

# SCHEDULES

## SCHEDULE 11

Section 57

### CENTRAL COUNTERPARTIES

#### PART 1

##### INTRODUCTORY

###### Overview

- 1 (1) The purpose of the special resolution regime for CCPs (see Part 5 of this Schedule) is to address the situation where all or part of the business of a CCP has encountered, or is likely to encounter, financial difficulties.
- (2) The special resolution regime consists of the eight stabilisation options.
- (3) The eight stabilisation options are—
  - (a) transfer to a private sector purchaser (paragraph 27),
  - (b) transfer to a bridge central counterparty (paragraph 29),
  - (c) transfer of ownership (paragraph 30),
  - (d) terminating clearing member contracts (paragraph 31),
  - (e) making a cash call (paragraph 32),
  - (f) reducing variation margin payments (paragraph 33),
  - (g) writing down liabilities (paragraphs 34 and 35), and
  - (h) taking control of the CCP (paragraph 38).
- (4) The stabilisation options are achieved through the exercise of one or more of the “stabilisation powers” which are—
  - (a) the share transfer powers (paragraphs 41 and 49 to 53),
  - (b) the property transfer powers (paragraphs 54 and 67 to 74), and
  - (c) the other resolution powers (paragraphs 31 to 35 and 38).
- (5) Each of the following has a role in the operation of the special resolution regime—
  - (a) the Bank,
  - (b) the Treasury,
  - (c) the PRA, and
  - (d) the FCA.
- (6) Other Parts of this Schedule deal with the following matters—
  - (a) powers and requirements in relation to CCPs which are exercisable by the Bank in advance of reliance on the special resolution regime (see Parts 2 to 4);
  - (b) powers relating to information, investigation and enforcement in relation to requirements under this Schedule (see Part 6);

- (c) third-country resolution action (see Part 7);
- (d) other general provision, financial provision and consequential amendments (see Parts 8 to 10).

## PART 2

### PRE-RESOLUTION POWERS OF THE BANK OF ENGLAND

#### *Removal of impediments to the exercise of stabilisation powers etc*

- 2 (1) The Bank may give directions to a CCP to take measures which the Bank considers are required to address impediments to the effective exercise of the stabilisation powers.
- (2) The power conferred by sub-paragraph (1) includes (but is not limited to) a power to direct the CCP—
- (a) to enter into or revise an agreement for the provision of services relating to the provision of critical clearing services;
  - (b) to limit its maximum individual and aggregate exposures to loss;
  - (c) to produce information which is relevant to the exercise of the stabilisation powers, and to provide that information to the Bank;
  - (d) to dispose of specified assets;
  - (e) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;
  - (f) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;
  - (g) to make specified changes to its recovery plan, rules or contractual arrangements;
  - (h) in order to ensure that it is possible for the performance of critical clearing services to be legally or operationally separated from the performance of other functions—
    - (i) to change its legal or operational structure, or
    - (ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;
  - (i) to change its operational and financial arrangements so as to separate specified classes of assets from other specified classes of assets;
  - (j) to restrict netting sets in relation to specified classes of assets;
  - (k) to establish a parent company in the United Kingdom.
- (3) Where a CCP is a subsidiary of a company incorporated in the United Kingdom, the Bank may give directions to its parent company requiring the parent company to establish a separate holding company as a parent of the subsidiary for the purpose of—
- (a) facilitating the exercise of the stabilisation powers, or
  - (b) ensuring that the exercise of a stabilisation power does not have an adverse effect on any other entities in the group.
- (4) Before giving directions under this paragraph the Bank must have regard to the potential impact of the direction on—
- (a) the CCP or entity in question,

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- (b) the market for financial services within the United Kingdom, and
  - (c) the financial stability of the United Kingdom.
- (5) Where the CCP in question is a PRA-authorised person, the Bank must consult the PRA before giving directions under this paragraph.
- (6) Directions under this paragraph—
- (a) must be in writing,
  - (b) may be given with general effect or with respect to a particular CCP or class of CCPs, and
  - (c) may be varied or revoked.
- (7) Nothing in this paragraph limits the powers of the Bank under section 296 or 296A of, or paragraph 9B of Schedule 17A to, FSMA 2000.
- (8) In this paragraph, “recovery plan” in relation to a CCP, means a plan required under paragraph 29B of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 ([S.I. 2001/995](#)).

#### *Safeguards relating to directions under paragraph 2*

- 3 (1) A direction given to a relevant person under paragraph 2 must be accompanied by a notice which—
- (a) states when the direction takes effect (see sub-paragraphs (2) and (3)),
  - (b) gives the Bank’s reasons for giving the direction, and
  - (c) specifies a reasonable period within which the person may make representations to the Bank about the direction.
- (2) The direction may, if the Bank considers it necessary, take effect—
- (a) immediately it is given to the relevant person, or
  - (b) on a later date specified in the direction.
- (3) In any other case the direction takes effect when—
- (a) it has been confirmed by a notice under sub-paragraph (5), and
  - (b) the period during which the direction may be referred to the Upper Tribunal (under sub-paragraph (6)) has expired and, if the matter was so referred, the reference and any appeal against the Tribunal’s determination, has been finally disposed of.
- (4) Where representations are made by the relevant person within the period specified under sub-paragraph (1)(c), the Bank must, within a reasonable period, consider those representations and decide—
- (a) whether to confirm or revoke the direction, and
  - (b) if the direction is revoked, whether to give a different direction.
- (5) The Bank must—
- (a) if no representations are made within that specified period, give the relevant person written notice that the direction is confirmed, and
  - (b) if representations are made, give the relevant person written notice of its decision under sub-paragraph (4).

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- (6) If the relevant person is aggrieved by the confirmation of the direction, the person may refer the matter to the Upper Tribunal.
- (7) A notice under sub-paragraph (5)(a) or (b) confirming the direction must—
  - (a) inform the relevant person of the right to refer the matter to the Upper Tribunal, and
  - (b) indicate the procedure on such a reference.
- (8) A notice given under sub-paragraph (5)(b) of a decision by the Bank to give a different direction must comply with sub-paragraph (1).
- (9) The Bank must prepare and publish a statement of its policy with respect to the giving of directions under paragraph 2.
- (10) The Bank may alter or replace a statement of policy published under this paragraph.
- (11) The Bank must publish a statement as altered or replaced under sub-paragraph (10).
- (12) No directions may be given under paragraph 2 before the statement of policy under sub-paragraph (9) has been published.
- (13) In this paragraph “relevant person” means—
  - (a) a CCP, or
  - (b) a parent of a CCP.

### PART 3

#### RESOLUTION PLANS

##### *Resolution plans*

- 4 (1) The Treasury may by regulations make provision requiring the Bank to create and maintain a resolution plan for each CCP.
- (2) The following are examples of provision that regulations under sub-paragraph (1) may make—
  - (a) provision specifying the information that must be contained in a resolution plan (including provision enabling the Bank to specify such information);
  - (b) provision requiring CCPs to give specified information to the Bank for the purpose of the Bank creating and maintaining a resolution plan (including provision enabling the Bank to specify the way in which such information is to be given);
  - (c) provision specifying the form of resolution plans (including provision enabling the Bank to specify the form);
  - (d) provision requiring the Bank to review resolution plans at specified intervals;
  - (e) provision requiring the Bank to provide specified information relating to a review to specified persons;
  - (f) provision requiring the Bank to give specified persons a copy of the resolution plan and any revised plans (including provision about the way in which a copy of a plan is to be given).
- (3) Regulations under this paragraph may provide for exemptions.

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- (4) Regulations under this paragraph are subject to the negative procedure.
- (5) In this paragraph “resolution plan”, in relation to a CCP, means a document setting out the actions that the Bank proposes to take in the event that the CCP meets the conditions under paragraph 17 for the exercise of the stabilisation powers.

## PART 4

### REMOVAL OF DIRECTORS AND SENIOR MANAGERS

#### *Removal of directors and senior managers*

- 5
- (1) If the Bank is satisfied that the conditions in paragraph 7(1) and (2) are met in relation to a CCP, the Bank may require the CCP to remove—
    - (a) any person who is a director of the CCP;
    - (b) any person who is a senior manager of the CCP.
  - (2) If the Bank imposes a requirement under sub-paragraph (1), the Bank may also require the CCP—
    - (a) to replace a director or senior manager who has been removed, and
    - (b) to take any step needed to give effect to the replacement, including, where necessary, calling a general meeting of the CCP’s shareholders or, if the CCP is an unincorporated association, its members.
  - (3) If the Bank is satisfied that the condition in paragraph 7(5) is met in relation to a person who is a director of a CCP, the Bank may require that CCP to remove that person from the board of directors.
  - (4) Nothing in this Schedule affects the powers under Article 31 of EMIR or paragraphs 45 and 58.

#### *Temporary manager*

- 6
- (1) If the Bank is satisfied that the conditions in paragraph 7(1), (2) and (4) are met in relation to a CCP, the Bank may appoint a person to act (or more than one persons to act jointly) as a temporary manager of that CCP.
  - (2) A temporary manager may be appointed under sub-paragraph (1)—
    - (a) to replace the directors of a CCP where they have been removed in compliance with a requirement imposed under paragraph 5, or
    - (b) to work with the directors of a CCP.
  - (3) A temporary manager has the functions specified in the instrument of appointment (see paragraph 9).
  - (4) The functions which may be specified include (amongst other things)—
    - (a) ascertaining the financial position of the CCP;
    - (b) managing the business or part of the business of the CCP in order to preserve or restore the financial position of the CCP;
    - (c) taking measures to restore the prudent management of the CCP;
    - (d) any functions of the directors.

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- (5) The temporary manager may, with the consent of the Bank—
  - (a) require the directors to call a general meeting of the shareholders, or in the case of an unincorporated association, the members of the CCP, or
  - (b) in the case where all of the directors have been removed in compliance with a requirement imposed under paragraph 5, call a general meeting of the shareholders of the CCP or, if the CCP is an unincorporated association, the members of the CCP.
- (6) The temporary manager may propose business for consideration at the general meeting.
- (7) If the temporary manager is being appointed to work with the directors, the Bank—
  - (a) may require the directors not to exercise specified functions during the period of appointment;
  - (b) may require the directors to consult the temporary manager, or obtain the consent of the temporary manager, before taking such decisions or actions as may be specified in the requirement.

*Paragraphs 5 and 6: conditions*

- 7 (1) The condition in this sub-paragraph is met if—
  - (a) there is a significant deterioration in the financial situation of the CCP, or
  - (b) there is a serious infringement by the CCP of—
    - (i) a relevant requirement, or
    - (ii) its rules.
- (2) The condition in this sub-paragraph is met if it is not reasonably likely that the deterioration would be reversed or the infringement would be brought to an end by any measure which could be taken by the Bank under the provisions listed in sub-paragraph (3).
- (3) The provisions mentioned in sub-paragraph (2) are—
  - (a) section 296 or 296A of FSMA 2000 (power to direct CCPs);
  - (b) paragraph 13 (power to impose stay on distributions).
- (4) The condition in this sub-paragraph is met if the imposition of one or more requirements under paragraph 5 (removal and replacement of directors and senior managers) would not be sufficient to reverse the deterioration or bring the infringement to an end.
- (5) The condition in this sub-paragraph is met in relation to a director of a CCP, if the director—
  - (a) is no longer of sufficiently good repute to perform their duties,
  - (b) no longer possesses sufficient knowledge, skills, experience, honesty, integrity or independence of mind to perform their duties, or
  - (c) is no longer able to commit sufficient time to perform their duties.
- (6) For the purposes of this paragraph—
  - (a) “relevant requirement” means a requirement imposed by or under—
    - (i) FSMA 2000;
    - (ii) EMIR;

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- (iii) another enactment (or provision of an enactment) specified in regulations made by the Treasury;
  - (b) a deterioration in the financial situation of a CCP is significant if the deterioration places the CCP at risk of meeting condition 1 under paragraph 17.
- (7) Regulations under this paragraph are subject to the negative procedure.

*Temporary manager: further provisions in relation to the appointment*

- 8
- (1) Before appointing a person to act as a temporary manager, the Bank must be satisfied that the person—
    - (a) has the qualifications, ability and knowledge to carry out the functions to be given to the temporary manager, and
    - (b) would not be subject to a conflict of interest as a result of the appointment.
  - (2) A person may not be appointed to act as a temporary manager for a period longer than one year, but is eligible for re-appointment (or further re-appointment) if paragraph 6(1) continues to apply in relation to the CCP.
  - (3) The Bank may vary the terms of the appointment of a temporary manager, or remove the temporary manager, at any time.
  - (4) A temporary manager 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 appointment (subject to section 8 of the Human Rights Act 1998).

*Temporary manager: instrument of appointment*

- 9
- (1) The power in paragraph 6(1) is to be exercised by an instrument of appointment.
  - (2) The instrument of appointment must—
    - (a) specify the functions of the temporary manager,
    - (b) specify the date on which the appointment of the temporary manager has effect,
    - (c) specify the period for which the temporary manager is appointed, and
    - (d) make provision for the resignation and replacement of the person who is appointed as the temporary manager.
  - (3) The instrument of appointment may—
    - (a) require the temporary manager to consult the Bank or other specified person before exercising specified functions,
    - (b) specify particular matters on which the Bank or other specified person must be consulted, and
    - (c) provide that the temporary manager is not to exercise specified functions without the consent of the Bank or other specified person.
  - (4) The instrument of appointment may require the temporary manager to make reports to the Bank, at specified times or intervals, on—
    - (a) the financial position of the CCP,
    - (b) the actions taken by the temporary manager during the course of the temporary manager's appointment, and
    - (c) any other specified matters.



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- (5) The instrument of appointment may provide for the payment of remuneration and allowances to a temporary manager.
- (6) Provision under sub-paragraph (5) may provide that the amounts are—
  - (a) to be paid by the Bank, or
  - (b) to be determined by the Bank and paid by the CCP.
- (7) If a temporary manager—
  - (a) is appointed to replace the directors of the CCP, or
  - (b) is appointed to work with the directors of the CCP and has the power to represent the CCP,the Bank must publish the instrument of appointment on its website.

*Right to refer matters to the Tribunal*

- 10 (1) A CCP which is aggrieved by one of the following may refer the matter to the Tribunal—
- (a) the imposition of a requirement on that CCP under paragraph 5, or
  - (b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that CCP under paragraph 6.
- (2) A director or senior manager (or a former director or senior manager) of a CCP who is aggrieved by the imposition of a requirement on that CCP under paragraph 5 may refer the matter to the Tribunal.
- (3) A director (or a former director) of a CCP who is aggrieved by the imposition of a requirement on that director under paragraph 6(7) may refer the matter to the Tribunal.

*Removal of directors and senior managers and appointment of temporary manager: procedure*

- 11 (1) A requirement under paragraph 5 or 6(7) or the appointment of a temporary manager under paragraph 6(1) may be expressed to take effect immediately or on a specified date only if the Bank, having regard to the grounds for imposing the requirement or making the appointment, reasonably considers that it is necessary for the requirement or the appointment to take effect immediately or on that date.
- (2) If the Bank proposes to impose a requirement on a CCP under paragraph 5 or imposes such a requirement with immediate effect, it must give written notice—
- (a) to that CCP, and
  - (b) to each of the directors or senior managers to whom the requirement relates.
- (3) If the Bank—
- (a) proposes to appoint a person to act as a temporary manager under paragraph 6 or to vary the terms on which such a person is appointed, or
  - (b) makes such an appointment or variation with immediate effect,
- the Bank must give written notice to the CCP.
- (4) If the Bank proposes to impose a requirement on the directors under paragraph 6(7), or imposes such a requirement with immediate effect, the Bank must give written notice to each director.



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- (5) If, having considered any representations made by a person to whom notice (the “original notice”) has been given (see paragraph 12), the Bank decides—
- (a) to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or
  - (b) not to rescind the imposition of any such requirement or the making of any such appointment or variation which has already taken effect,
- the Bank must give written notice to each person to whom the original notice was given.
- (6) A written notice under sub-paragraph (5) must inform the person to whom it is given of the right of that person to refer the matter to the Tribunal and give an indication of the procedure on such a reference.
- (7) If, having considered any representations made by a person to whom the original notice has been given (see paragraph 12), the Bank decides—
- (a) to impose a requirement, make an appointment or vary the terms of an appointment in a way that is different from the requirement, appointment or variation described in the original notice,
  - (b) not to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or
  - (c) to rescind the imposition of any such requirement, or the making of any such appointment or variation that has already taken effect,
- the Bank must give written notice to each person to whom the original notice was given.

*Removal of directors and senior managers and appointment of temporary manager: notice requirements*

- 12 (1) A notice under paragraph 11(2) must—
- (a) give details of the requirement,
  - (b) identify each of the directors or senior managers to whom the requirement relates (“the interested parties”),
  - (c) give the Bank’s reasons for imposing the requirement—
    - (i) in the case of a notice given to the CCP, in relation to each interested party;
    - (ii) in the case of a notice given to an interested party, in relation to that interested party,
  - (d) inform the CCP and the interested parties that each of them may make representations to the Bank within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
  - (e) state when the requirement takes effect, and
  - (f) inform the CCP and each of the interested parties of their right to refer the matter to the Tribunal.
- (2) A notice given under paragraph 11(3) must—
- (a) state when the appointment or variation takes effect, and be accompanied by the instrument, or revised instrument, of appointment,
  - (b) give the Bank’s reasons for making the appointment or variation,

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- (c) inform the CCP that it may make representations to the Bank within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and
  - (d) inform the CCP of its right to refer the matter to the Tribunal.
- (3) A notice given under paragraph 11(4) must—
- (a) give details of the requirement,
  - (b) give the Bank’s reasons for imposing the requirement,
  - (c) state when the requirement takes effect,
  - (d) inform the director that the director may make representations to the Bank within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and
  - (e) inform the director of the director’s right to refer the matter to the Tribunal.
- (4) The Bank may extend the period allowed by the notice given under paragraph 11(2), (3) or (4) for making representations.
- (5) A notice under paragraph 11(7)(a) about the imposition of a requirement under paragraph 5 must comply with sub-paragraph (1).
- (6) A notice under paragraph 11(7)(a) about the appointment of a person as a temporary manager or the variation of the terms of the appointment of a person as a temporary manager must comply with sub-paragraph (2).
- (7) A notice under paragraph 11(7)(a) about the imposition of a requirement under paragraph 6(7) must comply with sub-paragraph (3).
- (8) In this paragraph, any reference to “appointment” includes re-appointment.

#### *Temporary restriction on remuneration*

- 13 (1) The Bank may by direction restrict or prohibit for a specified period discretionary payments to specified employees of a CCP or specified shareholders of a CCP.
- (2) The power under sub-paragraph (1) may be exercised only if—
- (a) a stabilisation power is not being exercised in relation to the CCP,
  - (b) at least one of the conditions in sub-paragraph (3) is met, and
  - (c) the condition in sub-paragraph (4) is met.
- (3) The conditions in this sub-paragraph are—
- (a) there is or is likely soon to be a significant deterioration in the financial situation of the CCP (within the meaning given by paragraph 7(6));
  - (b) there is a material risk of a threat to the ability of the CCP to maintain critical clearing services;
  - (c) there is a risk of a significant disruption to the operation of the CCP;
  - (d) the operation of the CCP poses a risk to the financial stability of the United Kingdom.
- (4) The condition in this sub-paragraph is that the exercise of the power is necessary or desirable having regard to the public interest in—
- (a) the stability of the UK financial system, or
  - (b) the continuity of critical clearing services.

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- (5) The Bank must prepare and publish a statement of its policy with respect to the giving of directions under this paragraph.
- (6) The Bank may alter or replace a statement of policy published under this paragraph.
- (7) The Bank must publish a statement as altered or replaced under sub-paragraph (6).
- (8) No directions may be given under this paragraph before the statement of policy under sub-paragraph (5) has been published.
- (9) The specified period for the purposes of sub-paragraph (1) must not exceed 5 years.
- (10) Directions under this paragraph—
  - (a) must be given in writing to the employees or shareholders that the directions apply to;
  - (b) may be varied or revoked.
- (11) In this paragraph “discretionary payments” means payments, made otherwise than under a contractual obligation, of any of the following—
  - (a) equity remuneration;
  - (b) dividend payments;
  - (c) share buy-backs;
  - (d) variable remuneration including, where an employee is a senior manager, bonuses, discretionary pension benefits and severance payments.

*Restriction on remuneration: review and revocation*

- 14
- (1) This paragraph applies where a direction has been given under paragraph 13(1) in relation to a CCP.
  - (2) The Bank must, at least once every 3 months after giving the direction, carry out a review of whether the requirements for the exercise of the power continue to be met.
  - (3) If at any time the Bank becomes aware that the requirements for the exercise of the power cease to be met, the Bank must revoke the direction with immediate effect.
  - (4) The direction ceases to have effect if a stabilisation power is exercised in respect of the CCP.

