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SCHEDULES

SCHEDULE 2

BAIL-IN STABILISATION OPTION

PART 1

AMENDMENTS OF BANKING ACT 2009

Further provision about the bail-in option

4 After section 48A insert—

“Bail-in option

48B Special bail-in provision

- (1) “Special bail-in provision”, in relation to a bank, means any of the following (or any combination of the following)—
 - (a) provision cancelling a liability owed by the bank;
 - (b) provision modifying, or changing the form of, a liability owed by the bank;
 - (c) provision that a contract under which the bank has a liability is to have effect as if a specified right had been exercised under it.
- (2) “Special bail-in provision”, in relation to a bank, also includes any associated provision (see subsection (3)) that the Bank of England may think it appropriate to make in consequence of any provision under subsection (1) that—
 - (a) is made in the same resolution instrument, or
 - (b) has been made in another resolution instrument in respect of the bank.
- (3) “Associated provision” means provision cancelling or modifying a contract under which a banking group company has a liability.
- (4) A power to make special bail-in provision—
 - (a) may be exercised only for the purpose of, or in connection with, reducing, deferring or cancelling a liability of the bank;
 - (b) may not be exercised so as to affect any excluded liability.
- (5) The following rules apply to the interpretation of subsection (1).
 - (1) The reference to cancelling a liability owed by the bank includes a reference to cancelling a contract under which the bank has a liability.

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- (2) The reference to modifying a liability owed by the bank includes a reference to modifying the terms (or the effect of the terms) of a contract under which the bank has a liability.
- (3) The reference to changing the form of a liability owed by the bank, includes, for example—
 - (a) converting an instrument under which the bank owes a liability from one form or class to another,
 - (b) replacing such an instrument with another instrument of a different form or class, or
 - (c) creating a new security (of any form or class) in connection with the modification of such an instrument.
- (6) Examples of special bail-in provision include—
 - (a) provision that transactions or events of any specified kind have or do not have (directly or indirectly) specified consequences or are to be treated in a specified manner for specified purposes;
 - (b) provision discharging persons from further performance of obligations under a contract and dealing with the consequences of persons being so discharged.
- (7) The form and class of the instrument (“the resulting instrument”) into which an instrument is converted, or with which it is replaced, do not matter for the purposes of paragraphs (a) and (b) of rule 3 in subsection (5); for instance, the resulting instrument may (if it is a security) fall within Class 1 or any other Class in section 14.
- (8) The following liabilities of the bank are “excluded liabilities”—
 - (a) liabilities representing protected deposits;
 - (b) any liability, so far as it is secured;
 - (c) liabilities that the bank has by virtue of holding client assets;
 - (d) liabilities with an original maturity of less than 7 days owed by the bank to a credit institution or investment firm;
 - (e) liabilities arising from participation in designated settlement systems and owed to such systems or to operators of, or participants in, such systems;
 - (f) liabilities owed to central counterparties recognised by the European Securities and Markets Authority in accordance with Article 25 of Regulation (EU) 648/2012 of the European Parliament and the Council;
 - (g) liabilities owed to an employee or former employee in relation to salary or other remuneration, except variable remuneration;
 - (h) liabilities owed to an employee or former employee in relation to rights under a pension scheme, except rights to discretionary benefits;
 - (i) liabilities owed to creditors arising from the provision to the bank of goods or services (other than financial services) that are critical to the daily functioning of the bank's operations.
- (9) The following special rules apply in cases involving banking group companies—

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- (a) a liability mentioned in subsection (8)(d) is not an excluded liability if the credit institution or investment firm to which the liability is owed is a banking group company in relation to the bank (see section 81D);
- (b) in subsection (8)(i) the reference to creditors does not include companies which are banking group companies in relation to the bank.

48C Meaning of “protected deposit”

- (1) A deposit is “protected” so far as it is covered by the Financial Services Compensation Scheme.
- (2) A deposit is “protected” so far as it is covered by a scheme which—
 - (a) operates outside the United Kingdom, and
 - (b) is comparable to the Financial Services Compensation Scheme.
- (3) If one or both of subsections (1) and (2) apply to a deposit, the amount of the deposit “protected” is the highest amount which results from either of those subsections.
- (4) In subsections (1) and (2) and section 48B(8)(a), “deposit” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), but ignoring the exclusions in article 6.

