
STATUTORY INSTRUMENTS

2014 No. 3348

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

PART 1

Introductory provisions

Citation and commencement

- 1.—(1) This Order may be cited as the Bank Recovery and Resolution (No. 2) Order 2014.
- (2) This Order, except Part 9, comes into force on 10th January 2015.
- (3) Part 9 of this Order comes into force on 1st January 2016.

Interpretation

- 2.—(1) In this Order, except where provision is made to the contrary—

^{F1} ...

“appropriate regulator”—

- (a) in relation to an institution which is not part of a group subject to supervision on a consolidated basis in accordance with [^{F2}the capital requirements regulation and CRR rules]—
 - (i) if the institution is a PRA-authorised person, means the PRA;
 - (ii) if the institution is any other UK authorised person, means the FCA;
- (b) in relation to a relevant group—
 - (i) where the PRA is the consolidating supervisor, means the PRA;
 - (ii) where the FCA is the consolidating supervisor, means the FCA;
 - (iii) where neither the PRA nor the FCA is the consolidating supervisor, means the PRA in relation to a PRA-authorised person and the FCA in relation to any other UK authorised person;

“the Bank” means the Bank of England [^{F3}acting otherwise than in its capacity as the Prudential Regulation Authority];

“the capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervisions of credit institutions and investment firms, amending Directive [2002/87/EC](#) and repealing Directives [2006/48/EC](#) and [2006/49/EC](#)^{F4};

[^{F5}“the capital requirements regulation” means [Regulation \(EU\) No. 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;]

^{F6} ...

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[^{F7}“competent authority” means the supervisor of an authorised person under FSMA;]

[^{F8}“conditions for early intervention” means where—

- (a) an institution infringes the requirements of—
 - (i) the capital requirements regulation [^{F9}or CRR rules];
 - (ii) legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to the capital requirements directive;
 - (iii) legislation upon which the United Kingdom so relied to meet its obligations with respect to Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments; or
 - (iv) any of Articles 3 to 7, 14 to 17 and 24 to 26 of Regulation (EU) No. 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments; or
- (b) an institution is likely in the near future to infringe those requirements due, amongst other things, to—
 - (i) a rapidly deteriorating financial condition, including deteriorating liquidity situation;
 - (ii) increasing level of leverage;
 - (iii) non-performing loans; or
 - (iv) concentrations of exposures, as assessed on the basis of a set of triggers, which may include the institution's own funds requirement plus 1.5 percentage points;]

“conditions for resolution”—

- (a) in relation to an institution authorised by the PRA or FCA, means the conditions for the exercise of stabilisation powers in section 7 of the Banking Act 2009 ^{F10} (general conditions for exercise of stabilisation powers);
- (b) in relation to an undertaking set up in the United Kingdom, other than an institution, means the conditions for the exercise of stabilisation powers in section 81B (groups: sale to commercial purchaser and transfer to bridge bank), section 81ZBA (transfer to asset management vehicle) or section 81BA (groups: bail-in option) of the Banking Act 2009 ^{F11, F12} ...
- (c) ^{F13} ...;

[^{F14}“the consolidating supervisor” has the meaning given in section 6A(9) of the Banking Act 2009];

[^{F15}“core business lines” means business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part;]

[^{F15}“credit institution” has the meaning given in section 48D(1) of the Banking Act 2009;]

“critical functions”—

- (a) ^{F16} ... has the meaning given in section 3 of the Banking Act 2009 ^{F17} (interpretation: other expressions); ^{F16} ...
- (b) ^{F18} ...;

[^{F19}“CRR rules” has the meaning given in section 144A of FSMA;]

[^{F20}“deposit” has the meaning given in Article 2(1)(23A) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15th May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012;]

[^{F20}“depositor” means the holder or, in the case of a joint account, each of the holders, of a deposit;]

“derivative contract” has the meaning given by point (5) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ^{F21};

^{F22} ...

^{F22} ...

^{F22} ...

^{F22} ...

^{F22} ...

^{F22} ...

“eligible liabilities”—

(a) ^{F23} ... has the meaning given in section 3(1) of the Banking Act 2009; ^{F24} ...

(b) ^{F24} ...

