
STATUTORY INSTRUMENTS

2014 No. 3348

The Bank Recovery and Resolution (No. 2) Order 2014

PART 9

Minimum requirement for own funds and eligible liabilities

CHAPTER 1

Determination of minimum requirement for an institution

Determination of minimum requirement

123.—(1) This article applies for the purpose of the determination by the Bank of the minimum requirement for own funds and eligible liabilities.

(2) The amount of the relevant institution's total liabilities must include total liabilities under any derivative contracts held by the institution.

(3) An assessment of total liabilities under a derivative contract must take account of the rights of the parties to the contract to set off or net under a title transfer collateral arrangement, set-off arrangement or netting arrangement (within the meaning given by section 48(1)(b), (c) and (d) of the Banking Act 2009).

(4) [^{F1}An eligible liability must be excluded] from the amount of the relevant institution's [^{F2}own funds and eligible liabilities] if—

- (a) the instrument that creates the liability is not issued or fully paid up;
- (b) the liability is owed to, or secured or guaranteed by, the institution itself;
- (c) the purchase of the instrument that creates the liability was funded directly or indirectly by the institution itself;
- (d) the liability has a remaining maturity of less than one year;
- (e) the liability arises from a derivative contract held by the institution;
- (f) the liability arises from a deposit in respect of which the depositor's rights, in any proceedings relating to the insolvency of the institution, would be preferred to the rights of other creditors; or
- (g) the instrument that creates the liability is governed by the law of a third country and the Bank is not satisfied that a decision by the Bank to convert or write down the liability would be effective under that law.

(5) For the purpose of paragraph (4)(d), where the instrument that creates the liability confers on a party to the instrument a right to the repayment of a sum before maturity, the maturity date is the first date on which that party would become entitled to repayment if the right were exercised.

(6) The determination must be based on an assessment of the [^{F3}following criteria—

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

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

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

(i) losses could be absorbed; and

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

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

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

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

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

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

- (d) the size, the business model, the funding model and the risk profile of the relevant institution; ^{F4} ...

- (e) the extent to which the failure of the relevant institution would have adverse effects on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities;] ^{F5} and

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

- (7) The Bank must make that assessment in consultation with the appropriate regulator.

[^{F6}(8) The Bank may make technical standards relating to assessment criteria upon which it must base a determination of the minimum requirement for own funds and eligible liabilities under this article, article 126 or article 135.]

Textual Amendments

F1 Words in art. 123(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(a)**

F2 Words in art. 123(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(b)**

F3 Words in art. 123(6) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **46**

F4 Word in art. 123(6)(d) omitted (31.12.2020) by virtue of S.I. 2018/1394, Sch. 3 para. 68(2)(a) (as substituted by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **77(4)(a)**)

- F5** Art. 123(6)(f) and word inserted by S.I. 2018/1394, Sch. 3 para. 68(2)(b) (as substituted) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **77(4)(a)**
- F6** Art. 123(8) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 68(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

There are currently no known outstanding effects for the The Bank Recovery and Resolution (No. 2) Order 2014, Section 123.