## PART 5

### SPECIAL RESOLUTION ACTION

*Special resolution objectives*

- 15
- (1) This paragraph sets out the special resolution objectives.
  - (2) The Bank must have regard to the special resolution objectives in using, or considering the use of, the stabilisation powers.
  - (3) Objective 1 is to protect and enhance the stability of the UK financial system, including in particular by—
    - (a) preventing contagion (including contagion to market infrastructures), and

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- (b) maintaining market discipline.
- (4) Objective 2 is to protect and enhance public confidence in the stability of the UK financial system.
- (5) Objective 3 is to maintain the continuity of central counterparty clearing services.
- (6) Objective 4 is to protect public funds.
- (7) Objective 5 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998).
- (8) The order in which the objectives are listed in this paragraph is not significant; they are to be balanced as appropriate in each case.
- (9) In this paragraph, “market infrastructures” include recognised investment exchanges, recognised clearing houses and recognised CSDs, within the meaning of section 285 of FSMA 2000.

#### *Code of Practice*

- 16 (1) The Treasury must issue a code of practice about the use of the stabilisation powers.
- (2) The code may, in particular, provide guidance on—
- (a) how the special resolution objectives are to be understood and achieved,
  - (b) the choice between different options,
  - (c) the information to be provided in the course of a consultation under this Schedule,
  - (d) how to determine whether Condition 2 in paragraph 17 is met,
  - (e) how to determine whether the test for the use of stabilisation powers under paragraph 19 is satisfied,
  - (f) paragraphs 89 and 92, and
  - (g) compensation, including how the Treasury intend to satisfy the requirement under paragraph 87(3).
- (3) See also paragraph 29 which requires the inclusion in the code of certain matters about bridge central counterparties.
- (4) The Treasury may revise and re-issue the code of practice.
- (5) Before issuing or re-issuing the code of practice the Treasury must consult the Bank, the FCA and the PRA.
- (6) The Bank must have regard to the code of practice.
- (7) As soon as is reasonably practicable after issuing or re-issuing the code of practice the Treasury must lay a copy before Parliament.

#### *General conditions*

- 17 (1) A stabilisation power may be exercised in respect of a CCP only if the Bank is satisfied that each of the following conditions is met.
- (2) Condition 1 is that the CCP is failing or likely to fail.
- (3) Condition 2 is that—

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- (a) 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 CCP that will result in Condition 1 ceasing to be met, or
  - (b) in the Bank's assessment, the action that may be taken by or in respect of the CCP for the purpose of ensuring that Condition 1 is no longer met might have an adverse impact on the stability of the UK financial system.
- (4) Condition 3 is that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.
- (5) Condition 4 is that one or more of the special resolution objectives would not be met to the same extent by the winding up of the CCP.
- (6) For the purposes of Condition 1, a CCP is failing or likely to fail if one or more of the following apply—
  - (a) the CCP is failing or is likely to fail to meet the recognition requirements (within the meaning of section 286 of FSMA 2000);
  - (b) the value of the assets of the CCP is less than the amount of its liabilities;
  - (c) the CCP is unable to pay its debts or other liabilities as they fall due;
  - (d) any of paragraphs (a) to (c) will, in the near future, apply to the CCP;
  - (e) extraordinary public financial support is required in respect of the CCP and sub-paragraph (9) does not apply to that support.
- (7) The Bank may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the CCP.
- (8) The Bank must treat Conditions 1 and 2(a) as met if satisfied that those conditions would be met but for financial assistance provided by—
  - (a) the Treasury, or
  - (b) the Bank (disregarding ordinary market assistance offered by the Bank on its usual terms).
- (9) This sub-paragraph applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary public financial support takes either of the following forms—
  - (a) a State guarantee to back liquidity facilities provided by the Bank, or
  - (b) a State guarantee of newly issued liabilities.
- (10) Before determining that Conditions 2, 3 and 4 are met the Bank must consult—
  - (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.

#### *Effect on other group members*

- 18 Where the Bank is considering the exercise of a stabilisation power in respect of a CCP which is a member of a group, the Bank must have regard to—
- (a) the need to minimise the effect of the exercise of the power on other undertakings in the same group, and
  - (b) the potential effect of the exercise of the power on the financial stability of countries other than the United Kingdom (particularly those countries in which any member of that group is operating).

*Specific conditions: financial assistance cases*

- 19 (1) In a financial assistance case, the Bank may exercise a stabilisation power in respect of the CCP concerned in accordance with paragraph 27, 29 or 30 only if satisfied that the condition in sub-paragraph (3) is met.
- (2) “Financial assistance case” means a case where the Treasury notify the Bank that they have provided financial assistance in respect of a CCP for the purpose of resolving or reducing a serious threat to the stability of the UK financial system.
- (3) The condition is that—
- (a) the Treasury have given a recommendation to the Bank to exercise the stabilisation power on the grounds that it is necessary in order to protect the public interest, and
  - (b) the Bank considers that the exercise of the stabilisation power is an appropriate way to provide that protection.
- (4) The condition in this paragraph is in addition to the conditions in paragraph 17.

*Resolution liaison panel*

- 20 (1) The Treasury must make arrangements for a panel to advise the Treasury about the effect of the special resolution regime on—
- (a) CCPs,
  - (b) persons with whom CCPs do business, and
  - (c) the financial markets.
- (2) In particular, the panel may advise the Treasury about—
- (a) the exercise of powers to make statutory instruments under or by virtue of this Schedule, (excluding the stabilisation powers and regulations under paragraphs 87 and 153),
  - (b) the code of practice under paragraph 16, and
  - (c) anything else referred to the panel by the Treasury.
- (3) The Treasury must ensure that the panel includes—
- (a) a member appointed by the Treasury,
  - (b) a member appointed by the Bank,
  - (c) a member appointed by the PRA,
  - (d) a member appointed by the FCA,
  - (e) one or more persons who in the Treasury’s opinion represent the interests of CCPs,
  - (f) one or more persons who in the Treasury’s opinion represent the interests of clearing members of CCPs,
  - (g) one or more persons who in the Treasury’s opinion have expertise in law relating to the UK financial system, and
  - (h) one or more persons who in the Treasury’s opinion have expertise in insolvency law and practice.

### *Restrictions on use of certain resolution powers*

- 21 (1) Where the Bank has exercised the first stabilisation option (private sector purchaser) in respect of a CCP it may only exercise the relevant resolution powers in relation to the residual CCP.
- (2) Where the Bank has exercised the third stabilisation option (transfer of ownership) in respect of a CCP it may only exercise the relevant resolution powers in respect of the CCP where the transferee under paragraph 30 is—
- (a) the Bank,
  - (b) a company wholly owned by the Bank or the Treasury, or
  - (c) a nominee of the Treasury.
- (3) In this paragraph—
- “relevant resolution powers” means any of the resolution powers under paragraphs 27 to 38;
  - the “residual CCP” means the CCP all or part of whose business has been transferred in accordance with paragraph 27(2).

### *Pre-resolution valuation*

- 22 (1) Before the Bank exercises a stabilisation power in respect of a CCP, it must ensure that the assets and liabilities of the CCP are valued.
- (2) The purpose of a valuation carried out under sub-paragraph (1) is to—
- (a) inform the decision as to—
    - (i) whether the conditions for the exercise of a stabilisation power are satisfied,
    - (ii) which stabilisation option should be employed,
    - (iii) the extent to which any liabilities should be cancelled, modified, converted or deferred through the use of a write-down instrument,
    - (iv) the extent to which any securities should be cancelled, diluted, modified, converted or deferred through the use of a write-down instrument,
    - (v) what assets, liabilities or securities (if any) are to be transferred by a property transfer instrument, share transfer instrument or write-down instrument, and
    - (vi) the value of any consideration to be paid to the CCP or the owners of the securities for any assets, liabilities or securities so transferred, and
  - (b) ensure that the full extent of any losses on the assets of that CCP are appreciated at the time that the Bank exercises a stabilisation power.
- (3) Unless sub-paragraph (4) applies, the Bank must arrange for the appointment of an independent valuer in accordance with paragraph 24 to carry out a valuation for the purposes of sub-paragraph (1).
- (4) Where the Bank considers that the urgency of the case makes it appropriate to exercise the stabilisation power before a valuation can be carried out by a person appointed in accordance with sub-paragraph (3), the Bank may carry out a provisional valuation of the assets and liabilities of the CCP for the purposes of sub-paragraph (1).



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- (5) In carrying out a valuation required under sub-paragraph (1), the person carrying out the valuation must—
- (a) make prudent assumptions as to possible rates of default and the severity of losses suffered by the CCP,
  - (b) disregard potential financial assistance which may be provided by the Bank or the Treasury after the Bank has exercised the stabilisation power (except for ordinary market assistance offered by the Bank on its usual terms),
  - (c) take account of the fact that the Bank and the Treasury may charge interest or fees in respect of any loans or guarantees provided to the CCP after the Bank has exercised the stabilisation power,
  - (d) apply any relevant methodology specified in regulations made under this paragraph.
- (6) A provisional valuation carried out under sub-paragraph (4) must in particular make provision in respect of additional losses by the CCP in accordance with any regulations made under this paragraph.
- (7) A valuation under sub-paragraph (1) must be accompanied by—
- (a) a balance sheet of the CCP as at the date of the valuation,
  - (b) a report on the financial position of the CCP,
  - (c) an analysis and an estimate of the accounting value of the assets of the CCP,
  - (d) a list of the outstanding liabilities of the CCP (including any off-balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would receive in insolvency proceedings, and
  - (e) an estimate of the amount that each class of creditors and shareholders might be expected to receive if the CCP went into insolvent liquidation.
- (8) Where appropriate, the information in sub-paragraph (7)(c) may be supplemented by an analysis and estimate of the value of the assets and liabilities of the CCP on a market value basis.
- (9) Where a provisional valuation is carried out under sub-paragraph (4), the Bank need only comply with sub-paragraph (7) as far as it is reasonable to do so in the circumstances.
- (10) The Treasury may by regulations make provision for the purposes of a valuation under this paragraph specifying—
- (a) the methodology for assessing the value of the assets and liabilities of a CCP;
  - (b) the methodology for calculating and including a buffer for additional losses in the provisional valuation.
- (11) Before making regulations under sub-paragraph (10) the Treasury must consult the Bank.
- (12) Regulations under this paragraph are subject to the negative procedure.

#### *Replacement of Bank's provisional valuation*

- 23 (1) Where the Bank has carried out a provisional valuation under paragraph 22 before exercising a stabilisation power, the Bank must arrange for the appointment of an independent valuer in accordance with paragraph 24 to carry out a full valuation in accordance with this paragraph as soon as reasonably practicable.

- (2) The purpose of the valuation carried out under sub-paragraph (1) is to—
  - (a) ensure the full extent of any losses on the assets of the CCP is recognised in the accounting records of the CCP, and
  - (b) inform a decision by the Bank as to whether—
    - (i) additional consideration should be paid by a bridge central counterparty for any property, rights or liabilities transferred by a property transfer instrument, or securities transferred by a share transfer instrument, or
    - (ii) the Bank should exercise the power under paragraph 26 to increase or reinstate any liability which has been reduced, cancelled or deferred by a write-down instrument.
- (3) A valuation carried out under sub-paragraph (1) must comply with sub-paragraph (5) of paragraph 22 and be accompanied by the information required in sub-paragraph (7) of that paragraph.

*Independent valuer: valuation under paragraph 22 or 23*

- 24 (1) The Bank must make arrangements for the appointment of a person to act as an independent valuer for the purposes of a valuation to be conducted under paragraph 22 or 23.
- (2) The Bank may require the CCP to which the valuation relates to reimburse the Bank for costs it incurs in relation to the independent valuer (including remuneration and allowances paid to the valuer and the valuer's staff).
- (3) A person may not be appointed as an independent valuer under sub-paragraph (1) unless the Bank is satisfied that the person is independent from the Bank and the CCP to which the valuation relates.
- (4) An independent valuer is to hold and vacate office in accordance with the terms of the appointment.
- (5) An independent valuer may be removed from office only on the grounds of incapacity or serious misconduct.
- (6) In the event of the death of an independent valuer, or an independent valuer being removed from office or resigning, a new independent valuer must be appointed by the Bank in accordance with this paragraph.

*Independent valuer: supplemental*

- 25 (1) An independent valuer may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.
- (2) The Treasury may by regulations confer specific functions on independent valuers; in particular, the regulations may—
  - (a) enable an independent valuer to apply to a court or tribunal for an order requiring the provision of information or the giving of oral or written evidence;
  - (b) enable or require independent valuers to publish, disclose or withhold information.
- (3) Provision under sub-paragraph (2) may—

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- (a) confer a discretion on independent valuers;
  - (b) confer jurisdiction on a court or tribunal;
  - (c) make provision about oaths, expenses and other procedural matters relating to the giving of evidence or the provision of information;
  - (d) make provision about enforcement.
- (4) An independent valuer may appoint staff.
- (5) The Treasury may by regulations make provision about the procedure to be followed by independent valuers.
- (6) Independent valuers (and their staff) are neither servants nor agents of the Crown (and, in particular, are not civil servants).
- (7) Records of an independent valuer are public records for the purposes of the Public Records Act 1958.
- (8) Regulations under this paragraph are subject to the negative procedure.

#### *Consequences of a replacement valuation*

- 26 (1) Where the independent valuation carried out under paragraph 23(1) produces a higher valuation of the net asset value of the CCP than a provisional valuation carried out under paragraph 22(4), the Bank may—
- (a) modify any liability of the CCP which has been reduced, deferred or cancelled by a write-down instrument so as to increase or reinstate that liability, or
  - (b) instruct a bridge central counterparty to pay additional consideration—
    - (i) to the CCP for any property, rights or liabilities transferred to the bridge central counterparty by a property transfer instrument, or
    - (ii) to the previous holders of securities issued by the CCP for any securities transferred to the bridge central counterparty by a share transfer instrument.
- (2) The power in sub-paragraph (1)(a)—
- (a) may not be exercised so as to increase the value of the liability beyond the value it would have had if the write-down instrument which reduced, cancelled or deferred it had not been made, and
  - (b) must be exercised by a resolution instrument (whether or not that instrument contains any other provision authorised by this Schedule).

#### *Private sector purchaser*

- 27 (1) The first stabilisation option is to sell all or part of the business of the CCP to a commercial purchaser.
- (2) For that purpose the Bank may make—
- (a) one or more share transfer instruments;
  - (b) one or more property transfer instruments.

*Private sector purchaser: marketing*

- 28 (1) Subject to sub-paragraph (4) and (5), the Bank must make arrangements for marketing—
- (a) any securities issued by the CCP which the Bank intends to transfer by a share transfer instrument under paragraph 27(2)(a), or
  - (b) any property, rights or liabilities of the CCP which the Bank intends to transfer by a property transfer instrument under paragraph 27(2)(b).
- (2) The arrangements under sub-paragraph (1) must—
- (a) be as transparent as possible having regard to the circumstances and the need to maintain financial stability;
  - (b) ensure there is no conflict of interest;
  - (c) take account of the need for the Bank to act quickly to address the situation where a CCP is failing or likely to fail;
  - (d) aim at maximising, as far as possible, the sale price for the property, rights or liabilities involved.
- (3) The arrangements under sub-paragraph (1) must not—
- (a) materially misrepresent the securities, property, rights or liabilities which the Bank intends to transfer;
  - (b) favour or discriminate between potential purchasers or grant an unfair advantage to a potential purchaser.
- (4) Sub-paragraph (1) does not apply if the Bank considers that complying with that sub-paragraph would undermine one or more of the special resolution objectives.
- (5) In particular sub-paragraph (1) does not apply if the Bank considers that—
- (a) there is a material threat to financial stability in the United Kingdom arising from or aggravated by the failure or likely failure of the CCP, and
  - (b) complying with sub-paragraph (1) would undermine the effectiveness of the first stabilisation option in addressing that threat or achieving the objective in paragraph 15(4).

*Bridge central counterparty*

- 29 (1) The second stabilisation option is to transfer all or part of the business of the CCP to a company which meets the requirements of sub-paragraph (2) (a “bridge central counterparty”).
- (2) Those requirements are that the company—
- (a) is wholly or partially owned by the Bank,
  - (b) is controlled by the Bank, and
  - (c) is created for the purposes of receiving a transfer by virtue of this paragraph with a view to maintaining access to critical clearing services and (in due course) selling the CCP or its business.
- (3) For that purpose the Bank may make—
- (a) one or more property transfer instruments;
  - (b) one or more share transfer instruments.

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- (4) The code of practice under paragraph 16 must include provision about the management and control of bridge central counterparties including, in particular, provision about—
- (a) setting objectives,
  - (b) the content of the articles of association,
  - (c) the content of reports under paragraph 114,
  - (d) different arrangements for management and control at different stages, and
  - (e) eventual disposal.
- (5) The Bank must, without delay, take all necessary steps to wind up the bridge central counterparty if—
- (a) all or substantially all of the bridge central counterparty’s assets, rights and liabilities have been transferred to a third party, or
  - (b) following a transfer to the bridge central counterparty under this paragraph, no further transfer to the bridge central counterparty is made under this paragraph during the relevant post-transfer period.
- (6) Sub-paragraph (5) does not apply if the bridge central counterparty—
- (a) has merged with another entity,
  - (b) has ceased to meet the requirements of sub-paragraph (2)(a) or (b), or
  - (c) has already been wound up.
- (7) “The relevant post-transfer period” means the period of two years beginning with the day of the transfer mentioned in sub-paragraph (5)(a), subject to any extension under sub-paragraph (8).
- (8) The Bank may extend (or further extend) the relevant post-transfer period by one year if it is satisfied that the extension—
- (a) would support one or more of the outcomes mentioned in sub-paragraph (5) (a) or (6)(a), (b) or (c), or
  - (b) is necessary to ensure the continuity of critical clearing services.
- (9) Where property, rights or liabilities are first transferred by property transfer instrument to a bridge central counterparty and later transferred (whether or not by the exercise of a power under this Schedule) to another company which is wholly owned by the Bank, that other company is an “onward bridge central counterparty”.
- (10) An onward bridge central counterparty—
- (a) is a bridge central counterparty for the purposes of—
    - (i) sub-paragraphs (4) to (6),
    - (ii) paragraph 34(6)(d),
    - (iii) paragraph 110,
    - (iv) paragraph 112, and
    - (v) paragraph 114(5), but
  - (b) is not a bridge central counterparty for the purposes of—
    - (i) paragraph 52,
    - (ii) paragraph 69, and
    - (iii) paragraph 114(1).

### *Transfer of ownership*

- 30 (1) The third stabilisation option is to transfer ownership of the CCP to any person other than a bridge central counterparty or a commercial purchaser.
- (2) For that purpose the Bank may make one or more share transfer instruments.

### *Tear-up power*

- 31 (1) The fourth stabilisation option is to make one or more tear-up instruments for the purpose of ensuring that the CCP has a matched book.
- (2) A tear-up instrument is an instrument that makes provision terminating one or more contracts held by the CCP with clearing members.
- (3) Where the Bank exercises the power under sub-paragraph (1), it must as soon as reasonably practicable determine the value of the terminated contract.
- (4) On the basis of the determination under sub-paragraph (3) the Bank must as soon as reasonably practicable either—
- (a) require the CCP to make a commercially reasonable payment, representing the value of the terminated contract, to the clearing member who is a party to the contract, or
  - (b) require the clearing member who is a party to the contract to make a commercially reasonable payment, representing the value of the terminated contract, to the CCP.
- (5) The Bank must within 12 months of this paragraph coming into force publish a statement of policy as to how it determines what a commercially reasonable payment is for the purpose of complying with sub-paragraph (4).
- (6) The Bank may alter or replace a statement of policy published under this paragraph.
- (7) The Bank must publish a statement as altered or replaced under sub-paragraph (6).
- (8) For the purposes of this paragraph, a CCP has a matched book when the sum of the financial obligations owed by the CCP to its clearing members is equal to the sum of the financial obligations owed to the CCP by its clearing members.

### *Cash call power*

- 32 (1) The fifth stabilisation option is to make one or more cash call instruments.
- (2) A cash call instrument is an instrument that makes provision requiring one or more clearing members of the CCP to pay an amount in cash specified in the instrument to the CCP.
- (3) The Treasury may by regulations—
- (a) make provision for calculating the maximum cash amount that may be specified for the purposes of sub-paragraph (2);
  - (b) specify circumstances in which the Bank may require a CCP to use specified funds of specified clearing members to satisfy all or part of that member's obligations under sub-paragraph (2).
- (4) The power under sub-paragraph (1) does not apply to a clearing member—
- (a) which is an interoperable CCP,

- (b) which falls within Article 1(4) or (5) of EMIR, or
- (c) in relation to which a direction under regulation 3(1)(f) of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541) is in force.