[^{F25}“extraordinary public financial support” has the meaning given in section 3(1) of the Banking Act 2009;]

“the FCA” means the Financial Conduct Authority”;

“financial holding company” has the meaning given by point (20) of Article 4.1 of the capital requirements regulation;

“financial institution”, except in Part 18, has the meaning given by point (26) of Article 4.1 of the capital requirements regulation;

“Financial Policy Committee” means the Financial Policy Committee of the Bank established by section 9B of the Bank of England Act 1998 ^{F26};

“FSMA” means the Financial Services and Markets Act 2000;

[^{F27}“group” means a parent undertaking and its subsidiaries;]

“group entity”, in relation to a relevant group, means the [^{F28}UK] parent undertaking or a group subsidiary;

“group recovery plan” means a document which provides for measures to be taken in relation to a relevant group to achieve the stabilisation of the group as a whole, or of any institution within the group, where the group or the institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or institution;

“group resolution plan”, in relation to a relevant group, means a document which [^{F29}identifies at least one resolution entity and at least one resolution group and which] makes provision for—

(a) [^{F30}[^{F31}applying the resolution tools or exercising resolution powers] in respect of each resolution entity in the relevant group;]

(b) co-ordinating the application of resolution tools and the exercise of resolution powers ^{F32} by resolution authorities in respect of group entities that meet the conditions for resolution;

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“group subsidiary”, in relation to a relevant group, means a subsidiary within that group which is an institution, a financial institution, a financial holding company or a mixed financial holding company;

“insolvency proceedings” includes—

- (a) proceedings under the Insolvency Act 1986^{F33}; and
- (b) the procedure in Part 2 of the Banking Act 2009 (bank insolvency) and in Part 3 of that Act (bank administration);

[^{F34}“institution” means a credit institution or an investment firm;]

[^{F34}“instruments of ownership” means—

- (a) shares,
- (b) other instruments that confer ownership,
- (c) instruments that are convertible into, or give the right to acquire, shares or other instruments of ownership, and
- (d) instruments representing interests in shares or other instruments of ownership;]

[^{F35} “investment firm” has the meaning given in section 258A of the Banking Act 2009]

[^{F34}“management body” has the meaning given in point (9) of Article 4.1 of the capital requirements regulation;]

“mixed activity holding company” has the meaning given by point (22) of Article 4.1 of the capital requirements regulation;

“mixed financial holding company” has the meaning given by point (21) of Article 4.1 of the capital requirements regulation;

“own funds” has the meaning given by point (118) of Article 4.1 of the capital requirements regulation;

^{F36} ...

^{F37} ...

^{F38} ...

“parent undertaking” has the meaning given by point (15)(a) of Article 4.1 of the capital requirements regulation;

“the PRA” means the Prudential Regulation Authority;

“PRA-authorised person” means a UK authorised person which is a PRA-authorised person within the meaning given by section 2B(5) of FSMA^{F39} (the PRA’s general objective);

“the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive [82/891/EEC](#), and Directives [2001/24/EC](#), [2002/47/EC](#), [2005/56/EC](#), [2007/36/EC](#), 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, of the European Parliament and of the Council^{F40}[^{F41} as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019];

“recovery plan” means a document which provides for measures to be taken by an institution authorised by the PRA or FCA which is not part of a group, following a significant deterioration of the financial position of the institution, in order to restore its financial position;

^{F42} ...

“relevant group” means the group ^{F43} constituted by an [^{F44}UK] parent undertaking and its subsidiaries;

[^{F45}“resolution entity” means an entity that is identified in a resolution plan or a group resolution plan as an entity in respect of which resolution action might be taken;

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

- (i) is not a resolution entity itself;
- (ii) is not a subsidiary of another resolution entity; or
- (iii) is established in a third country and is stated by the group resolution plan under Part 5 to be included in the resolution group;]

“resolution objectives”, in relation to the application of resolution tools or the exercise of resolution powers—

- (a) ^{F46} ...
- (b) [^{F47}means] the special resolution objectives set out in section 4 of the Banking Act 2009 ^{F48},

“resolution plan” means a document which makes provision relating to the resolution action to be taken in the event that an institution or other person meets the conditions for resolution;

[^{F49}“resolution powers” means the powers of the Bank under Part 1 of the Banking Act 2009 other than those exercised in applying the resolution tools;]

“resolution tools”—

- (a) ^{F50} ...
- (b) [^{F51}means] stabilisation options referred to in paragraphs (a), (b), (ba) and (c) of section 1(3) of the Banking Act 2009 ^{F52} (overview: special resolution regime);

