Draft Regulations laid before Parliament under paragraph 2A(3)(a) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No.

FINANCIAL SERVICES AND MARKETS

The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020

Made - - - - ***

Coming into force in accordance with regulation 1(2) to (4)

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CHAPTER 1

Suspension of obligations, interests and rights

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**) and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**b**), make the following Regulations.

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

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 2A(3)(a) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020.

(2) Parts 1 to 3 and Chapter 3 of Part 4 come into force on 28th December 2020.

(3) Part 4 (apart from Chapter 3) comes into force on IP completion day.

(4) Part 5 comes into force on 28th December 2020, but shall cease to have effect on IP completion day.

(**a**) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), regulations 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 that Agreement signed at Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006.

(**b**) 2018 c.16.

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

PART 2

Amendment of Primary Legislation made under the European Communities Act 1972

CHAPTER 1

Amendment of the Financial Services and Markets Act 2000

Amendment of the Financial Services and Markets Act 2000

2. —(1) The Financial Services and Markets Act 2000(**a**) is amended in accordance with this regulation.

(2) In section 137R(5)(financial promotion rules)(**b**)—

(a) omit the "or" at the end of paragraph (b)(iv);

(b) after paragraph (b)(v) insert—

"or

(vi) Article 44a of the recovery and resolution directive (as defined in section 71I(5)),".

CHAPTER 2

Amendment of the Banking Act 2009

Introduction

3. The Banking Act 2009(**c**) is amended in accordance with this Chapter.

Interpretation

4. In section 3 (interpretation: other expressions), in subsection (1)—

(a) in the definition of "Additional Tier 1 instruments" after "Chapter 2" insert "or 4";

(b) after the definition of "Additional Tier 1 instruments" insert—

""bail-in liabilities", of an undertaking, means liabilities and capital instruments that—

(a) do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments, of the undertaking, and

(b) are not excluded liabilities listed in section 48B(8),";

(c) for the definition of "eligible liabilities" substitute—

""eligible liabilities" has the meaning given by section 3A(4A),";

(d) in the definition of "the recovery and resolution directive", at the end, insert "as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019";

(e) after the definition of "relevant capital instruments" insert—

""relevant internal liabilities" of a bank or banking group company means—

(a) eligible liabilities, or

(b) instruments used to meet any of the requirements set out in Article 92b of the capital requirements regulation,

in each case held by a resolution entity in the same resolution group as the bank or banking group company, either directly or indirectly (through other entities in the same

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(**a**) 2000 c.8.

(**b**) Section 137R was amended by S.I. 2017/701, S.I. 2018/546 and S.I. 2015/910; there are other amendments but none is relevant.

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

resolution group that bought the liabilities or instruments from the bank or banking group company),

"resolution entity" means an entity which is identified by the Bank of England in a resolution plan or a group resolution plan under Part 5 of the Bank Recovery and Resolution (No.2) Order 2014 as an entity in respect of which—

(a) the Bank of England might exercise a stabilisation power,

(b) an EU resolution authority might take EU resolution action, or

(c) a relevant third-country authority might take third-country resolution action,

and for the purposes of this definition, "EU resolution authority" has the meaning given by section 81AA(14), "relevant third-country authority" has the meaning given by section 81AA(14), "EU resolution action" has the meaning given to "resolution action" in Article 2.1(40) of the recovery and resolution directive and "third-country resolution action" has the meaning given by section 89H(7),

"resolution group" means a resolution entity together with any subsidiary that—

(a) is not a resolution entity itself,

(b) is not a subsidiary of another resolution entity, and

(c) where the subsidiary is established in a third country, is stated by the group resolution plan under Part 5 of the Bank Recovery and Resolution (No.2) Order 2014 to be included in the resolution group,

and for the purpose of this definition "subsidiary" has the meaning given by Article 4.1(16) of the capital requirements regulation,";

(f) in the definition of "Tier 2 instruments" after "Chapter 2" insert "or 4".

Removal of impediments to the exercise of stabilisation powers etc.

5. In section 3A (removal of impediments to the exercise of stabilisation powers etc)—

(a) for subsection (4) substitute—

"(4) The Bank of England may give directions to a relevant person requiring that person to maintain or issue particular kinds of bail-in liabilities.

(4A) Where the Bank of England gives directions to a relevant person under subsection (4) the bail-in liabilities that the person is required to maintain or issue are referred to, in relation to that person, as "eligible liabilities".

(4B) The Bank of England may give directions to a relevant person requiring that person—

(a) to maintain a minimum requirement for own funds and eligible liabilities, and

(b) for the purpose of paragraph (a), to change the maturity profile of own funds instruments and eligible liabilities or take other specified steps.

(4C) The Bank of England must not exercise the power under subsection (4B)(b) in relation to the maturity profile of own funds instruments—

(a) in the case of a relevant person which is—

(i) an institution authorised for the purpose of the Financial Services and Markets Act 2000 by the PRA, or

(ii) a parent of such an institution or subsidiary of such an institution or such a parent for the purposes of paragraph (b) or (c) of subsection (1),

without the consent of the PRA, or

(b) in the case of a relevant person to which paragraph (a) does not apply, without the consent of the FCA.";

(b) in subsection (5) for "(4)" substitute "(4B)".

Mandatory write-down, conversion etc.

6. In the heading for section 6B at the end insert "and liabilities".

7. In section 6B (mandatory write-down, conversion, etc of capital instruments)(**a**)—

(a) in subsection (2)—

(i) in paragraph (b), after the semi-colon, omit "and";

(ii) in paragraph (c) after "the principal amount of Tier 2 instruments" insert "of the bank";

(iii) after paragraph (c), insert—

"and

(d) where this section applies by virtue of section 6A(3) (Case 2) and the bank is not a resolution entity, but is in a resolution group, the principal amount of the relevant internal liabilities is reduced or such liabilities are converted (directly or indirectly) into Common Equity Tier 1 instruments (or both)—

(i) to the extent required to achieve the special resolution objectives set out in section 4 (so far as not achieved under paragraphs (b) and (c)), or

(ii) to the extent of the capacity of such liabilities,

whichever is lower.";

(b) in subsection (3)—

(i) in paragraph (b), for "or Tier 2 instruments" substitute ", Tier 2 instruments or relevant internal liabilities";

(ii) in paragraph (c), after "capital instruments" insert "or relevant internal liabilities".

8. In section 6C (mandatory reduction instruments: implementation of requirements of section 6B)(**b**)—

(a) in subsection (1), in the opening words after "relevant capital instrument", insert "or a relevant internal liability";

(b) in subsection (1), in paragraphs (b) and (c) after "relevant capital instrument", insert "or the relevant internal liability";

(c) in subsection (1), in paragraph (b) after "the instrument", in both places it occurs insert "or relevant internal liability";

(d) in subsection (2), after "relevant capital instruments" insert "or relevant internal liabilities";

(e) in subsection (3), after "relevant capital instruments" in both places it occurs insert "or relevant internal liabilities";

(f) in subsection (4), after "relevant capital instruments" insert "or relevant internal liabilities"; and

(g) in subsection (4)(d), after "capital instrument" insert "or relevant internal liability".

Bail-in: sequence of write-down and conversion of capital instruments and liabilities

9. In section 12AA (bail-in: sequence of write-down and conversion of capital instruments and liabilities)(**c**)—

(a) in subsection (1)(e), for "eligible" substitute "bail-in";

(b) in subsection (4), for "eligible" in both places it occurs substitute "bail-in";

(c) in subsection (5), for "eligible" substitute "bail-in".

(**a**) Section 6B was inserted by S.I. 2014/3329.
(**b**) Section 6C was inserted by S.I. 2014/3329.
(**c**) Section 12AA was inserted by S.I. 2014/3329.

Special bail-in provision

10. In section 48B (special bail-in provision)(**a**)—

(a) in subsection (8), after paragraph (e) insert—

"(ea) liabilities with a remaining maturity of less than 7 days owed by the bank to a recognised central counterparty, an EEA central counterparty or a third country central counterparty;";

(b) in the same subsection, after paragraph (j) insert—

"(k) liabilities owed by the bank to another bank or a banking group company which (in either case)—

(i) is part of the same resolution group as the bank, and

(ii) is not itself a resolution entity,

where the liabilities do not rank below ordinary non-preferential debts under the hierarchy of claims in normal insolvency proceedings.";

(c) in subsection (10), for "eligible" in both places it occurs substitute "bail-in";

(d) in subsection (11)—

(i) for "an eligible liability" in each place it occurs substitute "a bail-in liability";

(ii) for "the eligible liabilities" substitute "the bail-in liabilities".

General interpretation of section 48B

11. In section 48D (general interpretation of section 48B)(**b**), in subsection (1)—

(a) after the definition of "designated settlement system" insert—

""EEA central counterparty" has the meaning given in section 285 of the Financial Services and Markets Act 2000;";

(b) after the definition of "investment firm" insert—

""normal insolvency proceedings" has the meaning given in section 12AA(2);";

(c) after the definition of "pension scheme" insert—

""recognised central counterparty" has the meaning given in section 285 of the Financial Services and Markets Act 2000;";

(d) after the definition of "secured" insert—

""third country central counterparty" has the meaning given in section 285 of the Financial Services and Markets Act 2000;".

Pre-conditions for financial assistance: duty of Bank to give information

12. In section 78A (pre-conditions for financial assistance: duty of Bank to give information)(**c**), in subsection (2)(b) for "eligible" substitute "bail-in".

Cases where mandatory write-down, conversion etc. applies: banking group companies

13. In section 81AA (cases where mandatory write-down, conversion etc applies: banking group companies)—

(a) in subsection (1)—

(i) after "capital instruments" insert "and relevant internal liabilities"; and

(ii) for "and (8)" substitute ", (8) and (8A)";

(**a**) Section 48B was inserted by S.I. 2014/3329.
(**b**) Section 48D was inserted by paragraph 4 of Schedule 2 of the Financial Services (Banking Reform) Act 2013 (c. 33).
(**c**) Section 81AA was inserted by S.I. 2014/3329.

(b) in subsections (6)(a), (7)(a), and (8)(b), after "capital instruments", insert "or relevant internal liabilities";

(c) after subsection (8) insert—

"(8A) Case 4 is where—

(a) the banking group company is (or, but for the exercise of a stabilisation power, would be) a parent undertaking of a bank from which it has purchased (directly or indirectly) relevant capital instruments or relevant internal liabilities,

(b) the banking group company is not a resolution entity,

(c) the relevant capital instruments or relevant internal liabilities of the banking group company have been purchased (directly or indirectly) by a resolution entity in the same resolution group as the banking group company,

(d) any of the cases provided for in section 6A applies to the bank referred to in paragraph (a) above, and

(e) none of cases 1 to 3 in this section applies to the banking group company.";

(d) in subsection (14) after the definition of "financial institution" insert—

""parent undertaking" has the meaning given in Article 4.1(15)(a) of the capital requirements regulation.".

Groups: sale to commercial purchaser and transfer to bridge bank: holding companies

14. After section 81B insert—

"**Sale to commercial purchaser and transfer to bridge bank: supplemental powers in relation to certain holding companies**

81ZZBA.—(1) Without prejudice to the operation of section 81B, the Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.

(2) Condition 1 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(3) Condition 2 is that the banking group company is an entity within Article 1.1(c) or (d) of the recovery and resolution directive.

(4) Condition 3 is that the PRA is satisfied that the banking group company is failing or likely to fail.

(5) Condition 4 is that the Bank of England is satisfied that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the banking group company that will result in Condition 3 ceasing to be met.

(6) Condition 5 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives.

(7) Condition 6 is that the Bank of England is satisfied that one or more of the special resolution objectives would not be met to the same extent by the winding up of the banking group company.