(5) Regulations under this paragraph are subject to the negative procedure.

*Power to reduce variation margin payments*

- 33 (1) The sixth stabilisation option is to make one or more variation instruments.
- (2) A variation instrument is an instrument that makes provision to reduce or cancel a variation margin payment that a CCP would have otherwise paid to a clearing member of the CCP.
- (3) The power under this paragraph may be exercised only for the purpose of recovering losses arising as a result of a clearing member defaulting on the member's obligations to the CCP.
- (4) The power under sub-paragraph (1) does not apply to a clearing member—
- (a) which falls within Article 1(4) or (5) of EMIR, or
  - (b) in relation to which a direction under regulation 3(1)(f) of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541) is in force.
- (5) In this paragraph, a “variation margin payment” means a payment reflecting an increase in the market value of a clearing member's position in the market.

*Write-down power*

- 34 (1) The seventh stabilisation option is for the Bank to make one or more write-down instruments.
- (2) A write-down instrument is an instrument that makes any of the following provision (or any combination of the following)—
- (a) provision cancelling an unsecured liability owed by the CCP;
  - (b) provision modifying or changing the form of an unsecured liability owed by the CCP;
  - (c) provision that a contract under which the CCP has an unsecured liability is to have effect as if a specified right had been exercised under it;
  - (d) provision under paragraph 35(1).
- (3) The power under this paragraph may be exercised only for the purpose of recovering losses arising otherwise than as a result of a clearing member defaulting on the member's obligations to the CCP.
- (4) The power under sub-paragraph (2) may not be exercised so as to affect the following liabilities—
- (a) liabilities to employees or workers, including liabilities owed to a pension scheme in respect of those persons;
  - (b) liabilities to commercial or trade creditors arising from the provision to the CCP of goods or services that are critical to the continuity of the CCP's critical clearing services;



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- (c) HMRC debts which are preferential debts within the meaning of section 386 of the Insolvency Act 1986;
  - (d) liabilities to designated systems, operators of designated systems, or participants in such systems to the extent that the liabilities arise from their participation in the system;
  - (e) liabilities to interoperable CCPs;
  - (f) liabilities to central banks;
  - (g) liabilities to clearing members so far as these relate to initial margin requirements;
  - (h) liabilities to small enterprises.
- (5) The reference to modifying a liability owed by the CCP includes a reference to modifying the terms (or the effect of the terms) of a contract under which the CCP has a liability.
- (6) The reference to changing the form of a liability owed by the CCP includes, for example—
- (a) converting an instrument under which a CCP owes a liability from one form or class to another,
  - (b) replacing such an instrument with another instrument of a different form or class,
  - (c) creating a new security (of any form or class) in connection with the modification of such an instrument, or
  - (d) converting those liabilities into securities issued by the CCP or a bridge central counterparty or UK parent of the CCP.
- (7) The Treasury may by regulations amend sub-paragraph (4) by—
- (a) adding to the list of liabilities;
  - (b) amending or omitting any liability listed.
- (8) Regulations under this paragraph are subject to the affirmative procedure.
- (9) In this paragraph—
- “designated system” has the meaning given by regulation 2 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) as amended from time to time;
  - “initial margin requirements” means margins provided by clearing members to a CCP to cover the CCP’s potential future exposure in the event of default by those members;
  - “small enterprise” means an enterprise which employs fewer than 50 people and whose annual turnover or annual balance sheet total does not exceed £10 million.

#### *Powers in relation to securities*

- 35 (1) A write-down instrument may—
- (a) cancel, transfer, dilute or modify any securities to which this sub-paragraph applies;
  - (b) convert any such securities from one form or class into another.
- (2) Sub-paragraph (1) applies to securities issued by the CCP that fall within class 1 in paragraph 40.

- (3) A write-down instrument may—
- (a) make provision with respect to rights attaching to securities issued by the CCP;
  - (b) provide for the listing of securities issued by the CCP to be discontinued or suspended;
  - (c) provide for the listing or admission to trading on a regulated market of securities in class 1 (and related class 3 securities) created in accordance with that or any other write-down instrument;
  - (d) provide for the listing or admission to trading on a regulated market of existing securities in class 2 modified by that or any other write-down instrument (and, in that connection, for the disapplication of section 85(1) and (2) of FSMA 2000 (prohibition on listing etc of transferable securities without approved prospectus)).
- (4) The reference in sub-paragraph (1) 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) In sub-paragraph (3) any reference to a class of securities is to be construed in accordance with paragraph 40.
- (6) The provision that may be made under sub-paragraph (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 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.
- (7) In sub-paragraph (3)—
- (a) the reference to “listing” is to listing under section 74 of FSMA 2000, and
  - (b) “regulated market” has the meaning given in section 103(1) of FSMA 2000.
- (8) Where the listing of securities is suspended in accordance with a write-down instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, FSMA 2000 as still being listed.
- (9) The provision that may be made under this paragraph in relation to any securities is in addition to any provision that the Bank may have power to make in relation to them under paragraph 34.

*Report on provisions in write-down instrument*

- 36 (1) This paragraph applies to a relevant provision in a write-down instrument.
- (2) The Bank must report to the Chancellor of the Exchequer stating the reasons why that provision has been made in the case of the securities or 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 a relevant provision—

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- (a) the provision made by the instrument must be consistent with treating existing claims in respect of the CCP's shares and all the liabilities of the CCP 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 instrument to which it relates.
- (7) The Chancellor of the Exchequer must lay a copy of each report under sub-paragraph (2) before Parliament.
- (8) In this paragraph a “relevant provision” means a provision falling within paragraph 34(2).

#### *Priority between creditors*

- 37 (1) The Treasury may, for the purpose of ensuring that the treatment of any claims in respect of a CCP's shares or any liabilities in any write-down instrument is aligned to an appropriate degree with the treatment of claims and liabilities on an insolvency, by regulations specify matters or principles to which the Bank is to be required to have regard in making any such instrument.
- (2) Regulations under this paragraph may for example—
- (a) specify the insolvency treatment principles (as defined in paragraph 36(4)) or alternative principles;
  - (b) specify the meaning of “insolvency” for one or more purposes of the regulations.
- (3) Regulations under this paragraph may amend paragraph 36(4).
- (4) Regulations under this paragraph are subject to the affirmative procedure.

#### *Power to take control*

- 38 (1) The eighth stabilisation option is for the Bank to make one or more instruments of control.
- (2) An instrument of control is an instrument that makes any of the following provision —
- (a) provision transferring any voting rights exercisable by shareholders of the CCP or, if the CCP is an unincorporated association, members of the CCP to the Bank for a specified period;
  - (b) provision transferring specified powers, rights, duties or liabilities of the directors or senior managers of the CCP to the Bank for a specified period.
- (3) Provision made under sub-paragraph (2) may for example include—
- (a) provision for exemptions or applying modifications in relation to any powers, rights, duties or liabilities transferred;
  - (b) provision for the Bank to exercise such powers, rights, duties or liabilities under the CCP's rules as may be specified in the instrument;

- (c) provision for the Bank to exercise such powers, rights, duties or liabilities in relation to any contracts that the CCP is a party to as may be specified in the instrument.

*Shadow directors etc*

- 39 (1) This paragraph applies where the Bank uses one or more of the stabilisation options mentioned in paragraph 1(3) in respect of a CCP unless the CCP has ceased to be subject to the exercise of any stabilisation power mentioned in paragraph 1(4).
- (2) A relevant person is not to be treated in relation to the CCP—
- (a) as a shadow director for the purposes of the relevant enactments,
  - (b) as a person who discharges managerial responsibilities for the purposes of those enactments (unless that person has been appointed as a director or a senior manager), or
  - (c) as a director within the meaning of section 417(1)(b) of FSMA 2000 (a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act).
- (3) In this paragraph—
- “relevant enactment” means—
- (a) the Companies Act 2006;
  - (b) the Insolvency Act 1986;
  - (c) the Company Directors Disqualification Act 1986;
  - (d) FSMA 2000;
  - (e) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
  - (f) the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4));
- “relevant person” means—
- (a) the Bank,
  - (b) persons who are employed by, or act on behalf of, the Bank, and
  - (c) a temporary manager appointed under paragraph 6 of this Schedule.

*Interpretation: “securities”*

- 40 (1) In this Schedule “securities” includes anything falling within any of the following classes.
- (2) Class 1: shares and stock.
- (3) Class 2: debentures, including—
- (a) debenture stock,
  - (b) loan stock,
  - (c) bonds,
  - (d) certificates of deposit, and
  - (e) any other instrument creating or acknowledging a debt.
- (4) Class 3: warrants or other instruments that entitle the holder to acquire anything in Class 1 or 2.

### *Share transfer instrument*

- 41 (1) A share transfer instrument is for purposes of this Schedule an instrument which—
- (a) provides for securities issued by a specified CCP to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified CCP (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (2) A share transfer instrument may relate to—
- (a) specified securities, or
  - (b) securities of a specified description.

### *Effect*

- 42 (1) In this paragraph “transfer” means a transfer provided for by a share transfer instrument.
- (2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In sub-paragraph (3) “restriction” includes—
- (a) any restriction, inability or incapacity affecting what can or cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name).
- (5) A share transfer instrument may provide for a transfer to take effect free from any trust, liability or other encumbrance (and may include provision about their extinguishment).
- (6) A share transfer instrument may extinguish rights to acquire securities falling within Class 1 or 2 in paragraph 40.

### *Continuity*

- 43 (1) A share transfer instrument may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
- (2) A share transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A share transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.
- (4) A share transfer instrument may modify references (express or implied) in an instrument or document to a transferor.
- (5) A share transfer instrument may require or permit—
- (a) a transferor to provide a transferee with information and assistance;

- (b) a transferee to provide a transferor with information and assistance.

*Conversion and delisting*

- 44 (1) A share transfer instrument may provide for securities to be converted from one form or class to another.
- (2) A share transfer instrument may provide for the listing of securities, under section 74 of FSMA 2000, to be discontinued or suspended.
- (3) Where the listing of securities is suspended in accordance with a share transfer instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, FSMA 2000 as still being listed.

*Directors and senior managers*

- 45 (1) A share transfer instrument may enable the Bank—
- (a) to remove a director or senior manager of a specified CCP;
  - (b) to vary the service contract of a director or senior manager of a specified CCP;
  - (c) to terminate the service contract of a director or senior manager of a specified CCP;
  - (d) to appoint a director or a senior manager of a specified CCP.
- (2) Sub-paragraph (1) also applies to a director or senior manager of a relevant CCP group company of the specified CCP.
- (3) A “relevant CCP group company” means a CCP group company that is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) Appointments under sub-paragraph (1)(d) are to be on terms and conditions agreed with the Bank.

*Ancillary instruments: production, registration, etc*

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

### *Incidental provision*

- 47 (1) A share transfer instrument may include incidental, consequential or transitional provision.
- (2) In relying on sub-paragraph (1) a share transfer 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.

### *Procedure: instruments*

- 48 (1) As soon as is reasonably practicable after making a share transfer instrument in respect of a CCP, the Bank must send a copy to—
- (a) the CCP,
  - (b) the Treasury,
  - (c) if the CCP is a PRA-authorised person, the PRA,
  - (d) the FCA, and
  - (e) any other person specified in the code of practice under paragraph 16.
- (2) As soon as is reasonably practicable after making share transfer instrument the Bank must publish a copy—
- (a) on the Bank’s website,
  - (b) in at least one other medium chosen by the Bank to maximise the likelihood of the instrument coming to the attention of persons likely to be affected by it, and
  - (c) if securities of the CCP have been admitted to trading on a regulated market (within the meaning of section 103(1) of FSMA 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),
- and arrange for the publication of a copy on the website of the CCP in respect of which the instrument was made.
- (3) Where the Treasury receive a copy of a share transfer instrument under sub-paragraph (1) they must lay a copy before Parliament.

### *Supplemental instruments*

- 49 (1) This paragraph applies where the Bank has made a share transfer instrument, in respect of securities issued by a CCP, in accordance with paragraph 27(2), 29(3) or 30(2) (“the original instrument”).
- (2) The Bank may make one or more supplemental share transfer instruments.
- (3) A supplemental share transfer instrument is a share transfer instrument which—
- (a) provides for the transfer of securities which were issued by the CCP before the original instrument and have not been transferred by the original instrument or another supplemental share transfer instrument;
  - (b) makes provision of a kind that a share transfer instrument may make under paragraph 41(1)(b) (whether or not in connection with a transfer under the original instrument).



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- (4) Paragraphs 17 and 19 do not apply to a supplemental share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Schedule).
- (5) Before making a supplemental share transfer instrument the Bank must consult—
  - (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (6) The possibility of making a supplemental share transfer instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a new instrument in accordance with paragraphs 27(2), 29(3) and 30(2) (and not in reliance on sub-paragraph (2) above).
- (7) Paragraph 48 applies where the Bank has made a supplemental share transfer instrument.

#### *Onward transfer*

- 50 (1) This paragraph applies where the Bank has made a share transfer instrument, in respect of securities issued by a CCP, in accordance with paragraph 27(2), 29(3) or 30(2) (“the original instrument”).
- (2) The Bank may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which—
  - (a) provides for the transfer of—
    - (i) securities which were issued by the CCP before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
    - (ii) securities which were issued by the CCP after the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the CCP (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.
- (5) The Bank may not make an onward share transfer instrument unless the transferee under the original instrument is—
  - (a) the Bank,
  - (b) a nominee of the Treasury, or
  - (c) a company wholly owned by the Bank or the Treasury.
- (6) Paragraphs 17 and 19 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Schedule).
- (7) Before making an onward share transfer instrument the Bank must consult—

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- (a) if the CCP is a PRA-authorised person, the PRA, and
- (b) the FCA.

(8) Paragraph 48 applies where the Bank has made an onward share transfer instrument.

#### *Reverse share transfer*

- 51 (1) This paragraph applies where the Bank has made a share transfer instrument in accordance with paragraph 27(2), 29(3) or 30(2) (“the original instrument”) providing for the transfer of securities issued by a CCP to a person (“the original transferee”).
- (2) The Bank may make one or more reverse share transfer instruments in respect of securities issued by the CCP and held by the original transferee (whether or not they were transferred by the original instrument).
- (3) If the Bank makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the CCP and held by a transferee under the onward share transfer instrument (“the onward transferee”).
- (4) A reverse share transfer instrument is a share transfer instrument which—
- (a) provides for transfer to the transferor under the original instrument (where sub-paragraph (2) applies);
  - (b) provides for transfer to the original transferee (where sub-paragraph (3) applies);
  - (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).
- (5) The Bank may not make a reverse share transfer instrument under sub-paragraph (2) unless—
- (a) the original transferee is—
    - (i) the Bank,
    - (ii) a company wholly owned by the Bank or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the original transferee.
- (6) The Bank may not make a reverse share transfer instrument under sub-paragraph (3) unless—
- (a) the onward transferee is—
    - (i) the Bank,
    - (ii) a company wholly owned by the Bank or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the onward transferee.
- (7) Paragraphs 17 and 19 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).
- (8) Before making a reverse share transfer instrument the Bank must consult—

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- (a) if the CCP is a PRA-authorised person, the PRA, and
- (b) the FCA.

(9) Paragraph 48 applies where the Bank has made a reverse share transfer instrument.

*Bridge central counterparties: share transfers*

- 52 (1) This paragraph applies where the Bank has made a property transfer instrument or share transfer instrument in respect of a bridge central counterparty in accordance with paragraph 29(3) (“the original instrument”).
- (2) The Bank may make one or more bridge central counterparty share transfer instruments.
- (3) A bridge central counterparty share transfer instrument is a share transfer instrument which—
- (a) provides for securities issued by the bridge central counterparty to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bridge central counterparty (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) Paragraphs 17 and 19 do not apply to a bridge central counterparty share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Schedule).
- (5) Before making a bridge central counterparty share transfer instrument the Bank must consult—
- (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (6) Paragraph 48 applies where the Bank has made a bridge central counterparty share transfer instrument.

*Bridge central counterparties: reverse share transfer*

- 53 (1) This paragraph applies where the Bank has made a bridge central counterparty share transfer instrument in accordance with paragraph 52(2) (“the original instrument”).
- (2) The Bank may make one or more bridge central counterparty reverse share transfer instruments in respect of securities issued by the bridge central counterparty and held by a transferee under the original instrument.
- (3) A bridge central counterparty reverse share transfer instrument is a share transfer instrument which—
- (a) provides for transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).

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- (4) The Bank must not make a bridge central counterparty reverse share transfer instrument unless—
  - (a) the transferee under the original instrument is—
    - (i) a company wholly owned by the Bank,
    - (ii) a company wholly owned by the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the bridge central counterparty reverse share transfer instrument is made with the written consent of the transferee under the original instrument.
- (5) Paragraphs 17 and 19 do not apply to a bridge central counterparty reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).
- (6) Before making a bridge central counterparty reverse share transfer instrument the Bank must consult—
  - (a) if the CCP is a PRA-authorized person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Paragraph 48 applies where the Bank has made a bridge central counterparty reverse share transfer instrument.

#### *Property transfer instrument*

- 54 (1) A property transfer instrument is an instrument which—
  - (a) provides for property, rights or liabilities of a specified CCP to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of a specified CCP (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (2) A property transfer instrument may relate to—
  - (a) all property, rights and liabilities of the specified CCP,
  - (b) all its property, rights and liabilities subject to specified exceptions,
  - (c) specified property, rights or liabilities, or
  - (d) property, rights or liabilities of a specified description.

#### *Effect*

- 55 (1) In this paragraph “transfer” means a transfer provided for by a property transfer instrument.
- (2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In sub-paragraph (3) “restriction” includes—
  - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and

- (b) a requirement for consent (by any name).
- (5) A property transfer instrument may provide for a transfer to be conditional upon a specified event or situation—
  - (a) occurring or arising, or
  - (b) not occurring or arising.
- (6) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under sub-paragraph (5); and the consequences may include—
  - (a) automatic vesting in the original transferor;
  - (b) an obligation to effect a transfer back to the original transferor, with specified consequences for failure to comply (which may include provision conferring a discretion on a court or tribunal);
  - (c) provision making a transfer or anything done in connection with a transfer void or voidable.
- (7) Where a property transfer instrument makes provision in respect of property held on trust (however arising) it may also make provision about—
  - (a) the terms on which the property is to be held after the instrument takes effect, and
  - (b) how any powers, rights or obligations in respect of the property are to be exercisable or have effect after the instrument takes effect.
- (8) Provision under sub-paragraph (7)(a) may remove or alter the terms of the trust on which the property is held only to the extent that the Bank thinks it necessary or expedient for the purpose of transferring—
  - (a) the legal or beneficial interest of the transferor in the property;
  - (b) any powers, rights or obligations of the transferor in respect of the property.
- (9) In sub-paragraph (8) references to the transferor are references to the transferor under the property transfer instrument.

*Transferable property*

- 56 A property transfer instrument may transfer any property, rights or liabilities including, in particular—
- (a) property, rights and liabilities acquired or arising between the making of the instrument and the transfer date,
  - (b) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date,
  - (c) property outside the United Kingdom,
  - (d) rights and liabilities under the law of a country or territory outside the United Kingdom, and
  - (e) rights and liabilities under an enactment.

*Continuity*

- 57 (1) A property transfer instrument may provide—
- (a) for a transfer to be, or to be treated as, a succession;
  - (b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

- (2) A property transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.
- (4) A property transfer instrument which transfers or enables the transfer of a contract of employment may include provision about continuity of employment.
- (5) A property transfer instrument may modify references (express or implied) in an instrument or document to a transferor.
- (6) In so far as rights and liabilities in respect of anything transferred are enforceable after transfer, a property transfer instrument may provide for apportionment between transferor and transferee to a specified extent and in specified ways.
- (7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument; but a modification—
  - (a) must achieve a result that could have been achieved by the instrument, and
  - (b) may not transfer (or arrange for the transfer of) property, rights or liabilities.
- (8) A property transfer instrument may require or permit—
  - (a) a transferor to provide a transferee with information and assistance;
  - (b) a transferee to provide a transferor with information and assistance.