[^{F53}“shareholders” means shareholders or holders of other instruments of ownership;]

“subsidiary” has the meaning given by point (16) of Article 4.1 of the capital requirements regulation;

“third country” means a [^{F54}country or territory] other than [^{F55}the United Kingdom;]

“UK authorised person” means an authorised person (within the meaning given in section 31 of FSMA ^{F56}) which is incorporated in, or formed under the law of, any part of the United Kingdom;

[^{F57}“UK parent financial holding company” has the meaning given in point (30) of Article 4.1 of the capital requirements regulation;]

[^{F57}“UK parent institution” has the meaning given in point (28) of Article 4.1 of the capital requirements regulation;]

[^{F57}“UK parent mixed financial holding company” has the meaning given in point (32) of Article 4.1 of the capital requirements regulation;]

[^{F57}“UK parent undertaking” means a UK parent institution, UK parent financial holding company or UK parent mixed financial holding company.]

^{F58}(2)

(3) In this Order any reference, in relation to a company, undertaking, subsidiary or other entity, to the [^{F59}country or territory] in which the entity is set up is a reference to—

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- [^{F60}(a) the country or territory (as the case may be) in which the entity is authorised by an authority which, in the country or territory concerned, exercises any function equivalent to a function of the appropriate regulator; or]
- (b) if the entity is not authorised by such an authority, the [^{F61}country or territory] in which the entity is incorporated or under whose law (including the law of any part of that [^{F61}country or territory]) the entity is formed.
- [^{F62}(4) In this Order any reference to an EU regulation within the meaning of the European Union (Withdrawal) Act 2018 is to be read as a reference to the instrument as it forms part of retained EU law.]

- F1** Words in art. 2(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in art. 2(1) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/1376), regs. 1(3), **19(2)(a)**
- F3** Words in art. 2(1) inserted (1.3.2017) by [The Bank of England and Financial Services \(Consequential Amendments\) Regulations 2017](#) (S.I. 2017/80), reg. 1, **Sch. para. 40**
- F4** OJ No. L 176, 27.6.2013, p. 338. For corrigenda see OJ No. L 208, 2.8.2013, p. 73.
- F5** Words in art. 2(1) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/1376), regs. 1(3), **19(2)(b)**
- F6** Words in art. 2(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in art. 2(1) substituted (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. 1(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in art. 2(1) 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. 1(6)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(c)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F9** Words in art. 2(1) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/1376), regs. 1(3), **19(2)(c)**
- F10** Section 7 was amended by the Financial Services Act 2012, Schedule 17, paragraphs 1 and 8, and by S.I. 2014/3329.
- F11** Section 81B was inserted by the Financial Services Act 2012, section 100; and was amended by S.I. 2014/3329. Section 81ZBA was inserted by S.I. 2014/3329. Section 81BA was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), **Schedule 2**, paragraphs 1 and 7(1); and was amended by S.I. 2014/3329.
- F12** Word in art. 2(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(7)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in art. 2(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(7)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in art. 2(1) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/1376), regs. 1(3), **19(2)(d)**
- F15** Words in art. 2(1) 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. 1(9)**; 2020 c. 1, Sch. 5 para. 1(1)

