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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order imposes restrictions on the making of special bail-in provision in any instrument made by the Bank under Part 1 of the Act. In doing so, it implements, in part, Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (“BRRD”) (OJ L 173, 12.6.2014 p.190). Special bail-in provision can be made in relation to banks and investment firms. This Order will also apply where special bail-in provision is made in respect of banking group companies (by virtue of section 81CA(2) of the Act).

Article 4 provides that special bail-in provision cannot be made in respect of protected liabilities. Protected liabilities are liabilities subject to set-off or netting, which are not excluded from protection (under paragraph (3)), and in the case of liabilities relating to derivatives, other financial contracts or certain master agreements, which have not been set-off or netted. Article 4 does not prevent special bail-in provision from being made to convert the protected liability into the net sum that would be due following set-off or netting (or into an estimate of the net sum).

Article 5 defines derivatives by reference to Article 2(5) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p.1), as is the case under Article 2.1(64) and (65) of the BRRD. Financial contracts are defined to include certain securities contracts (including repos), commodities contracts (including repos) and futures contracts.

Article 6 (as supplemented by article 7) provides the remedy for contraventions of the provisions of the Order.

Article 8 requires the Treasury to review the regulatory system established by the Order at least once every 5 years.

A Transposition Table setting out how the recovery and resolution directive is transposed into UK law is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on <http://www.hm-treasury.gov.uk/> and is published alongside the Regulations on <http://www.legislation.gov.uk/>.