STATUTORY INSTRUMENTS

2014 No. 3348

The Bank Recovery and Resolution (No. 2) Order 2014

PART 17

Modified application of company law to banks etc in resolution

Interpretation of Part

216.—(1) In this Part—

[F1"applying the public equity support tool" means participating in the recapitalisation of an institution or an entity by providing capital to the institution or entity in exchange for Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments;]

[F1"Common Equity Tier 1 instruments", "Additional Tier 1 instruments" and "Tier 2 instruments" have the meanings given in section 3(1) of the Banking Act 2009;]

"the use of resolution tools, powers and mechanisms" means—

- (a) the exercise by the Bank or the Treasury of a stabilisation power (within the meaning given in section 1(4) of the Banking Act 2009);
- (b) the making by the Bank of a mandatory reduction instrument (within the meaning given in section 6B of that Act MI); or
- (c) [F2 the exercise by the Treasury of its powers under section 228 of the Banking Act 2009, subject to the requirements of the capital requirements regulation [F3 and CRR rules], where the Treasury is applying the public equity support tool; and]
- "UK-registered company" has the meaning given in section 1158 of the Companies Act 2006 M2 (meaning of UK-registered company).

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- (3) For the purposes of this Part a company is a company under resolution if it is a UK-registered company which is subject to the use of resolution tools, powers and mechanisms.
 - (4) But such a company is not a company under resolution if—
 - (a) it has ceased to be subject to the exercise of a stabilisation power or the application of the public equity support tool; and
 - (b) the results which are to be achieved by an instrument made in respect of the company under Part 1 of the Banking Act 2009 have been achieved.

Textual Amendments

Words in art. 216(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 108(2) (a); 2020 c. 1, Sch. 5 para. 1(1)

- Words in art. 216(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 108(2)(b); 2020 c. 1, Sch. 5 para. 1(1)
- **F3** Words in art. 216(1) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(13)**
- F4 Art. 216(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 108(3); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

- M1 Section 6B was inserted by S.I. 2014/3329.
- **M2** 2006 c. 46.

Shadow directorship

- 217.—(1) A relevant person is not to be treated, in relation to a company under resolution, as—
 - (a) a shadow director for the purposes of the enactments specified in paragraph (3);
 - (b) a person who discharges managerial responsibilities for the purposes of those enactments (unless that person has been appointed as a director); or
 - (c) a director by virtue of paragraph (b) of the definition of "director" given in section 417(1) of FSMA (a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act).
- (2) "Relevant persons" are—
 - (a) the Bank; F5...
 - (b) persons who are employed by, or act on behalf of, the Bank.
- [F6(c)] a resolution administrator appointed under section 62B of the Banking Act 2009; and
- [F6(d) a temporary manager appointed under section 71C of the Financial Services and Markets Act 2000.]
- (3) The specified enactments are—
 - (a) the Companies Act 2006;
 - (b) the Insolvency Act 1986 M3;
 - (c) the Company Directors Disqualification Act 1986 M4; and
 - (d) FSMA.

Textual Amendments

- **F5** Word in art. 217(2)(a) omitted (16.12.2016) by virtue of The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), 41(15)(a)
- **F6** Art. 217(2)(c)(d) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), 41(15)(b)

Marginal Citations

- **M3** 1986 c. 45.
- **M4** 1986 c. 46.

(No. 2) Order 2014.".

Modified application of legislation on cross-border mergers

Tovto	al Amendments
F7	Art. 218 omitted (31.12.2020) by virtue of The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/348), reg. 2, Sch. 3 para. 36 ; 2020 c. 1, Sch. 5 para. 1(1)
Modifi	ed application of the Companies Act 2006 (disapplication of [F8Takeover Rules])
219.	^{F9} (1)
	Part 28 of the Companies Act 2006 (Takeovers etc) has effect as if, in section 943 (rules), bsection (1) there were inserted—
	[F10···(1ZA)] Rules made in accordance with paragraph 7(1) and (2) of Part 2 of Schedule 1C] must provide that they do not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014).".
Textu	al Amendments
F8	Words in art. 219 heading substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 110(2) ; 2020 c. 1, Sch. 5 para. 1(1)
F9	Art. 219(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 110(3) ; 2020 c. 1, Sch. 5 para. 1(1)
F10	Words in art. 219(2) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 110(4) ; 2020 c. 1, Sch. 5 para. 1(1)
	ed application of the Companies Act 2006 (disapplication of other [F11 requirements])
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	14 The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) 008 M5 applies as if in Schedule 2 (transitional provisions and savings) after paragraph 43

"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

^{F15} (6)

Textual Amendments

- F11 Word in art. 220 heading substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 111(2); 2020 c. 1, Sch. 5 para. 1(1)
- F12 Art. 220(1)-(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 111(3); 2020 c. 1, Sch. 5 para. 1(1)
- F13 Words in art. 220(4) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 111(4); 2020 c. 1, Sch. 5 para. 1(1)
- F14 Words in art. 220(5) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 111(5); 2020 c. 1, Sch. 5 para. 1(1)
- F15 Art. 220(6) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), Sch. 3 para. 111(6); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M5 S.I. 2008/2860. There are amendments, but none is relevant.

[F16Modified application of the Companies Act 2006 (shareholders' rights)

- **220A.**—(1) The provisions of the Companies Act 2006 concerning the rights of shareholders to call general meetings and to amend the articles of association of the company apply to traded companies to which Part 1 of the Banking Act 2009 applies with the following modifications.
 - (2) "Traded company" has the meaning given in section 360C of the Companies Act 2006.
 - (3) Section 21 (amendment of articles) has effect as if, after subsection (3) there were inserted—
 - "(4) A traded company (within the meaning of section 360C) to which Part 1 of the Banking Act 2009 applies may also amend its articles in accordance with section 307B."
- (4) Section 307A (notice required of general meeting: certain meetings of traded companies), has effect as if, at the beginning of subsection (1), there were inserted "Subject to section 307B,".
 - (5) Part 13 (resolutions and meetings) has effect as if after section 307A there were inserted—

"Notice required of general meeting: traded companies meeting the conditions for early intervention

- **307B.**—(1) Where the conditions in subsections (2) and (3) are satisfied, the members of a traded company to which Part 1 of the Banking Act 2009 applies may, by a resolution passed at a general meeting by a majority of two-thirds of those voting in person or by proxy—
 - (a) require the company to call a general meeting to pass a resolution to increase the company's share capital, provided that the meeting is to be called by notice of at least 10 days;
 - (b) amend the company's articles of association to permit a general meeting to be called to consider a proposal to increase the company's share capital by notice of at least 10 days.
 - (2) The condition in this subsection is satisfied if—

- (a) the company has infringed, or is likely in the near future to infringe—
 - (i) a relevant requirement within the meaning of section 204A of the Financial Services and Markets Act 2000; or
 - (ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments; or
- (b) the conditions for appointment of a temporary manager under section 71C(1) of the Financial Services and Markets Act 2000 (temporary manager) are met in relation to the company.
- (3) The condition in this subsection is satisfied if an increase in the share capital of the company is necessary to prevent the conditions in section 7 of the Banking Act 2009 for the exercise of the stabilisation powers provided for in Part 1 of that Act being met in relation to the company."]

Textual Amendments

F16 Art. 220A inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(16)**

Changes to legislation:
There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014, PART 17.