- F16** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(10)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F17** Section 3 was amended by the Financial Services Act 2012, section 96(2) and Schedule 17, paragraphs 1 and 4, and by S.I. 2014/3329.
- F18** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(10)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in art. 2(1) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(2)(e)**
- F20** Words in art. 2(1) 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. 1(11)**; 2020 c. 1, Sch. 5 para. 1(1)
- F21** OJ No. L 201, 27.7.2012, p. 1-59.
- F22** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(12)**; 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(13)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(13)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in art. 2(1) 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. 1(14)**; 2020 c. 1, Sch. 5 para. 1(1)
- F26** 1998 c. 11. Section 9B was inserted by the Financial Services Act 2012, section 4(1).
- F27** Words in art. 2(1) 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. 1(15)**; 2020 c. 1, Sch. 5 para. 1(1)
- F28** Word in art. 2(1) substituted (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. 1(16)**; 2020 c. 1, Sch. 5 para. 1(1)
- F29** Words in art. 2(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(b)(i)**
- F30** Words in art. 2(1) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(b)(ii)**
- F31** Words in art. 2(1) substituted (31.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(3), **74(2)**
- F32** For the meaning of “resolution power” see the recovery and resolution directive, Article 2.1, point (20).
- F33** 1986 c. 45.
- F34** Words in art. 2(1) 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. 1(17)**; 2020 c. 1, Sch. 5 para. 1(1)
- F35** Words in art. 2(1) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(2)(f)**
- F36** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(18)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F37** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(18)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F38** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(18)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F39** Section 2B was substituted by the Financial Services Act 2012, section 6(1), which substituted Part 1A of FSMA.
- F40** OJ No. L 173, 12.6.2014, p. 190.
- F41** Words in art. 2(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(d)**
- F42** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(19)**; 2020 c. 1, Sch. 5 para. 1(1)
- F43** For the meaning of “group” see the recovery and resolution directive, Article 2.1, point (26).
- F44** Word in art. 2(1) substituted (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. 1(20)**; 2020 c. 1, Sch. 5 para. 1(1)
- F45** Words in art. 2(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **30(c)**
- F46** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(21)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F47** Word in art. 2(1) substituted (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. 1(21)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F48** Section 4 was amended by S.I. 2014/3329.
- F49** Words in art. 2(1) 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. 1(22)**; 2020 c. 1, Sch. 5 para. 1(1)
- F50** Words in art. 2(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(23)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F51** Word in art. 2(1) substituted (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. 1(23)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F52** Section 1(3) was substituted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 12(1) and (3); and was amended by S.I. 2014/3329. Paragraphs (a), (b), (ba) and (c) refer to four of the five stabilisation options, namely transfer to a private sector purchaser, transfer to a bridge bank, the bail-in option and transfer to an asset management vehicle (the fifth option is transfer to temporary public ownership referred to in paragraph (d)).
- F53** Words in art. 2(1) 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. 1(24)**; 2020 c. 1, Sch. 5 para. 1(1)
- F54** Words in art. 2(1) substituted (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. 1(25)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F55** Words in art. 2(1) substituted (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. 1(25)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F56** Section 31 was amended by the Financial Services Act 2012, section 11(1).

- F57** Words in art. 2(1) added (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. 1(26)**; 2020 c. 1, Sch. 5 para. 1(1)
- F58** Art. 2(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 1(27)**; 2020 c. 1, Sch. 5 para. 1(1)
- F59** Words in art. 2(3) substituted (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. 1(28)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F60** Art. 2(3)(a) substituted (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. 1(28)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F61** Words in art. 2(3)(b) substituted (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. 1(28)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F62** Art. 2(4) inserted (21.12.2018) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(3), **Sch. 3 para. 1(29)**; (as amended by The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 (S.I. 2020/1385), reg. 1(4), **Sch. para. 1(1)(2)(i)(k)(iii)**);

Application of Order

3. This Order [^{F63}imposes on the Bank (designated as the resolution authority in the United Kingdom), the PRA and the FCA (designated as appropriate regulators in the United Kingdom)] procedural and other requirements with respect to planning and taking measures for the purpose of—

- (a) restoring the financial position of—
 - (i) institutions;
 - (ii) relevant groups; and
 - (iii) in relation to relevant groups, specified kinds of parent undertaking and subsidiary (other than institutions); and
- (b) applying the resolution tools and exercising the resolution powers in order to achieve one or more of the resolution objectives in relation to such institutions, groups and undertakings.

- F63** Words in art. 3 substituted (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. 2**; 2020 c. 1, Sch. 5 para. 1(1)

^{F64}PART 2

Designation of authorities and competent ministry

- F64** Pt. 2 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 3**; 2020 c. 1, Sch. 5 para. 1(1)

PART 3

Recovery and resolution planning

Recovery planning: preparatory steps and simplified obligations

7.—(1) For each institution in relation to which Chapter 1 of Part 4 applies the appropriate regulator must determine the date by which the institution is required to draw up a recovery plan.

(2) For each relevant group in relation to which Chapter 2 of Part 4 applies the appropriate regulator must determine the date by which a group recovery plan is to be drawn up.

(3) The appropriate regulator may determine—

- (a) that specified information in addition to the information set out in [^{F65}Schedule A1] is to be included in a recovery plan or group recovery plan; or
- (b) that any information set out in [^{F66}that Schedule] or other detail which would otherwise have to be included in a recovery plan or group recovery plan does not have to be included.

[^{F67}(3A) The PRA may make technical standards specifying further information to be contained in a recovery plan or a group recovery plan that is to be drawn up by an institution or group entity that is authorised by the PRA.