(8) Condition 7 (which applies only in a financial assistance case) is that—

(a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and

(b) in the Bank of England's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

(9) In exercising a stabilisation power in reliance on this section, the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

(10) In this section "financial assistance case" has the meaning given in section 81B(8).

Assessment of conditions for section 81ZZBA

81ZZBB.—(1) This section applies for the purposes of section 81ZZBA.

(2) The PRA must treat Condition 3 as met if satisfied that it would be met but for financial assistance provided by—

(a) the Treasury, or

(b) the Bank of England,

disregarding ordinary market assistance offered by the Bank of England on its usual terms.

(3) The Bank of England must treat Condition 4 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (2).

(4) For the purposes of Condition 3, a banking group company is failing or likely to fail if—

(a) it is contravening or likely to contravene a regulatory requirement where that contravention is serious in nature or directly related to a deterioration in the financial situation of the banking group company which threatens the viability of—

(i) the banking group company, or

(ii) another undertaking in the same resolution group,

(b) it is failing, or is likely to fail, to meet the approval conditions set out in section 192R(3) to (6) of the Financial Services and Markets Act 2000 in circumstances where that failure—

(i) would justify the taking of measures in relation to the company by the PRA under section 192T(1) of that Act, and

(ii) is serious in nature,

(c) the value of the assets of the banking group company is less than the amount of its liabilities,

(d) the banking group company is unable to pay its debts or other liabilities as they fall due,

(e) paragraph (c) or (d) (or both) will, in the near future, apply to the banking group company, or

(f) extraordinary public financial support is required in respect of the banking group company and subsection (5) does not apply to it.

(5) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary financial support takes any of the following forms—

(a) a State guarantee to back liquidity facilities provided by central banks,

(b) a State guarantee of newly issued liabilities,

(c) an injection of own funds, or purchase of capital instruments or liabilities, at prices and on terms that do not confer an advantage upon the banking group company, where none of the circumstances referred to in subsection (4)(a), (b), (c), (d) or (e) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.

(6) Before determining that Condition 3 is met, the PRA must consult the Bank of England.

(7) Before determining whether or not Conditions 4 and (where applicable) 7 are met, the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(8) Before determining that Conditions 5 and 6 are met the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(9) The special resolution objectives are not relevant to Conditions 3 and 4.

(10) In this section "regulatory requirement" means a requirement imposed—

(a) by or under the Financial Services and Markets Act 2000,

(b) by or under the capital requirements regulation,

(c) by any enactment which gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation made under that directive, or

(d) by the Bank of England under this Act,

and for the purposes of this definition, "capital requirements directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.".

Groups: transfer to asset management vehicle: holding companies

15. After section 81ZBA insert—

"**Transfer to asset management vehicle: supplemental powers in relation to certain holding companies**

81ZBB.—(1) Without prejudice to the operation of section 81ZBA, the Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12ZA(3) if the following conditions are met.

(2) Condition 1 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(3) Condition 2 is that the banking group company is an entity within Article 1.1(c) or (d) of the recovery and resolution directive.

(4) Condition 3 is that the PRA is satisfied that the banking group company is failing or likely to fail.

(5) Condition 4 is that the Bank of England is satisfied that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the banking group company that will result in Condition 3 ceasing to be met.

(6) Condition 5 is that the power is exercised in connection with the exercise of one or more stabilisation powers in respect of the banking group company otherwise than for the purposes of the third stabilisation option.

(7) Condition 6 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives.

(8) Condition 7 is that the Bank of England is satisfied that one or more of the special resolution objectives would not be met to the same extent by the winding up of the banking group company.

(9) Condition 8 (which applies only in a financial assistance case) is that—

(a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and

(b) in the Bank of England's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

(10) Condition 9 is that the Bank of England is satisfied that—

(a) the situation of the market for the assets which it is proposed to transfer by the exercise of the stabilisation power is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets,

(b) the transfer is necessary to ensure the proper functioning of the banking group company from which the transfer is to be made, or

(c) the transfer is necessary to maximise the proceeds available for distribution.

(11) In this section—

"financial assistance case" has the meaning given in section 81B(8); and

"normal insolvency proceedings" has the meaning given in section 81ZBA.

Assessment of conditions for section 81ZBB

81ZBC.—(1) This section applies for the purposes of section 81ZBB.

(2) The PRA must treat Condition 3 as met if satisfied that it would be met but for financial assistance provided by—

(a) the Treasury, or

(b) the Bank of England,

disregarding ordinary market assistance offered by the Bank of England on its usual terms.

(3) The Bank of England must treat Condition 4 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (2).

(4) For the purposes of Condition 3, a banking group company is failing or likely to fail if—

(a) it is contravening or likely to contravene a regulatory requirement where that contravention is serious in nature or directly related to a deterioration in the financial situation of the banking group company which threatens the viability of—

(i) the banking group company, or

(ii) another undertaking in the same resolution group,

(b) it is failing, or is likely to fail, to meet the approval conditions set out in section 192R(3) to (6) of the Financial Services and Markets Act 2000 in circumstances where that failure—

(i) would justify the taking of measures in relation to the company by the PRA under section 192T(1) of that Act, and

(ii) is serious in nature,

(c) the value of the assets of the banking group company is less than the amount of its liabilities,

(d) the banking group company is unable to pay its debts or other liabilities as they fall due,

(e) paragraph (c) or (d) (or both) will, in the near future, apply to the banking group company, or

(f) extraordinary public financial support is required in respect of the banking group company and subsection (5) does not apply to it.

(5) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary financial support takes any of the following forms—

(a) a State guarantee to back liquidity facilities provided by central banks,

(b) a State guarantee of newly issued liabilities,

(c) an injection of own funds, or purchase of capital instruments, at prices and on terms that do not confer an advantage upon the banking group company, where none of the circumstances referred to in subsection (4)(a), (b), (c), (d) or (e) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.

(6) Before determining that Condition 3 is met, the PRA must consult the Bank of England.

(7) Before determining whether or not Conditions 4, 5 and (where applicable) 8 are met, the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(8) Before determining that Conditions 6 and 7 are met the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(9) The special resolution objectives are not relevant to Conditions 3 and 4.

(10) In this section "regulatory requirement" means a requirement imposed—

(a) by or under the Financial Services and Markets Act 2000,

(b) by or under the capital requirements regulation,

(c) by any enactment which gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation made under that directive, or

(d) by the Bank of England under this Act,

and for the purposes of this definition, "capital requirements directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.".

Groups: bail-in option: holding companies

16. After section 81BA insert—

"**Bail-in option: supplemental powers in relation to certain holding companies**

81BB.—(1) Without prejudice to the operation of section 81BA, the Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12A(2) if the following conditions are met.

(2) Condition 1 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(3) Condition 2 is that the banking group company is an entity within Article 1.1(c) or (d) of the recovery and resolution directive.

(4) Condition 3 is that the PRA is satisfied that the banking group company is failing or likely to fail.

(5) Condition 4 is that the Bank of England is satisfied that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the banking group company that will result in Condition 3 ceasing to be met.

(6) Condition 5 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives.

(7) Condition 6 is that the Bank of England is satisfied that one or more of the special resolution objectives would not be met to the same extent by the winding up of the banking group company.

(8) In exercising a stabilisation power in reliance on this section, the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

Assessment of conditions for section 81BB

81BC.—(1) This section applies for the purposes of section 81BB.

(2) The PRA must treat Condition 3 as met if satisfied that it would be met but for financial assistance provided by—

(a) the Treasury, or

(b) the Bank of England,

disregarding ordinary market assistance offered by the Bank of England on its usual terms.

(3) The Bank of England must treat Condition 4 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (2).

(4) For the purposes of Condition 3, a banking group company is failing or likely to fail if—

(a) it is contravening or likely to contravene a regulatory requirement where that contravention is serious in nature or directly related to a deterioration in the financial situation of the banking group company which threatens the viability of—

(i) the banking group company, or

(ii) another undertaking in the same resolution group,

(b) it is failing, or is likely to fail, to satisfy the approval conditions set out in section 192R(3) to (6) of the Financial Services and Markets Act 2000 in circumstances where that failure—

(i) would justify the taking of measures in relation to the company by the PRA under section 192T(1) of that Act, and

(ii) is serious in nature,

(c) the value of the assets of the banking group company is less than the amount of its liabilities,

(d) the banking group company is unable to pay its debts or other liabilities as they fall due,

(e) paragraph (c) or (d) (or both) will, in the near future, apply to the banking group company, or

(f) extraordinary public financial support is required in respect of the banking group company and subsection (5) does not apply to it.

(5) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary financial support takes any of the following forms—

(a) a State guarantee to back liquidity facilities provided by central banks,

(b) a State guarantee of newly issued liabilities,

(c) an injection of own funds, or purchase of capital instruments, at prices and on terms that do not confer an advantage upon the banking group company, where none of the circumstances referred to in subsection (4)(a), (b), (c), (d) or (e) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.

(6) Before determining that Condition 3 is met, the PRA must consult the Bank of England.

(7) Before determining whether or not Condition 4 is met, the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(8) Before determining that Conditions 5 and 6 are met the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(9) The special resolution objectives are not relevant to Conditions 3 and 4.

(10) In this section "regulatory requirement" means a requirement imposed—

(a) by or under the Financial Services and Markets Act 2000,

(b) by or under the capital requirements regulation,

(c) by any enactment which gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation made under that directive, or

(d) by the Bank of England under this Act,

and for the purposes of this definition, "capital requirements directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.".

17. For the heading for section 81C substitute "Sections 81AA to 81ZBB: supplemental".

18. In section 81C (section 81B or 81ZBA: supplemental)(**a**)—

(a) in subsection (1A) after paragraph (a) insert—

"(aa) where Case 4 in section 81AA applies, section 6B(2) is to be read as providing that "the mandatory reduction provision" is provision which, together with the mandatory reduction provision made in respect of any other subsidiary of the resolution entity that is in the same resolution group as the banking group company, produces the results referred to in subsection (1AA) of this section,";

(**a**) Section 81C was inserted by S.I. 2014/3329.

(b) after subsection (1A) insert—

"(1AA) The results are that—

(a) the principal amount of the relevant capital instruments or relevant internal liabilities of the banking group company is reduced, or

(b) such instruments or liabilities of the banking group company are converted (directly or indirectly) into Common Equity Tier 1 instruments,

(or both (a) and (b)) in accordance with the principle that losses of the bank referred to in relation to that banking group company in section 81AA(8A)(a) are effectively passed on to, and the bank is recapitalised by, the resolution entity that is in the same resolution group as the banking group company.";

(c) in section 81C(2), for "or 81ZBA" substitute ", 81ZZBA, 81ZBA or 81ZBB".

19. In the heading for section 81CA, after "Section 81BA" insert "and Section 81BB".

20. In section 81CA(1), after "section 81BA" insert "or section 81BB".

Resolution of banks not regulated by the PRA

21.—(1) In section 83A (modifications of Part 1 for banks not regulated by the PRA), the Table of modifications in subsection (2) is amended as follows.

(2) In the appropriate places, insert—

"Section 81ZZBA	Treat the reference to the PRA in subsection (4) as a reference to the FCA."

"Section 81ZZBB	(a) Treat the references to the PRA in subsections (2) and (6) as references to the FCA. (b) Subsections (7)(b) and (8)(b) do not apply unless the banking group company has as a member of its immediate group a PRA-authorised person."

"Section 81ZBB	Treat the reference to the PRA in subsection (4) as a reference to the FCA."

"Section 81ZBC	(a) Treat the references to the PRA in subsections (2) and (6) as references to the FCA. (b) Subsections (7)(b) and (8)(b) do not apply unless the banking group company has as a member of its immediate group a PRA-authorised person."

"Section 81BB	Treat the reference to the PRA in subsection (4) as a reference to the FCA."

