the recovery and resolution directive, Article 2.1, point (20).

(a) consult the members of the college before it decides what measures are to be taken; and

(b) in deciding what measures are to be taken—

(i) take account of—

(aa) the group resolution plan;

(bb) any resolution plans adopted for relevant subsidiaries;

(cc) the financial stability of the EEA States in which relevant subsidiaries are set up; and

(ii) ensure that the measures are in line with the measures adopted in those plans, except where an assessment of the circumstances indicates that the resolution objectives would be achieved more effectively by different or modified measures.

Joint decision on adoption of group resolution scheme

210.—(1) Where the notified measures include the implementation of a group resolution scheme, the Bank must endeavour to reach a joint decision on the adoption of the scheme with the other resolution authorities which are members of the college.

(2) Where the Bank and another resolution authority ("authority A") are unable to reach a joint decision on the adoption of a group resolution scheme, the Bank must—

(a) decide the contents and details of a group resolution scheme for part of the relevant group, which it may do either alone or jointly with any resolution authority with which it is able to reach a joint decision; and

(b) ensure that—

(i) the decision on the contents and details of the scheme takes account of views and reservations of authority A; and

(ii) every group entity for which authority A is the resolution authority is excluded from the scope of the scheme.

(3) Where another resolution authority (apart from authority A) notifies the Bank that it does not wish to adopt a group resolution scheme for part of the relevant group, the Bank must ensure that every group entity for which that authority is the resolution authority is excluded from the scope of the group resolution scheme.

Requesting the assistance of EBA

211. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the adoption of a group resolution scheme for the relevant group.

CHAPTER 7

Group resolution where EEA parent undertaking is set up in another EEA State

Application of Chapter 7

212. This Chapter applies where, in relation to a relevant group—

(a) the EEA parent undertaking is set up in another EEA State;

(b) the Bank receives a notice from the resolution authority for the EEA parent undertaking ("the notifying authority")—

(i) communicating its decision that the EEA parent undertaking meets the conditions for resolution; and

(ii) proposing measures for taking resolution action or insolvency proceedings in respect of that undertaking; and

(c) the notified measures include the implementation of a group resolution scheme adopted for the relevant group.

Joint decision on adoption of group resolution scheme

213. The Bank must endeavour to reach a joint decision on the adoption of a group resolution scheme with the notifying authority and other resolution authorities which are members of the college.

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

214.—(1) Where the Bank, having taken account of the group resolution plan and any resolution plans adopted for group subsidiaries—

(a) disagrees with a proposal for a group resolution scheme, or

(b) considers that it needs to take independent resolution action or other measures in respect of a group subsidiary in the interest of financial stability,

it must give the notifying authority and the other members of the college a notice which sets out in detail its reasons for disagreement or independent action and what resolution action or other measures it intends to take in respect of the group subsidiary.

(2) The Bank must include in its reasons for disagreement an assessment of the potential impact of the resolution action or other measures that it intends to take in respect of the group subsidiary on other group entities and on the financial stability of other EEA States whose resolution authorities are members of the college.

(3) The Bank must take resolution action and other measures in respect of the group subsidiary in close co-operation with the other members of the college with a view to ensuring that there is a co-ordinated strategy for applying the resolution tools and exercising the resolution powers in respect of group entities.

(4) Co-operation under paragraph (3) includes informing the other members of the college regularly and fully about the action and other measures being taken and progress being made.

Requesting the assistance of EBA

215. The Bank may ask EBA to assist the resolution authorities in accordance with Article 31(c) of the EBA Regulation to reach a joint decision on the adoption of a group resolution scheme for the relevant group.

PART 17

Modified application of company law to banks etc in resolution

Interpretation of Part

216.—(1) In this Part—

"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(**113**)); or

(c) the application by the Treasury of the public equity support tool described in Article 57 of the recovery and resolution directive; and

"UK-registered company" has the meaning given in section 1158 of the Companies Act 2006(**114**) (meaning of UK-registered company).

(2) For the purposes of article 219 "the use of resolution tools, powers and mechanisms" includes the application by an authority in another EEA State of—

(a) any of the resolution tools referred to in Article 37.3 of the recovery and resolution directive;

(b) the public equity support tool described in Article 57 of that directive; and

(c) the temporary public ownership tool referred to in Article 58 of that directive.

(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.

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; and

(b) persons who are employed by, or act on behalf of, the Bank.