(3B) The FCA may make technical standards specifying further information to be contained in a recovery plan or a group recovery plan that is to be drawn up by an institution or group entity that is authorised by the FCA.]

(4) The appropriate regulator may determine that a plan drawn up by an institution or [^{F68}a UK] parent undertaking is to be reviewed at intervals of more than one year.

[^{F69}(4A) The Bank may make technical standards specifying relevant criteria which the appropriate regulator must take into account when exercising its functions under this article.

(4B) In paragraph (4A) “relevant criteria” means criteria that may be used to assess the impact that an institution's failure would have on financial markets, other institutions and on funding conditions.]

- F65** Words in art. 7(3)(a) substituted (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. 4(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F66** Words in art. 7(3)(b) substituted (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. 4(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F67** Art. 7(3A)(3B) 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. 4(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F68** Words in art. 7(4) substituted (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. 4(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F69** Art. 7(4A)(4B) 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. 4(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Resolution planning: preparatory steps and simplified obligations

8.—(1) For each institution in relation to which Chapter 1 of Part 5 applies the Bank must determine the date by which it aims to draw up a resolution plan.

(2) For each relevant group in relation to which Chapter 2 of Part 5 applies the Bank must determine the date by which it aims to draw up a group resolution plan.

(3) The Bank may determine—

- (a) that specified information in addition to the information set out in Schedule 1, in the case of a resolution plan, or Schedule 2, in the case of a group resolution plan, including any of the ^{F70}additional information specified in Schedule 2A], is to be provided for the purpose of drawing up the plan; or
- (b) that a resolution plan does not need to contain all of the information set out in Schedule 1, or that a group resolution plan does not need to contain all of the information set out in Schedule 2.

^{F71}(3A) The Bank may make technical standards specifying relevant criteria which it must take into account when exercising its functions under this article.

(3B) In paragraph (3A) “relevant criteria” means criteria that may be used to assess the impact that an institution's failure would have on financial markets, other institutions and on funding conditions.]

(4) For the purpose of making an assessment of resolvability (within the meaning given in Chapter 1 of Part 6) or an assessment of group resolvability (within the meaning given in Chapter 2 of Part 6), the Bank may determine that it will—

- (a) consider specified matters in addition to the matters ^{F72}provided for in Schedule 2B]; or
- (b) make the assessment at a lower level of detail than would otherwise be required by article 60(2) or 62(3).

(5) The Bank may determine that it will review a resolution plan or group resolution plan at intervals of more than one year.

F70 Words in art. 8(3)(a) substituted (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. 5\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F71 Art. 8(3A)(3B) 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. 5\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F72 Words in art. 8(4)(a) substituted (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. 5\(4\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Consultation with the Financial Policy Committee

9.—(1) The PRA and the FCA must consult the Financial Policy Committee (“the Committee”) before adopting a general policy on the imposition of simplified obligations in respect of any class of undertaking if the policy would, in the opinion of the PRA or FCA, have a material adverse impact on the advancement by the Committee of any of the Committee's objectives under section 9C of the Bank of England Act 1998 ^{F73}.

(2) The Bank must consult the Committee before adopting a general policy on the imposition of simplified obligations in respect of any class of undertaking if the policy would, in the Bank's opinion, have a material adverse impact on the advancement by the Committee of any of the Committee's objectives under section 9C of the Bank of England Act 1998.

(3) In this article “simplified obligations”—

- (a) in relation to the PRA or FCA, means the less onerous obligations that would result from a determination under article 7(3)(b) or (4);

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- (b) in relation to the Bank, means the less onerous obligations that would result from a determination under article 8(3)(b), (4)(b) or (5).

F73 Section 9C was inserted by the Financial Services Act 2012, section 4(1).

Provision of information to EBA

^{F74}**10.**

F74 Art. 10 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 6**; 2020 c. 1, Sch. 5 para. 1(1)

PART 4

Recovery plans

CHAPTER 1

Assessment of recovery plan drawn up by an institution

Application and interpretation of Chapter 1

11.—(1) This Chapter applies where an institution—

- (a) is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [^{F75}the capital requirements regulation and CRR rules]; and
- (b) submits a recovery plan to the appropriate regulator for assessment ^{F76}....