"Section 81BC	(a) Treat the references to the PRA in subsections (2) and (6) as references to the FCA. (b) Subsections (7)(b) and (8)(b) do not apply unless the banking group company has as a member of its immediate group a PRA-authorised person."

Resolution of recognised central counterparties

22. In section 89B (application to recognised central counterparties), in subsection (1ZA), after "2016", insert "or by the Bank Recovery and Resolution (Amendment)(EU Exit) Regulations 2020".

Recognition of third-country resolution actions

23. In section 89I (effect of recognition of third-country resolution action by Bank of England)—

(1) in subsection (5), for "(8)", substitute "(9A)"; and

(2) after subsection (9), insert—

"(9A) Sections 81ZZBA, 81ZZBB, 81ZBB, 81ZBC, 81BB and 81BC do not apply.".

Resolution of UK branches of third-country institutions

24. In section 89JA (resolution of UK branches of third-country institutions)(**a**)—

(a) in subsection (8), in substituted section 48B(10)—

(i) after paragraph (e) insert—

"(ea) liabilities with a remaining maturity of less than 7 days owed by the relevant institution to a recognised central counterparty, an EEA central counterparty or a third country central counterparty;";

(ii) after paragraph (i) insert—

"(j) liabilities owed by the relevant institution to another institution or a banking group company which (in either case)—

(i) is part of the same resolution group as the relevant institution, and

(ii) is not itself a resolution entity,

where the liabilities do not rank below ordinary non-preferential debts under the hierarchy of claims in normal insolvency proceedings.";

(b) in the same subsection in substituted section 48B(12) for "eligible" in both places it occurs substitute "bail-in";

(c) in the same subsection in substituted section 48B(13)—

(i) for "an eligible liability" in each place it occurs substitute "a bail-in liability";

(ii) for "the eligible liabilities" substitute "the bail-in liabilities".

Index of defined terms

25. In section 261 (index of defined terms) in the Table, insert each of the following entries at the appropriate place—

"bail in liabilities	3"

"relevant internal liabilities	3"

"resolution entity	3"

"resolution group	3"

(**a**) Section 81B was inserted by S.I. 2016/1239.

PART 3

Amendment of Secondary legislation made under the European Communities Act 1972

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

26.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**a**) are amended in accordance with this regulation.

(2) In regulation 2(2B)(b) at the end insert "as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019".

Amendment of the Credit Institutions (Reorganisation and Winding up) Regulations 2004

27.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004(**b**) are amended in accordance with this regulation.

(2) In regulation 2(1) in the definition of "recovery and resolution directive" at the end insert "as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019".

Amendment of the Banking Act 2009 (Restriction of Special Bail-in Provisions, etc) Order 2014

28.—(1) The Banking Act 2009 (Restriction of Special Bail-in Provision, etc) Order 2014(**c**) is amended in accordance with this regulation.

(2) In article 2(1)—

(a) after the definition of "the Act" insert—

""bail-in liability has the meaning given in section 2(1) of the Banking Act 2009";

(b) omit the definition of "eligible liabilities".

(3) In article 4(2) for "an eligible liability" substitute "a bail-in liability".

Amendment of the Bank Recovery and Resolution (No.2) Order 2014

29. The Bank Recovery and Resolution (No.2) Order 2014(**d**) is amended in accordance with regulations 30 to 60.

30. In article 2(1)

(a) in the definition of "the capital requirements regulation", at the end insert, "as last amended by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20th May 2019";

(b) in the definition of "group resolution plan"—

(i) after "document which" insert, "identifies at least one resolution entity and at least one resolution group and which";

(ii) for paragraph (a) substitute—

"(a) taking resolution action in respect of each resolution entity in the relevant group;";

(c) after the definition of "relevant group" insert—

""resolution entity" means an entity that is identified in a resolution plan or a group resolution plan as an entity in respect of which resolution action might be taken;

(**a**) S.I. 1999/2979.
(**b**) S.I. 2004/1045.
(**c**) S.I. 2014/3350, amended by S.I. 2016/1239 and S.I. 2018/1394.
(**d**) S.I. 2014/3348, amended by S.I. 2016/1239 and S.I. 2017/80.

"resolution group" means a resolution entity together with any subsidiary where the subsidiary—

(i) is not a resolution entity itself;

(ii) is not a subsidiary of another resolution entity; or

(iii) is established in a third country and is stated by the group resolution plan under Part 5 to be included in the resolution group;";

(d) in the definition of "the recovery and resolution directive" at the end insert, "as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019".

31. In article 40, after paragraph (6) insert—

"(6A) In a relevant group, where a mixed-activity holding company has at least one subsidiary which is—

(a) an institution; and

(b) a subsidiary of a financial holding company,

the group resolution plan shall provide that the financial holding company is identified as a resolution entity. "Institution" in this subsection has the same meaning as in the capital requirements regulation.".

32. In article 42(4), after "reasoned" insert "and substantiated".

33. In article 48(2)—

(a) in the opening words omit "For each group entity for which it is the resolution authority";

(b) in sub-paragraph (a), after "resolution plan" insert "or a group resolution plan covering any group entity for which it is the resolution authority,";

(c) in sub-paragraph (b)—

(i) after "reasoned" insert "and substantiated"; and

(ii) for "for adopting a group resolution plan" substitute "referred to in paragraph (1)(b)".

34. In article 53, for paragraph (2)(a) substitute—

"(a) review a resolution plan where—

(i) any material change has been made to the legal or organisational structure of the relevant entity or to its business or financial position; or

(ii) a change results from the application of the resolution tools or the exercise of the powers under section 6B of the Banking Act 2009 in relation to the relevant entity.".

35. In article 61(2), after "take resolution action" insert "in respect of resolution entities".

36. In article 62—

(a) in paragraph (2), at the end insert "in respect of the relevant group and, where there is more than one resolution group in the relevant group, in respect of each resolution group";

(b) in paragraph (3)(b), for "group entities" substitute "resolution entities";

(c) in paragraph (5)—

(i) after "The relevant group" insert "or a resolution group";

(ii) after "take resolution action" insert "in respect of resolution entities".

37. In article 64(2)—

(a) in the definition of "relevant proposals"—

(i) in paragraph (b) after "impediments" insert "including a timetable for doing so";

(ii) in paragraph (c), for the words from "four months" to the end substitute "the response period";

(b) at the end insert—

""response period" means—

(a) in a case described in point (b) of Article 17.3 of the recovery and resolution directive, two weeks beginning with the date on which the institution received the notice; and

(b) in any other case, four months beginning with that date.".

38. In article 66—

(a) in paragraph (3)(a), for "four month" substitute "response";

(b) at the beginning of paragraph (5) insert "Where the consent of the appropriate regulator is not required under section 3A(5) of the Banking Act 2009,".

39. In article 68(2), at the end insert—

""response period" means—

(a) in a case described in point (b) of Article 17.3 of the recovery and resolution directive, two weeks beginning with the date on which the institution received the notice; and

(b) in any other case, four months beginning with that date.".

40. In article 71(1), for "four months" substitute "the response period".

41. In article 72(1), for the words from "within four months" to the end substitute—

"in accordance with the following time limits—

(a) if the EEA parent undertaking submits observations or an alternative proposal under article 71(1), within four months beginning with the date on which the observations or proposal are submitted;

(b) if the EEA parent undertaking does not submit observations or an alternative proposal under article 71(1), within one month beginning with the end of the period referred to in that provision.".

42. In article 75(2), at the end insert—

""response period" means—

(a) in a case described in point (b) of Article 17.3 of the recovery and resolution directive, two weeks beginning with the date on which the institution received the notice; and

(b) in any other case, four months beginning with that date.".

43. After article 75, insert—

"Report on substantive impediments to the resolvability of group entities

75A. Following the receipt of a report on impediments and remedial measures the Bank must submit a copy to any group entity established in the United Kingdom.".

44. In article 78(b), for "four months" substitute "the response period".

45. In article 122(1)(a), omit "expressed as a percentage of the institution's total liabilities and own funds".

46. In article 123(6), for the words from "criteria" to the end substitute—

"following criteria—

(a) the need to ensure that the relevant institution can be resolved by the application of the resolution tools including, where appropriate, by making special bail-in

provision within the meaning of section 48B of the Banking Act 2009, in a way that meets the special resolution objectives;

(b) the need to ensure, in appropriate cases, that the relevant institution has sufficient eligible liabilities to ensure that, if mandatory reduction provision within the meaning of section 6B of the Banking Act 2009 or special bail-in provision were made—

(i) losses could be absorbed; and

(ii) the capital ratio and, as applicable, the leverage ratio, of the relevant institution could be restored,

to a level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;

(c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under section 48B(10) of the Banking Act 2009 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer—

(i) the relevant institution has sufficient other eligible liabilities or own funds to ensure that losses could be absorbed; and

(ii) the capital ratio and, as applicable, the leverage ratio, of the relevant institution could be restored,

to the level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;

(d) the size, the business model, the funding model and the risk profile of the relevant institution; and

(e) the extent to which the failure of the relevant institution would have adverse effects on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities.".

47. In article 125(2)—

(a) in the definition of "minimum consolidated requirement", omit "expressed as a percentage of the total liabilities and own funds of those institutions";

(b) in the definition of "minimum requirement" omit "expressed as a percentage of the institution's total liabilities and own funds".

48. In article 126—

(a) in paragraph (1) at the end insert "for each resolution group";

(b) in paragraph (2) after "entity" insert "in the resolution group";

(c) in paragraph (3)—

(i) in the opening words after "entity" insert "in the resolution group"; and

(ii) in paragraph (a) at the end insert "for the resolution group";

(d) in paragraph (8)(a), for "criteria set out in Article 45.6 of the recovery and resolution directive" substitute—

"following criteria—

(i) the need to ensure that each group institution can be resolved by the application of the resolution tools including, where appropriate, by making special bail-in provision within the meaning of section 48B of the Banking Act 2009, in a way that meets the special resolution objectives;

(ii) the need to ensure, in appropriate cases, that each group institution has sufficient eligible liabilities to ensure that, if mandatory reduction provision

within the meaning of section 6B of the Banking Act 2009 or special bail-in provision were made—

(aa) losses could be absorbed; and

(ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored,

to a level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;

(iii) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under section 48B(10) of the Banking Act 2009 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer—

(aa) each group institution has sufficient other eligible liabilities or own funds to ensure that losses could be absorbed; and

(ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored,

to the level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;

(iv) the size, the business model, the funding model and the risk profile of each group institution; and

(v) the extent to which the failure of each group institution would have an adverse effect on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities.".

49. In article 127(1), after "requirement" insert "for a resolution group".

50. In article 128(1), in the opening words after "requirement" insert "for a resolution group".

51. In article 129(1), after "requirement" insert "for each resolution group".

52. In article 131(1), after "requirement" insert "for each resolution group".

53. In article 135(6)(a), for "Article 45.6 of the recovery and resolution directive" substitute "article 126(8)(a)".

54. In articles 139(1) and 146(1), omit "expressed as a percentage of the entity's total liabilities and own funds".

55. In article 142(6)(a), after "recovery and resolution directive" insert "as it had originally had legal effect".

56. In article 195(a), after "Union subsidiary" insert "or a Union parent undertaking".

57. In article 196—

(a) in paragraph (1)(a), after "Union subsidiary" insert "or a Union parent undertaking";

(b) in paragraph (2), after "Union subsidiaries" insert "and the Union parent undertaking";

(c) for paragraph (3) substitute—

"(3) Paragraph (4) applies where—

(a) there is only one Union parent undertaking and it—

(i) is established in the United Kingdom; and

(ii) holds all of the Union subsidiaries of a third-country institution or third-country parent undertaking; or

(b) a Union parent undertaking or a Union subsidiary—

(i) is established in the United Kingdom; and

(ii) holds the highest value of total balance sheet assets in the relevant group.".

