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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**EXITING THE EUROPEAN UNION  
FINANCIAL SERVICES**

The Bank Recovery and Resolution and Miscellaneous  
Provisions (Amendment) (EU Exit) Regulations 2018

*Made* - - - - - **\*\*\***

*Coming into force in accordance with regulation 1*

**THE BANK RECOVERY AND RESOLUTION  
AND MISCELLANEOUS PROVISIONS  
(AMENDMENT) (EU EXIT) REGULATIONS 2018**

1. Citation and commencement
  2. Amendments of the Banking Act 2009
  3. Amendments of other primary legislation
  4. Amendments of the Bank Recovery and Resolution (No.2) Order 2014
  5. Amendments of other secondary legislation
  6. Revocation and amendments of retained direct EU legislation
  7. The following instruments are amended in accordance with Schedule 5—...
  8. Transitional provisions: pre-exit EEA resolution action
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SCHEDULE 1 — Amendments of the Banking Act 2009

1. Introduction
2. Special resolution regime: introduction
3. (1) Subsection (1) is amended as follows.
4. In subsection (2), for paragraph (a) (but not the “and”...
5. After subsection (2) insert— (2A) The Treasury may by regulations...
6. After subsection (3) insert— (4) In this Part a reference...
7. Objectives and Code
8. Mandatory write-down, conversion etc of capital instruments
9. In section 6B (mandatory write-down, conversion, etc of capital instruments),...

10. (1) Section 6C (mandatory reduction instruments: implementation of requirements of...
11. Valuation before mandatory write-down of capital or stabilisation action
12. Exercise of powers: general
13. (1) Section 7A (effect on other group members, financial stability...
14. In section 8ZA (specific conditions: asset management vehicle), omit subsection...
15. The stabilisation options
16. In section 12AA (bail-in: sequence of write-down and conversion of...
17. Transfer of securities
18. Transfer of property
19. Bail-in option
20. In section 48C (meaning of “protected deposit”), in subsection (1)...
21. (1) In section 48D (general interpretation of section 48B), subsection...
22. (1) Section 48H (business reorganisation plans) is amended as follows....
23. Termination rights etc
24. Independent valuer: valuation under section 6E or 48X
25. Incidental functions
26. In section 70C (suspension of termination rights), in subsection (6)...
27. (1) Section 70D (suspension: general provisions) is amended as follows....
28. In section 75 (power to change law), in subsection (9),...
29. Groups
30. (1) Section 81B (sale to commercial purchaser and transfer to...
31. (1) Section 81ZBA (transfer to asset management vehicle) is amended...
32. In section 81BA (bail-in option)— (a) in subsection (2) omit...
33. In section 81CA (section 81BA: supplemental), in subsection (5), omit...
34. In section 81D (interpretation: “banking group company” etc), in subsection...
35. Appointment of investigators
36. (1) Section 83ZE (investigations etc in support of foreign resolution...
37. Enforcement of relevant requirements
38. In section 83ZZ (co-operation), in paragraph (c) for “giving” substitute...
39. Special cases
40. In section 89A (application of Part 1 to investment firms),...
41. Third-country resolution actions
42. (1) Section 89I (effect of recognition of third-country resolution action...
43. Resolution of UK branches of third-country institutions
44. In subsection (2)(c) for the words from “meaning” to “directive”...
45. (1) The modified version of section 6E substituted by subsection...
46. (1) The modified version of section 7 substituted by subsection...
47. (1) The modified version of section 7A substituted by subsection...
48. (1) The modified version of section 48B substituted by subsection...
49. (1) In the Table of further modifications in subsection (11),...
50. General provisions
51. Bank Insolvency
52. Payment Systems
53. Miscellaneous provisions
54. General
55. (1) In section 259 (statutory instruments), in subsection (3), the...
56. (1) In section 261 (index of defined terms), the Table...