#### *Directors and senior managers*

- 58
- (1) A property transfer instrument may enable the Bank—
    - (a) to remove a director or senior manager of a specified CCP;
    - (b) to vary the service contract of a director or senior manager of a specified CCP;
    - (c) to terminate the service contract of a director or senior manager of a specified CCP;
    - (d) to appoint a director or senior manager of a specified CCP.
  - (2) Sub-paragraph (1) also applies to a director or senior manager of a relevant CCP group company of the specified CCP.
  - (3) A “relevant CCP group company” means a CCP group company incorporated in, or formed under the law of any part of, the United Kingdom.
  - (4) Appointments under sub-paragraph (1)(d) are to be on terms and conditions agreed with the Bank.

#### *Recognised central counterparty rules*

- 59
- (1) A property transfer instrument made in respect of a CCP may make provision about the consequences of a transfer for the rules of the CCP.
  - (2) In particular, an instrument may—
    - (a) modify or amend the rules of a CCP;

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- (b) in a case where some, but not all, of the business of a CCP is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this paragraph may (but need not) be limited so as to have effect—
  - (a) for a specified period, or
  - (b) until a specified event occurs or does not occur.

#### *Recognised central counterparty membership*

- 60 (1) A property transfer instrument made in respect of a CCP may make provision about the consequences of a transfer for membership of the CCP.
- (2) In particular, an instrument may—
- (a) make provision modifying the terms on which a person is a clearing member of a CCP;
  - (b) in a case where some, but not all, of the business of a CCP is transferred, provide for a person who was a clearing member of the transferor to remain a clearing member of the transferor while also becoming a clearing member of the transferee.

#### *Licences*

- 61 (1) A licence in respect of anything transferred by a property transfer instrument continues to have effect despite the transfer.
- (2) A property transfer instrument may disapply sub-paragraph (1) to a specified extent.
- (3) Where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliance between transferor and transferee.
- (4) In this paragraph “licence” includes permission and approval and any other permissive document in respect of anything transferred.

#### *Foreign property*

- 62 (1) This paragraph applies where a property transfer instrument transfers foreign property.
- (2) In sub-paragraph (1) “foreign property” means—
- (a) property outside the United Kingdom, or
  - (b) rights and liabilities under foreign law.
- (3) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of foreign law (if it is not wholly effective by virtue of the property transfer instrument).
- (4) Until the transfer is effective as a matter of foreign law, the transferor must—
- (a) hold the property or right for the benefit of the transferee (together with any additional property or right accruing by virtue of the original property or right), or
  - (b) discharge the liability on behalf of the transferee.



- (5) If the Bank determines that, in spite of any action taken by the transferee or the transferor, it is not possible for the transfer of certain property to be effective under the law of the jurisdiction where the property is located or (where the property consists of rights or liabilities) the law under which it arises—
  - (a) sub-paragraph (4) ceases to apply, and
  - (b) the provisions of the property transfer instrument relating to that property are void.
- (6) The Bank must give notice of any determination under sub-paragraph (5) to the transferor and the transferee.
- (7) The transferor must meet any expenses of the transferee in complying with this paragraph.
- (8) An obligation imposed by this paragraph is enforceable as if created by contract between the transferor and transferee.
- (9) The transferor must comply with any directions of the Bank in respect of the obligations under sub-paragraphs (3) and (4); and—
  - (a) a direction may disapply sub-paragraphs (3) and (4) to a specified extent, and
  - (b) obligations imposed by direction are enforceable as if created by contract between the transferor and the Bank.
- (10) In this paragraph “foreign law” means the law of a country or territory outside the United Kingdom.

#### *Incidental provision*

- 63
- (1) A property transfer instrument may include incidental, consequential or transitional provision.
  - (2) In relying on sub-paragraph (1) an 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.

#### *Procedure*

- 64
- (1) As soon as is reasonably practicable after making a property transfer instrument in respect of a CCP, the Bank must send a copy to—
    - (a) the CCP,
    - (b) the Treasury,
    - (c) if the CCP is a PRA-authorised person, the PRA,
    - (d) the FCA, and
    - (e) any other person specified in the code of practice under paragraph 16.
  - (2) As soon as is reasonably practicable after making a property transfer instrument the Bank must publish a copy—
    - (a) on the Bank’s website,
    - (b) in at least one other medium chosen by the Bank to maximise the likelihood of the instrument coming to the attention of persons likely to be affected, and

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- (c) if securities of the CCP have been admitted to trading on a regulated market (within the meaning of section 103(1) of FSMA 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),

and arrange for the publication of a copy on the website of the CCP in respect of which the instrument was made.

- (3) Where the Treasury receive a copy of a property transfer instrument under sub-paragraph (1) they must lay a copy before Parliament.

*Property transfer instrument: delisting*

- 65 (1) A property transfer instrument may provide for the listing of securities, under section 74 of FSMA 2000, to be discontinued or suspended.
- (2) Where the listing of securities is suspended in accordance with a property transfer instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, FSMA 2000 as still being listed.

*Transfer of property subsequent to resolution instrument*

- 66 (1) This paragraph applies where the Bank has made a resolution instrument.
- (2) The Bank may make one or more property transfer instruments in respect of property, rights or liabilities of the CCP.
- (3) Paragraph 17 does not apply to a property transfer instrument under sub-paragraph (2).
- (4) Before making a property transfer instrument under sub-paragraph (2) the Bank must consult—
  - (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.

*Supplemental instruments*

- 67 (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 27(2) or 29(3) (“the original instrument”).
- (2) The Bank may make one or more supplemental property transfer instruments.
- (3) A supplemental property transfer instrument is a property transfer instrument which—
  - (a) provides for property, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument);
  - (b) makes other provision of a kind that an original property transfer instrument may make under paragraph 54(1)(b) (whether in connection with a transfer under the original instrument or in connection with a transfer under that or another supplemental instrument).
- (4) Paragraphs 17 and 19 do not apply to a supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for

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all other purposes, including for the purposes of the application of a power under this Schedule).

- (5) Before making a supplemental property transfer instrument the Bank must consult—
  - (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (6) The possibility of making a supplemental property transfer instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a new instrument in accordance with paragraph 27(2) or 29(3) (and not in reliance on sub-paragraph (2) above).
- (7) Paragraph 64 applies where the Bank has made a supplemental property transfer instrument.

*Private sector purchaser: reverse property transfer*

- 68
- (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 27(2) (“the original instrument”) providing for the transfer of property, rights or liabilities of a CCP to a person (“the original transferee”).
  - (2) The Bank may make one or more private sector reverse property transfer instruments in respect of property, rights or liabilities of the original transferee.
  - (3) A private sector reverse property transfer instrument is a property transfer instrument which—
    - (a) provides for transfer to the transferor under the original instrument;
    - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).
  - (4) The Bank must not make a private sector reverse property transfer instrument without the written consent of the original transferee.
  - (5) Paragraphs 17 and 19 do not apply to a private sector reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).
  - (6) Before making a private sector reverse property transfer instrument the Bank must consult—
    - (a) if the CCP is a PRA-authorised person, the PRA,
    - (b) the FCA, and
    - (c) the Treasury.
  - (7) Paragraph 64 applies where the Bank has made a private sector reverse property transfer instrument.

*Onward transfer*

- 69 (1) This paragraph applies where the Bank has made a property transfer instrument in respect of a bridge central counterparty in accordance with paragraph 29(3) (“the original instrument”).
- (2) The Bank may make one or more onward property transfer instruments.
- (3) An onward property transfer instrument is a property transfer instrument which—
- (a) provides for property, rights or liabilities of the bridge central counterparty to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bridge central counterparty (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (4) An onward property transfer instrument may relate to property, rights or liabilities of the bridge central counterparty whether or not they were transferred under the original instrument.
- (5) An onward property transfer instrument may not transfer property, rights or liabilities to the transferor under the original instrument.
- (6) Paragraphs 17 and 19 do not apply to an onward property transfer instrument (but for other purposes it is to be treated in the same way as any other property transfer instrument, including for the purposes of the application of a power under this Schedule).
- (7) Before making an onward property transfer instrument the Bank must consult—
- (a) if the CCP is a PRA-authorized person, the PRA
  - (b) the FCA, and
  - (c) the Treasury.
- (8) Paragraph 64 applies where the Bank of England has made an onward property transfer instrument.

*Bridge central counterparties: reverse property transfer*

- 70 (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 29(3) (“the original instrument”) providing for the transfer of property, rights or liabilities to a bridge central counterparty.
- (2) The Bank may make one or more bridge central counterparty reverse property transfer instruments in respect of property, rights or liabilities of the bridge central counterparty.
- (3) If the Bank makes an onward property transfer instrument under paragraph 69 the Bank may make one or more reverse property transfer instruments in respect of property, rights or liabilities of a transferee under the onward property transfer instrument (“the onward transferee”).
- (4) A bridge central counterparty reverse property transfer instrument is a property transfer instrument which—
- (a) provides for transfer to the transferor under the original instrument (where sub-paragraph (2) applies);

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- (b) provides for transfer to the bridge central counterparty (where sub-paragraph (3) applies);
  - (c) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) or (b) (whether the transfer has been or is to be effected by that instrument or otherwise).
- (5) The Bank must not make a bridge central counterparty reverse property transfer instrument unless—
- (a) the onward transferee is—
    - (i) a company wholly owned by the Bank,
    - (ii) a company wholly owned by the Treasury, or
    - (iii) a company wholly owned by a nominee of the Treasury, or
  - (b) the bridge central counterparty reverse property transfer is made with the written consent of the onward transferee.
- (6) Paragraphs 17 and 19 do not apply to a bridge central counterparty reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).
- (7) Before making a bridge central counterparty reverse property transfer instrument the Bank must consult—
- (a) if the CCP is a PRA-authorized person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (8) Paragraph 64 applies where the Bank has made a bridge central counterparty reverse property transfer instrument.

*Transfer of ownership and private sector purchaser: property transfer*

- 71 (1) This paragraph applies where the Bank has made a share transfer instrument, in respect of securities issued by a CCP, in accordance with paragraph 27(2) or 30(2) (“the original instrument”).
- (2) The Bank may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which—
- (a) provides for property, rights or liabilities of the CCP to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the CCP (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank may not make a property transfer instrument in accordance with this paragraph unless the original instrument transferred securities to—
- (a) the Bank,
  - (b) a company wholly owned by the Bank or the Treasury, or
  - (c) a nominee of the Treasury.
- (5) Paragraphs 17 and 19 do not apply to a property transfer instrument made in accordance with this paragraph.

- (6) Before making a property transfer instrument in accordance with this paragraph, the Bank must consult—
  - (a) if the CCP is a PRA-authorised person, the PRA, and
  - (b) the FCA.
- (7) Paragraph 64 applies where the Bank has made a property transfer instrument in accordance with this paragraph.

*Transfer of ownership: reverse property transfer*

- 72
- (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 71(2) (“the original instrument”).
  - (2) The Bank may make one or more reverse property transfer instruments in respect of property, rights and liabilities of the transferee under the original instrument.
  - (3) A reverse property transfer instrument is a property transfer instrument which—
    - (a) provides for transfer to the transferor under the original instrument;
    - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
  - (4) The Bank must not make a reverse property transfer instrument unless—
    - (a) the transferee under the original instrument is—
      - (i) the Bank,
      - (ii) a company wholly owned by the Bank or the Treasury, or
      - (iii) a nominee of the Treasury, or
    - (b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.
  - (5) Paragraphs 17 and 19 do not apply to a reverse property transfer instrument made in accordance with this paragraph.
  - (6) Before making a reverse property transfer instrument in accordance with this paragraph, the Bank must consult—
    - (a) if the CCP is a PRA-authorised person, the PRA, and
    - (b) the FCA.
  - (7) Paragraph 64 applies where the Bank has made a reverse property transfer instrument in accordance with this paragraph.

*Bridge central counterparty: supplemental property transfer powers*

- 73
- (1) This paragraph applies where the Bank has made a share transfer instrument in accordance with paragraph 29(3) (“the original instrument”) providing for the transfer of securities issued by a CCP (“the CCP”) to a bridge central counterparty.
  - (2) The Bank may make one or more property transfer instruments in relation to the CCP (“bridge central counterparty supplemental property transfer instruments”).
  - (3) A bridge central counterparty supplemental property transfer instrument is an instrument which—

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- (a) provides for property, rights or liabilities of the CCP to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the CCP (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) Paragraphs 17 and 19 do not apply to a bridge central counterparty supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).
- (5) Before making a bridge central counterparty supplemental property transfer instrument the Bank must consult—
- (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (6) The possibility of making a bridge central counterparty supplemental property transfer instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a property transfer instrument in accordance with paragraph 29(3) (and not in reliance on sub-paragraph (2) above).
- (7) Paragraph 64 applies where the Bank has made a bridge central counterparty supplemental property transfer instrument.

*Bridge central counterparty: supplemental reverse property transfer powers*

- 74 (1) This paragraph applies where the Bank has made a bridge central counterparty supplemental property transfer instrument in accordance with paragraph 73 (“the original instrument”).
- (2) The Bank may make one or more reverse property transfer instruments (“bridge central counterparty supplemental reverse property transfer instruments”) in respect of property, rights or liabilities of the transferee under the original instrument.
- (3) A bridge central counterparty supplemental reverse property transfer instrument is an instrument which—
- (a) provides for transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).
- (4) Paragraphs 17 and 19 do not apply to a bridge central counterparty supplemental reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).
- (5) The Bank must not make a bridge central counterparty supplemental reverse property transfer instrument unless—
- (a) the transferee under the original instrument is—
    - (i) a company wholly owned by the Bank of England,
    - (ii) a company wholly owned by the Treasury, or
    - (iii) a nominee of the Treasury, or



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- (b) it is made with the written consent of the transferee under the original instrument.
- (6) Before making a bridge central counterparty supplemental reverse property transfer instrument the Bank must consult—
  - (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Paragraph 64 applies where the Bank has made a bridge central counterparty supplemental property transfer instrument.

#### *Restriction of partial transfers*

- 75 (1) In this Schedule, “partial property transfer” means a property transfer instrument which provides for the transfer of some, but not all of the property, rights and liabilities of a CCP.
- (2) The Treasury may by regulations—
    - (a) restrict the making of partial property transfers;
    - (b) impose conditions on the making of partial property transfers;
    - (c) require partial property transfers to include specified provision or provision to a specified effect;
    - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the regulations.
  - (3) Regulations under this paragraph may apply to partial property transfers generally or only to partial property transfers—
    - (a) of a specified kind, or
    - (b) made or applying in specified circumstances.
  - (4) Provision under sub-paragraph (2) may, in particular, refer to particular classes of liabilities.
  - (5) Regulations under this paragraph are subject to the affirmative procedure.

#### *Power to protect certain interests*

- 76 (1) In this paragraph—
- (a) “security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,
  - (b) “title transfer collateral arrangements” are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,
  - (c) “set-off arrangements” are arrangements under which two or more debts, claims or obligations can be set off against each other,
  - (d) “netting arrangements” are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, in particular, “close-out” netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose

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- of enabling them to be set off against each other or to be converted into a net debt, and
- (e) “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.
- (2) The Treasury may by regulations —
- (a) restrict the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
- (b) impose conditions on the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
- (c) require partial property transfers to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
- (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the regulations.
- (3) Regulations under this paragraph may apply to protected arrangements generally or only to arrangements—
- (a) of a specified kind, or
- (b) made or applying in specified circumstances.
- (4) Regulations under this paragraph may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, regulations 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.
- (5) In this paragraph “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 other parties.
- (6) Regulations under this paragraph are subject to the affirmative procedure.

#### *Creation of liabilities*

- 77 (1) The provision that may be made by a property transfer instrument in reliance on paragraph 54(1)(b), 67(3)(b), 68(3)(b), 69(3)(b), 70(4)(c), 71(3)(b), 72(3)(b), 73(3)(b), or 74(3)(b) includes provision for the creation of liabilities.
- (2) The provision may be framed by reference to an agreement which has been or is to be entered into, or anything else which has been or is to be done, by any person (including a person other than the person making the instrument).

#### *Regulations for safeguarding certain financial arrangements: write-down instruments*

- 78 (1) In this paragraph “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.

- (2) In sub-paragraph (1)—
- (a) “security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,
  - (b) “title transfer collateral arrangements” are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,
  - (c) “set-off arrangements” are arrangements under which two or more debts, claims or obligations can be set off against each other, and
  - (d) “netting arrangements” are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, 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.
- (3) The Treasury may by regulations —
- (a) restrict the making of a write-down instrument in cases that involve, or where they might affect, protected arrangements;
  - (b) impose conditions on the making of write-down instruments in cases that involve, or where they might affect, protected arrangements;
  - (c) require write-down instruments to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
  - (d) provide for a write-down instrument to be void or voidable, or for other consequences to arise, if or in so far as the write-down instrument is made or purported to be made in contravention of a provision of the regulations;
  - (e) specify principles to which the Bank is to be required to have regard in making a write-down instrument—
    - (i) that involves protected arrangements, or
    - (ii) where the making of the instrument might affect protected arrangements.
- (4) Regulations under this paragraph may apply to protected arrangements generally or only to arrangements—
- (a) of a specified kind, or
  - (b) made or applying in specified circumstances.
- (5) Regulations under this paragraph may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, regulations 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.
- (6) In this paragraph “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 other parties.

(7) Regulations under this paragraph are subject to the affirmative procedure.

*Resolution instruments: effect and supplementary matters*

- 79 (1) In this Schedule “resolution instrument” means—
- (a) a cash call instrument;
  - (b) a tear-up instrument;
  - (c) a variation instrument;
  - (d) a write-down instrument;
  - (e) an instrument of control.
- (2) A resolution instrument must be made in writing.
- (3) A resolution instrument in respect of a CCP ceases to have effect on whichever of the following occurs first—
- (a) such date as may be specified in the instrument,
  - (b) the making of a share transfer instrument or a property transfer instrument in relation to the CCP, or
  - (c) any of the conditions under paragraph 17 ceasing to be met in relation to the CCP.
- (4) The Bank may at any time amend a resolution instrument to specify or amend a date for the purposes of sub-paragraph (3)(a).
- (5) Before amending a resolution instrument in accordance with sub-paragraph (4) the Bank must consult the Treasury.
- (6) Provision made in a resolution instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (7) 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.
- (8) A resolution instrument may modify references (express or implied) in an instrument or document.
- (9) A resolution instrument may require or permit any person to provide information and assistance to the Bank or another person, for the purposes of or in connection with provision made or to be made in that or another resolution instrument.
- (10) A resolution instrument—
- (a) may include supplemental, incidental, consequential or transitional provision,
  - (b) may make provision generally or only for specified purposes, cases or circumstances,
  - (c) may make different provision for different purposes, cases or circumstances, and
  - (d) may make provision for exemptions.
- (11) A resolution instrument ceasing to have effect does not affect the validity of anything previously done in accordance with it.

*Write-down instruments: supplementary*

- 80 (1) A write-down instrument may permit or require the execution, issue or delivery of an instrument.
- (2) A write-down 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 write-down instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the instrument.
- (4) A write-down instrument may—
- (a) entitle a person to be registered in respect of a security;
  - (b) require a person to effect registration.

*Resolution instruments: procedure*

- 81 (1) As soon as is reasonably practicable after making a resolution instrument in respect of a CCP, the Bank must send a copy of the instrument to—
- (a) the CCP,
  - (b) the Treasury,
  - (c) if the CCP is a PRA-authorised person, the PRA,
  - (d) the FCA, and
  - (e) any other person specified in the code of practice under paragraph 16.
- (2) As soon as is reasonably practicable after making a resolution instrument the Bank must publish a copy—
- (a) on the Bank’s website,
  - (b) in at least one other medium chosen by the Bank to maximise the likelihood of the instrument coming to the attention of persons likely to be affected, and
  - (c) if securities of the CCP have been admitted to trading on a regulated market (within the meaning of section 103(1) of FSMA 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),
- and arrange for the publication of a copy on the website of the CCP in respect of which the instrument was made.
- (3) Where the Treasury receive a copy of a resolution instrument under sub-paragraph (1) they must lay a copy before Parliament.

*Supplemental resolution instruments*

- 82 (1) This paragraph applies where the Bank has made a resolution instrument (“the original instrument”) with respect to a CCP.
- (2) The Bank may make, with respect to the CCP, one or more resolution instruments designated by the Bank as supplemental resolution instruments.

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- (3) Paragraphs 17, 22 and 79(3)(c) 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 Schedule).
- (4) Before making a supplemental resolution instrument, the Bank must consult—
  - (a) if the CCP is a PRA-authorised person, the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (5) The possibility of making a supplemental resolution instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a new resolution instrument in accordance with paragraphs 31(1), 32(1), 33(1), 34(1) and 38(1) (and not in reliance on sub-paragraph (2) above).