48D General interpretation of section 48B

- (1) In section 48B—
 - “client assets” means assets which the bank has undertaken to hold on trust for, or on behalf of, a client;
 - “contract” includes any instrument;
 - “credit institution” means any credit institution as defined in Article 4.1(1) of [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council, other than an entity mentioned in Article 2.5(2) to (23) of [Directive 2013/36/EU](#) of the European Parliament and of the Council;
 - “designated settlement system” means a system designated in accordance with Directive [98/26/EC](#) of the European Parliament and of the Council (as amended by Directives [2009/44/EC](#) and [2010/78/EU](#));
 - “employee” includes the holder of an office;
 - “investment firm” means an investment firm as defined in Article 4.1(2) of [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council that is subject to the initial capital requirement specified in Article 28(2) of [Directive 2013/36/EU](#) of the European Parliament and of the Council;
 - “pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities;
 - “secured” means secured against property or rights, or otherwise covered by collateral arrangements.

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- (2) In subsection (1)—
- “assets” has the same meaning as in section 232(4) (ignoring for these purposes section 232(5A)(b));
- “collateral arrangements” includes arrangements which are title transfer collateral arrangements for the purposes of section 48.
- (3) For the purposes of section 48B(8)(h), a benefit under a pension scheme is discretionary so far as the employee's right to the benefit resulted from the exercise of a discretion.

48E Report on special bail-in provision

- (1) This section applies where the Bank of England makes a resolution instrument containing special bail-in provision (see section 48B).
- (2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision has been made in the case of the liabilities concerned.
- (3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.
- (4) The insolvency treatment principles are that where an instrument includes special bail-in provision—
- (a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and
 - (b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.
- (5) A report must comply with any other requirements as to content that may be specified by the Treasury.
- (6) A report must be made as soon as reasonably practicable after the making of the resolution instrument to which it relates.
- (7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.

48F Power to amend definition of “excluded liabilities”

- (1) The Treasury may by order amend section 48B(8) by—
- (a) adding to the list of excluded liabilities;
 - (b) amending or omitting any paragraph of that subsection, other than paragraphs (a) to (c).
- (2) The Treasury may by order amend section 48C or 48D.
- (3) The powers conferred by subsections (1) and (2) include power to make consequential and transitional provision.
- (4) An order under this section—
- (a) is to be made by statutory instrument, and

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- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) The Treasury must consult before laying a draft order under this section before Parliament.

48G Priority between creditors

- (1) The Treasury may, for the purpose of ensuring that the treatment of liabilities in any instrument that contains special bail-in provision is aligned to an appropriate degree with the treatment of liabilities on an insolvency, by order specify matters or principles to which the Bank of England is to be required to have regard in making any such instrument.
- (2) An order may, for example, specify the insolvency treatment principles (as defined in section 48E(4)) or alternative principles.
- (3) An order may specify the meaning of “insolvency” for one or more purposes of the order.
- (4) An order may amend sections 44C(4) and 48E(4).
- (5) An order—
 - (a) is to be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

48H Business reorganisation plans

- (1) A resolution instrument may require a bail-in administrator, or one or more directors of the bank, to—
 - (a) draw up a business reorganisation plan with respect to the bank, and
 - (b) submit it to the Bank of England within the period allowed by (or under) the instrument.
- (2) “Business reorganisation plan” means a plan that includes—
 - (a) an assessment of the factors that caused Condition 1 in section 7 to be met in the case of the bank,
 - (b) a description of the measures to be adopted with a view to restoring the viability of the bank, and
 - (c) a timetable for the implementation of those measures.
- (3) Where a person has submitted a business reorganisation plan to the Bank of England under subsection (1) (or has re-submitted a plan under subsection (4)), the Bank of England—
 - (a) must approve the plan if satisfied that the plan is appropriately designed for meeting the objective mentioned in subsection (2)(b);
 - (b) must otherwise require the person to amend the plan in a specified manner.
- (4) Where the Bank of England has required a person to amend a business reorganisation plan, the person must re-submit the amended plan within the period allowed by (or under) the resolution instrument.