(3) The specified enactments are—

(a) the Companies Act 2006;

(b) the Insolvency Act 1986(**115**);

(c) the Company Directors Disqualification Act 1986(**116**); and

(d) FSMA.

(**113**) Section 6B was inserted by S.I. 2014/3329.
(**114**) 2006 c. 46.
(**115**) 1986 c. 45.
(**116**) 1986 c. 46.

Modified application of legislation on cross-border mergers

218.—(1) This article applies for the purpose of ensuring that Directive 2005/56/EC of the European Parliament and of the Council of 26th October 2005 on cross border mergers of limited liability companies(**117**) does not apply in relation to a company under resolution.

(2) The Companies (Cross-Border Mergers) Regulations 2007(**118**) have effect as if after regulation 3 there were inserted—

"**Application to company subject to special resolution**

3A. These Regulations do not apply 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.".

(3) The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(**119**) have effect as if, in regulation 46 (cross-border merger)—

(a) in paragraph (1) for "following modifications" there were substituted "the modifications set out in paragraph (2)"; and

(b) after paragraph (1) there were inserted—

"(1A) These Regulations do not apply in relation to a LLP which, if it were a UK-registered company (within the meaning given in section 1158 of the Companies 2006), would be a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014.".

Modified application of the Companies Act 2006 (disapplication of Article 5.1 of the Takeovers Directive)

219.—(1) This article applies for the purpose of ensuring that Article 5.1 of Directive 2004/25/EC of the European Parliament and of the Council of 21st April 2004 on takeover bids(**120**) does not apply in relation to any change in interests in shares or any other transaction which is, in either case, effected by the use of resolution tools, powers and mechanisms.

(2) Part 28 of the Companies Act 2006 (Takeovers etc) has effect as if, in section 943 (rules), after subsection (1) there were inserted—

"(1A) Rules giving effect to Article 5.1 of the Takeovers Directive 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).".

Modified application of the Companies Act 2006 (disapplication of other directives)

220.—(1) This article applies for the purposes set out in paragraphs (2) and (3).

(2) The first purpose is to ensure that—

(a) the Shareholders' Rights Directive,

(b) the Mergers Directive,

(c) in the Safeguards Directive—

(i) Article 10,

(**117**) OJ No. L 310, 25.11.2005, p. 1.
(**118**) S.I. 2007/2974. There are amendments, but none is relevant.
(**119**) S.I. 2009/1804. There are amendments, but none is relevant.
(**120**) OJ No. L 142, 30.4.2004, p. 12.

(ii) Article 19.1,

(iii) paragraphs 1 to 3 of Article 29.1,

(iv) the first sub-paragraph of Article 31.2,

(v) Articles 33 to 36, and

(vi) Articles 40 to 42,

do not apply in relation to a company under resolution.

(3) The second purpose is to ensure that provisions in the Companies Act 2006 made—

(a) in relation to companies to which the Safeguards Directive does not apply, and

(b) for purposes equivalent to the purposes of any provision of that directive referred to in paragraph (2)(c),

do not apply in relation to such a company which is a company under resolution.

(4) For the purposes of this article the Companies Act 2006 applies with the modifications set out in Schedule 4 and with any other necessary modification.

(5) For the second purpose the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008(**121**) 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.".

(6) In this article—

"the Shareholders' Rights Directive" means Directive 2007/36/EC of the European Parliament and of the Council of 11th July 2007 on the exercise of certain rights of shareholders in listed companies(**122**);

"the Mergers Directive" means Directive 2011/35/EU of the European Parliament and of the Council of 5th April 2011 concerning mergers of public limited liability companies(**123**); and

"the Safeguards Directive" means Directive 2012/30/EU of the European Parliament and of the Council of 25th October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent(**124**).

(**121**)S.I. 2008/2860. There are amendments, but none is relevant.
(**122**)OJ No. L 184, 14.7.2007, p. 17-24.
(**123**)OJ No. L 110, 29.4.2011, p. 1-11.
(**124**)OJ No. L 315, 14.11.2012, p. 74-97.

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(**125**) ("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.

PART 19

Miscellaneous provisions

Continuity

222. Where the resolution authority established in another EEA State transfers assets, rights or liabilities of a credit institution or an investment firm which is, in either case, an EEA firm within the meaning given by paragraph 5 of Schedule 3 to FSMA (EEA passport rights)—

(a) to a purchaser by the sale of business tool provided for under Article 38 of the recovery and resolution directive (the sale of business tool), or

(b) to a bridge institution by the bridge institution tool provided for under Article 40 of the recovery and resolution directive (bridge institution tool),

the purchaser or bridge institution is treated, in relation to the assets, rights or liabilities transferred, as the same person as the credit institution or investment firm for the purposes of paragraph 12 of Schedule 3 to FSMA.