#### *Directors and senior managers*

- 83 (1) A resolution instrument may enable the Bank—
- (a) to remove a director or senior manager of a specified CCP;
  - (b) to vary the service contract of a director or senior manager of a specified CCP;
  - (c) to terminate the service contract of a director or senior manager of a specified CCP;
  - (d) to appoint a director or a senior manager of a specified CCP.
- (2) Sub-paragraph (1) also applies to a director or senior manager of a relevant CCP group company of the specified CCP.
- (3) A “relevant CCP group company” is a CCP group company incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) Appointments under sub-paragraph (1)(d) are to be on terms and conditions agreed with the Bank.

#### *Termination rights etc*

- 84 (1) In this paragraph—
- “resolution measure” means—
- (a) the making by the Bank of a stabilisation instrument in relation to a CCP,
  - (b) where an instrument of control under paragraph 38 is in place in relation to a CCP, the exercise by the Bank of any relevant rules of the CCP,
  - (c) a measure taken by a CCP as a result of directions given under paragraph 2,
  - (d) the removal by a CCP of a director or senior manager as a result of a requirement imposed under paragraph 5,
  - (e) the appointment of a temporary manager in relation to a CCP under paragraph 6,
  - (f) a restriction or prohibition on payments under paragraph 13 or 102,
  - (g) the recognition by the Bank of third-country resolution action (or part of such action) in accordance with Part 7 of this Schedule, or

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(h) the exercise by the Bank of a stabilisation power by virtue of paragraph 146(3);

“default event provision” means a Type 1 or Type 2 default event provision (see sub-paragraphs (2) and (3));

“relevant rules”, in relation to a CCP, mean rules ensuring that the requirements under paragraph 29A or 36 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (S.I. 2001/995) are met;

“stabilisation instrument” means—

- (a) a share transfer instrument,
- (b) a property transfer instrument, or
- (c) a resolution instrument.

- (2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises—
- (a) the agreement is terminated, modified or replaced,
  - (b) rights or duties under the agreement are terminated, modified or replaced,
  - (c) a right accrues to terminate, modify or replace the agreement,
  - (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
  - (e) a sum becomes payable or ceases to be payable,
  - (f) delivery of anything becomes due or ceases to be due,
  - (g) a right to claim a payment or delivery accrues, changes or lapses,
  - (h) any other right accrues, changes or lapses,
  - (i) a right to accelerate, close out, set-off or net obligations accrues, changes or lapses, or
  - (j) an interest is created, changes or lapses.
- (3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement—
- (a) takes effect only if a specified event occurs or does not occur,
  - (b) takes effect only if a specified situation arises or does not arise,
  - (c) has effect only for so long as a specified event does not occur,
  - (d) has effect only while a specified situation lasts,
  - (e) applies differently if a specified event occurs,
  - (f) applies differently if a specified situation arises, or
  - (g) applies differently while a specified situation lasts.
- (4) For the purposes of sub-paragraphs (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).
- (5) Subject to sub-paragraph (7), sub-paragraph (6) applies where—
- (a) a contract or agreement is entered into by a CCP, and
  - (b) the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.



- (6) The following are to be disregarded in determining whether a default event provision applies—
  - (a) a resolution measure, and
  - (b) the occurrence of any event directly linked to the application of such a measure.
- (7) A stabilisation instrument may provide for sub-paragraph (6)—
  - (a) not to apply in relation to a contract or other agreement, or
  - (b) to apply in relation to a contract or other agreement only to the extent specified by the Bank in the instrument.
- (8) Provision may be made under sub-paragraph (7) only if the Bank considers that such provision would advance one or more of the special resolution objectives.
- (9) A stabilisation instrument may provide for sub-paragraph (10) or (11) to apply (but need not apply either) in circumstances where sub-paragraph (6) would not apply.
- (10) If this sub-paragraph applies, the stabilisation instrument is to be disregarded in determining whether a default event provision applies.
- (11) If this sub-paragraph applies, the stabilisation instrument is to be disregarded in determining whether a default event provision applies except so far as the instrument provides otherwise.
- (12) In sub-paragraphs (9), (10) and (11) a reference to a stabilisation 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.
- (13) Provision under sub-paragraph (9) may apply sub-paragraph (10) or (11)—
  - (a) generally or only for specified purposes, cases or circumstances, or
  - (b) differently for different purposes, cases or circumstances.
- (14) A thing is not done by virtue of a stabilisation instrument for the purposes of sub-paragraph (12)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument.

### *Deferment*

- 85
- (1) The Treasury may by regulations make provision for and in connection with the suspension or waiver of provisions made under a resolution instrument.
  - (2) The following are examples of provision that may be made by regulations under this paragraph—
    - (a) provision specifying matters to which the Bank must have regard before suspending or waiving provisions under a resolution instrument;
    - (b) provision specifying the procedure for suspending or waiving such provisions;
    - (c) provision specifying the maximum time period for which a suspension under the regulations may take effect;

- (d) provision for review of any suspension or waiver of provisions under a resolution instrument.
- (3) Regulations under this paragraph are subject to the negative procedure.

*Recovery of expenses*

- 86 (1) The Bank may, in making a resolution instrument, share transfer instrument or property transfer instrument in relation to a CCP, direct that CCP to pay the Bank a specified fee to cover expenses reasonably incurred by the Bank in connection with exercising that option.
- (2) The Treasury may direct a CCP in relation to which the Bank has made a resolution instrument, share transfer instrument or property transfer instrument to pay the Treasury a specified fee to cover expenses reasonably incurred by the Treasury in connection with the exercise by the Bank of that power in relation to the CCP.

*Compensation scheme*

- 87 (1) The Treasury may by regulations make provision for protecting the financial interests of relevant persons in connection with the making of a stabilisation instrument in respect of a CCP.
- (2) For the purposes of sub-paragraph (1) regulations may make provision establishing a scheme, which may for example include provision—
- (a) for determining whether relevant persons should be paid compensation or providing for relevant persons to be paid compensation;
  - (b) for paying any compensation (including payments in instalment or subject to terms and conditions);
  - (c) under which specified relevant persons become entitled to the proceeds of disposal of things transferred under a share transfer instrument or property transfer instrument.
- (3) In making regulations under this paragraph the Treasury must have regard (among other matters) to the desirability of ensuring that any person who is a relevant person before the making of a stabilisation instrument does not receive less favourable treatment than they would have received had—
- (a) the CCP entered insolvency immediately before the stabilisation instrument was made, and
  - (b) all the relevant rules of the CCP been applied in the period leading up to the insolvency.
- (4) The regulations may provide for the amount of compensation payable to relevant persons to be determined by a person appointed in accordance with the regulations (an “independent valuer”).
- (5) The regulations may make such further provision about independent valuers as the Treasury consider to be appropriate, including (among other things)—
- (a) provision about appointment and tenure,
  - (b) provision for remuneration of independent valuers and their staff,
  - (c) provision conferring functions on independent valuers (including conferring a discretion),

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- (d) provision specifying principles to be applied by independent valuers to determine the amount of compensation,
  - (e) provision about the procedure to be followed by independent valuers,
  - (f) provision about the liability of independent valuers, and
  - (g) provision about appeals against decisions by independent valuers (including conferring jurisdiction on a court or tribunal).
- (6) The regulations may provide for compensation or other payments to be made by—
- (a) the Treasury, or
  - (b) any other specified persons.
- (7) In this paragraph—
- references to “insolvency” include a reference to—
    - (a) liquidation,
    - (b) administration,
    - (c) receivership,
    - (d) a composition with creditors, and
    - (e) a scheme of arrangement;
  - “relevant person”, in relation to a CCP, means—
    - (a) clearing members of the CCP;
    - (b) creditors of the CCP;
    - (c) shareholders of the CCP;
    - (d) clients within the meaning of Article 2 of EMIR where they have a contractual relationship as principal with the CCP.
- (8) Regulations under this paragraph are subject to the affirmative procedure.

*Instruments: notification of members and creditors*

- 88 (1) This paragraph applies where the Bank has applied one or more of the stabilisation options in respect of a CCP.
- (2) Except where securities issued by the CCP have been admitted to trading on a regulated market (within the meaning given in section 103(1) of FSMA 2000), the Bank must send a copy of any property transfer instrument, share transfer instrument or resolution instrument made in respect of the CCP to each of the following persons who are known to the Bank—
- (a) the CCP’s shareholders or, if the CCP is an unincorporated association, its members, and
  - (b) creditors of the CCP.

*General continuity obligation: property transfers*

- 89 (1) In this paragraph—
- (a) “residual CCP” means a CCP all or part of whose business has been transferred under a property transfer instrument in accordance with paragraph 27(2), 29(3), 66(2) or 73(2),
  - (b) “group company” means anything which is, or was immediately before the transfer, a group undertaking in relation to a residual CCP,

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- (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006,
  - (d) “the transferred business” means the part of the CCP’s business that has been transferred, and
  - (e) “transferee” means a commercial purchaser or bridge central counterparty to whom all or part of the transferred business has been transferred.
- (2) In this paragraph a reference to insolvency includes a reference to liquidation, administration, receivership, composition with creditors and a scheme of arrangement.
  - (3) The residual CCP and each group company must provide such services and facilities as are required to enable a transferee to operate the transferred business, or part of it, effectively.
  - (4) The duty under sub-paragraph (3) (the “continuity obligation”) may be enforced as if created by contract between the residual CCP or group company and the transferee.
  - (5) The continuity obligation continues to apply despite the residual CCP or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.
  - (6) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
  - (7) But if the services and facilities provided in pursuance of the continuity obligation were provided to the CCP whose business has been transferred, under an agreement with that CCP, before the property transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and sub-paragraph (6) does not apply).
  - (8) The continuity obligation is not limited to the provision of services or facilities directly to a transferee.
  - (9) The Bank may, with the consent of the Treasury, by notice to the residual CCP or a group company state that in the Bank’s opinion—
    - (a) specified activities are required to be undertaken in accordance with the continuity obligation;
    - (b) activities are required to be undertaken in accordance with the continuity obligation on specified terms.
  - (10) A notice under sub-paragraph (9) is to be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

*Special continuity obligations: property transfers*

- 90 (1) Expressions in this paragraph have the same meaning as in paragraph 89.
- (2) The Bank may—
  - (a) cancel a contract or other arrangement between the residual CCP and a group company or a third party (whether or not rights or obligations under it have been transferred to a transferee);

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- (b) modify the terms of a contract or other arrangement between the residual CCP and a group company or a third party (whether or not rights or obligations under it have been transferred to a transferee);
  - (c) add or substitute a transferee as a party to a contract or other arrangement between the residual CCP and a group company or a third party;
  - (d) confer and impose rights and obligations on a group company or third party and a transferee, which must have effect as if created by contract between them;
  - (e) confer and impose rights and obligations on the residual CCP and a transferee which must have effect as if created by contract between them.
- (3) In modifying or setting terms under sub-paragraph (2) the Bank must aim, so far as is reasonably practicable, to preserve or include—
- (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.
- (4) The power under sub-paragraph (2)—
- (a) may be exercised only in so far as the Bank thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business, or part of it, effectively,
  - (b) may be exercised only with the consent of the Treasury, and
  - (c) must be exercised by way of provision in a property transfer instrument.
- (5) An obligation imposed on the residual CCP or a group company under sub-paragraph (2)(d) or (e) continues to apply despite the residual CCP or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.

*Continuity obligations: onward property transfers*

- 91 (1) In this paragraph—
- (a) “onward transfer” means a transfer of property, rights or liabilities (whether or not under a power in this Schedule) from—
    - (i) a person who is a transferee under a property transfer instrument under paragraph 29(3) (an “original transferee”), or
    - (ii) a CCP, securities issued by which were earlier transferred by a share transfer instrument under paragraph 29(3) or 30(2), and
  - (b) the person to whom the onward transfer is made is referred to as an “onward transferee”.
- (2) The Bank may—
- (a) provide for an obligation under paragraph 89 to apply in respect of an onward transferee;
  - (b) extend paragraph 90 so as to permit action to be taken under paragraph 90(2) for the purpose of enabling an onward transferee to operate the transferred business, or part of it, effectively.
- (3) Sub-paragraph (2) may be relied on to impose obligations on—
- (a) an original transferee (where the original transfer was a property transfer),

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- (b) a residual CCP within the meaning of paragraph 89 (where the original transfer was a property transfer),
  - (c) the CCP (where the original transfer was a share transfer),
  - (d) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of anything within paragraphs (a) to (c), or
  - (e) any combination of the above.
- (4) Sub-paragraph (2) may be used to impose obligations—
- (a) in addition to obligations under or by virtue of paragraph 89 or 90, or
  - (b) replacing obligations under or by virtue of either of those paragraphs to a specified extent.
- (5) A power under sub-paragraph (2) is exercisable by giving a notice to each person—
- (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (6) Paragraphs 89(3) to (10) and 90(3) and (4) apply to an obligation as applied under sub-paragraph (2)—
- (a) construing “transferred business” as the business transferred by means of the onward transfer, and
  - (b) with any other necessary modification.
- (7) The Bank may act under or by virtue of sub-paragraph (2) only with the consent of the Treasury.

*General continuity obligation: share transfers*

- 92 (1) In this paragraph and paragraph 93—
- (a) “transferred CCP” means a CCP all or part of the ownership of which has been transferred in accordance with paragraph 27(2), 29(3), or 30(2),
  - (b) “former group company” means anything which was a group undertaking in relation to the transferred CCP immediately before the transfer (whether or not it is also a group undertaking in relation to the transferred CCP immediately after the transfer),
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006.
- (2) In this paragraph a reference to insolvency includes a reference to liquidation, administration, receivership, composition with creditors and a scheme of arrangement.
- (3) Each former group company must provide such services and facilities as are required to enable the transferred CCP to operate effectively.
- (4) The duty under sub-paragraph (3) (the “continuity obligation”) may be enforced as if created by contract between the transferred CCP and the former group company.
- (5) The continuity obligation continues to apply despite the former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.

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- (6) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (7) But if the services and facilities provided in pursuance of the continuity obligation were provided to the transferred CCP, under an agreement with that CCP, before the share transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and sub-paragraph (6) does not apply).
- (8) The continuity obligation is not limited to the provision of services or facilities directly to the transferred CCP.
- (9) The Bank may by notice to a former group company state that in the Bank's opinion—
  - (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required to be undertaken in accordance with the continuity obligation on specified terms.
- (10) A notice under sub-paragraph (9) is to be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.
- (11) The Bank may act under or by virtue of sub-paragraph (9) only with the consent of the Treasury.

*Special continuity obligations: share transfers*

- 93 (1) Expressions in this paragraph have the same meaning as in paragraph 92.
- (2) The Bank may—
    - (a) cancel a contract or other arrangement between the transferred CCP and a former group company or a third party;
    - (b) modify the terms of a contract or other arrangement between the transferred CCP and a former group company or a third party;
    - (c) confer and impose rights and obligations on a former group company or a third party and the transferred CCP, which has effect as if created by contract between them.
  - (3) In modifying or setting terms under sub-paragraph (2) the Bank must aim, so far as is reasonably practicable, to preserve or include—
    - (a) a provision for reasonable consideration, and
    - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.
  - (4) The power under sub-paragraph (2)—
    - (a) may be exercised only in so far as the Bank thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferred CCP to operate effectively,
    - (b) may be exercised by the Bank only with the consent of the Treasury, and
    - (c) must be exercised by way of provision in a share transfer instrument.
  - (5) An obligation imposed on the transferred CCP or a former group company under sub-paragraph (2)(b) or (c) continues to apply despite the transferred CCP or former



group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.

*Continuity obligations: onward share transfers*

- 94 (1) In this paragraph “onward transfer” means a transfer (whether or not under a power in this Schedule) of securities issued by a CCP where—
- (a) securities issued by the CCP were earlier transferred by a share transfer instrument under paragraph 29(3) or 30(2), or
  - (b) the CCP was the transferee under a property transfer instrument under paragraph 29(3).
- (2) The Bank may—
- (a) provide for an obligation under paragraph 92 to apply in respect of the CCP after the onward transfer;
  - (b) extend paragraph 93 so as to permit action to be taken under paragraph 93(2) to enable the CCP to operate effectively after the onward transfer.
- (3) Sub-paragraph (2) may be relied on to impose obligations on—
- (a) the CCP,
  - (b) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of the CCP,
  - (c) anything which is or was a group undertaking of the residual CCP (in a case to which sub-paragraph (1)(b) applies), or
  - (d) any combination of the above.
- (4) Sub-paragraph (2) may be used to impose obligations—
- (a) in addition to obligations under or by virtue of paragraph 92 or 93, or
  - (b) replacing obligations under or by virtue of either of those paragraphs to a specified extent.
- (5) A power under sub-paragraph (2) is exercisable by giving a notice to each person—
- (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (6) Paragraphs 92(4) to (10) and 94(3) and (4) apply to an obligation as applied under sub-paragraph (2) with any necessary modification.
- (7) The Bank may act under or by virtue of sub-paragraph (2) only with the consent of the Treasury.

*Continuity obligations: consideration and terms*

- 95 (1) The Treasury may by regulations specify matters which are to be or not to be considered in determining—
- (a) what amounts to reasonable consideration for the purpose of paragraphs 89 to 94;
  - (b) what provisions to include in accordance with paragraph 90(3)(b) or 93(3)(b).
- (2) The Bank may give guarantees or indemnities in respect of consideration for services or facilities provided or to be provided in pursuance of a continuity obligation.

- (3) Regulations under this paragraph are subject to the negative procedure.

*Continuity obligations: termination*

- 96 (1) The Bank may by notice terminate an obligation arising under paragraph 89 or 92.
- (2) The power under sub-paragraph (1) is exercisable by giving a notice to each person—
- (a) on whom the obligation is imposed, or
  - (b) who has benefited or might have expected to benefit from the obligation.
- (3) A reference in sub-paragraph (1) to obligations under a paragraph includes a reference to obligations under that paragraph as applied under paragraph 91 or 94.

*Suspension of obligations*

- 97 (1) Where the Bank is exercising a stabilisation power in respect of a CCP (a “CCP under resolution”) the Bank may suspend obligations to make a payment, or delivery, under a contract where one of the parties to the contract is the CCP under resolution.
- (2) A suspension imposed under sub-paragraph (1) does not apply to—
- (a) payments of eligible claims, or
  - (b) payments or deliveries to excluded persons (see paragraph 100).
- (3) A suspension imposed under sub-paragraph (1)—
- (a) begins when the instrument providing for the suspension is first published,
  - (b) 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, and
  - (c) subject to sub-paragraph (2), suspends all obligations to make a payment or delivery under the contract in question, whether the obligation concerned is that of the CCP under resolution or of any other party to the contract.
- (4) Where a payment or delivery under the contract concerned first fell due within the period of the suspension, that payment or delivery is treated as being due immediately on the expiry of the suspension.
- (5) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.
- (6) The Bank must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in sub-paragraph (1).
- (7) In this paragraph, “eligible claim” means a claim in respect of which compensation is payable under the Financial Services Compensation Scheme.

*Restriction of security interests*

- 98 (1) Where the Bank is exercising a stabilisation power in respect of a CCP (a “CCP under resolution”) the Bank may suspend the rights of a secured creditor of the CCP to enforce any security interest the creditor has in relation to any assets of the CCP.
- (2) A suspension under sub-paragraph (1)—

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- (a) begins when the instrument providing for the suspension is first published, and
  - (b) must end no later than midnight at the end of the first business day following the day on which that instrument is published.
- (3) But the Bank 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 CCP under resolution which has been pledged or provided to the excluded person in question as collateral or as cover for margin.
- (4) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.
- (5) Where the power in sub-paragraph (1) is being exercised in a partial property transfer, the Bank must ensure that any restrictions on the enforcement of security interests which it imposes under that sub-paragraph are applied consistently for all CCP group companies in respect of which the Bank is exercising a stabilisation power.
- (6) The Bank must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in sub-paragraph (1).
- (7) For the purposes of this paragraph, 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*

- 99 (1) The Bank may suspend the termination right 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 paragraph if—
- (a) one of the parties to the contract is a CCP in respect of which the Bank is exercising a stabilisation power (a “CCP under resolution”) and all the obligations under the contract to make a payment, make delivery or provide collateral continue to be performed, or
  - (b) one of the parties to the contract is a subsidiary of a CCP under resolution and the condition in sub-paragraph (3) is met.
- (3) The condition is that—
- (a) the obligations of the subsidiary are guaranteed or otherwise supported by the CCP under resolution,
  - (b) the termination rights under the contract are triggered by the insolvency or the financial condition of the CCP under resolution, and
  - (c) if a property transfer instrument has been made in relation to the CCP under resolution—
    - (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 is providing adequate protection for the performance of the obligations of the subsidiary under the contract in any other way.