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- (5) Before deciding what action to take under subsection (3) the Bank of England must (for each submission or re-submission of a plan) consult—
 - (a) the PRA, and
 - (b) the FCA.
- (6) A business reorganisation plan may include recommendations by the person submitting the plan as to the exercise by the Bank of England of any of its powers under this Part in relation to the bank.
- (7) Where a resolution instrument contains provision under subsection (1), the instrument may—
 - (a) specify further matters (in addition to those mentioned in subsection (2)) that must be dealt with in the business reorganisation plan;
 - (b) make provision about the timing of actions to be taken in connection with the making and approval of the plan;
 - (c) enable any provision that the Bank of England has power under paragraph (a) or (b) to make in the instrument to be made instead in an agreement between the Bank of England and the person required to draw up the business reorganisation plan.
- (8) For the purposes of subsection (2)(b) the viability of a bank is to be assessed by reference to whether the bank satisfies, and (if so) for how long it may be expected to continue to satisfy, the threshold conditions (as defined in section 55B of the Financial Services and Markets Act 2000).

48I Bail-in administrator: further functions

- (1) A resolution instrument may—
 - (a) authorise a bail-in administrator to manage the bank's business (or confer on a bail-in administrator any other power with respect to the management of the bank's business);
 - (b) authorise a bail-in administrator to exercise any other powers of the bank;
 - (c) confer on a bail-in administrator any other power the Bank of England may consider appropriate;
 - (d) provide that the exercise of any power conferred by the instrument in accordance with this section is to be subject to conditions specified in the instrument.
- (2) A resolution instrument may require a bail-in administrator to make reports to the Bank of England—
 - (a) on any matter specified in the instrument, and
 - (b) at the times or intervals specified in the instrument.
- (3) If a resolution instrument specifies a matter in accordance with subsection (2)(a), it may provide for further requirements as to the contents of the report on that matter to be specified in an agreement between the Bank of England and the bail-in administrator.
- (4) A resolution instrument may—

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- (a) require a bail-in administrator to consult specified persons before exercising specified functions (and may specify particular matters on which the specified person must be consulted);
- (b) provide that a bail-in administrator is not to exercise specified functions without the consent of a specified person.

48J Bail-in administrator: supplementary

- (1) A bail-in administrator may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.
- (2) A bail-in administrator is not a servant or agent of the Crown (and, in particular, is not a civil servant).
- (3) Where a bail-in administrator is appointed under this Part, the Bank of England—
 - (a) must make provision in a resolution instrument for resignation and replacement of the bail-in administrator;
 - (b) may remove the bail-in administrator from office only (i) on the ground of incapacity or misconduct, or (ii) on the ground that there is no further need for a person to perform the functions conferred on the bail-in administrator.

48K Bail-in administrator: money

- (1) A resolution instrument may provide for the payment of remuneration and allowances to a bail-in administrator.
- (2) Provision made under subsection (1) may provide that the amounts are—
 - (a) to be paid by the Bank of England, or
 - (b) to be determined by the Bank of England and paid by the bank.
- (3) A bail-in administrator is not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the office (subject to section 8 of the Human Rights Act 1998).

48L Powers in relation to securities

- (1) A resolution instrument may—
 - (a) cancel or modify any securities to which this subsection applies;
 - (b) convert any such securities from one form or class into another.
- (2) Subsection (1) applies to securities issued by the bank that fall within Class 1 in section 14.
- (3) A resolution instrument may—
 - (a) make provision with respect to rights attaching to securities issued by the bank;
 - (b) provide for the listing of securities issued by the bank to be discontinued.

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- (4) The reference in subsection (1)(b) to converting securities from one form or class into another includes creating a new security in connection with the modification of an existing security.
- (5) The provision that may be made under subsection (3)(a) includes, for example—
 - (a) provision that specified rights attaching to securities are to be treated as having been exercised;
 - (b) provision that the Bank of England, or a bail-in administrator, is to be treated as authorised to exercise specified rights attaching to securities;
 - (c) provision that specified rights attaching to securities may not be exercised for a period specified in the instrument.
- (6) In subsection (3)(b) the reference to “listing” is to listing under section 74 of the Financial Services and Markets Act 2000.
- (7) The provision that may be made under this section in relation to any securities is in addition to any provision that the Bank of England may have power to make in relation to them under section 48B.