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.

(2) "Relevant functions"—

(a) in the case of the Bank, means the functions of a resolution authority under the recovery and resolution directive;

(b) in the case of the PRA or FCA, means the functions of a competent authority under that directive.

Non-binding co-operation arrangements in line with EBA framework arrangements

224.—(1) Where the Bank, the PRA or the FCA concludes that—

(a) non-binding co-operation arrangements with equivalent authorities in relevant third countries would facilitate the more effective performance of relevant functions, and

(b) making the arrangements in line with EBA framework arrangements would meet that object more effectively than bilateral or multi-lateral arrangements with those authorities,

(**125**) 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).

it must make non-binding co-operation arrangements in line with EBA framework arrangements with those authorities.

(2) Where the Bank, the PRA or the FCA makes any non-binding co-operation arrangements with equivalent authorities in relevant third countries (whether or not the arrangements are in line with EBA framework arrangements), it must notify EBA that it has done so.

(3) In this article—

"EBA framework arrangements" means non-binding framework co-operation arrangements concluded by EBA with authorities in relevant third countries under Article 33 of the EBA Regulation (international relations) for the purposes of Article 97 of the recovery and resolution directive (co-operation with third country authorities);

"equivalent authority", in relation to a relevant third country—

(a) in the case of the Bank, means the authority which, in the country concerned, exercises any function equivalent to a function of a resolution authority;

(b) in the case of the PRA or FCA, means the authority which, in the country concerned, exercises any function equivalent to a function of a competent authority;

"relevant functions"—

(a) in the case of the Bank, means the functions of a resolution authority under the recovery and resolution directive;

(b) in the case of the PRA or FCA, means the functions of a competent authority under that directive; and

"relevant third country"—

(c) where a third-country parent undertaking(**126**) has one or more Union subsidiaries, means the third country in which that undertaking is set up;

(d) where a third-country institution has branches which are regarded as significant branches in at least two EEA States, means the third country in which that institution is set up;

(e) where, in relation to a relevant group—

(i) a group subsidiary is an institution set up in an EEA State other than the State in which the EEA parent undertaking is set up, or

(ii) the EEA parent undertaking is an institution and has a significant branch in an EEA State other than the United Kingdom,

means any third country in which a subsidiary, which would be an institution if it were set up in an EEA State, is set up; and

(f) where an institution has a parent undertaking, subsidiary or significant branch in at least one other EEA State and has a branch in a third country, means that third country.

Duty to inform EBA of imposition of penalties

225.—(1) Where the PRA or FCA imposes a relevant penalty, it must inform EBA of the penalty imposed, of any appeal against the penalty and of the outcome of the appeal.

(2) "Relevant penalty" means a penalty imposed in respect of a failure by any person or undertaking to comply with a requirement to—

(a) draw up, maintain or update a recovery plan or group recovery plan;

(b) provide information required for drawing up a resolution plan or group resolution plan;

(**126**) For the meaning of "third-country parent undertaking", "Union subsidiary", "third-country institution" and "significant branch" see the recovery and resolution directive, Article 2.1, points (87), (84), (86) and (34).

(c) give notice in accordance with Article 25.1 of the recovery and resolution directive of an intention to provide financial support under a group financial support agreement authorised pursuant to Article 20 of that directive (review of proposed agreement for provision of financial support); or

(d) give notice that the undertaking is failing or likely to fail (within the meaning given in Article 32.4 of the recovery and resolution directive).

(3) This article does not require any information to be disclosed if its disclosure would be contrary to section 348 of FSMA(**127**).

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

227.—(1) The Treasury must from time to time—

(a) carry out a review of articles 2 to 226;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the recovery and resolution directive (which is partially implemented by means of articles 2 to 226) is implemented in other EEA States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by articles 2 to 226;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published before the end of the period of five years beginning with the day on which this Order comes into force.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

(**127**) 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.

Mark Lancaster
Gavin Barwell
Two of the Lords Commissioners of Her Majesty's Treasury

18th December 2014

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 resolution action(**128**) 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 Chapter II (resolvability) of Title II of the recovery and resolution directive (preparation).