58. In Schedule 1, in paragraph 4(2), in paragraphs (q) and (r), at the end, in both cases insert "that is set having regard to the deadline set to ensure compliance with the rules relied upon by the United Kingdom for transposition of Article 104b of Directive 2013/36/EU".

59. In Schedule 2, in paragraph 2—

(a) in sub-paragraph (a), for "group entities" substitute "each resolution entity in the relevant group";

(b) for sub-paragraph (b) substitute—

"(b) set out the implications of sub-paragraph (a) for—

(i) the other group entities in the same resolution group as the resolution entity; and

(ii) any other resolution group in the relevant group;";

(c) in sub-paragraph (c), at the end insert "or any resolution group";

(d) in sub-paragraph (f), for "group entities" substitute "resolution entities";

(e) in sub-paragraph (g), after "respect of" insert "each resolution group in".

60. In Schedule 4, for paragraph 23 substitute—

"**23.** Part 13 has effect as if the following sections were omitted—

(a) section 360AA (traded companies: confirmation of receipt of electronic voting);

(b) section 360B (traded companies: requirements for participating in and voting at general meetings); and

(c) section 360BA (traded companies: right to confirmation of vote after a general meeting).".

PART 4

Amendment of legislation made under the European Union (Withdrawal) Act 2018

CHAPTER 1

Amendment of Primary Legislation

Amendment of the Banking Act 2009

61. The Banking Act 2009 is amended in accordance with regulations 62 to 72.

62. In section 3—

(a) in the definition of "resolution entity"—

(i) at the end of paragraph (a) insert "or";

(ii) omit paragraph (b);

(iii) in the words after paragraph (c) omit the words ""EU resolution authority" has the meaning given by section 81AA(14)," and ", "EU resolution action" has the meaning given to "resolution action" in Article 2.1(40) of the recovery and resolution directive";

(b) in the definition of "resolution group" for "third-country" substitute "country or territory other than the United Kingdom".

63. In section 48B (special bail-in provision), in subsection (8)(ea), omit ", an EEA central counterparty".

64. In section 48D (general interpretation of section 48B), in subsection (1), omit the definitions of "EEA central counterparty" and "normal insolvency proceedings".

65. In section 81ZZBA (sale to commercial purchaser and transfer to bridge bank: supplemental powers in relation to certain holding companies), in subsection (3), for "Article 1.1(c) or (d) of the recovery and resolution directive" substitute "subsection (2A) of section 81AA".

66. In section 81ZZBB (assessment of conditions for section 81ZZBA)—

(a) in subsection (5)(a), for "central banks" substitute "the Bank of England";

(b) in subsection (10)—

(i) in paragraph (b), at the end insert "including any retained EU law that was originally made under 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";

(ii) in paragraph (c), for the words "gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation" substitute "was relied on by the United Kingdom immediately before IP completion day to implement the capital requirements directive and its implementing measures or any retained EU law originally".

67. In section 81ZBB (transfer to asset management vehicle: supplemental powers in relation to certain holding companies)—

(a) in subsection (3) for "Article 1.1(c) or (d) of the recovery and resolution directive" substitute "subsection (2A) of section 81AA";

(b) in subsection (11)—

(i) omit the "and" at the end of the definition of "financial assistance case";

(ii) omit the definition of "normal insolvency proceedings".

68. In section 81ZBC (assessment of conditions for section 81ZBB)—

(a) in subsection (5)(a), for "central banks" substitute "the Bank of England";

(b) in subsection (10)—

(i) in paragraph (b), at the end insert "including any retained EU law that was originally made under 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";

(ii) in paragraph (c), for the words "gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation" substitute "was relied on by the United Kingdom immediately before IP completion day to implement the capital requirements directive and its implementing measures or any retained EU law originally".

69. In section 81BB (bail-in option: supplemental powers in relation to certain holding companies), in subsection (3), for "Article 1.1(c) or (d) of the recovery and resolution directive" substitute "subsection (2A) of section 81AA".

70. In section 81BC (assessment of conditions for section 81BB)—

(a) in subsection (5)(a), for "central banks" substitute "the Bank of England";

(b) in subsection (10)—

(i) in paragraph (b), at the end insert "including any retained EU law that was originally made under 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";

(ii) in paragraph (c), for the words "gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation" substitute "was

relied on by the United Kingdom immediately before IP completion day to implement the capital requirements directive and its implementing measures or any retained EU law originally".

71. In section 89A (application to investment firms), in the Table of modifications in subsection (1), after the entry for section 1, insert—

"Section 3	In subsection (1), in the definition of "normal insolvency proceedings" ignore the reference to the bank insolvency procedure."

72. In section 89JA (resolution of UK branches of third-country institutions), in subsection (8), in substituted section 48B(10)(ea), omit ", an EEA central counterparty".

CHAPTER 2

Amendment of Secondary Legislation

Amendment of the Credit Institutions (Reorganisation and Winding up) Regulations 2004

73.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004(**a**) are amended in accordance with this regulation.

(2) In regulation 2(1), in the definition of "recovery and resolution directive" omit the words "as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019".

Amendment of the Bank Recovery and Resolution (No.2) Order 2014

74.—(1) The Bank Recovery and Resolution (No.2) Order 2014 is amended in accordance with this regulation.

(2) In article 2(1), in the definition of "group resolution plan" in paragraph (a) for "taking resolution action" substitute "applying the resolution tools or exercising resolution powers".

(3) In article 64, in paragraph (a) of the definition of "response period" for the words from "described" to "directive" substitute "where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act";

(4) In article 68, in paragraph (a) of the definition of "response period" for the words from "described" to "directive" substitute "where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act".

CHAPTER 3

Amendment of EU Exit Legislation

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

75. The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018(**b**) are amended in accordance with this Chapter.

(**a**) S.I. 2004/1045. There are other amendments but none is relevant.
(**b**) S.I. 2018/1394, amended by S.I. 2019/710.

Amendment of Schedule 1

76.—(1) Schedule 1 (amendments of the Banking Act 2009) is amended in accordance with this regulation.

(2) In paragraph 10 (mandatory write-down, conversion etc of capital instruments)—

(a) in sub-paragraph (4), after "instrument" insert "or liability";

(b) in sub-paragraph (5), in the inserted subsection (4A), after "instrument" insert "or liability".

(3) In paragraph 23 (termination rights etc), in sub-paragraph (2), omit paragraph (a).

(4) In paragraph 42 (third-country resolution actions), after sub-paragraph (3) insert—

"(4) In subsection (9A)—

(a) in the modified subsection (5), after "United Kingdom and the", for "third country" substitute "country or territory";

(b) in the modified subsection (6), for ""third-country group company" and "third country"" substitute "and "third-country group company"".".

Amendment of Schedule 3

77.—(1) Schedule 3 (amendments of the Bank Recovery and Resolution (No.2) Order 2014) is amended in accordance with this regulation.

(2) In paragraph 36 (assessment of resolvability of groups), for sub-paragraph (3)(a), substitute—

"(a) for "take resolution action in respect of resolution entities or", substitute "apply the resolution tools or exercise resolution powers in respect of resolution entities, or take";".

(3) In paragraph 37 (assessment of resolvability of groups), for sub-paragraph (4)(a), substitute—

"(a) for "take resolution action in respect of resolution entities or", substitute "apply the resolution tools or exercise resolution powers in respect of resolution entities, or take";".

(4) In paragraph 68 (minimum requirement for own funds and eligible liabilities: determination of minimum requirement for an institution)—

(a) for sub-paragraph (2) substitute—

"(2) In paragraph (6)—

(a) in sub-paragraph (d), omit the final "and";

(b) at the end of sub-paragraph (e) insert—

"and

(f) relevant assessment criteria specified in any Commission Regulation containing regulatory technical standards adopted by the European Commission under Article 45.2 of the recovery and resolution directive, so far as they are retained EU law.".".

(5) In paragraph 70 (determination of minimum consolidated requirement where the PRA or FCA is the consolidating supervisor)—

(a) for sub-paragraph (4) substitute—

"(4) In paragraph (8)(a)—

(a) in sub-paragraph (iv) omit the final "and";

(b) at the end of sub-paragraph (v) insert—

"and

(iv) relevant assessment criteria specified in any Commission Regulation containing regulatory technical standards adopted by the European Commission under Article 45.2 of the recovery and resolution directive, so far as they are retained EU law.".".

(6) In paragraph 76 (determination of minimum requirements for group institutions where the PRA or FCA is the consolidating supervisor), omit sub-paragraph (2).

(7) In paragraph 118 (information to be contained in a group resolution plan), in sub-paragraph (5), in inserted paragraph 4, for "group entities", substitute "resolution entities".

Amendment of Schedule 4

78.—(1) Schedule 4 (amendments of other secondary legislation) is amended in accordance with this regulation.

(2) In paragraph 7 (the Banking Act 2009 (Restriction of Special Bail-in Provision etc.) Order 2014), in sub-paragraph (2)(a), omit sub-paragraph (i).

Amendment of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

79.—(1) The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(**a**) are amended in accordance with this regulation.

(2) In regulation 38 (Section 137R (financial promotion rules))—

(a) in paragraph (2), for ""insurance distribution directive,"", substitute ""(as defined in section 71I(5)),""; and

(b) in paragraph (4) in inserted subsection (5A)—

(i) in paragraph (a)—

(aa) in sub-paragraph (iv), omit "or";

(bb) in sub-paragraph (v), for "and", substitute "or"; and

(cc) after sub-paragraph (v), insert—

"(vi) Article 44a of the recovery and resolution directive (as defined in paragraph (c)), and"

(ii) after paragraph (b), insert—

"(c) In paragraph (a)(vi), "recovery and resolution directive" means 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, as it had effect immediately before IP completion day."

CHAPTER 4

Revocation of technical standards under the Recovery and Resolution Directive

Revocation of technical standards under the Recovery and Resolution Directive

80. Any technical standards which have been adopted by the European Commission under Articles 45c(4), 45f(6), 45i(5), 45i(6), 45j(2), 55(6), 55(8) and 71a(5) 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 and are in force immediately before IP completion day are revoked.

(**a**) S.I. 2019/632.

PART 5

Other Provision made under the European Communities Act 1972

CHAPTER 1

Suspension of obligations, interests and rights

Interpretation

81. In this Chapter—

"the Act" means the Banking Act 2009;

"bank" has the meaning given in section 2 of the Act;

"banking group company" has the meaning given in section 81D of the Act;

"business day" and "excluded person" have the meanings given in section 70D of the Act;

"the FCA" and "the PRA" have the meanings given in section 3(1) of the Act;

"mandatory reduction instrument" has the meaning given in section 6B of the Act;

"resolution instrument" has the same meaning as in the Act;

"stabilisation options" and "stabilisation powers" have the meanings given in section 1 of the Act.

82. The exercise of any of the powers in this Chapter is to be treated as a "crisis management measure" under section 48Z of the Act.

Suspension of obligations prior to exercise of stabilisation powers

83.—(1) The Bank of England may make an instrument suspending obligations to make a payment, or delivery, under a contract where one of the parties to the contract is a bank and the conditions specified in paragraph (2) are met in relation to the bank.

(2) These conditions are that:

(a) the PRA has determined that Condition 1 in section 7 of the Act is met, having consulted the Bank of England;

(b) the Bank of England has determined that no action referred to in Condition 2 in that section will be taken immediately, having consulted the PRA, the FCA and the Treasury;

(c) the Bank of England has determined that the suspension would prevent further deterioration of the financial position of the bank, having consulted the PRA and the FCA;

(d) the suspension—

(i) would allow additional time for the Bank of England to determine whether Conditions 3 and 4 in section 7 of the Act are met;

(ii) would allow additional time for determination of which stabilisation option is appropriate; or

(iii) would assist with the effective exercise of one or more of the stabilisation powers.

(3) A suspension imposed under paragraph (1) does not apply to payments or deliveries to excluded persons.