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- (4) The Bank must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in sub-paragraph (1).
- (5) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.
- (6) A suspension imposed under sub-paragraph (1)—
  - (a) begins when the instrument providing for the suspension is first published, and
  - (b) must end no later than midnight at the end of the first business day following the day on which that instrument is published.
- (7) 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 that the rights and liabilities of the CCP under resolution 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 share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.
- (8) If—
  - (a) no notice has been given by the Bank under sub-paragraph (7), and
  - (b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under sub-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.
- (9) But, where the rights and liabilities of the CCP under resolution or the subsidiary under the contract have been transferred to another undertaking, sub-paragraph (8) applies only if the event giving rise to the termination right has been triggered by that undertaking.
- (10) For the purposes of this paragraph, “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: general provision*

100 For the purposes of paragraphs 97 to 99—

“business day” means any day other than a Saturday, a Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

“excluded person” means—

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- (a) a person who has been declared to be, or who is an operator of, a designated system under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979),
- (b) a CCP,
- (c) a third-country central counterparty (within the meaning given by section 285 of FSMA 2000), or
- (d) a central bank.

#### *Stay on terminating membership*

- 101 (1) This paragraph applies where the Bank has made a resolution instrument, share transfer instrument or a property transfer instrument in relation to a CCP.
- (2) A clearing member of the CCP may not at any time during the relevant period terminate their membership of the CCP.
- (3) The “relevant period” for the purposes of sub-paragraph (2) is the period of 48 hours beginning with the time the instrument in question comes into force.
- (4) A resolution instrument, share transfer instrument or property transfer instrument in relation to a CCP may provide for sub-paragraph (2)—
- (a) not to apply in relation to clearing members of the CCP, or
  - (b) to apply in relation to clearing members of the CCP only to the extent specified by the Bank in the instrument.
- (5) Provision may be made under sub-paragraph (4) only if the Bank considers that such provision would advance one or more of the special resolution objectives.

#### *Restriction on remuneration*

- 102 (1) The Bank may restrict or prohibit for a specified period discretionary payments to specified employees or specified shareholders of a CCP.
- (2) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument or resolution instrument.
- (3) The specified period for the purposes of sub-paragraph (1) must not exceed 5 years (but this is subject to sub-paragraph (4)).
- (4) A provision under sub-paragraph (1) restricting or prohibiting discretionary payments in relation to a CCP ceases to have effect if—
- (a) any of the conditions under paragraph 17 cease to be met in relation to the CCP, and
  - (b) the Bank is satisfied that following the exercise of any of the stabilisation powers in relation to the CCP, the CCP has sufficient resources to pay compensation and repay any public funds in connection with the exercise of those powers.
- (5) In this paragraph—
- “discretionary payments” has the meaning given in paragraph 13;
  - “specified” means specified in the instrument under sub-paragraph (2).

### *Pensions*

- 103 (1) This paragraph applies to—
- (a) share transfer instruments, and
  - (b) property transfer instruments.
- (2) An instrument may make provision—
- (a) about the consequences of a transfer for a pension scheme;
  - (b) about property, rights and liabilities of any pension scheme of the CCP.
- (3) In particular, an instrument may—
- (a) modify any rights and liabilities,
  - (b) apportion rights and liabilities, or
  - (c) transfer property of, or accrued rights in, one pension scheme to another (with or without consent).
- (4) Provision by virtue of this paragraph may (but need not) amend the terms of a pension scheme.
- (5) A share or property transfer instrument may make provision in reliance on this paragraph only with the consent of the Treasury.
- (6) In this paragraph—
- (a) “pension scheme” includes any arrangement for the payment of pension, allowances and gratuities, and
  - (b) a reference to a pension scheme of a CCP is a reference to a scheme in respect of which the CCP, or a CCP group company, is or was an employer.

### *Disputes*

- 104 (1) This paragraph applies to—
- (a) share transfer instruments,
  - (b) property transfer instruments,
  - (c) resolution instruments, and
  - (d) third-country instruments.
- (2) An instrument may include provision for disputes to be determined in a specified manner.
- (3) Provision by virtue of sub-paragraph (2) may, in particular—
- (a) confer jurisdiction on a court or tribunal;
  - (b) confer discretion on a specified person.

### *Tax*

- 105 (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of a stabilisation power.
- (2) Regulations may relate to—
- (a) capital gains tax,
  - (b) corporation tax,
  - (c) income tax,
  - (d) inheritance tax,

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- (e) stamp duty,
  - (f) stamp duty land tax, or
  - (g) stamp duty reserve tax.
- (3) Regulations may apply to—
- (a) anything done in connection with an instrument,
  - (b) things transferred or otherwise affected by virtue of an instrument,
  - (c) a transferor or transferee under an instrument, and
  - (d) persons otherwise affected by an instrument.
- (4) Regulations may—
- (a) modify or disapply an enactment;
  - (b) provide for an action to have or not have specified consequences;
  - (c) provide for specified classes of property (including securities), rights or liabilities to be treated, or not treated, in a specified way;
  - (d) withdraw or restrict a relief;
  - (e) extend, restrict or otherwise modify a charge to tax;
  - (f) provide for matters to be determined by the Treasury in accordance with provision made by or in accordance with the regulations.
- (5) Regulations may make provision for the fiscal consequences of the exercise of a stabilisation power in respect of things done—
- (a) during the period of three months before the date on which the stabilisation power is exercised, or
  - (b) on or after that date.
- (6) In relation to the exercise of a supplemental, onward, bridge or subsequent instrument under paragraph 49, 50, 52, 66, 67, 69, 71, 73 or 82, in sub-paragraph (5)(a) above “the stabilisation power” is a reference to the first stabilisation power in connection with which the supplemental, onward, bridge or subsequent instrument is made.
- (7) The Treasury may by regulations amend sub-paragraph (2) so as to—
- (a) add an entry, or
  - (b) remove an entry.
- (8) Regulations under this paragraph are subject to the affirmative procedure.

#### *Stay or sist of legal proceedings*

- 106 (1) This paragraph applies where—
- (a) the Bank has exercised a stabilisation power in relation to a CCP or a CCP group company, and
  - (b) the CCP or CCP group company is a party to legal proceedings before a court in the United Kingdom.
- (2) The Bank may apply to that court for a stay or sist of proceedings where the Bank reasonably considers that a stay or sist of those proceedings is necessary for an effective application of the stabilisation options or the stabilisation powers.

#### *Insolvency proceedings*

- 107 (1) This paragraph applies to a CCP if—



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- (a) a stabilisation power has been exercised in respect of the CCP, or
  - (b) the conditions in paragraph 17 are met in relation to the CCP.
- (2) Insolvency proceedings may not be commenced in relation to the CCP except by, or with the consent of, the Bank.
- (3) For the purposes of sub-paragraph (2), the commencement of insolvency proceedings means—
- (a) making an application for an administration order,
  - (b) presenting a petition for winding up,
  - (c) proposing a resolution for voluntary winding up, or
  - (d) appointing an administrator.

*Recognition of transferee company*

- 108 (1) The Bank may provide for a company to which the business of a CCP is transferred in accordance with paragraph 29(3) to be treated as a CCP for the purposes of FSMA 2000—
- (a) for a specified period, or
  - (b) until a specified event occurs.
- (2) The provision may have effect—
- (a) for a period specified in the instrument, or
  - (b) until the occurrence of an event specified or described in the instrument.
- (3) The power under this paragraph—
- (a) may be exercised only with the consent of the Treasury, and
  - (b) must be exercised by way of provision in a property transfer instrument.

*International obligation notice: general*

- 109 (1) The Bank may not exercise a stabilisation power in respect of a CCP if the Treasury notify the Bank that the exercise would be likely to contravene an international obligation of the United Kingdom.
- (2) A notice under sub-paragraph (1)—
- (a) must be in writing, and
  - (b) may be withdrawn (generally, partially or conditionally).
- (3) If the Treasury give a notice under sub-paragraph (1) the Bank must consider other exercises of the stabilisation powers with a view to—
- (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury’s notice was based.
- (4) The Treasury may by notice to the Bank disapply sub-paragraph (3) in respect of a CCP and a notice may be revoked by further notice.

*International obligation notice: bridge central counterparty*

- 110 (1) This paragraph applies where the Bank has transferred all or part of a CCP’s business to a bridge central counterparty.

- (2) The Bank must comply with any notice of the Treasury requiring the Bank, for the purpose of ensuring compliance by the United Kingdom with its international obligations—
  - (a) to take specified action under this Schedule in respect of the bridge central counterparty, or
  - (b) not to take specified action under this Schedule in respect of the bridge central counterparty.
- (3) A notice under sub-paragraph (2)—
  - (a) must be in writing, and
  - (b) may be withdrawn (generally, partially or conditionally).
- (4) A notice may include requirements about timing.

*Public funds: general*

- 111 (1) The Bank may not exercise a stabilisation power in respect of a CCP without the Treasury’s consent if the exercise of that power would be likely to have implications for public funds.
- (2) In sub-paragraph (1)—
- (a) “public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury, and
  - (b) action has implications for public funds if it would or might involve or lead to a need for the application of public funds.
- (3) The Treasury may by regulations specify considerations which are to be, or not to be, taken into account in determining whether action has implications for public funds for the purpose of sub-paragraph (1).
- (4) If the Treasury refuse consent under sub-paragraph (1), the Bank must consider other exercises of the stabilisation powers with a view to—
- (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury’s refusal was based.
- (5) The Treasury may by notice to the Bank disapply sub-paragraph (4) in respect of a CCP; and a notice may be revoked by further notice.
- (6) Regulations under this paragraph are subject to the negative procedure.

*Public funds: bridge central counterparty*

- 112 (1) This paragraph applies where the Bank has transferred all or part of a CCP’s business to a bridge central counterparty.
- (2) The Bank may not take action in respect of the bridge central counterparty without the Treasury’s consent if the action would be likely to have implications for public funds.
- (3) Paragraph 111(2) and (3) have effect for the purposes of this paragraph.

*Private sector purchaser: report*

- 113 (1) This paragraph applies where the Bank sells all or part of a CCP's business to a commercial purchaser.
- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under paragraph 27(2).
- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under paragraph 27(2).

*Bridge central counterparty: report*

- 114 (1) Where the Bank transfers all or part of a CCP's business to a bridge central counterparty, the Bank must report to the Chancellor of the Exchequer about the activities of the bridge central counterparty.
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer to the bridge central counterparty.
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The Chancellor of the Exchequer must lay a copy of each report under sub-paragraph (2) or (3) before Parliament.
- (5) The Bank must comply with any request of the Treasury for a report dealing with specified matters in relation to a bridge central counterparty.
- (6) A request under sub-paragraph (5) may include provision about—
- (a) the content of the report;
  - (b) timing.

*Resolution instruments: report*

- 115 (1) This paragraph applies where the Bank makes one or more resolution instruments in respect of a CCP.
- (2) The Bank must, on request by the Treasury, report to the Chancellor of the Exchequer about—
- (a) the exercise of the power to make the resolution instrument, and
  - (b) any other matters in relation to the CCP that the Treasury may specify.
- (3) In relation to the matter specified in sub-paragraph (2)(a), 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 sub-paragraph (2) before Parliament.

*Transfer of ownership: report*

- 116 (1) This paragraph applies where the Bank makes one or more share transfer instruments in respect of a CCP under paragraph 30(2).
- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that paragraph.
- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under paragraph 30(2).

*Sale to commercial purchaser, transfer to bridge central counterparty and transfer of ownership: conditions for group companies*

- 117 (1) The Bank may exercise a stabilisation power in respect of a CCP group company in accordance with paragraph 27(2), 29(3) or 30(2) if each of the following conditions is met.
- (2) Condition 1 is that the Bank is satisfied that the general conditions for the exercise of a stabilisation power set out in paragraph 17 are met in respect of a CCP in the same group.
- (3) Condition 2 (which does not apply in a financial assistance case) is that the Bank is satisfied that the exercise of the power in respect of the CCP group company is necessary, having regard to the public interest in—
- (a) the stability of the UK financial system, and
  - (b) the maintenance of public confidence in the stability of that system.
- (4) Condition 3 (which applies only in a financial assistance case) is that—
- (a) the Treasury have recommended the Bank to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
  - (b) in the Bank’s opinion, exercise of the power in respect of the CCP group company is an appropriate way to provide that protection.
- (5) Condition 4 is that the CCP group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank must consult—
- (a) the Treasury,
  - (b) if the CCP is a PRA-authorized person, the PRA, and
  - (c) the FCA.
- (7) In exercising a stabilisation power in reliance on this paragraph the Bank must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.
- (8) In this paragraph “financial assistance case” means a case in which the Treasury notify the Bank that they have provided financial assistance in respect of a CCP in the same group for the purpose of resolving or reducing a serious threat to the stability of the UK financial system.

*Paragraph 117: supplemental*

- 118 (1) In paragraph 117 references to CCPs includes references to CCP group companies.
- (2) Where the Bank exercises a stabilisation power in respect of a CCP group company in reliance on paragraph 117, the provisions relating to the stabilisation powers contained in this Schedule (except paragraphs 17 and 19) and any other enactment apply (with any necessary modifications) as if the CCP group company were a CCP.

## PART 6

### INFORMATION, INVESTIGATION AND ENFORCEMENT

#### *Information*

- 119 (1) This paragraph applies only to information and documents reasonably required in connection with the exercise by the Bank of functions conferred by or under this Schedule.
- (2) The Bank may, by notice in writing given to a CCP or CCP group company, require the CCP or CCP group company—
- (a) to provide specified information or information of a specified description, or
  - (b) to produce specified documents or documents of a specified description.
- (3) The information or documents must be provided or produced—
- (a) before the end of such reasonable period as may be specified, and
  - (b) at such place as may be specified.
- (4) An officer who has written authorisation from the Bank to do so may require a CCP or CCP group company without delay—
- (a) to provide the officer with specified information or information of a specified description, or
  - (b) to produce to the officer specified documents or documents of a specified description.
- (5) The Bank may require any information provided under this paragraph to be provided in such form as it may reasonably require.
- (6) The Bank may require—
- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,
- as it may reasonably require.
- (7) The powers conferred by sub-paragraphs (2) and (4) may also be exercised by the Bank to impose requirements on a person who is connected with a CCP.
- (8) “Officer” means an officer of the Bank, and includes a member of the Bank’s staff or an agent of the Bank.
- (9) “Specified” means—
- (a) in sub-paragraphs (2) and (3), specified in the notice, and
  - (b) in sub-paragraph (4), specified in the authorisation.

- (10) For the purposes of this paragraph, a person is connected with a CCP if that person is or has at any relevant time been—
- (a) a member of that CCP’s group,
  - (b) a controller of that CCP (within the meaning of section 422 of FSMA 2000), or
  - (c) in relation to that CCP, a person mentioned in Part 1 of Schedule 15 to FSMA 2000 (reading references in that Part to the authorised person as references to the CCP).

### *Reports by skilled persons*

- 120 (1) This paragraph applies where the Bank has required or could require a person to whom sub-paragraph (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”) under paragraph 119.
- (2) This sub-paragraph applies to—
- (a) a CCP,
  - (b) a member of a CCP’s group, or
  - (c) a person who has at any relevant time been a person falling within paragraph (a) or (b),
- who is, or was at the relevant time, carrying on a business.
- (3) The Bank may either—
- (a) by notice in writing given to the person concerned, require that person to provide the Bank with a report on the matter concerned, or
  - (b) itself appoint a person to provide the Bank with a report on the matter concerned.
- (4) When acting under sub-paragraph (3)(a), the Bank may require the report to be in such form as may be specified in the notice.
- (5) The Bank must give notice of an appointment under sub-paragraph (3)(b) to the person concerned.
- (6) The person appointed to make a report—
- (a) must be a person appearing to the Bank to have the skills necessary to make a report on the matter concerned, and
  - (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the Bank.
- (7) It is the duty of—
- (a) the person concerned, and
  - (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,
- to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by sub-paragraph (7) is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

- (9) The Bank may, in relation to an appointment under sub-paragraph (3)(b), require a CCP to pay to the Bank a fee to cover the expenses incurred by the Bank in relation to the appointment.

*Appointment of persons to carry out general investigations*

- 121 (1) This paragraph applies only for the purposes of the functions of the Bank conferred by or under this Schedule.
- (2) If it appears to the Bank that there is a good reason for doing so, the Bank may appoint one or more competent persons to conduct an investigation on its behalf into—
- (a) the nature, conduct or state of the business of a CCP,
  - (b) a particular aspect of that business, or
  - (c) the ownership or control of a CCP.
- (3) If a person appointed under sub-paragraph (2) thinks it necessary for the purposes of the investigation, that person may also investigate the business of a person who is or has at any relevant time been a member of a group of which the CCP under investigation is part.
- (4) A person appointed under sub-paragraph (2) who decides to investigate the business of any person under sub-paragraph (3) must give that person written notice of that decision.
- (5) In this paragraph, “business” includes any part of a business.

*Appointment of person to carry out investigations in particular cases*

- 122 (1) This paragraph applies if it appears to the Bank that there are circumstances suggesting that a person may have failed to comply with any relevant requirement.
- (2) The Bank may appoint one or more competent persons to conduct an investigation on its behalf.
- (3) In this paragraph “relevant requirement” means a requirement imposed by or under this Schedule.

*Investigations etc in support of foreign resolution authorities*

- 123 (1) On receiving a request to which sub-paragraph (3) applies from a foreign resolution authority, the Bank may—
- (a) exercise the power conferred by paragraph 119, or
  - (b) appoint one or more competent persons to investigate any matter.
- (2) Accordingly, for the purposes of sub-paragraph (1)(a), paragraph 119 has effect as if it also referred to information and documents reasonably required by the Bank to meet such a request.
- (3) This sub-paragraph applies to a request if the request is made by a foreign resolution authority in connection with the exercise by that authority of functions in relation to third-country resolution action (within the meaning of paragraph 145) corresponding to the stabilisation powers of the Bank under this Schedule.



- (4) An investigator appointed under sub-paragraph (1)(b) has the same powers as an investigator appointed under paragraph 122.
- (5) In deciding whether or not to exercise its investigative power, the Bank may take into account in particular—
  - (a) whether, in the territory of the foreign resolution authority concerned, corresponding assistance would be given to the Bank,
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom,
  - (c) the seriousness of the case and its importance to persons in the United Kingdom, and
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (6) The Bank may decide that it will not exercise its investigative power unless the foreign resolution authority undertakes to make such contribution towards the cost of its exercise as the Bank considers appropriate.
- (7) “Foreign resolution authority” means an authority, in a country or territory outside the United Kingdom, which exercises functions referred to in sub-paragraph (3).
- (8) “Investigative power” means one of the powers mentioned in sub-paragraph (1).

*Investigations: general*

- 124 (1) This paragraph applies if the Bank appoints one or more competent persons (“investigators”) under paragraph 121 or 122 to conduct an investigation on its behalf.
- (2) The Bank must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).
  - (3) A notice under sub-paragraph (2) must—
    - (a) specify the provisions under which, and as a result of which, the investigator was appointed, and
    - (b) state the reason for the investigator’s appointment.
  - (4) Nothing prevents the Bank from appointing a person who is a member of its staff as an investigator.
  - (5) An investigator must make a report of the investigation to the Bank.
  - (6) The Bank may, by a direction to an investigator, control—
    - (a) the scope of the investigation,
    - (b) the period during which the investigation is to be conducted,
    - (c) the conduct of the investigation, and
    - (d) the reporting of the investigation.
  - (7) A direction may, in particular—
    - (a) confine the investigation to particular matters;
    - (b) extend the investigation to additional matters;

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- (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
  - (d) require the investigator to make such interim reports as are so specified.
- (8) If there is a change in the scope or conduct of the investigation and, in the opinion of the Bank, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.
- (9) If the appointment is under paragraph 122, sub-paragraphs (2) and (8) do not apply if the Bank believes that the notice required by the sub-paragraph in question would be likely to result in the investigation being frustrated.

#### *Powers of persons appointed under paragraph 121*

- 125 (1) This paragraph applies to an investigator appointed under paragraph 121 to conduct an investigation on behalf of the Bank.
- (2) The investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—
- (a) to attend before the investigator at a specified time and place and answer questions, or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (3) The investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (4) A requirement under sub-paragraph (2) or (3) may be imposed only so far as the investigator reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- (5) For the purposes of this paragraph, a person (“B”) is connected with the person under investigation (“A”) if B is or has at any relevant time been—
- (a) a member of A’s group;
  - (b) a controller of A;
  - (c) in relation to A, a person mentioned in Part 1 or 2 of Schedule 15 to FSMA 2000 (reading references in those Parts to the authorised person or the person under investigation as references to A).
- (6) In this paragraph—
- “controller” has the meaning given in section 422 of FSMA 2000;
  - “specified” means specified in a notice in writing.