## SCHEDULE 2 — Amendments of other primary legislation

1. Amendments of the Insolvency Act 1986

2. In paragraph 15BB— (a) in sub-paragraph (a)—
3. In paragraph 15C— (a) in sub-paragraph (3) for paragraph (b)...
4. Amendments of the Financial Services (Banking Reform) Act 2013

SCHEDULE 3 — Amendments of the Bank Recovery and Resolution (No.2) Order  
2014

1. Introductory provisions
2. In article 3 (application of Order), in the opening words,...
3. Designation of authorities and competent ministry
4. Recovery and resolution planning
5. (1) Article 8 (resolution planning: preparatory steps and simplified obligations)...
6. Omit article 10 (provision of information to EBA).
7. Assessment of recovery plan drawn up by an institution
8. In article 12 (assessment of plan) omit paragraph (2).
9. (1) Article 13 (criteria for assessment) is amended as follows....
10. Assessment of group recovery plan
11. In article 17(1) (duty to transmit a copy of group...
12. (1) Article 18 (assessment of group recovery plan) is amended...
13. (1) Article 19 (purpose of assessment) is amended as follows....
14. For article 20 substitute— Timing of assessment of plan The appropriate regulator must conclude the assessment within the four...
15. Omit article 21 (joint assessment of plan).
16. (1) Article 22 (revision of plan) is amended as follows....
17. (1) Article 23 (business changes and relevant measures) is amended...
18. Omit articles 25 (references to EBA) and 26 (requesting the...
19. Assessment of group recovery plan where neither the PRA nor the FCA is the consolidating supervisor
20. Review of recovery plans and group recovery plans
21. (1) Article 34 (review of group recovery plan assessed under...
22. Omit article 35 (review of group recovery plan assessed under...
23. Resolution plans for institutions
24. (1) Article 37 (the Bank's duty to draw up resolution...
25. Group resolution plan
26. (1) Article 41 (information to be transmitted for the purpose of...
27. Omit articles 42 (joint decision on adoption of group resolution...
28. In article 45 (duty to transmit a copy of the...
29. Group resolution plan where neither the PRA nor the FCA is the consolidating supervisor
30. Review of resolution plans and group resolution plans
31. In article 54 (review of group resolution plan drawn up...
32. Omit article 55 (review of group resolution plan drawn up...
33. Information and records for resolution planning
34. Assessment of resolvability of institutions
35. (1) Article 60 (assessment of resolvability) is amended as follows....
36. Assessment of resolvability of groups
37. (1) Article 62 (assessment of group resolvability where the PRA...
38. Omit article 63 (assessment of group resolvability where neither the...
39. Removal of impediments to resolvability of institutions
40. (1) Article 66 (effect of notice of determination) is amended...
41. Removal of impediments to resolvability of group entities where the PRA or FCA is the consolidating supervisor
42. (1) Article 69 (report on substantive impediments to the resolvability...

43. (1) Article 70 (suspension of requirement to draw up or...
44. (1) Article 71 (determining remedial measures) is amended as follows....
45. Omit articles 72 (joint decision on impediments to group resolvability...
46. Removal of impediments to resolvability of groups where neither the PRA nor the FCA is the consolidating supervisor
47. Authorisation of agreement for group financial support
48. (1) Article 84 (review of group financial support agreement and...
49. In article 85 (duty to transmit a copy of application),...
50. Omit 86 (joint decision with other competent authorities), 87 (references...
51. In article 89 (duty to transmit a copy of authorised...
52. (1) Article 90 (amendment of authorised agreement) is amended as...
53. Authorisation of agreement for group financial support where neither the PRA nor the FCA is the consolidating supervisor
54. Approval of authorised agreements by the members of a UK group entity
55. After article 98 insert— Publication of information concerning group financial...
56. Provision of group financial support
57. (1) Article 102 (relevant notice from UK group entity: decision...
58. (1) Article 103 (duties of consolidating supervisor where financial support...
59. Omit articles 104 (re-assessment of recovery plans by the PRA...
60. Early intervention with respect to an institution
61. (1) Article 108 (notice that institution meets the conditions for...
62. Early intervention with respect to groups where the PRA or FCA is the consolidating supervisor
63. (1) Article 111 (procedure for early intervention in respect of...
64. Omit articles 112 (procedure for early intervention in respect of...
65. Early intervention with respect to groups where neither the PRA nor the FCA is the consolidating supervisor
66. Minimum requirement for own funds and eligible liabilities: determination of minimum requirement for an institution
67. In article 122 (duties of the Bank of England in...
68. (1) Article 123 (determination of minimum requirement) is amended as...
69. Determination of minimum consolidated requirement where the PRA or FCA is the consolidating supervisor
70. (1) Article 126 (determination of minimum consolidated requirement) is amended...
71. Omit articles 127 (joint determination) and 128 (references to EBA:...
72. In article 129 (review of minimum consolidated requirement), in paragraph...
73. Determination of minimum consolidated requirement where neither the PRA nor the FCA is the consolidating supervisor
74. Determination of minimum requirements for group institutions where the PRA or FCA is the consolidating supervisor
75. (1) Article 134 (duties of the Bank of England in...
76. (1) Article 135 (determination of minimum requirement) is amended as...
77. Omit articles 136 (joint determination of minimum requirements) and 137...
78. (1) Article 138 (review of minimum requirements) is amended as...
79. (1) Article 139 (minimum requirement for other group entities set...
80. Determination of minimum requirements for group institutions where neither the PRA nor the FCA is the consolidating supervisor
81. Minimum requirement for own funds and eligible liabilities: other provisions