(4) Subject to paragraph (3), a suspension imposed under subsection (1) suspends all obligations to make a payment or delivery under the contract in question, whether the obligation is that of the bank or of any other party to the contract.

(5) Before exercising the power in paragraph (1) the Bank of England must have regard to—

(a) the impact a suspension might have on the orderly functioning of the financial markets; and

(b) rules and supervisory and judicial powers to safeguard the rights of creditors (including equal treatment) in normal insolvency proceedings (in view of the potential application of such proceedings to the bank following a determination that Condition 3 or 4 in section 7 of the Act is not met).

(6) In paragraph (5)(b), "normal insolvency proceedings" has the meaning given in section 12AA of the Act.

(7) A suspension imposed under paragraph (1)—

(a) must be as short in duration as is reasonably practicable;

(b) begins when the instrument providing for the suspension is first published;

(c) may not continue to apply after the end of the period that the Bank of England considers likely to be required to carry out the determinations referred to in paragraph (2)(c) and (d)(i) and (ii); and

(d) in any event must end no later than midnight at the end of the first business day following the day on which the instrument providing for the suspension is published.

(8) Where a payment or delivery under the contract concerned would have fallen due within the period of the suspension, that payment or delivery obligation is treated as falling due immediately on the expiry of the suspension.

Suspension of security interests prior to exercise of stabilisation powers

84.—(1) Where the Bank of England imposes a suspension under regulation 83(1) in respect of a bank, the Bank may make an instrument suspending the rights of a secured creditor of the bank to enforce any security interest the creditor has in relation to any assets of the bank.

(2) But the Bank of England may not suspend the rights of an excluded person to enforce any security interest that person may have in relation to any asset of the bank which has been pledged or provided to the excluded person in question as collateral or as cover for margin.

(3) The Bank of England must ensure that any restrictions on the enforcement of security interests which it imposes by virtue of paragraph (1) are applied consistently with any such restrictions imposed on a banking group company in the same group by virtue of regulation 88.

(4) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in paragraph (1).

(5) A suspension under paragraph (1)—

(a) begins when the suspension under regulation 83(1) begins; and

(b) ends when the suspension under regulation 83(1) ends.

(6) For the purposes of this regulation, a "security interest" means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

Suspension of termination rights prior to exercise of stabilisation powers

85.—(1) Where the Bank of England imposes a suspension under regulation 83(1) in respect of a bank, the Bank may make an instrument suspending the termination rights of any party to a qualifying contract (other than a party who is an excluded person).

(2) A contract is a "qualifying contract" for the purpose of this regulation if—

(a) one of the parties to the contract is the bank and all the obligations under the contract to make a payment, make a delivery or provide collateral continue to be performed; or

(b) one of the parties to the contract is a subsidiary undertaking of the bank and the condition in paragraph (3) is met.

(3) The condition is that—

(a) the obligations of the subsidiary undertaking are guaranteed or otherwise supported by the bank,

(b) the termination rights under the contract are triggered by the insolvency or the financial condition of the bank; and

(c) if a property transfer instrument may be made in relation to the bank—

(i) all the assets and liabilities relating to the contract have been or are being transferred to, or assumed by, a single transferee; or

(ii) the Bank of England is providing adequate protection for the performance of the obligations of the subsidiary undertaking under the contract in any other way.

(4) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in paragraph (1).

(5) A suspension under paragraph (1)—

(a) begins when the suspension under regulation 83(1) begins; and

(b) ends when the suspension under regulation 83(1) ends.

(6) A person may exercise a termination right under a contract before the expiry of the suspension if that person is given notice by the Bank of England that the rights and liabilities of the bank covered by the contract are not—

(a) to be transferred to another undertaking through the exercise of a stabilisation power; or

(b) to be made subject to a mandatory reduction instrument or a resolution instrument.

(7) If—

(a) no notice has been given by the Bank of England under paragraph (6); and

(b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under paragraph (1) (or the occurrence of an event directly linked to the exercise of a stabilisation power),

a person may, on the expiry of the suspension, exercise the termination right in accordance with the terms of the contract.

(8) But, where the rights and liabilities of the bank or the subsidiary undertaking under the contract have been transferred to another undertaking, paragraph (7) applies only if the event giving rise to the termination right has been triggered by that undertaking.

(9) For the purposes of this regulation, "termination right" means—

(a) a right to terminate a contract;

(b) a right to accelerate, close out, set-off or net obligations, or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract; or

(c) a provision that prevents an obligation from arising under the contract.

Suspension prior to exercise of stabilisation powers: procedure

86.—(1) The following sections of the Act apply in relation to an instrument under regulation 83, 84 or 85 as they apply to a resolution instrument—

(a) section 48O;

(b) section 48Q;

(c) section 48R;

(d) section 48S; and

(e) section 48T.

(2) Where the Bank of England makes one or more instruments under regulation 83, 84 or 85 in respect of a bank, the Bank must, on request by the Treasury, report to the Chancellor of the Exchequer about—

(a) the exercise of the power to make an instrument;

(b) the activities of the bank; and

(c) any other matters in relation to the bank that the Treasury may specify.

(3) In relation to the matters in paragraphs (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.

(4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.

Restriction on subsequent suspension

87. If the Bank of England exercises its powers under regulation 83(1) to impose a suspension, the Bank may not exercise its powers under section 70A to 70C of the Act in respect of the bank in question.

Groups

88.—(1) Regulations 83 to 87 apply to banking group companies incorporated in, or formed under the law of any part of, the United Kingdom with the following modifications.

(2) For the condition specified in regulation 83(2)(a) substitute—

(a) the PRA is satisfied that Condition 1 in section 7 of the Act is met in respect of a bank in the same group as the banking group company, having consulted the Bank of England;

(b) the EU resolution authority of an EU institution in the same group is satisfied that the condition set out in point (a) of Article 32(1) of the recovery and resolution directive is met in relation to that EU institution; or

(c) a relevant third-country authority of a third-country institution in the same group is satisfied that any equivalent condition required by the law of the third country is met in relation to that third-country institution.

(3) For the condition specified in regulation 83(2)(b) substitute—

(a) the Bank of England has determined that no action referred to in Condition 2 in section 7 of the Act will be taken immediately in respect of a bank in the same group as the banking group company, having consulted the PRA, the FCA and the Treasury; or

(b) the EU resolution authority of an EU institution in the same group is satisfied that the condition set out in point (b) of Article 33a(1) of the recovery and resolution directive is met in relation to that EU institution.

(4) For the condition specified in regulation 83(2)(c) substitute—

(a) the Bank of England has determined that the suspension would prevent further deterioration of the financial position of a bank in the same group as the banking group company, having consulted the PRA and the FCA; or

(b) the EU resolution authority of an EU institution in the same group as the banking group company is satisfied that the condition set out in point (c) of Article 33a(1) of the recovery and resolution directive is met in relation to that EU institution.

(5) For the condition specified in regulation 83(2)(d) substitute—

(i) the suspension would allow additional time for the Bank of England to determine whether Conditions 2 and 3 in section 81B of the Act (sale to commercial purchaser and transfer to a bridge bank) are met;

(ii) the suspension would allow additional time for determination of which stabilisation option is appropriate;

(iii) the suspension would assist with the effective exercise of one or more of the stabilisation powers; or

(iv) the suspension is necessary for an EU resolution authority to take any decision referred to in point (d) of Article 33a(1) of the recovery and resolution directive.

(6) In this regulation—

"EU institution" has the meaning given in section 81AA(14) of the Act;

"EU resolution authority" means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);

"group" has the meaning given by section 81D(7) of the Act;

"the recovery and resolution directive" has the meaning given in section 3(1) of the Act;

"relevant third-country authority" has the meaning given by Article 2.1(90) of the recovery and resolution directive;

"third-country institution" has the meaning given by section 89H(7) of the Act.

Suspension of obligations when Bank is exercising a stabilisation power

89. The Bank of England may exercise its powers under section 70A of the Act as if subsection (2)(a) were omitted.

Modification of Part for banks not regulated by the PRA

90. In the application of this Part to an FCA-regulated bank the following modifications apply—

(a) in regulation 83(2)—

(i) in paragraph (a) treat the reference to PRA as reference to the FCA;

(ii) in paragraphs (b) and (c) the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorised person;

(b) in regulation 88—

(i) in paragraph (2)(a) treat the reference to PRA as reference to the FCA;

(ii) in paragraphs (3)(a) and (4)(a) the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorised person.

CHAPTER 2

Power to prohibit distributions

Power to prohibit distributions

91.—(1) This regulation applies where a relevant person—

(a) meets the combined buffer requirement, but

(b) would not do so but for reliance upon own funds and eligible liabilities that are relied upon also for the purposes of meeting the requirement under section 3A(4) of the Banking Act 2009.

(2) In this regulation—

"Additional Tier 1 instruments" has the meaning given in section 3(1) of the Banking Act 2009;

"bank" has the meaning given in section 2 of the Banking Act 2009;

"combined buffer requirement" has the meaning given in regulation 2(1) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(**a**);

"Common Equity Tier 1 instruments" has the meaning given in section 3(1) of the Banking Act 2009;

"competent authority" has the meaning given in article 2(1) of the Bank Recovery and Resolution (No 2) Order 2014;

"eligible liabilities" has the meaning given in section 3(1) of the Banking Act 2009;

"failure" means an occurrence of this regulation applying;

(**a**) S.I. 2014/894.

"group" has the meaning given in section 3(2)(b) of the Banking Act 2009;

"own funds" has the meaning given in section 3(1) of the Banking Act 2009;

"recovery and resolution directive" has the meaning given in section 3(1) of the Banking Act 2009;

"relevant person" has the meaning given in section 3A of the Banking Act 2009;

"resolvability" means the subject matter of assessment under Part 6 of the Bank Recovery and Resolution (No.2) Order 2014.

(3) The relevant person must notify the Bank of England without delay that this regulation applies.

(4) The Bank of England may prohibit the relevant person from distributing more than the maximum distributable amount through any of the following actions—

(a) making a distribution in connection with Common Equity Tier 1 instruments;

(b) creating an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the relevant person failed to meet the combined buffer requirement; or

(c) make payments on Additional Tier 1 instruments.

(5) Before exercising the power under paragraph (4) the Bank of England must—

(a) consult the competent authority;

(b) carry out an assessment of—

(i) the reasons for, and the duration and magnitude of, the failure, and its impact on the resolvability of the relevant person;

(ii) the development of the relevant person's financial situation and the likelihood of Condition 1 provided for in section 7 of the Banking Act 2009 being fulfilled in relation to it, or a bank in the same group, in the foreseeable future;

(iii) the prospect that the relevant person will within a reasonable time frame be able to meet the combined buffer requirement without relying upon own funds and eligible liabilities that it relies upon also for the purposes of meeting the requirement under section 3A(4) of the Banking Act 2009;

(iv) where the relevant person is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, whether that inability is idiosyncratic or is due to market wide disturbance;

(v) whether the exercise of the power under paragraph (4) is the most adequate and proportionate means of addressing the situation of the relevant person, including consideration of the potential impact on both the financing conditions and resolvability of the relevant person.

(6) The Bank must repeat its assessment under paragraph (5)(b) at intervals of no more than one month until the failure ends.

(7) If—

(a) failure continues for nine months after notification is given under paragraph (3); and

(b) not more than one of the conditions specified in paragraph (8) is met;

(c) the Bank of England must exercise its power under paragraph (4).

(8) The conditions are that the Bank of England assesses that—

(a) the failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based market stress across more than one segment of financial markets;

(b) the disturbance not only results in the increased price volatility of the own funds and eligible liabilities of the relevant person or increased costs for the entity, but also leads to a full or partial closure of markets which prevents the relevant person from issuing own funds and eligible liabilities on those markets;

(c) the closure of markets is observed not only for the relevant person, but also for at least several other entities;

(d) the disturbance prevents the relevant person from issuing sufficient own funds and eligible liabilities to end the failure;

(e) exercise of the power would lead to negative spill-over effects for at least one part of the banking sector, thereby potentially undermining financial stability.