#### *Powers of persons appointed as a result of paragraph 122*

- 126 (1) This paragraph applies to an investigator appointed under paragraph 122 to conduct an investigation on behalf of the Bank.
- (2) The investigator has—
- (a) the powers conferred by paragraph 125 on an investigator appointed under paragraph 121, and
  - (b) the powers conferred by sub-paragraphs (3) and (4).

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- (3) The investigator may require the person who is the subject of the investigation (“the person under investigation”) to give the investigator all assistance in connection with the investigation which that person is reasonably able to give.
- (4) The investigator may require a person who is neither the person under investigation nor a person connected with the person under investigation—
  - (a) to attend before the investigator at a specified time and place and answer questions, or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (5) A requirement may only be imposed under sub-paragraph (4) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.
- (6) Paragraph 125(5) and (6) applies for the purposes of this paragraph.

*Admissibility of statements made to investigators*

- 127 (1) A statement made to an investigator appointed under paragraph 121 or 122 by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirement governing the admissibility of evidence in the circumstances in question.
- (2) But in criminal proceedings in which that person is charged with an offence to which this sub-paragraph applies—
- (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked—
- by or on behalf of the prosecution, or the Bank (as the case may be), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Sub-paragraph (2) applies to any offence other than one under—
- (a) paragraph 132,
  - (b) section 398 of FSMA 2000 (misleading FCA or PRA: residual cases),
  - (c) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
  - (d) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
  - (e) Article 10 of the Perjury (Northern Ireland) Order 1979 (false declarations etc).
- (4) “Information requirement” means a requirement imposed by an investigator under paragraph 125, 126 or 128.

*Information and documents: supplemental provision*

- 128 (1) If the Bank has power under this Schedule to require a person to produce a document but if it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.
- (2) If a document is produced in response to a requirement imposed under this Schedule, the person to whom it is produced may—

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- (a) take copies or extracts from the document, or
  - (b) require the person producing the document, or any relevant person to provide an explanation of the document.
- (3) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.
- (4) If the person to whom a document is so produced has reasonable grounds for believing—
- (a) that the document may have to be produced for the purposes of any legal proceedings, and
  - (b) that it might otherwise be unavailable for those purposes,
- it may be retained until the proceedings are concluded.
- (5) If a person who is required under this Schedule to produce a document fails to do so, the Bank or an investigator may require that person to state, to the best of that person's knowledge and belief, where the document is.
- (6) A lawyer may be required under this Schedule to furnish the name and address of the lawyer's client.
- (7) No person may be required under this Schedule to disclose information or produce a document in respect of which the person ("A") owes an obligation of confidence unless—
- (a) A is the person under investigation or a member of that person's group,
  - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group,
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
  - (d) the imposing on A of a requirement with respect to such information or document has been specifically authorised by the Bank.
- (8) If a person claims a lien on a document, its production under this Schedule does not affect the lien.
- (9) In this paragraph—
- “controller” has the meaning given by section 422 of FSMA 2000;
  - “investigator” means a person appointed under paragraph 121 or 122;
  - “relevant person”, in relation to a person who is required to produce a document, means a person who—
- (a) has been or is or is proposed to be a director or controller of that person,
  - (b) has been or is an auditor of that person,
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or
  - (d) has been or is an employee of that person.

#### *Protected items*

- 129 (1) A person may not be required under this Schedule to produce, disclose or permit the inspection of protected items.
- (2) “Protected items” means—

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- (a) communications between a professional legal adviser and that adviser's client or any person representing such a client which fall within sub-paragraph (3),
  - (b) communications between a professional legal adviser, that adviser's client or any person representing such a client and any other person which fall within sub-paragraph (3) (as a result of paragraph (b) of that sub-paragraph), and
  - (c) items which—
    - (i) are enclosed with, or referred to in, such communications,
    - (ii) fall within sub-paragraph (3), and
    - (iii) are in the possession of a person entitled to be in possession of them.
- (3) A communication or item falls within this sub-paragraph if it is made—
- (a) in connection with the giving of legal advice to the client, or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

#### *Entry of premises under warrant*

- 130 (1) A justice of the peace may issue a warrant under this paragraph if satisfied on information on oath given by or on behalf of the Secretary of State, the Bank or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
- (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and
  - (b) that on the premises specified in the warrant—
    - (i) there are documents which have been required, or
    - (ii) there is information which has been required.
- (3) The second set of conditions is—
- (a) that the premises specified in the warrant are premises of a CCP or a member of the same group as a CCP,
  - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and
  - (c) that if such a requirement were to be imposed—
    - (i) it would not be complied with, or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) The third set of conditions is—
- (a) that an offence mentioned in paragraph 132 has been (or is being) committed by any person,
  - (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed,
  - (c) that an information requirement could be imposed in relation to those documents or that information, and

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- (d) that if such a requirement were to be imposed—
  - (i) it would not be complied with, or
  - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) A warrant under this paragraph authorises a constable—
  - (a) to enter the premises specified in the warrant,
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this paragraph was issued (“the relevant kind”) or to take, in relation to any such documents or information, any such steps which may appear to be necessary for preserving them or preventing interference with them,
  - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,
  - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and
  - (e) to use such force as may be reasonably necessary.
- (6) A warrant under this paragraph may be executed by any constable.
- (7) The warrant may authorise persons to accompany any constable who is executing it.
- (8) The powers in sub-paragraph (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.
- (9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this paragraph.
- (10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this paragraph.
- (11) In the application of this paragraph to Northern Ireland the reference to a justice of the peace is a reference to a lay magistrate.
- (12) In the application of this paragraph to Scotland—
  - (a) for the reference to a justice of the peace substitute references to a justice of the peace or a sheriff, and
  - (b) for the references to information on oath substitute references to evidence on oath.
- (13) “Investigator” means an investigator appointed under paragraph 121 or 122.
- (14) “Information requirement” means a requirement imposed—
  - (a) by the Bank under paragraph 119 or 128, or
  - (b) by an investigator under paragraph 125, 126 or 128.

*Retention of documents obtained under paragraph 130*

- 131 (1) Any document of which possession is taken under paragraph 130 (“a seized document”) may be retained for so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates’ court, or in Scotland the sheriff, for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
- (3) If on an application under sub-paragraph (2) the court, or in Scotland the sheriff, cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under sub-paragraph (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
- (5) Any right to bring proceedings (as described in sub-paragraph (4)) may only be exercised within 6 months of the date of the order made under sub-paragraph (2) or (3).

*Offences etc*

- 132 (1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on the defaulter under paragraph 125, 126 or 128, the person imposing the requirement may certify that fact in writing to the court.
- (2) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if that person were in contempt.
- (3) “Officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.
- (4) A person who knows or suspects that an investigation is being or is likely to be conducted under paragraph 121, 122 or 123 is guilty of an offence if—
- (a) that person falsifies, conceals, destroys or otherwise disposes of a document which that person knows or suspects is or would be relevant to such an investigation, or
  - (b) that person causes or permits the falsification, concealment, destruction or disposal of such a document,
- unless that person shows that that person had no intention of concealing facts disclosed by the document from the investigator.
- (5) A person who, in purported compliance with a requirement imposed on that person by any relevant requirement—
- (a) provides information which that person knows to be false or misleading in a material particular, or
  - (b) recklessly provides information which is false or misleading in a material particular,
- is guilty of an offence.
- (6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under paragraph 130 is guilty of an offence.



- (7) A person guilty of an offence under sub-paragraph (4), (5) or (6) is liable, on summary conviction—
- (a) in England and Wales, to imprisonment for a term not exceeding 3 months or a fine, or both;
  - (b) In Scotland and Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.
- (8) In this paragraph—
- “court” means—
    - (a) the High Court,
    - (b) in Scotland, the Court of Session;
  - “relevant requirement” has the meaning given in paragraph 122.

#### *Prosecution of offences under paragraph 132*

- 133 (1) Proceedings for an offence under paragraph 132 may be instituted—
- (a) in England and Wales, only by the Bank or by or with the consent of the Director of Public Prosecutions, and
  - (b) in Northern Ireland, only by the Bank or by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (2) In exercising its power to institute proceedings for an offence under paragraph 132, the Bank must comply with any conditions or restrictions imposed in writing by the Treasury.
- (3) Conditions or restrictions may be imposed under sub-paragraph (2) in relation to proceedings generally, or such proceedings or categories of proceedings as the Treasury may direct.

#### *Offences under paragraph 132 by bodies corporate etc*

- 134 (1) If an offence under paragraph 132 committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on the part of an officer,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if that member were a director of the body.
- (3) If an offence under paragraph 132 committed by a partnership is shown—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on the part of a partner,
- the partner as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) In sub-paragraph (3) “partner” includes a person purporting to act as partner.
- (5) “Officer” in relation to a body corporate means—

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- (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, and
  - (b) an individual who is a controller of the body (and for these purposes, “controller” has the meaning given in section 422 of FSMA 2000).
- (6) If an offence under paragraph 132 committed by an unincorporated association (other than a partnership) is shown—
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member, the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

*Injunctions to prevent failure to comply with relevant requirement*

- 135 (1) If, on the application of the Bank, the court is satisfied that there is a reasonable likelihood that any person will contravene a relevant requirement, the court may make an order restraining, or in Scotland an interdict prohibiting, the contravention.
- (2) The jurisdiction conferred by this paragraph is exercisable—
- (a) in England and Wales, and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (3) In this paragraph “relevant requirement” has the meaning given in paragraph 122.

*Regulatory sanctions*

- 136 (1) If the Bank considers that a person has failed to comply with a relevant requirement imposed on the person, it may do one or more of the following—
- (a) publish a statement to that effect;
  - (b) impose on that person a penalty, in respect of the failure, of such amount as it considers appropriate;
  - (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct;
  - (d) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of—
    - (i) a named CCP,
    - (ii) a CCP of a specified description, or
    - (iii) any CCP.
- (2) A prohibition under sub-paragraph (1)(d) may apply—
- (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) If the Bank considers that a failure by a person to comply with a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, an officer of that person, it may do one or more of the following—
- (a) publish a statement to that effect;

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- (b) impose on that officer a penalty, in respect of the failure, of such amount as it considers appropriate;
  - (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct specified in the direction.
- (4) A penalty under this paragraph—
- (a) must be paid to the Bank, and
  - (b) may be enforced by the Bank as a debt.
- (5) In this paragraph “relevant requirement” has the meaning given in paragraph 122.

#### *Determination of sanctions*

- 137 When determining the type of sanction, and level of any penalty, to be imposed on a person under paragraph 136, the Bank must take into account all relevant circumstances, including where appropriate—
- (a) the gravity and the duration of the failure,
  - (b) the degree of responsibility of the person,
  - (c) the financial strength of the person,
  - (d) the amount of profits gained or losses avoided by the person,
  - (e) the losses for third parties caused by the failure,
  - (f) the level of co-operation of the person with the Bank,
  - (g) previous failures by the person, and
  - (h) any potential systemic consequences of the failure.

#### *Procedure: warning notice*

- 138 (1) If the Bank proposes to impose a sanction on a person under paragraph 136(1) or (3) it must give that person a warning notice.
- (2) Section 387 of FSMA 2000 applies in relation to a warning notice given under sub-paragraph (1) and to the Bank as it applies in relation to a warning notice given under that Act and to the regulator which gave that notice, subject to sub-paragraphs (3) and (4).
- (3) In complying with section 387(1)(a) of that Act, a warning notice must in particular—
- (a) if it is about a proposal to publish a statement, set out the terms of the statement,
  - (b) if it is about a proposal to impose a penalty, specify the amount of the penalty,
  - (c) if it is about a proposal to direct a person to refrain from certain conduct, specify the conduct, and
  - (d) if it is about a proposal to impose a prohibition on holding an office or other position, specify the extent of the prohibition.
- (4) For the purposes of sub-paragraph (2), section 387 of that Act has effect as if subsections (1A) and (3A) were omitted.

#### *Procedure: decision notice*

- 139 (1) If the Bank decides to impose a sanction on a person under paragraph 136(1) or (3) it must without delay give that person a decision notice.

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- (2) If the decision is to publish a statement, the decision notice must set out the terms of the statement.
- (3) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.
- (4) If the decision is to refrain from certain conduct, the decision notice must specify the conduct.
- (5) If the decision is to impose a prohibition on holding an office or other position, the decision notice must specify the extent of the prohibition.
- (6) Section 388 of FSMA 2000 applies in relation to a decision notice given under sub-paragraph (1) and the Bank as it applies in relation to a decision notice given under that Act and the regulator which gave that notice, subject to sub-paragraph (7).
- (7) Section 388 of that Act has effect for the purposes of sub-paragraph (6) as if—
  - (a) in subsection (1)(e)(i) for “this Act” there were substituted “paragraph 141 of Schedule 11 to the Financial Services and Markets Act 2023”, and
  - (b) subsections (1A) and (2) were omitted.

*Procedure: general*

- 140 (1) Sections 389, 390 and 392 to 394 of FSMA 2000 apply in relation to a warning notice given under paragraph 138, a decision notice given under paragraph 139 and the Bank as they apply in relation to a warning notice or decision notice given under that Act and the regulator which gave that notice, subject to sub-paragraphs (2) to (4).
- (2) Section 389 of that Act has effect as if subsection (2) were omitted.
  - (3) Section 390 has effect as if—
    - (a) in subsection (2A), in paragraph (a), for “133(6)(b)” there were substituted “133(5)(b)”,
    - (b) in that paragraph, for “133(6)” there were substituted “133(5)”,
    - (c) for subsection (4) there were substituted—
      - “(4) A final notice about a direction under paragraph 136(1)(c) or (3)(c) of Schedule 11 to the Financial Services and Markets Act 2023 or a prohibition under paragraph 136(1)(d) of that Schedule must—
      - (a) specify the conduct to which the direction relates or the extent of the prohibition, and
      - (b) give details of the date on which the direction or prohibition has effect.”
  - (4) Section 392 has effect as if for paragraphs (a) and (b) there were substituted—
    - “(a) a warning notice given under paragraph 138 of Schedule 11 to the Financial Services and Markets Act 2023;
    - (b) a decision notice given under paragraph 139 of Schedule 11 to the Financial Services and Markets Act 2023.”

*Appeals*

- 141 (1) If the Bank decides to impose a sanction on a person under paragraph 136, the person may appeal to the Upper Tribunal.

- (2) The Bank may not impose a sanction while an appeal under this paragraph could be brought or is pending.

*Injunctions: failure to comply with certain paragraph 136 sanctions*

- 142 (1) If, on the application of the Bank, the court is satisfied—
- (a) that there is a reasonable likelihood that there will be a compliance failure, or
  - (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,
- the court may make an order restraining the conduct constituting the failure.
- (2) If, on the application of the Bank, the court is satisfied—
- (a) that there has been a compliance failure, and
  - (b) that there are steps which could be taken for remedying the failure,
- the court may make an order requiring anyone who appears to have been knowingly concerned in the failure to take such steps as the court may direct to remedy it.
- (3) If, on the application of the Bank, the court is satisfied—
- (a) that there may have been a compliance failure by any person, or
  - (b) that a person may have been knowingly concerned in a compliance failure,
- the court may make an order restraining that person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.
- (4) “Compliance failure” means—
- (a) a failure to comply with a direction under paragraph 136(1)(c) or (3)(c), or
  - (b) a breach of a prohibition imposed under paragraph 136(1)(d).
- (5) The jurisdiction conferred by this paragraph is exercisable—
- (a) in England and Wales and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (6) In this paragraph—
- (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,
  - (b) references to an order requiring steps to be taken are, in Scotland, to be read as references to an order for specific performance under section 45 of the Court of Session Act 1988,
  - (c) references to remedying a failure include mitigating its effect, and
  - (d) references to dealing with assets include disposing of them.

*Publication*

- 143 (1) In the case of a warning notice under paragraph 138—
- (a) neither the Bank nor a person to whom it is given or copied may publish the notice,
  - (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the Bank has published those details, and
  - (c) after consulting the persons to whom the notice is given or copied, the Bank may publish such information about the matter to which the notice relates as it considers appropriate.

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- (2) A person to whom a decision notice under paragraph 139 is given or copied may not publish the notice or any details concerning it unless the Bank has published the notice or those details.
- (3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (5) Subject to sub-paragraph (8), where the Bank gives a decision notice it may publish such information about the matter to which the notice relates as it considers appropriate.
- (6) Where the Bank publishes information under sub-paragraph (5) and the person to whom the decision notice is given refers the matter to the Upper Tribunal, the Bank must, without undue delay, publish on its website information about the status of the appeal and its outcome.
- (7) Subject to sub-paragraph (8), where the Bank gives a final notice—
  - (a) it must, without undue delay, publish details of any sanction to which the notice relates on its website, and
  - (b) it may publish such other information about the matter to which the notice relates as it considers appropriate.
- (8) Information about a matter to which a decision notice or a final notice relates must be published anonymously where—
  - (a) the sanction is imposed (or proposed to be imposed) on an individual and following an obligatory prior assessment publication of personal data is found to be disproportionate, or
  - (b) were it not published anonymously, publication would—
    - (i) jeopardise the stability of financial markets or an ongoing criminal investigation, or
    - (ii) cause, in so far as it can be determined, disproportionate damage to the persons involved.
- (9) Where sub-paragraph (8) applies, the person publishing the information may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction is imposed.
- (10) Where the Bank publishes information in accordance with sub-paragraphs (6) to (9), it must ensure the information remains on its website for at least five years, unless the information is personal data and the data protection legislation requires the information to be retained for a different period.
- (11) In this paragraph—

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

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“notice of discontinuance” and “final notice” have the same meaning as in sections 389 and 390 of FSMA 2000 (which are applied (with modifications) by paragraph 140).

### *Co-operation*

- 144 In connection with the exercise of its powers to impose sanctions under paragraph 136, the Bank must take such steps as it considers appropriate to co-operate with—
- (a) the FCA, and
  - (b) any person who exercises functions outside the United Kingdom equivalent to those exercisable by the Bank under this Schedule.

## **PART 7**

### THIRD-COUNTRY RESOLUTION ACTIONS

#### *Third-country resolution actions*

- 145 (1) This paragraph applies where the Bank is notified of third-country resolution action in respect of a third-country central counterparty.
- (2) The Bank must make an instrument which—
- (a) recognises the action,
  - (b) refuses to recognise the action, or
  - (c) recognises part of the action and refuses to recognise the remainder.
- An instrument within paragraph (a), (b) or (c) is a “third-country instrument” (as is an instrument under paragraph 146).
- (3) The Bank may only make a decision under sub-paragraph (2) with the approval of the Treasury.
- (4) Recognition of the action (or a part of it) may be refused only if the Bank and the Treasury are satisfied that one or more of the following conditions are satisfied—
- (a) recognition would have an adverse effect on financial stability in the United Kingdom;
  - (b) under the third-country resolution action creditors (including in particular clearing members) located or payable in the United Kingdom would not, by reason of being located or payable in the United Kingdom, receive the same treatment as creditors who are located or payable in the country concerned and have similar legal rights;
  - (c) recognition of, and taking action in support of, the third-country resolution action (or the part) would have material fiscal implications for the United Kingdom;
  - (d) recognition would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).
- (5) The recognition of a third-country resolution action (or any part of it) is without prejudice to any normal insolvency proceedings.
- (6) In this paragraph—



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“third-country central counterparty” has the meaning given by section 285 of FSMA 2000;

“third-country resolution action” means action under the law of a country or territory outside the United Kingdom to manage the failure or likely failure of a third-country central counterparty—

- (a) the anticipated results of which are, in relation to a third-country central counterparty, broadly comparable to results which could have been anticipated from the exercise of a stabilisation option in relation to an entity in the United Kingdom corresponding to the third-country central counterparty, and
- (b) the objectives of which are broadly comparable, in relation to the country or territory concerned, to the special resolution objectives in paragraph 15 as they apply in relation to the United Kingdom.

*Effects of recognition on third-country resolution action*

146 (1) This paragraph applies where an instrument under paragraph 145 recognises any third-country resolution action (or a part of it).

(2) The third-country resolution action (or part) produces the same legal effects in any part of the United Kingdom as it would have produced had it been made (with due authority) under the law of that part of the United Kingdom.

(3) For the purposes of supporting, or giving full effect to, the third-country resolution action (or the part), the Bank may exercise, in relation to a third-country central counterparty, one or more of the stabilisation options, or one or more of the stabilisation powers, available to the Bank in relation to a similar entity in the United Kingdom.