82. (1) Article 148 (meeting minimum requirement through contractual bail-in instruments...
83. Requirement to write down or convert capital instruments
84. (1) Article 150 (determinations pursuant to Article 59.3 of the...
85. (1) Article 152 (determination that Case 2, 3, 4 or...
86. Omit article 153 (joint determination under Article 59(3)(c) of the...
87. Removal of procedural impediments to application of bail-in tool
88. (1) Article 155 (requirement to increase or remove limit on...
89. After article 156 insert— PART11A Contractual recognition of bail-in Contractual...
90. Treatment of derivative contracts where bail-in option is applied
91. Preparation of business reorganisation plans after application of bail-in tool: assessment of plan drawn up by an institution
92. (1) Article 161 (purpose of assessment) is amended as follows....
93. Assessment of business organisation plan drawn up by a single group entity
94. (1) Article 164 (assessment etc of business reorganisation plan) is...
95. Assessment of business organisation plan drawn up for relevant group where the PRA or FCA is the consolidating supervisor
96. Omit article 166 (duty to transmit a copy of business...
97. (1) Article 167 (assessment of business reorganisation plan) is amended...
98. (1) Article 168 (purpose of assessment) is amended as follows....
99. Omit article 170 (joint assessment of plan).
100. (1) Article 171 (revision of plan) is amended as follows....
101. Omit articles 173 (references to European Banking Authority) and 174...
102. Assessment of business reorganisation plan drawn up for relevant group where neither the PRA nor the FCA is the consolidating supervisor
103. Procedural obligations where an undertaking is failing or likely to fail
104. (1) Article 182 (matters to be notified by the regulator...
105. (1) Article 183 (notification that an undertaking is failing or...
106. In Part 14, after article 184 insert— Notifications under articles...
107. Cross-border group resolution
108. Modified application of company law to banks etc in resolution
109. (1) Article 218 (modified application of legislation on cross-border mergers)...
110. (1) Article 219 (modified application of the Companies Act 2006...
111. (1) Article 220 (modified application of the Companies Act 2006...
112. Miscellaneous provisions
113. (1) Article 223 (duty to co-operate) is amended as follows....
114. Omit articles 224 (non-binding co-operation arrangements in line with EBA...
115. (1) Article 227 (review) is amended as follows.
116. Requirements concerning recovery plans
117. Information to be contained in a resolution plan
118. Information to be contained in a group resolution plan
119. Additional information for purposes of a resolution plan and matters the Bank is to consider when assessing resolvability

#### SCHEDULE 4 — Amendments of other secondary legislation

1. The Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009
2. The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:  
*The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 No. 1394*

3. The Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014
4. The Banking Act 2009 (Banking Group Companies) Order 2014
5. The Bank Recovery and Resolution Order 2014
6. The Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014
7. The Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014
8. The Building Societies (Bail-in) Order 2014
9. The Bank Recovery and Resolution Order 2016

SCHEDULE 5 — Amendments of Retained Direct EU legislation

1. Amendment of Commission Delegated Regulation (EU) 2016/778
2. Amendment of Commission Delegated Regulation (EU) 2016/860

Explanatory Note