(2) In this Chapter “relevant measures” means measures to maintain or restore the viability and financial position of the institution, including measures to—

- (a) reduce its risk profile, including its liquidity risk profile;
- (b) review its structure and strategy;
- (c) enable it to undertake timely recapitalisation;
- (d) change its funding strategy in order to improve the resilience of core business lines and critical functions; and
- (e) change its governance structure.

F75 Words in art. 11(1)(a) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(3)**

F76 Words in art. 11(1)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 7(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Assessment of plan

12.—(1) The appropriate regulator must assess the recovery plan within six months beginning with the date on which it receives the plan.

^{F77}(2)

(3) The appropriate regulator must—

- (a) send a copy of the recovery plan to the Bank; and
- (b) have regard to any recommendations made by the Bank to address any course of action proposed in the plan which could have an adverse impact on the resolvability of the institution.

F77 Art. 12(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 8**; 2020 c. 1, Sch. 5 para. 1(1)

Criteria for assessment

13.—(1) The appropriate regulator must assess whether the recovery plan meets the requirements of [^{F78}Schedule A1] and whether the arrangements proposed in the plan—

- (a) would, if implemented, be reasonably likely to maintain or restore the viability and financial position of the institution; and
- (b) would be reasonably likely to be implemented quickly and effectively in situations of financial stress and, as far as possible, without any material adverse impact on the financial system of the United Kingdom.

[^{F79}(1A) The PRA and the FCA may each make technical standards relating to the criteria referred to in paragraph (1) for a recovery plan submitted by an institution that it has authorised.]

(2) In assessing the recovery plan against these criteria, the appropriate regulator must consider—

- (a) any preparatory measures taken or planned to be taken by the institution;
- (b) the possibility that the plan may have to be implemented at the same time as recovery plans drawn up by other institutions and group recovery plans; and
- (c) whether the capital and funding structure of the institution is appropriate having regard to the level of complexity of its organisational structure and its risk profile.

(3) This article has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(a)) with respect to the recovery plan.

F78 Words in art. 13(1) substituted (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. 9(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F79 Art. 13(1A) 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. 9(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Revision of plan

14.—(1) The appropriate regulator—

- (a) must notify the institution if, in its assessment, the recovery plan contains any material deficiency or measure which would impede its implementation; and
- (b) may not require the institution to revise the recovery plan without giving it an opportunity to state its opinion on that requirement.

(2) If the appropriate regulator requires the institution to revise the recovery plan, it must allow the institution two months, which it may on application by the institution extend to three months, to prepare a plan which demonstrates that the deficiency or other impediment has been addressed.

Business changes and relevant measures

15.—(1) This article applies where—

- (a) the institution fails to submit a revision of the recovery plan within the time allowed by the appropriate regulator; or
 - (b) the appropriate regulator considers that a matter notified under article 14(1) has not been adequately addressed in a revision of the plan and cannot be adequately addressed by directing the institution to make specific changes to the plan.
- (2) The appropriate regulator must, in exercise of its powers under FSMA—
- (a) direct the institution to propose changes to its business which would be made with the object of addressing a material deficiency or measure in the recovery plan which would impede its implementation; and
 - (b) if the institution fails to propose such changes to its business within the time allowed by the appropriate regulator or the appropriate regulator considers that any changes proposed would not adequately address the impediment, determine whether to direct the institution to take relevant measures.

CHAPTER 2

Assessment of group recovery plan where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 2

16.—(1) This Chapter applies where, in relation to a relevant group—

- (a) the PRA or FCA is the consolidating supervisor; and
- (b) a group entity submits a group recovery plan to the appropriate regulator for assessment

^{F80}
....

(2) In this Chapter—

“business changes” means changes to the business of a group institution which would be made with the object of addressing an impediment;

“four month period” means four months beginning with the date on which the appropriate regulator transmits a copy of the group recovery plan under article 17;

“group institution” means—

- (a) the [^{F81}UK] parent undertaking, if it is an institution;
- (b) a group subsidiary which is an institution;

“impediment”, in relation to the group recovery plan, means any material deficiency or measure in the plan which would impede its implementation;

“relevant matters”, in relation to the assessment of the group recovery plan, means the following matters for decision—

- (c) whether the plan meets the criteria for assessment;
- (d) whether group institutions should be required to draw up and submit recovery plans on an individual basis;
- (e) whether the plan contains an impediment;