(4) But, for the purposes of exercising a power by virtue of sub-paragraph (3), provision which could otherwise be made under this Schedule in a share transfer instrument, property transfer instrument or resolution instrument may instead be made in—

- (a) the instrument made under paragraph 145 recognising the third-country resolution action (or part), or
- (b) a further instrument made by the Bank under this paragraph.

An instrument under paragraph (b) is a “third-country instrument” (as is an instrument under paragraph 145(2)(a), (b) or (c)).

(5) This Schedule (other than this paragraph) applies in relation to the exercise of any power by virtue of sub-paragraph (3), subject to sub-paragraphs (6) and (7) and any other necessary modifications.

(6) Paragraph 15 (special resolution objectives) has effect as if after sub-paragraph (7) there were inserted—

“(7A) Objective 6 is to support third-country resolution action with a view to promoting objectives which, in relation to the country or territory concerned, correspond to Objectives 1 to 5 in relation to the United Kingdom.”

(7) Paragraphs 17 to 19 do not apply.

(8) Paragraph 145(6) applies for the purposes of this paragraph.

*Third-country instruments: supplementary provision*

- 147 (1) Paragraph 47 (incidental provision) applies to a third-country instrument as it applies to a share transfer instrument.
- (2) Paragraph 48 (procedure: instruments) applies to a third-country instrument as it applies to a share transfer instrument, except that references in that paragraph to the CCP are to be read as references to the third-country central counterparty to which the third-country instrument relates.
- (3) Paragraph 109 (international obligation notice: general) applies in relation to the making of a third-country instrument under paragraph 145 or 146 as it applies in relation to the exercise of a stabilisation power, except that—
- (a) for the purposes of paragraph 109(3), paragraph 15 is to be read subject to the modification in paragraph 146(6), and
  - (b) in sub-paragraph (4), the reference to a CCP is to be read as a reference to a third-country central counterparty in respect of which a third-country instrument is made.
- (4) Paragraph 110 (international obligation notice: bridge central counterparty) applies where the Bank has, by virtue of paragraph 146, transferred all or part of the business of a third-country central counterparty to a bridge central counterparty as it applies where the Bank has transferred all or part of the business of a CCP to a bridge central counterparty.
- (5) Paragraph 145(6) applies for the purposes of this paragraph.

## PART 8

### GENERAL

*Information*

- 148 (1) The Bank may disclose information that it thinks relevant to the financial stability of—
- (a) individual CCPs, or
  - (b) one or more aspects of the UK financial system.
- (2) Information about the business or other affairs of a specified or identifiable person may be disclosed under sub-paragraph (1) only to—
- (a) the Treasury;
  - (b) the FCA;
  - (c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of FSMA 2000);
  - (d) the Payment Systems Regulator (established under section 40 of the Financial Services (Banking Reform) Act 2013);
  - (e) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank, the PRA or the FCA in relation to financial stability.
- (3) Except as provided by sub-paragraph (4), the disclosure of information under this paragraph does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or

- (b) any other restriction on the disclosure of information (however imposed).
- (4) This paragraph does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duties imposed by this paragraph).
- (5) In this paragraph “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

*Restrictions on disclosure of confidential information*

- 149 (1) Sections 348, 349, 352 and 353 of FSMA 2000 (disclosure of information) apply for the purposes of this Schedule with the following modifications.
- (2) Section 348 of that Act has effect as if —
- (a) in subsection (2)(b), after “Act” there were inserted “or of the Bank of England under Schedule 11 to the Financial Services and Markets Act 2023”,
  - (b) in subsection (3)(a), at the end there were inserted “or the Financial Services and Markets Act 2023”,
  - (c) in subsection (5)—
    - (i) after paragraph (c) there were inserted—
      - “(ca) a person appointed to make a report under paragraph 120 of Schedule 11 to the Financial Services and Markets Act 2023 (reports by skilled persons);
      - (cb) a person appointed to act as a temporary manager under paragraph 6 of Schedule 11 to the Financial Services and Markets Act 2023,”
    - (ii) in paragraph (e) for “to (c)” there were substituted “to (cb)”, and
  - (d) after subsection (6)(b) there were inserted—
    - “(c) a competent person appointed by the Bank of England under Part 6 of Schedule 11 to the Financial Services and Markets Act 2023.”
- (3) Section 349 of that Act has effect as if, in subsection (2)(c), for “or the PRA” there were substituted “the PRA or the Bank of England”.
- (4) Section 353 of that Act has effect as if in subsection (1)—
- (a) in paragraph (a)—
    - (i) after “under this Act” there were inserted “or the Financial Services and Markets Act 2023”, and
    - (ii) for “it” there were substituted “those Acts”;
  - (b) in paragraph (b) after “to the” there were inserted “Bank of England, the”.

*Remedies on judicial review*

- 150 (1) Where an application is made for judicial review of a decision of the Bank to exercise the stabilisation powers in relation to a CCP or CCP group company (“relevant proceedings”)—
- (a) a ruling by the court that the decision is unlawful does not affect a relevant transfer or a relevant provision in a stabilisation instrument made by the Bank pursuant to that decision, and

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- (b) the court may not quash any provision in a stabilisation instrument made by the Bank if that provision makes a relevant transfer or a relevant provision.
- (2) For the purposes of sub-paragraph (1)—
- (a) “stabilisation instrument” means—
    - (i) a share transfer instrument,
    - (ii) a property transfer instrument, or
    - (iii) a resolution instrument;
  - (b) a “relevant provision” in a stabilisation instrument means—
    - (i) in relation to a tear-up instrument, provision under paragraph 31(2),
    - (ii) in relation to a cash call instrument, provision under paragraph 32(2),
    - (iii) in relation to a variation instrument, provision under paragraph 33(2),
    - (iv) in relation to a write-down instrument, provision under paragraph 34(2) or 35, and
    - (v) in relation to an instrument of control, provision under paragraph 38(2);
  - (c) a transfer is a “relevant transfer” if it transfers to any person—
    - (i) property, rights or liabilities of the CCP or CCP group company, or of a bridge central counterparty, or
    - (ii) securities issued by the CCP, or CCP group company, or of a bridge central counterparty.
- (3) Sub-paragraph (1) does not affect the power of the court, subject to section 244 of the Banking Act 2009 (immunity), to award damages as a remedy in relevant proceedings.

#### *Giving of notices, documents etc under this Schedule*

- 151 Regulations under section 414 of FSMA 2000 (service of notices), and subsection (4) of that section, apply in relation to any notice, direction or document of any kind required to be given under any provision of this Schedule (however that requirement is expressed) as if those provisions were provisions of that Act.

#### *“Financial assistance”*

- 152 (1) In this Schedule “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (2) The Treasury may by regulations provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for a specified purpose of this Schedule; and sub-paragraph (1) is subject to this sub-paragraph.
- (3) Regulations under this paragraph are subject to the negative procedure.

#### *Modifications to the law*

- 153 (1) The Treasury may by regulations modify the law for the purpose of enabling the powers under this Schedule to be used effectively, having regard to the special resolution objectives.

- (2) Regulations may be made—
- (a) for the general purpose of the exercise of powers under this Schedule,
  - (b) to facilitate a particular proposed or possible use of a power, or
  - (c) in connection with a particular exercise of a power.
- (3) Regulations under sub-paragraph (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Schedule in connection with which the regulations are made (but in relying on this sub-paragraph the Treasury must have regard to the fact that it is in the public interest to avoid retrospective legislation).
- (4) In sub-paragraph (1) “modify the law” means—
- (a) disapply or modify the effect of a provision of an enactment (other than a provision made by or under this Act),
  - (b) disapply or modify the effect of a rule of law not set out in legislation, or
  - (c) amend any provision of an instrument or regulations made in the exercise of a stabilisation power.
- (5) Specific powers under this Schedule are without prejudice to the generality of this paragraph.
- (6) Regulations under this paragraph are—
- (a) subject to the affirmative procedure, or
  - (b) if the Treasury consider it necessary for the regulations to come into force without delay, subject to the made affirmative procedure.
- (7) Where regulations under this paragraph are subject to the made affirmative procedure the statutory instrument containing the regulations must be laid before Parliament after being made.
- (8) Regulations contained in a statutory instrument laid before Parliament under sub-paragraph (7) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (9) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (10) If regulations cease to have effect as a result of sub-paragraph (8), that does not—
- (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.

### *Interpretation*

154 In this Schedule—

- “Bank” means the Bank of England;
- “bridge central counterparty” has the meaning given by paragraph 29(1);
- “cash call instrument” has the meaning given by paragraph 32;
- “CCP” means a recognised central counterparty (see paragraph 155);
- “CCP group company” has the meaning given by paragraph 156;

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“central counterparty” means a body corporate or an unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

“clearing member” has the meaning given in Article 2 of EMIR and, unless otherwise provided, includes an interoperable CCP;

“clearing” and “clearing services”, in relation to a CCP, have the meaning given by section 313 of FSMA 2000;

“critical clearing services” means clearing services the withdrawal of which the Bank considers may threaten the stability of the UK financial system;

“director” includes, in relation to a CCP which has no board of directors, a member of the equivalent management body responsible for the management of the CCP concerned;

“EMIR” means [Regulation \(EU\) No 648/2012](#) of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

“employee” includes the holder of an office;

“extraordinary public financial support” means financial assistance that is provided by the Treasury or the Bank in order to preserve or restore the viability, liquidity or solvency of a CCP, a CCP group company or a group which includes a CCP, other than—

- (a) ordinary market assistance offered by the Bank on its usual terms, or
- (b) a liquidity facility which is provided—
  - (i) to a CCP that is facing temporary liquidity problems but is solvent, and
  - (ii) by the Bank on its own initiative and on its own terms;

“financial assistance” has the meaning given by paragraph 152;

“group” has the meaning given by section 474 of the Companies Act 2006;

“instrument of control” has the meaning given by paragraph 38;

“interoperable CCP” means a CCP with which an interoperability arrangement (within the meaning of Article 2 of EMIR) has been established;

“parent” means a parent undertaking within the meaning given by section 1162 of the Companies Act 2006;

“partial property transfer” has the meaning given by paragraph 75(1);

“PRA-authorised person” has the meaning given by section 2B(5) of FSMA 2000;

“recognition requirements” means the requirements resulting from section 286 of FSMA 2000;

“resolution instrument” has the meaning given by paragraph 79;

“securities” has the meaning given by paragraph 40;

“service contract” has the meaning given by section 227 of the Companies Act 2006;

“senior manager”, in relation to a CCP, means a person who—

- (a) exercises executive functions within that CCP, and
- (b) is responsible, and directly accountable to the directors, for the day to day management of that CCP;

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“special resolution objectives” means the objectives set out in paragraph 15;

“stabilisation instrument” has the meaning given by paragraph 84;

“stabilisation options” means the options described in paragraph 1(3);

“stabilisation powers” means the powers described in paragraph 1(4);

“subsidiary” means a subsidiary undertaking within the meaning given by section 1162 of the Companies Act 2006.

“tear-up instrument” has the meaning given by paragraph 31;

“third-country instrument” has the meaning given by paragraph 145;

“third-country resolution action” has the meaning given by paragraph 145;

“transfer date” —

- (a) in relation to a share transfer instrument, means the date on or at which a share transfer instrument (or the relevant part of it) takes effect, or
- (b) in relation to a property transfer instrument, means the date on or at which a property transfer instrument (or the relevant part of it) takes effect;

“UK financial system” has the meaning given by section 1I of FSMA 2000;

“variation instrument” has the meaning given by paragraph 33;

“write-down instrument” has the meaning given by paragraph 34.

#### *Recognised central counterparty*

155 (1) In this Schedule “recognised central counterparty” has the meaning given by section 285 of FSMA 2000.

(2) But “recognised central counterparty” does not include a recognised clearing house (within the meaning of section 285 of FSMA 2000) which is also—

- (a) a bank,
- (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),
- (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
- (d) an investment firm.

(3) Where a stabilisation power is exercised in respect of a recognised central counterparty, the body does not cease to be a recognised central counterparty for the purposes of this Schedule if the recognition order under Part 18 of FSMA 2000 is later revoked.

#### *Interpretation: “CCP group company”, etc*

156 (1) In this Schedule “CCP group company” means an undertaking—

- (a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a CCP, and
- (b) in respect of which any conditions specified in regulations made by the Treasury are met.



- (2) Regulations under this paragraph may require the Bank to consult specified persons before determining whether the conditions are met.
- (3) Regulations under this paragraph are subject to the affirmative procedure.
- (4) Undertakings are in the same group for the purposes of paragraph 117 and this paragraph if they are group undertakings in respect of each other.
- (5) Expressions defined in the Companies Act 2006 have the same meaning in paragraph 117 and this paragraph as in that Act.

## PART 9

### TREASURY SUPPORT FOR CCPS

#### *Consolidated Fund*

- 157 (1) There is to be paid out of money provided by Parliament expenditure incurred—
- (a) by the Treasury, or by the Secretary of State with the consent of the Treasury, in respect of, or in connection with giving, financial assistance to or in respect of a CCP (other than in respect of loans made in accordance with paragraph 158), or
  - (b) by the Treasury in respect of financial assistance to the Bank in connection with this Schedule.
- (2) For the purpose of sub-paragraph (1)(a) expenditure is incurred in respect of financial assistance in respect of CCPs if it is incurred in respect of an activity, transaction or arrangement, or class of activity, transaction or arrangement, which is expected to facilitate any part of the business of one or more CCPs; and for that purpose it does not matter—
- (a) whether or not that is the sole or principal expected effect of the activity, transaction or arrangement, or
  - (b) whether the sole or principal motive for the activity, transaction or arrangement is—
    - (i) its effect on CCPs,
    - (ii) its effect on the economy as a whole,
    - (iii) its effect on a particular industry or sector of the economy, or
    - (iv) its effect on clearing members of CCPs.
- (3) In this paragraph “financial assistance” has the meaning given by paragraph 152 (and regulations under that paragraph may restrict or expand the effect of sub-paragraph (2))
- (4) Expenditure which could be paid out of money provided by Parliament under sub-paragraph (1) may be charged on and paid out of the Consolidated Fund if the Treasury are satisfied that the need for the expenditure is too urgent to permit arrangements to be made for the provision of money by Parliament.
- (5) Where money is paid in reliance on sub-paragraph (4) the Treasury must as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the CCP or other institution to or in respect of which it is paid).

- (6) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under sub-paragraph (5).

*National Loans Fund*

- 158 (1) Where the Treasury propose to make a loan to or in respect of a CCP, they may arrange for money to be paid out of the National Loans Fund.
- (2) The Treasury may make arrangements under sub-paragraph (1) only where they think it necessary to make the loan urgently in order to protect the stability of the UK financial system
- (3) The Treasury may determine—
- (a) the rate of interest on a loan, and
  - (b) other terms and conditions.
- (4) Sums received by the Treasury in respect of loans by virtue of this paragraph must be paid into the National Loans Fund.
- (5) Neither section 16 of the Banking (Special Provisions) Act 2008 (finance) nor any other enactment restricts the breadth of application of this paragraph.
- (6) Where money is paid in reliance on sub-paragraph (1) the Treasury must as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the CCP or other institution to or in respect of which it is paid).
- (7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under sub-paragraph (6).

**PART 10**

CONSEQUENTIAL ETC PROVISION

*Bank of England Act 1998*

- 159 In section 7D of the Bank of England Act 1998 (examination by Comptroller and Auditor General), in subsection (10)—
- (a) in the definition of “resolution functions” after paragraph (b) insert—  
“(ba) Schedule 11 to the Financial Services and Markets Act 2023,”;
  - (b) for the definition of “stabilisation powers” substitute—  
““stabilisation powers” means a stabilisation power within the meaning given by section 1(4) of the Banking Act 2009 or paragraph 1(4) of Schedule 11 to the Financial Services and Markets Act 2023.”

*Financial Services and Markets Act 2000*

- 160 (1) FSMA 2000 is amended as follows.
- (2) In section 77 (discontinuance and suspension of listing), in subsection (3A), after “2009” insert “or paragraph 44 or 65 of Schedule 11 to the Financial Services and Markets Act 2023”.
- (3) In section 78 (discontinuance or suspension: procedure)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) in subsection (10)(a), after “2009,” insert “or paragraph 44 or 65 of Schedule 11 to the Financial Services and Markets Act 2023”;
  - (b) in subsection (14), after “2009” insert “or paragraph 44 or 65 of Schedule 11 to the Financial Services and Markets Act 2023”.
- (4) In section 133 (proceedings before Tribunal: general provision), in subsection (1)(c) for “or the Banking Act 2009” substitute “, the Banking Act 2009 or the Financial Services and Markets Act 2023”.
- (5) In section 133B (offences), in subsection (1)(c) for “or the Banking Act 2009” substitute “, the Banking Act 2009 or the Financial Services and Markets Act 2023”.

#### *Companies Act 2006*

- 161 (1) The Companies Act 2006 is amended as follows.
- (2) In Part 2 of Schedule 2 (specified descriptions of disclosures for the purposes of section 948), in paragraph 49(c) for “or the Banking Act 2009” substitute “, the Banking Act 2009 or the Financial Services and Markets Act 2023”.
  - (3) In Part 2 of Schedule 11A (specified descriptions of disclosures for the purposes of section 1224A), in paragraph 71(c) for “or the Banking Act 2009” substitute “, the Banking Act 2009 or the Financial Services and Markets Act 2023”.

#### *Banking Act 2009*

- 162 (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), in the table in subsection (6), omit the entry relating to sections 89B to 89G.
  - (3) In section 2 (interpretation: bank), omit subsection (9).
  - (4) In section 39A (banks which are recognised central counterparties)—
    - (a) for “Sections 89C to 89E” substitute “Paragraphs 59, 60 and 108 of Schedule 11 to the Financial Services and Markets Act 2023”;
    - (b) for “section 89G(2)” substitute “paragraph 155(2) of Schedule 11 to that Act”.
  - (5) In section 75 (power to change law), in subsection (5) omit paragraph (cb).
  - (6) Omit sections 89B to 89G and the cross-heading preceding section 89B.
  - (7) In section 259 (statutory instruments), in Part 1 of the Table, omit the entry relating to section 89F.
  - (8) In section 261 (index), in the Table, omit the following entries—
    - (a) “PRA-authorized person”, and
    - (b) “recognised central counterparty”.

#### *Financial Services Act 2012*

- 163 (1) The Financial Services Act 2012 is amended as follows.
- (2) In section 57A (duty of Bank to provide information required by Treasury)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) in subsection (2) after “credit union” insert “, recognised central counterparty”;
  - (b) in subsection (5) after “credit union” insert “, recognised central counterparty”;
  - (c) in subsection (5)(b), after “2009” insert “or in Schedule 11 to the Financial Services and Markets Act 2023”;
  - (d) in subsection (7), after the definition of “public funds” insert—
    - ““recognised central counterparty” has the meaning given by section 285 of FSMA 2000,”
- (3) In section 58 (duty of Bank to notify Treasury of possible need for public funds)—
- (a) in subsection (4) after “2009” insert “or under Schedule 11 to the Financial Services and Markets Act 2023”;
  - (b) in subsection (5)—
    - (i) in the opening words, after “Scheme” insert “or any scheme established under paragraph 87 of Schedule 11 to the Financial Services and Markets Act 2023”;
    - (ii) in the closing words, after “Scheme” insert “or any scheme established under paragraph 87 of Schedule 11 to the Financial Services and Markets Act 2023”.
- (4) In section 61 (Treasury power of direction), in subsection (2)(b)—
- (a) after “2009” insert “or paragraph 1(4) of Schedule 11 to the Financial Services and Markets Act 2023”;
  - (b) for “that Act” substitute “the Banking Act 2009”.
- (5) Omit section 102.

#### *Financial Services (Banking Reform) Act 2013*

- 164 (1) The Financial Services (Banking Reform) Act 2013 is amended as follows.
- (2) In Schedule 2 omit paragraph 9.
  - (3) In Schedule 10 omit paragraph 7.

#### *Modified application of corporate law to CCPs in resolution*

- 165 (1) The Treasury may by regulations provide for a relevant enactment to apply for the purposes of this Schedule with or without modifications.
- (2) In this paragraph “relevant enactment” means any provision made by or under—
- (a) the Company Directors Disqualification Act 1986;
  - (b) the Insolvency Act 1986;
  - (c) FSMA 2000;
  - (d) the Companies Act 2006;
  - (e) the Banking Act 2009;
  - (f) the Bank Recovery and Resolution (No.2) Order 2014 (S.I. 2014/3348);
  - (g) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
  - (h) the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)).

(3) Regulations under this paragraph are subject to the affirmative procedure.