48M Termination rights, etc

- (1) In this section “default event provision” has the same meaning as in section 22.
- (2) A resolution instrument may provide for subsection (3) or (4) to apply (but need not apply either).
- (3) If this subsection applies, the resolution instrument is to be disregarded in determining whether a default event provision applies.
- (4) If this subsection applies, the resolution instrument is to be disregarded in determining whether a default event provision applies except so far as the instrument provides otherwise.
- (5) In subsections (3) and (4) a reference to the resolution instrument is a reference to—
 - (a) the making of the instrument,
 - (b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, and
 - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument.
- (6) Provision under subsection (2) may apply subsection (3) or (4)—
 - (a) generally or only for specified purposes, cases or circumstances, or
 - (b) differently for different purposes, cases or circumstances.
- (7) A thing is not done by virtue of a resolution instrument for the purposes of subsection (5)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument.

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48N Directors

- (1) A resolution instrument may enable the Bank of England—
 - (a) to remove a director of a specified bank;
 - (b) to vary the service contract of a director of a specified bank;
 - (c) to terminate the service contract of a director of a specified bank;
 - (d) to appoint a director of a specified bank.
- (2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.

48O Directions in or under resolution instrument

- (1) A resolution instrument may—
 - (a) require one or more directors of the bank to comply with any general or specific directions that may be set out in the instrument;
 - (b) enable the Bank of England to give written directions (whether general or specific) to one or more directors of the bank.
- (2) A director—
 - (a) is not to be regarded as failing to comply with any duty owed to any person (for example, a shareholder, creditor or employee of the bank) by virtue of any action or inaction in compliance with a direction given under subsection (1)(a) or (b);
 - (b) is to be immune from liability in damages in respect of action or inaction in accordance with a direction.
- (3) A director must comply with a direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.
- (4) A direction under subsection (1)(a) or (b) is enforceable on an application made by the Bank of England, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

48P Orders for safeguarding certain financial arrangements

- (1) In this section “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.
- (2) In subsection (1)—

“netting arrangements” means arrangements under which a number of claims or obligations can be converted into a net claim or obligation, and includes, in particular, “close-out” netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt;

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“security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another;

“set-off arrangements” means arrangements under which two or more debts, claims or obligations can be set off against each other;

“title transfer collateral arrangements” means arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged.

- (3) The Treasury may by order—
- (a) restrict the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;
 - (b) impose conditions on the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;
 - (c) require any instrument that makes special bail-in provision to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
 - (d) provide for an instrument to be void or voidable, or for other consequences to arise, if or in so far as the instrument is made or purported to be made in contravention of a provision of the order (or of another order under this section);
 - (e) specify principles to which the Bank of England is to be required to have regard in exercising specified powers—
 - (i) that involve protected arrangements, or
 - (ii) where the exercise of the powers might affect protected arrangements.
- (4) References to exercising a power within the scope of paragraph (a) or (b) of subsection (3) are to making an instrument containing provision made in reliance on section 12A(3)(a) or 44B (special bail-in provision).
- (5) An order may apply to protected arrangements generally or only to arrangements—
- (a) of a specified kind, or
 - (b) made or applying in specified circumstances.
- (6) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.
- (7) In this section “arrangements” includes arrangements which—
- (a) are formed wholly or partly by one or more contracts or trusts;
 - (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;
 - (c) wholly or partly arise automatically as a matter of law;
 - (d) involve any number of parties;
 - (e) operate partly by reference to other arrangements between parties.

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- (8) An order—
- (a) is to be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

48Q Continuity

- (1) A resolution instrument may provide for anything (including legal proceedings) that relates to anything affected by the instrument and is in the process of being done immediately before the instrument takes effect to be continued from the time the instrument takes effect.
- (2) A resolution instrument may modify references (express or implied) in an instrument or document.
- (3) A resolution instrument may require or permit any person to provide information and assistance to the Bank of England or another person, for the purposes of or in connection with provision made or to be made in that or another resolution instrument.

48R Execution and registration of instruments etc

- (1) A resolution instrument may permit or require the execution, issue or delivery of an instrument.
- (2) A resolution instrument may provide for any provision in the instrument to have effect irrespective of—
 - (a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;
 - (b) registration.
- (3) A resolution instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the resolution instrument.
- (4) A resolution instrument may—
 - (a) entitle a person to be registered in respect of a security;
 - (b) require a person to effect registration.

