

Draft Order laid before the House of Commons under paragraph 40(5) of Schedule 19 to the Finance Act 2011, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2011 No.

BANK LEVY

The Finance Act 2011 (Bank Levy: Amendment of Netting Agreements Provisions) Order 2011

<i>Made</i>	-	-	-	-	***
<i>Coming into force</i>	-	-			***

The Treasury make the following Order in exercise of the powers conferred by paragraph 40(1) of Schedule 19 to the Finance Act 2011⁽¹⁾.

A draft of this instrument was laid before, and approved by a resolution of, the House of Commons in accordance with paragraph 40(5) of Schedule 19 to the Finance Act 2011.

Citation, commencement and effect

1.—(1) This Order may be cited as the Finance Act 2011 (Bank Levy: Amendment of Netting Agreements Provisions) Order 2011 and comes into force on the date on which it is made.

(2) This Order has effect in relation to chargeable periods ending on or after 1 January 2011.

Amendment of Schedule 19

2. Schedule 19 to the Finance Act 2011 (the bank levy) is amended as follows.

Amendment of paragraph 16

3.—(1) Paragraph 16 (chargeable equity and liabilities of a UK banking group or a building society group) is amended as follows.

(2) In sub-paragraph (1)—

- (a) in paragraph (a) omit “and N has assets which correspond to those liabilities”; and
- (b) for paragraph (b) substitute—

⁽¹⁾ 2011 c. 11. This is the first exercise of the power.

“(b) M, or another member of the relevant group, recognises, as assets, amounts due from N or another entity which is not a member of the group (“N’s liabilities”),”.

(3) In sub-paragraph (2)——

(a) for paragraph (b) substitute——

“(b) references to amounts due from N or another entity which is not a member of the relevant group include securities provided by M, or another member of the relevant group, to N or another entity which is not a member of the relevant group as collateral, but only where M or another member of the relevant group recognises those securities in its balance sheet or statement of financial position, and”;

(b) omit paragraph (c) (and the “and” after it);

(c) in paragraph (d)(i) omit “assets which correspond to”; and

(d) after paragraph (d) insert——

“Section 556 of CTA 2009 (meaning of securities and similar securities)(2) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.”

(4) Omit sub-paragraph (3).

Amendment of paragraph 18

4.—(1) Paragraph 18 (chargeable equity and liabilities of a foreign banking group) is amended as follows.

(2) In sub-paragraph (8)——

(a) in paragraph (a) omit “, and N has assets which correspond to those liabilities”; and

(b) for paragraph (b) substitute——

“(b) M, or another entity within sub-paragraph (9), recognises, as assets, amounts due from N or another entity not within that sub-paragraph (“N’s liabilities”),”.

(3) In sub-paragraph (10)——

(a) in paragraph (b) for “N’s assets corresponding to those liabilities are” substitute “N recognises assets in respect of those liabilities as”;

(b) for paragraph (c) substitute——

“(c) references to amounts due from N or another entity not within sub-paragraph (9) include securities provided by M, or another entity within that sub-paragraph, to N or another entity not within sub-paragraph (9) as collateral, but only where M or that other entity within that sub-paragraph recognises those securities in its balance sheet or statement of financial position, and”;

(c) omit paragraph (d) (and the “and” after it);

(d) in paragraph (e)(i) omit “assets which correspond to”; and

(e) after paragraph (e) insert——

“Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.”

(4) Omit sub-paragraph (11).

Amendment of paragraph 20

5.—(1) Paragraph 20 (chargeable equity and liabilities of a relevant non-banking group) is amended as follows.

(2) In sub-paragraph (8)—

(a) in paragraph (a) omit “, and N has assets which correspond to those liabilities”; and

(b) for paragraph (b) substitute—

“(b) M, or another entity within sub-paragraph (9), recognises, as assets, amounts due from N or another entity not within that sub-paragraph (“N’s liabilities”),”.