(9) Where at least two of the conditions specified in paragraph (8) are met the Bank of England must—

(a) notify the competent authority and explain its assessment in writing;

(b) review its assessment under paragraph (8) at intervals of no more than one month.

(10) When the Bank of England is satisfied that the failure has ended the Bank of England must without delay notify the relevant person that the prohibition under paragraph (4) has ceased to have effect.

(11) For the purposes of paragraph (4) the maximum distributable amount is to be calculated by multiplying the sum calculated in accordance with paragraph (12) by the factor determined in accordance with paragraph (13).

(12) The sum referred to in paragraph (11) is A + B – C, where—

"A" is any interim profits not included in Common Equity Tier 1 instruments pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in paragraph (4);

"B" is any year-end profits not included in Common Equity Tier 1 instruments pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any such distribution of profits or payment;

"C" is amounts which would be payable by tax if A and B were to be retained.

(13) The factor referred to in paragraph (11) is determined as follows—

(a) where the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and under section 3A(4) of the Banking Act 2009, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, are within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any such requirements are within the second quartile of the combined buffer requirement, the factor shall be 0.2;

(c) where the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any such requirements are within the third quartile of the combined buffer requirement, the factor shall be 0.4;

(d) the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any such requirements are within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

(14) For the purposes of paragraph (13) the lower bound of quartile and upper bound of quartile are calculated as follows—

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

Where—

'Q_n' is the ordinal number of the quartile concerned.

(15) The maximum distributable amount is not reduced by any amount resulting from any of the actions referred to in paragraph (4).

CHAPTER 3

Transfer of losses or capital between members of a group

Transfer of losses or capital between members of a group

92.—(1) When exercising the functions conferred by section 81B(2) of the Banking Act 2009, the PRA, Bank of England, EU regulation authority or relevant third-country authority (as the case may be) must treat subsection (2A) of that section as if it were omitted.

(2) When exercising the functions conferred by section 81ZBA(2) of that Act, the PRA, Bank of England, EU regulation authority or relevant third-country authority (as the case may be) must treat subsection (2A) of that section as if it were omitted.

(3) When exercising the functions conferred by section 81BA(2) of that Act, the PRA, Bank of England, EU regulation authority or relevant third-country authority (as the case may be) must treat subsection (2A) of that section as if it were omitted.

CHAPTER 4

Contractual recognition of bail-in

Interpretation

93. In this Chapter—

"the Act" means the Banking Act 2009,

"additional Tier 1 instruments" has the meaning given by section 3(1) of the Act,

"the FCA" has the meaning given in section 3(1) of the Act,

"fully secured liability" means a liability which, at the time it is created, is fully secured and governed by contractual terms that oblige the debtor to maintain the liability fully collateralised on a continuous basis in compliance with regulatory requirements in EU law or of the law of a third country achieving effects that can be deemed equivalent to EU law.

"mandatory reduction provision" has the meaning given by section 6B(2) of the Act,

"the PRA" has the meaning given in section 3(1) of the Act,

"the recovery and resolution directive" has the meaning given by section 3(1) of the Act,

"special bail-in provision" has the meaning given by section 48B(1) of the Act,

"Tier 2 instruments" has the meaning given by section 3(1) of the Act, and

"unsecured liability" means—

(a) for liabilities created on or before 31 July 2016, a liability under which the right of the creditor to payment or other form of performance is not—

(i) secured by a charge, pledge, lien, or mortgage; or

(ii) subject to other collateral arrangements, including liabilities arising from repurchase transactions and other title transfer collateral arrangements; and

(b) for liabilities created after 31 July 2016, a liability that is not a fully secured liability.

Requirement to include a contractual term recognising bail-in

94.—(1) A relevant undertaking must include a relevant term in a relevant contract.

(2) For the purposes of paragraph (1)—

(a) a relevant undertaking is an undertaking to which regulation 95 applies;

(b) a relevant contract is a contract to which regulation 96 applies; and

(c) a relevant term is a term which meets the requirements in regulation 97.

Undertakings required to include a contractual term

95.—(1) This regulation applies to an undertaking which is—

(a) an institution;

(b) a financial holding company;

(c) a mixed financial holding company; or

(d) a relevant MAHC.

(2) Notwithstanding paragraph (1), this regulation does not apply to an undertaking to which regulation 99(2) applies.

(3) In this regulation, "institution", "financial holding company", "mixed financial holding company", and "relevant MAHC" each have the meaning given by section 3A(8) of the Act.

Contracts for which a contractual term is required

96.—(1) This regulation applies to a contract governing a liability, provided that such liability is—

(a) not an excluded liability;

(b) not an excluded deposit;

(c) governed by the law of a third country; and

(d) a liability of a type described in paragraph (3).

(2) Notwithstanding paragraph (1), this regulation does not apply to a liability to which regulation 99(1) applies.

(3) This paragraph applies to a liability—

(a) created on or after 28 December 2020, regardless of whether it is created under an agreement entered into before 28 December 2020 (including under a master or framework agreement between the contracting parties governing multiple liabilities);

(b) created before 28 December 2020, if the agreement governing the liability is subject to a material amendment on or after 28 December 2020.

(4) An amendment is material for the purposes of paragraph (3) if it affects the substantive rights and obligations of a party to the agreement.

(5) In this regulation—

"amendment" includes an automatic amendment,

"excluded deposit" means a liability which would become a secondary preferential debt within the meaning of section 386(1B) of the Insolvency Act 1986, and

"excluded liability" has the meaning given by section 48B(8) of the Act, except that a liability is not to be regarded as secured for the purposes of section 48B(8)(b) where—

(a) it was created after 31 July 2016; and

(b) at the time it was created, it was not a fully secured liability.

Content of required term

97. A term meets the requirements of this regulation where all creditors or parties to the agreement creating the liability—

(a) recognise that the liability may be subject to the exercise of a power by the Bank of England to make special bail-in provision or mandatory reduction provision; and

(b) agree 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.

Evidence to demonstrate compliance with regulation 94 obligation

98.—(1) The Bank of England may require an undertaking to which regulation 95 applies to provide a properly reasoned legal opinion on the legal enforceability and effectiveness of a term under regulation 97 to one or more of the following—

(a) the Bank of England;

(b) the PRA; or

(c) the FCA.

(2) A legal opinion under paragraph (1) must be prepared by an individual appropriately qualified in the relevant third country.

Exclusions

99.—(1) The obligation in regulation 94(1) does not apply where the Bank of England determines that contracts to which regulation 96 would otherwise apply can be subject to write down and conversion powers pursuant to the law of a third country or a binding agreement concluded with a third country.

(2) The Bank of England may determine that the obligation in regulation 94(1) does not apply to an undertaking in respect of which it has determined it would not exercise stabilisation powers under Part 1 of the Act.

Determination of impracticality

100.—(1) An undertaking to which regulation 95 applies may determine that it is impracticable, whether legally or otherwise, to comply with the requirement in regulation 94(1) in relation to a particular contract.

(2) An undertaking may not make a determination under paragraph (1) in relation to—

(a) Additional Tier 1 instruments;

(b) Tier 2 instruments;

(c) debt instruments referred to in point (48)(ii) of Article 2(1) of the recovery and resolution directive, where those instruments are unsecured liabilities; or

(d) any other liability which is not senior to the liabilities referred to in points (a), (b) and (c) of Article 108(2) and in Article 108(3) of the recovery and resolution directive.

(3) Where a determination under paragraph (1) has been made, the undertaking must notify the Bank of England.

(4) A notification under paragraph (3) must include—

(a) the designation of the class of liability; and

(b) justification of the determination.

Suspension of the regulation 94 obligation

101.—(1) Where the Bank of England receives a notification under regulation 100(3), the obligation in regulation 94(1) is automatically suspended in relation to that particular contract from the moment of receipt.

(2) Regulations made under section 414 of the Financial Services and Markets Act 2000 (services of notices) and subsection (4) of that section apply to any notification under paragraph 102(1).

Assessment of the determination of impracticability

102.—(1) Where the Bank of England has received a notification under regulation 100(3), it may assess the effect of such notification on the resolvability of that undertaking.

(2) An assessment under paragraph (1) must take into account the need to ensure the resolvability of the undertaking.

(3) The Bank of England may request further information from the undertaking in order to carry out the assessment in paragraph (1).

(4) An undertaking must comply with a request under paragraph (3) within a reasonable period from receipt of the request.

Determination that term is not impracticable

103.—(1) Where the Bank of England concludes, following an assessment under regulation 102(1), that it is not impracticable to comply with the obligation in regulation 94(1) in relation to a particular contract—

(a) it must, within a reasonable period from the notification in regulation 100(3), require the undertaking to comply with the obligation; and

(b) it may require the undertaking to amend its practices on determinations under regulation 100(1).

(2) An undertaking must comply with any requirement imposed under paragraph (1).

Assessment of resolvability

104.—(1) Where the Bank of England determines that the condition in paragraph (3) is met, the Bank of England must immediately assess the impact of this condition on the resolvability of the undertaking.

(2) An assessment under paragraph (1) must consider the impact of a risk of breaching the creditor safeguards in Article 73 of the recovery and resolution directive when applying write-down and conversion powers to eligible liabilities.

(3) The condition referred to in paragraph (1) is that the combined total of the following liabilities comprises more than 10% of a relevant class of liabilities—

(a) liabilities in respect of which an undertaking has not included a term under regulation 97 because a determination under regulation 100(1) has been made; and

(b) liabilities which are excluded under section 48B(8) of the Act or which the Bank of England considers to be likely to be excluded under section 48B(10) of the Act from the exercise of a power to make special bail-in provision.

(4) A class of liabilities is relevant for the purposes of paragraph (3) if it contains eligible liabilities.

(5) In this regulation, "eligible liabilities" has the meaning given by section 3A(4A) of the Act.

Exercise of power to remove impediments to resolvability

105. The Bank of England must exercise its powers under section 3A of the Act where an assessment under regulation 104(1) concludes that the liabilities described in regulation 104(3)(a) create a substantive impediment to resolvability.

Exclusion of liabilities from the minimum requirement for own funds and eligible liabilities

106. A liability is not included within an undertaking's minimum requirement for own funds and eligible liabilities, as required by section 3A(4B) of the Act, if, in relation to that liability, the obligation in regulation 94(1)—

(a) has not been complied with; or

(b) is suspended under regulation 101(1).

Exercise of resolution powers where contractual term not included

107. Nothing in this Chapter restricts the Bank of England's ability to exercise a power to make special bail-in provision or mandatory reduction provision where the obligation in regulation 94(1) does not apply or is not met.

CHAPTER 5

Amendments to priority of debts in insolvency

Transitional provision

108.—(1) This Chapter has no effect in relation to insolvency proceedings which are commenced before the date on which it comes into force or which are commenced after IP completion day.

(2) For this purpose—

(a) "insolvency proceedings" means—

(i) proceedings under the Insolvency Act 1986(**a**);

(ii) proceedings under the Insolvency (Northern Ireland) Order 1989(**b**);

(iii) proceedings under the Insolvent Partnerships Order 1994(**c**);

(iv) proceedings under the Insolvent Partnerships Order (Northern Ireland) 1995(**d**);

(v) proceedings under Part 2 or 3 of the Banking Act 2009 (including proceedings under either of those Parts as applied to building societies by section 90C of the Building Societies Act 1986(**e**));

(vi) proceedings under the Investment Bank Special Administration Regulations 2011(**f**); or

(vii) proceedings under the Bankruptcy (Scotland) Act 2016(**g**);

(b) insolvency proceedings commence on—

(i) the date of presentation of a petition for a winding-up order, bank insolvency order, special administration (bank insolvency) order, building society insolvency order, bankruptcy order or award of sequestration;

(ii) the date on which an application is made for an administration order, bank administration order, investment bank special administration order, special administration (bank administration) order or building society special administration order;

(iii) the date on which notice of appointment of an administrator is given under paragraph 18 or 29 of Schedule B1 to the Insolvency Act 1986(**h**) or paragraph 19 or 30 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(**i**);

(iv) the date on which a proposal is made by the directors of a company for a company voluntary arrangement under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989 or by an individual debtor for an

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(**a**) 1986 c.45.