48S Resolution instruments: general matters

- (1) Provision made in a resolution instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (2) A resolution instrument may include incidental, consequential or transitional provision.
- (3) In relying on subsection (2) a resolution instrument—
 - (a) may make provision generally or only for specified purposes, cases or circumstances, and
 - (b) may make different provision for different purposes, cases or circumstances.

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48T Procedure

- (1) As soon as is reasonably practicable after making a resolution instrument in respect of a bank the Bank of England must send a copy to—
 - (a) the bank,
 - (b) the Treasury,
 - (c) the PRA,
 - (d) the FCA, and
 - (e) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a resolution instrument the Bank of England must publish a copy—
 - (a) on the Bank's internet website, and
 - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.
- (3) Where the Treasury receive a copy of a resolution instrument under subsection (1) they must lay a copy before Parliament.

48U Supplemental resolution instruments

- (1) This section applies where the Bank of England has made a resolution instrument (“the original instrument”) with respect to a bank.
- (2) The Bank of England may make, with respect to the bank, one or more resolution instruments designated by the Bank of England as supplemental resolution instruments.
- (3) Sections 7 and 8A do not apply to a supplemental resolution instrument (but it is to be treated in the same way as a resolution instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (4) Before making a supplemental resolution instrument the Bank of England must consult—
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (5) The possibility of making a supplemental resolution instrument in reliance on subsection (2) is without prejudice to the possibility of making a new instrument in accordance with section 12A(2) (and not in reliance on subsection (2) above).

48V Onward transfer

- (1) This section applies where the Bank of England has made a resolution instrument (“the original instrument”) providing for securities issued by a specified bank to be transferred to any person.

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- (2) The Bank of England may make one or more onward transfer resolution instruments.
- (3) An onward transfer resolution instrument is a resolution instrument which—
 - (a) provides for the transfer of—
 - (i) securities which were issued by the bank before the original instrument and have been transferred by the original instrument or a supplemental resolution instrument, or
 - (ii) securities which were issued by the bank after the original instrument;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that instrument, by another instrument or otherwise).
- (4) An onward transfer resolution instrument may not transfer securities to the transferor under the original instrument.
- (5) Sections 7 and 8A do not apply to an onward transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (6) Before making an onward transfer resolution instrument the Bank of England must consult—
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (7) Section 48U applies where the Bank of England has made an onward transfer resolution instrument.

48W Reverse transfer

- (1) This section applies where the Bank of England has made an instrument (“the original instrument”) that is either—
 - (a) a resolution instrument providing for the transfer of securities issued by a bank to a person (“the transferee”), or
 - (b) an onward transfer resolution instrument (see section 48V) providing for the transfer of securities issued by a bank to a person (“the onward transferee”).
- (2) In a case falling within subsection (1)(a) the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the transferee (whether or not they were transferred by the original instrument).
- (3) In a case falling within subsection (1)(b), the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the onward transferee.
- (4) A reverse transfer resolution instrument is a resolution instrument which—
 - (a) provides for transfer to the transferor under the original instrument;

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- (b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, or could be or could have been, transferred under paragraph (a).
- (5) Except where subsection (6) applies, the Bank of England may make a reverse transfer resolution instrument under subsection (2) only with the written consent of the transferee.
- (6) This subsection applies where the transferee is—
 - (a) a bail-in administrator, or
 - (b) a person who is not to be authorised to exercise any rights attaching to the securities except on the Bank of England's instructions.
- (7) The Bank of England may make a reverse transfer resolution instrument under subsection (3) only with the written consent of the onward transferee.
- (8) Sections 7 and 8A do not apply to a reverse transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes including for the purposes of an application of a power under this Part).
- (9) Before making a reverse transfer resolution instrument the Bank of England must consult—
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (10) Section 48U applies where the Bank of England has made a reverse transfer resolution instrument.”

Commencement Information

- I1** Sch. 2 para. 4 in force at 1.3.2014 for specified purposes by S.I. 2014/377, art. 2(1)(b), Sch. Pt. 2
- I2** Sch. 2 para. 4 in force at 31.12.2014 in so far as not already in force by S.I. 2014/3160, art. 2(1)(b)

Status:

Point in time view as at 31/12/2014.

Changes to legislation:

There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Cross Heading: Further provision about the bail-in option.