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 Article 100 of the recovery and resolution directive;

(b) emergency liquidity assistance(**129**); or

(c) any other liquidity assistance provided by the Bank under non-standard collateralisation, tenor and interest rate terms.

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—

(**128**) For the meaning of "resolution action" see the recovery and resolution directive, Article 2.1, point (40).

(**129**) 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).

(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;

(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;

(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 sub-paragraph (2) are to be quantified.

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 Article 100 of the recovery and resolution directive;

(b) emergency liquidity assistance(**130**); or

(c) any other liquidity assistance provided by the Bank or any other central bank under non-standard collateralisation, tenor and interest rate terms.

Contents of group resolution plan

2. A group resolution plan must—

(a) set out the resolution action or insolvency proceedings that would be taken in respect of group entities;

(b) analyse the scope for applying the resolution tools and exercising the resolution powers in a co-ordinated manner in respect of group entities;

(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;

(d) identify and assess potential impediments in relation to the relevant group as a whole to—

(i) the co-ordination of resolution action;

(ii) the effectiveness of resolution action 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 resolution action, and co-operating, with the authorities which, in the country concerned, exercise any function equivalent to a function of a resolution authority or competent authority; and

(ii) the implications of such co-ordination for the resolution(**131**) of that subsidiary and group entities;

(**130**) For the meaning of "emergency liquidity assistance" see the recovery and resolution directive, Article 2.1, point (29).
(**131**) For the meaning of "resolution" see the recovery and resolution directive, Article 2.1, point (1).

(f) set out measures which the Bank considers it would be necessary to take to facilitate group resolution(**132**), including by the legal or economic separation of specified functions or business lines of group 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 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;

(i) explain how the resolution action 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)); and

(j) where financing arrangements made in accordance with Article 100 of the recovery and resolution directive would be required, set out principles for determining how responsibility for that financing would be shared among the EEA States in which group entities were set up.

3. The Bank must ensure that the principles set out in accordance with paragraph 2(j) are based on equitable and balanced criteria which, in particular, take account of—

(a) the factors referred to in Article 107.5 of the recovery and resolution directive (mutualisation of national financing arrangements in the case of a group resolution); and

(b) the impact of group resolution, and of a failure to take resolution action, on the financial stability of each State concerned.

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(**133**) (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(**134**).

(**132**) For the meaning of "group resolution" see the recovery and resolution directive, Article 2.1, point (42).
(**133**) Section 137J was substituted by the Financial Services Act 2012, section 24(1).
(**134**) 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.

(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(**135**); 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—

(a) a bank within the meaning given by section 2 of the Banking Act 2009(**136**);

(b) a building society within the meaning given in section 119 of the Building Societies Act 1986(**137**); or

(c) an investment firm within the meaning given by section 258A(**138**) of the Banking Act 2009;".

Rules about resolution packs: duty to consult

3.—(1) Section 137K(**139**) (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".

(**135**) OJ No. L 173, 12.6.2014, p. 190.
(**136**) 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.
(**137**) 1986 c. 53.
(**138**) 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.
(**139**) Section 137K was substituted by the Financial Services Act 2012, section 24(1).

Special provision relating to adequacy of resolution plans

4. Section 137M(**140**) (special provision relating to adequacy of resolution plans) is repealed.

Recovery plans and resolution packs: restriction on duty of confidence

5.—(1) Section 137N(**141**) (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)(**142**)) 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)(**143**).".

(6) Accordingly, in the heading for "resolution plans" substitute "resolution packs".

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(**144**) (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.".

(**140**) Section 137M was substituted by the Financial Services Act 2012, section 24(1).
(**141**) Section 137N was substituted by the Financial Services Act 2012, section 24(1).
(**142**) Subsection (6) of section 137J is amended by paragraph 2(4) of this Schedule.
(**143**) Section 192A was inserted by the Financial Services Act 2012, section 27.
(**144**) 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(**145**), 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(**146**); 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.".

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(**147**) are amended as follows.

(2) In regulation 2(**148**)—

(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;";

(**145**) S.I. 1999/2979. There are amendments, but none is relevant.
(**146**) Section 48Z was inserted by S.I. 2014/3329.
(**147**) S.I. 2001/2188.
(**148**) 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.

""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;(**149**)

""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(**150**) to act as resolution administrator in the course of discharging that person's functions as such;".