(3) In sub-paragraph (10)—

(a) in paragraph (b) for “N’s assets corresponding to those liabilities are” substitute “N recognises assets in respect of those liabilities as”;

(b) for paragraph (c) substitute—

“(c) references to amounts due from N or another entity not within sub-paragraph (9) include securities provided by M or another entity within that sub-paragraph to N or another entity not within sub-paragraph (9) as collateral, but only where M or that other entity within that sub-paragraph recognises those securities in its balance sheet or statement of financial position, and”;

(c) omit paragraph (d) (and the “and” after it);

(d) in paragraph (e)(i) omit “assets which correspond to”; and

(e) after paragraph (e) insert—

“Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.”

(4) Omit sub-paragraph (11).

Amendment of paragraph 22

6.—(1) Paragraph 22 (chargeable equity and liabilities of UK resident banks and building societies which are not members of groups) is amended as follows.

(2) In sub-paragraph (1)—

(a) paragraph (a) omit “(“N”) and N has assets which correspond to those liabilities”; and

(b) for paragraph (b) substitute—

“(b) the relevant entity recognises, as assets, amounts due from that other entity (“N”) to the relevant entity (“N’s liabilities”),”.

(3) In paragraph 22(2)—

(a) for paragraph (b) substitute—

“(b) references to amounts due from N include securities provided by the relevant entity to N as collateral, but only where the relevant entity recognises those securities in its balance sheet or statement of financial position, and”;

(b) omit paragraph (c) (and the “and” after it); and

(c) after paragraph (d) insert—

“Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.”

- (4) Omit sub-paragraph (3).

Amendment of paragraph 25

7.—(1) Paragraph 25 (definition of “UK allocated equity and liabilities”) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (a) omit—

(i) “(“N”)”; and

(ii) “, and N has assets which correspond to those liabilities”; and

(b) for paragraph (b) substitute—

“(b) the bank recognises, as assets, amounts due from that other entity (“N”) to the bank (“N’s liabilities”),”.

(3) In sub-paragraph (3)—

(a) for paragraph (b) substitute—

“(b) references to amounts due from N include securities provided by the relevant foreign bank to N as collateral, but only where the bank recognises those securities in its balance sheet or statement of financial position, and”;

(b) omit paragraph (c) (and the “and” after it); and

(c) after paragraph (d) insert—

“Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.”

(4) Omit sub-paragraph (4).

ABC

DEF

Two of the Lords Commissioners of Her
Majesty’s Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Order)

Schedule 19 to the Finance Act 2011 (c. 11) (“Schedule 19”) introduced a new tax, the bank levy. The bank levy is charged only on the net balance of certain liabilities after certain assets have been offset (“netting”). Netting is permitted to take place where banks or entities within a banking group that falls within the charge to the bank levy, have entered into an agreement with another party for there to be a net settlement of all liabilities in the event of an insolvency or bankruptcy. Included in these agreements are multi-lateral agreements which permit different members of the same banking group to enter into a net settlement agreement with the same counterparties. This Order amends the provisions of Schedule 19 which deal with netting.

Article 1 deals with citation, commencement and effect. This Order will have effect in relation to chargeable periods ending on or after 1 January 2011, which is the first period in which the bank levy applied. The power to make an Order with retrospective effect is contained in paragraph 40(3) of Schedule 19.

Articles 3 to 7 amend paragraphs 16, 18, 20, 22 and 25 of Schedule 19 which are the paragraphs that provide for netting where there are multi-lateral agreements. These amendments ensure that these paragraphs apply to cases where the bank or entity either receives securities as collateral (and subsequently sells them) or provides securities as collateral to a counterparty. The amendments ensure that, in the event of the insolvency of either party, the liabilities and assets recognised on the bank or the entity’s balance sheet from these transactions will qualify for netting.

A Tax Information and Impact Note covering this instrument was published on 23 March 2011 alongside the draft legislation on the bank levy and is available on the HMRC website at http://www.hmrc.gsi.gov.uk/the_library/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.