(**b**) S.I. 1989/2045 (N.I. 19); amended by the Insolvency (Northern Ireland) Order 2002 (S.I. 2002 No. 3152 (N.I. 6)), S.R. 2004 No. 307, the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), S.I. 2014 No. 3486, paragraph 83 of schedule 29 to the Civil Partnership Act 2004 (c.33), S.I. 2018/1244, the Corporate Insolvency and Governance Act 2020 (c.12); there are other amending instruments but none is relevant.

(**c**) S.I. 1994/2421, amended by S.I. 2002/2708, S.I. 2005/1516, S.I. 2014/3486, S.I. 2017/1119 and S.I. 2018/1244; there are other amending instruments but none is relevant.

(**d**) S.R. (N.I.) 1995 No.225.

(**e**) 1986 c.53; Section 90C was inserted by S.I. 2009/805.

(**f**) S.I. 2011/245; amended by S.I. 2017/400; there are other amending instruments but none is relevant.

(**g**) 2016 asp 21.

(**h**) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40) Schedule 16. There are no amendments to either paragraph 18 or paragraph 29.

(**i**) Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10), Schedule 1. There are no amendments to either paragraph 19 or paragraph 30.

individual voluntary arrangement under Part 8 of the Insolvency Act 1986 or Part 8 of the Insolvency (Northern Ireland) Order 1989;

(v) the date on which a resolution for voluntary winding-up is passed.

Amendment of the Insolvency Act 1986

Introduction

109. The Insolvency Act 1986 is modified in accordance with regulations 110 to 114.

Non-preferential debts in company voluntary arrangements

110. Section 4 (decisions of the company and its creditors)(**a**) applies as if in subsection (4)(d) for "or (3)" there were substituted ", (3) or (3A)".

Non-preferential debts in winding up of companies

111. Section 176AZA (non-preferential debts of financial institutions)(**b**) applies as if after subsection (3) there were inserted—

"(3A) The company's tertiary non-preferential debts shall be paid in priority to its quaternary non-preferential debts.".

Non-preferential debts in bankruptcy proceedings

112. Section 328 (priority of debts)(**c**) applies as if in subsection (3A)—

(a) in paragraph (c), the "and" were omitted;

(b) after paragraph (d), there were inserted—

"and

(e) the bankrupt's tertiary non-preferential debts shall be paid in priority to the bankrupt's quaternary non-preferential debts.".

Interpretation

113. Section 387A (financial institutions and their non-preferential debts)(**d**) applies as if in subsection (3)—

(a) in paragraph (a), for "neither secondary non-preferential debts nor tertiary non-preferential debts" there were substituted "not secondary non-preferential debts, tertiary non-preferential debts or quaternary non-preferential debts";

(b) in paragraph (b), the final "and" were omitted;

(c) for paragraph (c) there were substituted—

"(c) "tertiary non-preferential debts" means subordinated debts that are not quaternary non-preferential debts, and

(d) "quaternary non-preferential debts" means debts under instruments the whole or part of which constitute Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).".

(**a**) Section 4 was amended by the Insolvency Act 2000 (c.39), Schedule 2, paragraphs 1 and 4, the Deregulation Act 2015 (c. 20) Schedule 6(6) paragraph 20(2)(c), the Small Business, Enterprise and Employment Act 2015 (c. 26) Schedule 9(1) paragraph 4, S.I. 2014/3486 and S.I. 2018/1244.

(**b**) Section 176AZA was inserted by S.I. 2018/1244.

(**c**) Section 328 was amended by S.I. 2014/3486 and S.I. 2018/1244.

(**d**) Section 387A was inserted by S.I. 2018/1244.

Administration

114. Schedule B1 (administration)(**a**) applies as if in paragraph 73(1)(e) (protection for priority creditor) for "or (3)" there were substituted ", (3) or (3A)".

Amendment of the Insolvency (Northern Ireland) Order 1989

Introduction

115. The Insolvency (Northern Ireland) Order 1989 is modified in accordance with regulations 116 to 120.

Non-preferential debts in company voluntary arrangements

116. Article 17 (decisions of meetings)(**b**) applies as if in paragraph (4)(d) for "or (3)" there were substituted ", (3) or (3A)".

Non-preferential debts in winding up of companies

117. Article 150ZZA (non-preferential debts of financial institutions)(**c**) applies as if after paragraph (3) there were inserted—

"(3A) The company's tertiary non-preferential debts are to be paid in priority to its quaternary non-preferential debts.".

Non-preferential debts in bankruptcy proceedings

118. Article 300 (priority of debts)(**d**) applies as if in paragraph (3A)—

(a) in sub-paragraph (c), "and" were omitted;

(b) after sub-paragraph (d) there were inserted—

"and

(e) the bankrupt's tertiary non-preferential debts are to be paid in priority to the bankrupt's quaternary non-preferential debts.".

Interpretation

119. Article 347A (financial institutions and their non-preferential debts)(**e**) applies as if in paragraph (3)—

(a) in paragraph (a), for "neither secondary non-preferential debts nor tertiary non-preferential debts" there were substituted "not secondary non-preferential debts, tertiary non-preferential debts or quaternary non-preferential debts";

(b) in sub-paragraph (b)(iii), the final "and" were omitted;

(c) for sub-paragraph (c) there were substituted—

"(c) "tertiary non-preferential debts" means subordinated debts that are not quaternary non-preferential debts, and

(d) "quaternary non-preferential debts" means debts under instruments the whole or part of which constitute Common Equity Tier 1 instruments, Additional Tier 1

(**a**) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40) Schedule 16 paragraph 1; paragraph 73 was amended by S.I. 2014/3486 and S.I. 2018/1244; there are other amending instruments but none is relevant.
(**b**) Article 17(4)(d) was inserted by S.I. 2018/1244 Pt 5 art. 23(c).
(**c**) Article 150ZZA was inserted by S.I. 2018/1244 Pt 5 art. 24.
(**d**) Article 300(3A) was inserted by S.I. 2018/1244 Pt 5 art. 26.
(**e**) Article 347A was inserted by S.I. 2018/1244 Pt 5 art.29.

instruments or Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).".

Administration

120. Schedule B1 (administration)(**a**) applies as if in paragraph 74(1)(e) (protection for priority creditor) for "or (3)" there were substituted ", (3) or (3A)".

Further Amendment of Insolvency Legislation

Amendments of the Insolvent Partnerships Order 1994

121.—(1) The Insolvent Partnerships Order 1994 is modified in accordance with this regulation.

(2) Schedule 1 (modified provisions of Part 1 of, and Schedule A1 to, the Insolvency Act 1986 (company voluntary arrangements) as applied by article 4)(**b**) applies as if in modified section 4(4) (decisions of the members of the partnership and its creditors) at the end of paragraph (d) for "or (3)" there were substituted ", (3) or (3A)".

(3) In Schedule 2 (modified provisions of Part 2 of and Schedule B1 to the Insolvency Act 1986 (administration) as applied by article 6)(**c**) applies as if in paragraph 25, in modified section 73(1) at the end of paragraph (e) for "or (3)" there were substituted ", (3) or (3A)".

(4) Paragraph 23 of Schedule 4 (provisions of the Insolvency Act 1986 which apply with modifications for the purposes of article 8 to winding up of insolvent partnership on creditor's petition where concurrent petitions are presented against one or more members)(**d**) applies as if—

(a) in modified section 175A (priority of debts in joint estate)—

(i) in subsection (2), after paragraph (bb) there were inserted—

"(bc) the quaternary non-preferential debts;";

(ii) in subsection (5B)(b) for "section 175B(1)(bc)" there were substituted "section 175B(1)(bb)";

(iii) after subsection (5B) there were inserted—

"(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with paragraph (bc) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which–

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with section 175B(1)(bc).";

(iv) in subsection (9) after "(5B)," there were inserted "(5C),";

(b) in modified section 175B(1) (priority of debts in separate estate)—

(i) at the end of paragraph (bb) there were inserted "(including any debt referred to in section 175A(5B)(a))";

(ii) after paragraph (bb) there were inserted—

(**a**) Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10), Schedule 1, paragraph 1. Paragraph 74(1)(e) was inserted by S.I. 2018/1244, Pt 5 art.31(3)(c).

(**b**) Schedule 1 was substituted by S.I. 2002/2708 and amended by S.I. 2014/3486, S.I. 2017/540 and S.I. 2018/1244; there are other amending instruments but none is relevant.

(**c**) Schedule 2 was substituted by S.I. 2005/1516 and amended by S.I. 2005/1516, S.I. 2014/3486 and S.I. 2018/1244; there are other amending instruments but none is relevant.

(**d**) Schedule 4 was amended by S.I. 2014/3486, S.I. 2017/1119 and S.I. 2018/1244; there are other amending instruments but none is relevant.

"(bba) the quaternary non-preferential debts;";

(iii) for paragraph (bc) there were substituted—

"(bc) the debt referred to in section 175A(5C)(a);";

(c) in modified section 175C (provisions generally applicable in distribution of joint and separate estates)—

(i) in subsection (3), after "(5B)(a)" there were inserted ", (5C)(a)";

(ii) in subsection (4), for "and tertiary non-preferential debts" there were substituted ", tertiary non-preferential debts and quaternary non-preferential debts";

(iii) in paragraph (8)(b), after "(5B)," there were inserted "(5C),".

(5) Paragraph 21 of Schedule 7 (provisions of the Insolvency Act 1986 which apply with modifications for the purposes of article 11 where joint bankruptcy petition presented by individual members without winding up partnership as unregistered company)(**a**) applies as if—

(a) in modified section 328A (priority of debts in joint estate)—

(i) in subsection (2), after paragraph (bb) there were inserted—

"(bc) the quaternary non-preferential debts;";

(ii) in subsection (5B)(b), for "section 328B(1)(bc)" there were substituted "section 328B(1)(bb)";

(iii) after subsection (5B) there were inserted—

"(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with paragraph (bc) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which–

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with section 328B(1)(bc).";

(iv) in subsection (9), after "(5B)," there were inserted "(5C),";

(b) in modified section 328B(1), (priority of debts in separate estate)—

(i) at the end of paragraph (bb) there were inserted "(including any debt referred to in section 328A(5B)(a))";

(ii) after paragraph (bb) there were inserted—

"(bba) the quaternary non-preferential debts;";

(iii) for paragraph (bc) there were substituted—

"(bc) the debt referred to in section 328A(5C)(a);";

(c) in modified section 328C (provisions generally applicable in distribution of joint and separate estates)—

(i) in subsection (3), after "(5B)(a)" there were inserted ", (5C)(a)".

(ii) in subsection (4), for "and tertiary non-preferential debts" there were substituted ", tertiary non-preferential debts and quaternary non-preferential debts".

(iii) in paragraph (8)(b), after "(5B)," there were inserted "(5C),".

(**a**) Schedule 7 was amended by S.I. 2014/3486, S.I. 2017/1119 and S.I. 2018/1244; there are other amendments but none is relevant.

Amendments of the Insolvent Partnerships Order (Northern Ireland) 1995

122.—(1) The Insolvent Partnerships Order (Northern Ireland) 1995 is modified in accordance with this regulation.