(3) In regulation 8(**151**)—

(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(**152**)—

(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(**153**),

(**149**) OJ No. L 173, 12.6.2014, p. 190.
(**150**) Section 62B was inserted by S.I. 2014/3329.
(**151**) Regulation 8 was amended by S.I. 2003/504, 2006/3413 and 2012/916.
(**152**) 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.
(**153**) S.I. No. 2011/245.

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(**154**) after paragraph (f) insert—

"(g) recovery and resolution directive information.".

(7) In Schedule 1(**155**)—

(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(**156**)";

(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)(**157**)";

(**154**) Regulation 11 was amended by S.I. 2003/2066, 2006/3413, 2011/1613, 2012/916 and 2013/504.
(**155**) 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.
(**156**) S.I. 2011/245.
(**157**) 2009 c. 1. Section 81D was inserted by the Financial Services Act 2012 (c. 21), s.100.

(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(**158**)", 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".

Financial Collateral Arrangements (No 2) Regulations 2003

9.—(1) The Financial Collateral Arrangements (No 2) Regulations 2003(**159**) are amended as follows.

(2) In regulation 3(**160**)—

(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;

(**158**) OJ No. L 157, 9.6.2006, p. 87.
(**159**) S.I. 2003/3226.
(**160**) Regulation 3 was amended by S.I. 2010/2993.

(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(**161**) 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.".

Credit Institutions (Reorganisation and Winding up) Regulations 2004

10.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004(**162**) 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(**163**);

(b) a "resolution instrument" made under section 12A of the Banking Act 2009(**164**);

(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;

(**161**) Regulations 12, 16 and 17 were amended by S.I. 2010/2993.
(**162**) S.I. 2004/1045, as amended by S.I. 2007/108, 2007/126, 2007/830, 2011/1043, 2011/1265, 2013/472 and 2013/3115.
(**163**) Section 6B was inserted by S.I. 2014/3329.
(**164**) 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.

(e) a "property transfer instrument" as defined in section 33 of the Banking Act 2009(**165**); or

(f) a "third country instrument" made under section 89H of the Banking Act 2009(**166**);";

(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;"; and

(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(**167**) 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(**168**) 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)—

(**165**) Section 33 was amended by S.I. 2014/3329.
(**166**) Section 89H was inserted by S.I. 2014/3329.
(**167**) OJ No. L 125, 5.5.2001, p. 15.
(**168**) Section 89L was inserted by S.I. 2014/3329.

(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(**169**).".

(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(**170**);

(b) section 70C of the Banking Act 2009(**171**);

(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(**172**);

(b) section 70C of the Banking Act 2009(**173**);

(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

(**169**) OJ No. L 173, 12.6.2014, p. 349.
(**170**) Section 48Z is inserted by S.I. 2014/3329.
(**171**) Section 70C is inserted by S.I. 2014/3329.
(**172**) Section 48Z is inserted by S.I. 2014/3329.
(**173**) Section 70C is inserted by S.I. 2014/3329.

(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(**174**) 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(**175**) 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

(**174**) Section 89L was inserted by S.I. 2014/3329.
(**175**) 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.

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)).".

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(**176**) 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)—

(**176**) S.I. 2013/165, as amended by S.I. 2013/3115.

(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(**177**) 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(**178**); 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.".

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(**179**) 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—

(**177**) Section 192JB was inserted by the Financial Services (Banking Reform) Act 2013, section 133; and was amended by S.I. 2014/3329.

(**178**) 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.

(**179**) S.I. 2013/419, as amended by SI 2013/1773.

"(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(**180**).".

(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—

"(e) any directly applicable regulation made under the recovery and resolution directive.".

Capital Requirements Regulations 2013

13. In the Capital Requirements Regulations 2013(**181**), in regulation 7 (co-operation with EBA) omit paragraph (2).

(**180**) Section 192K(1)(c) was inserted by S.I. 2014/3329.
(**181**) S.I. 2013/3115.

SCHEDULE 4 Article 220(4)

Modified application of the Companies Act 2006 to banks etc in resolution

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(**182**) which concern the exercise of certain rights of shareholders in listed companies(**183**).

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—

(**182**) 2006 c. 46.
(**183**) The modifications have effect in relation to provisions of the Act inserted, substituted or amended by S.I. 2009/1632.

(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.

23. Part 13 has effect as if section 360B (traded companies: requirements for participating in and voting at general meetings) were omitted.

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(**184**).".

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—

(**184**) See article 216(3) of this Order.

(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.".

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.