- (f) whether a group entity should be required to revise the plan;
 - (g) whether an impediment has been adequately addressed in a revision of the plan;
 - (h) where an impediment has not been adequately addressed in a revision of the plan, whether it can be adequately addressed by directing a group entity to make specific changes to the plan; and
 - (i) where an impediment cannot be adequately addressed by specific changes to the plan or by business changes—
 - (i) whether a group entity should be directed to take relevant measures; and
 - (ii) the terms of any direction to take relevant measures;
- “relevant measures” means measures to maintain or restore the viability and financial position of a group institution, including measures to—
- (a) reduce the institution's risk profile, including its liquidity risk profile;
 - (b) review its structure and strategy;
 - (c) enable it to undertake timely recapitalisation;
 - (d) change its funding strategy in order to improve the resilience of core business lines and critical functions; or
 - (e) change its governance structure; and

F82 ...

- F80** Words in art. 16(1)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 10\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F81** Word in art. 16(2) substituted (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. 10\(3\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F82** Words in art. 16(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 10\(3\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Duty to transmit a copy of group recovery plan

17.—(1) The appropriate regulator must send a copy of the group recovery plan or, where paragraph (2) has effect in relation to any information, of the plan without that information, to—

- (a) the Bank; [^{F83}and]
- ^{F84}(b)
- ^{F84}(c)
- [^{F85}(d) the PRA or FCA, where either is not the appropriate regulator but supervises a group entity as an authorised person under FSMA.]
- ^{F86}(e)

(2) This article does not require any information contained in the group recovery plan to be disclosed if its disclosure would be contrary to section 348 of FSMA ^{F87} (restrictions on disclosure of confidential information by FCA, PRA etc).

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- F83** Word in art. 17(1)(a) 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. 11(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F84** Art. 17(1)(b)(c) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 11(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F85** Art. 17(1)(d) substituted (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. 11(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F86** Art. 17(1)(e) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 11(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F87** Section 348 was amended by the Financial Services Act 2010 (c. 28), **section 24(1)** and (2) and Schedule 2, paragraphs 1 and 26; by the Financial Services Act 2012, section 41 and Schedule 12, paragraph 18, and by the Financial Services (Banking Reform) Act 2013, section 129 and Schedule 8, paragraph 5.

Assessment of group recovery plan

18.—(1) ^{F88}... The appropriate regulator must assess the group recovery plan, and is solely responsible for the assessment.

^{F89}(2)

^{F89}(3)

(4) The assessment must take account of—

- (a) any recommendations made by the Bank ^{F90}... to address any course of action proposed in the plan which could have an adverse impact on the resolvability of a group institution; and
- (b) the potential impact of the proposed recovery measures on the financial stability of [^{F91}the United Kingdom].

- F88** Words in art. 18(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 12(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F89** Art. 18(2)(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 12(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F90** Words in art. 18(4)(a) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 12(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F91** Words in art. 18(4)(b) substituted (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. 12(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Purpose of assessment

19.—(1) The purpose of the assessment of the group recovery plan is to determine whether the plan meets the criteria for assessment and decide other relevant matters.

(2) The criteria for assessment are that the plan must satisfy the requirements of [^{F92}Schedule A1] and that the arrangements proposed in the plan—

- (a) would, if implemented, be reasonably likely to maintain or restore the viability and financial position of group institutions; and
- (b) would be reasonably likely to be implemented quickly and effectively in situations of financial stress and, as far as possible, without any material adverse impact on the financial system of [^{F93}the United Kingdom].

[^{F94}(2A) The PRA and the FCA may each make technical standards relating to the criteria referred to in paragraph (1) for a group recovery plan submitted by a group entity that it has authorised.]

(3) The appropriate regulator must ensure that the group recovery plan is not assessed without consideration of—

- (a) any preparatory measures taken or planned to be taken by any group entity;
- (b) the possibility that the plan may have to be implemented at the same time as other group recovery plans and recovery plans drawn up by institutions; and
- (c) whether the capital and funding structure of the group institutions is appropriate having regard to the level of complexity of their organisational structure and risk profile.

(4) This article has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(a)) with respect to the group recovery plan.