(2) Schedule 1 (modified provisions of Part 2 of, and Schedule A1 to, the Insolvency (Northern Ireland) Order 1989 (company voluntary arrangements) as applied by article 4)(**a**) applies as if in modified Article 17(4) (decisions of meetings), in sub-paragraph (d), for "or (3)" there were substituted ", (3) or (3A)".

(3) Schedule 2 (modified provisions of Schedule B1 and Schedule 1 to the Insolvency (Northern Ireland) Order 1989 (administration) as applied by article 6)(**b**) applies as if in paragraph 35, in modified paragraph 74(1), in sub-paragraph (e), for "or (3)" there were substituted ", (3) or (3A)".

(4) Paragraph 23 of Schedule 4 (provisions of the Insolvency (Northern Ireland) Order 1989 which apply with modifications for the purposes of article 8 to the winding up of an insolvent partnership on a creditor's petition where concurrent petitions are presented against one or more members)(**c**) applies as if—

(a) in modified Article 149A (priority of debts in joint estate)—

(i) in paragraph (2), after sub-paragraph (bb) there were inserted—

"(bc) the quaternary non-preferential debts;";

(ii) in sub-paragraph (5B)(b), for "Article 149B(1)(bc)" there were substituted "Article 149B(1)(bb)";

(iii) after paragraph (5B) there were inserted—

"(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with sub-paragraph (bc) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with Article 149B(1)(bc).";

(iv) in paragraph (9), after "(5B)," there were inserted "(5C),";

(b) in modified Article 149B(1) (priority of debts in separate estate)—

(i) at the end of sub-paragraph (bb) there were inserted "(including any debt referred to in Article 149A(5B)(a))";

(ii) after sub-paragraph (bb) there were inserted—

"(bba) the quaternary non-preferential debts;";

(iii) for sub-paragraph (bc) there were substituted—

"(bc) the debt referred to in Article 149A(5C)(a);";

(c) in modified Article 149C (provisions generally applicable in distribution of joint and separate estates)—

(i) in paragraph (3), after "(5B)(a)" insert ", (5C)(a)";

(ii) in paragraph (4), for "and tertiary non-preferential debts" substitute ", tertiary non-preferential debts and quaternary non-preferential debts";

(iii) in sub-paragraph (8)(b), after "(5B)," insert "(5C),".

(**a**) Schedule 1 was substituted by S.R. 2003 No.550 and amended by S.I. 2014/3486 and S.I. 2018/1244.

(**b**) Schedule 2 was substituted by S.R. 2006 No.515 and amended by S.I. 2014/3486 and S.I. 2018/1244; there are other amendments but none is relevant.

(**c**) Schedule 4 was amended by S.I. 2014/3486 and S.I. 2018/1244; there are other amendments but none is relevant.

(5) Paragraph 21 of Schedule 7 (provisions of the Insolvency (Northern Ireland) Order 1989 which apply with modifications for the purposes of article 11 where a joint bankruptcy petition is presented by individual members without winding up the partnership as an unregistered company)(**a**) applies as if—

(a) in modified Article 300A (priority of debts in joint estate)—

(i) in paragraph (2), after sub-paragraph (bb) there were inserted—

"(bc) the quaternary non-preferential debts;";

(ii) in paragraph (5B), for "Article 300B(1)(bc)" there were substituted "Article 300B(1)(bb)";

(iii) after paragraph (5B) there were inserted—

"(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with sub-paragraph (bc) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with Article 300B(1)(bc).";

(iv) in paragraph (9) after "(5B)," there were inserted "(5C),";

(b) in modified Article 300B(1) (priority of debts in separate estate)—

(i) at the end of sub-paragraph (bb) there were inserted "(including any debt referred to in Article 300A(5B)(a))";

(ii) after sub-paragraph (bb) there were inserted—

"(bba) the quaternary non-preferential debts;";

(iii) for sub-paragraph (bc) there were substituted—

"(bc) the debt referred to in Article 300A(5C)(a);";

(c) in modified Article 300C (provisions generally applicable in distribution of joint and separate estates)—

(i) in paragraph (3), after "(5B)(a)" there were inserted ", (5C)(a)";

(ii) in paragraph (4), for "and tertiary non-preferential debts" there were substituted ", tertiary non-preferential debts and quaternary non-preferential debts";

(iii) in sub-paragraph (8)(b), after "(5B)," there were inserted "(5C),".

Housing Act 1996

123. Section 44 of the Housing Act 1996 (proposals as to ownership and management of landlord's land)(**b**) applies as if subsection (4) were modified as follows—

(a) in paragraph (d)(ii), the final "or" were omitted;

(b) after paragraph (d)(iii), there were inserted—

"or

(iv) a tertiary non-preferential debt of the landlord is to be paid otherwise than in priority to any quaternary non-preferential debts of the landlord";

(**a**) Schedule 7 was amended by S.I. 2014/3486 and S.I. 2018/1244.

(**b**) 1996 c. 52; section 44 was amended by the Charities Act 2006 (c. 50) Schedule 8 paragraph 187, the Housing and Regeneration Act 2008 (c. 17) Part 2 chapter 1 section 61(7), the Co-operative and Community Benefit Societies Act 2014 (c. 14) Schedule 4(2) paragraph 56, S.I. 2014/3486 and S.I. 2018/1244.

(c) in the words after paragraph (d), after "tertiary non-preferential debts" there were inserted ", quaternary non-preferential debts".

Housing and Regeneration Act 2008

124. The Housing and Regeneration Act 2008(**a**) applies as if it were modified as follows—

(a) in section 152 (proposals)(**b**), in subsection (4)—

(i) in paragraph (d)(ii), the final "or" were omitted;

(ii) after paragraph (d)(iii), there were inserted—

"or

(iv) a tertiary non-preferential debt being paid otherwise than in priority to a quaternary non-preferential debt.";

(b) in section 275 (general)(**c**), after ""tertiary non-preferential debt"" there were inserted ", "quaternary non-preferential debt"";

(c) in section 276 (index of defined terms)(**d**), in the table, there were inserted the following entry at the appropriate place—

"Quaternary non-preferential debt	Section 275".

Housing (Scotland) Act 2010

125. Section 80 of the Housing (Scotland) Act 2010 (proposals: formulation)(**e**) applies as if it were modified as follows—

(a) in subsection (5)—

(i) the "or" after paragraph (d)(ii) were omitted, and

(ii) after paragraph (d)(iii), there were inserted—

"or

(iv) quaternary non-preferential debts being paid before tertiary non-preferential debts,", and

(b) in subsection (6), for "and "tertiary non-preferential debts"" there were substituted ", "tertiary non-preferential debts" and "quaternary non-preferential debts"".

Bankruptcy (Scotland) Act 2016

126. The Bankruptcy (Scotland) Act 2016 is modified in accordance with regulations 127 and 128.

127. Section 129 (priority in distribution)(**f**) applies as if it were modified as follows.

(a) in subsection (1)—

(i) after paragraph (gb) there were inserted—

"(gc) quaternary non-preferential debts,", and

(ii) in paragraph (h)—

(**a**) 2008 c. 17.
(**b**) Section 152 was amended by S.I. 2014/3486 and S.I. 2018/1244.
(**c**) Section 275 was amended by the Charities Act 2011 (c. 25) Schedule 7(2) paragraph 135, the Co-operative and Community Benefit Societies Act 2014 (c. 14) Schedule 4(2) paragraphs 122 and 136, the Housing and Planning Act 2016 (c. 22) Schedule 4(4) paragraph 38 and Schedule 6 paragraph 9, S.I. 2014/2486 and S.I. 2018/1244.
(**d**) Section 276 was amended by the Localism Act 2011 (c. 20) Schedule 16(1) paragraph 53 and Schedule 25(26) paragraph 1, the Co-operative and Community Benefit Societies Act 2014 (c. 14) Schedule 4(2) paragraph 123 and paragraph 137, the Housing and Planning Act 2016 (c. 22) Schedule 6 paragraph 10, S.I. 2010/844, S.I. 2018/1040 and S.I. 2018/1244.
(**e**) 2010 asp 17; section 80 was amended by S.I. 2013/496, S.I. 2014/3486 and S.I. 2018/1244.
(**f**) Section 129 was amended by S.S.I. 2017/210, S.I. 2018/1244 and S.S.I. 2019/94.

(aa) the "and" after sub-paragraph (iv) were omitted, and

(bb) after sub-paragraph (v) there were inserted—

"and

(vi) the quaternary non-preferential debts,".

(b) in subsection (3A), for "and "tertiary non-preferential debts"" there were substituted ", "tertiary non-preferential debts" and "quaternary non-preferential debts"".

128. Section 129A (section 129: interpretation)(**a**) applies as if for subsection (4) there were substituted—

"(4) In this Act, "tertiary non-preferential debts" means subordinated debts that are not quaternary non-preferential debts.

(4A) In this Act, "quaternary non-preferential debts" means debts under instruments the whole or part of which constitute Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).".

Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (O.J. L150, 7.6.2019, p296).

Chapter 1 of Part 2 extends existing rule making powers of the Financial Conduct Authority under the Financial Services and Markets Act 2000 (c.8). This will empower the FCA to implement restrictions placed by Directive 2014/59 ("BRRD") on the selling of subordinated eligible liabilities to retail clients. These are a type of liability which relevant persons may be required by the Bank of England ("the Bank") to maintain or issue.

Chapter 2 of Part 2 amends the Banking Act 2009 (c.1) which is the principal primary legislation upon which the UK relies for compliance with its obligations under the BRRD.

Regulations 5 to 8 amend the Bank's powers to direct relevant persons to maintain a minimum requirement for own funds and eligible liabilities ("MREL") and enable it to write-down or convert internal liabilities in specified circumstances where a bank is not a resolution entity, but is in a resolution group. Regulation 10 exempts two new categories of liability from the exercise of a power to make special bail-in provision in relation to a bank. Regulation 24 makes provision equivalent to regulation 5 (which concerns banks established in the United Kingdom) for UK branches of third-country institutions, and regulation 18 sets out the type of mandatory reduction provision that may be made in exercise of the powers conferred by regulation 7.

Regulation 13 specifies additional circumstances where mandatory write-down or conversion of capital instruments and internal liabilities must take place in relation to a banking group company, and regulations 14 and 15 confer supplemental powers on the Bank to sell all or part of the business of a specified type of banking group company to a commercial purchaser, or to transfer it to a bridge bank or an asset management vehicle. Regulation 16 also confers on the Bank supplemental "bail-in" powers in relation to a specified type of banking group company.

(**a**) Section 129A was inserted by S.I. 2018/1244.

Part 3 amends secondary legislation upon which the UK relies for compliance with its obligations in relation to the BRRD. It adds to the definition of "group resolution plan", and makes further provision concerning resolution plans, the assessment of resolvability of groups, and the removal of impediments to resolvability of institutions and groups. Regulations 45 to 55 relate to the MREL, including omitting provision restricting the manner in which it is to be expressed, and regulations 56 and 57 add provision relating to Union parent undertakings into the provisions about cross-border group resolution.

Part 4 makes provision in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) ("EUWA") to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. In particular, these Regulations address deficiencies under paragraphs (a), (b), (c) and (g) of section 8(2) and transfer functions under section 8(6) of EUWA. The deficiencies are those which are introduced by the implementation of Directive 2019/879.

Part 5 (which is made under the European Communities Act 1972) is to cease to have effect on IP completion day. It makes various provision related to resolution, conferring powers on the Bank to prohibit distributions in particular circumstances, modifying conditions for the exercise of certain stabilisation powers, imposing requirements to include certain contractual terms in contracts, and making amendments to the ranking of debts in insolvency.

A de minimis regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained either from the Resilience and Resolution Team, HM Treasury, 1 Horseguards Road, London, SW1A 2HQ or via the Treasury website (www.hm-treasury.gov.uk).

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UK202010141004 10/2020 19585

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