- F92** Words in art. 19(2) substituted (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. 13(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F93** Words in art. 19(2)(b) substituted (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. 13(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F94** Art. 19(2A) 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. 13(3)**; 2020 c. 1, Sch. 5 para. 1(1)

[^{F95}Timing of assessment of plan

20. The appropriate regulator must conclude the assessment within the four month period.]

- F95** Art. 20 substituted (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. 14**; 2020 c. 1, Sch. 5 para. 1(1)

Joint assessment of plan

^{F96}**21.**

- F96** Art. 21 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 15**; 2020 c. 1, Sch. 5 para. 1(1)

Revision of plan

22. The appropriate regulator—

- (a) must notify a UK [^{F97}parent undertaking] if the group recovery plan is found on assessment to contain an impediment; and

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(b) may not require a UK [F97parent undertaking] to revise the plan without giving it an opportunity to state its opinion on that requirement.

(2) If the appropriate regulator requires a UK [F98parent undertaking] to revise the plan, it must allow [F99the undertaking] two months, which it may on application by [F99the undertaking] extend to three months, to prepare a plan which demonstrates that the impediment has been addressed.

- F97** Words in art. 22(1) substituted (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. 16(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F98** Words in art. 22(2) substituted (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. 16(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F99** Words in art. 22(2) substituted (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. 16(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Business changes and relevant measures

23.—(1) This article applies where—

- (a) a UK [F100parent undertaking] fails to submit a revision of the group recovery plan within the time allowed by the appropriate regulator; or
- (b) the appropriate regulator considers that an impediment has not been adequately addressed in a revision of the plan and cannot be adequately addressed by directing [F101the UK parent undertaking] to make specific changes to the plan.

(2) F102... the appropriate regulator must, in exercise of its powers under FSMA—

- (a) direct the UK [F103parent undertaking] to propose business changes; and
- (b) if [F104the UK parent undertaking] fails to propose business changes within the time allowed by the appropriate regulator or the appropriate regulator considers that any business changes proposed by [F104the UK parent undertaking] would not adequately address the impediment, determine whether to direct [F104the UK parent undertaking] to take relevant measures.

- F100** Words in art. 23(1)(a) substituted (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. 17(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F101** Words in art. 23(1)(b) substituted (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. 17(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F102** Words in art. 23(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 17(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F103** Words in art. 23(2)(a) substituted (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. 17(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F104** Words in art. 23(2)(b) substituted (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. 17(4)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Recovery plan for group institution

24. Where the appropriate regulator requires a group institution to draw up and submit a recovery plan on an individual basis, Chapter 1 applies for the purpose of the assessment of the plan, but has effect for that purpose as if each reference to an institution were a reference to the group institution.

References to EBA

^{F105}25.

F105 Art. 25 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 18**; 2020 c. 1, Sch. 5 para. 1(1)

Requesting the assistance of EBA

^{F106}26.

F106 Art. 26 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 18**; 2020 c. 1, Sch. 5 para. 1(1)

^{F107}CHAPTER 3

Assessment of group recovery plan where neither
the PRA nor the FCA is the consolidating supervisor

F107 Pt. 4 Ch. 3 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 19**; 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 3

^{F107}27.

Purpose of assessment

^{F107}28.

Joint assessment of plan

^{F107}29.

Assessment of recovery plans drawn up on an individual basis

^{F107}30.

References to EBA

^{F107}31.

Requesting the assistance of EBA

^{F107}32.

CHAPTER 4

Review of recovery plans and group recovery plans

Review of recovery plan

33.—(1) This article applies where a recovery plan drawn up by an institution has been assessed under Chapter 1, including that Chapter as applied by article 24 ^{F108}....

(2) The appropriate regulator must require the institution to review the recovery plan and make any appropriate amendment at least—

- (a) once a year; or
- (b) if the appropriate regulator has made a determination under article 7(4), at the intervals determined.

(3) The appropriate regulator must require the institution to—

- (a) review the recovery plan where any material change has been made to the legal or organisational structure of the institution or to its business or financial position; and
- (b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.

(4) Where the appropriate regulator considers that the plan ought to be reassessed following a decision ^{F109}... to prohibit or restrict the provision of financial support under an authorised agreement (within the meaning given in Chapter 4 of Part 7), it may require the institution to review the recovery plan and make any appropriate amendment.

(5) For the purposes of any review of the recovery plan the appropriate regulator may make a determination under article 7(3).

(6) Where the institution submits an up-dated plan for assessment, the appropriate regulator must assess that plan—

- (a) if the institution ^{F110}... is not part of a group subject to supervision on a consolidated basis in accordance with [^{F111}the capital requirements regulation and CRR rules], in accordance with Chapter 1; or
- (b) if the institution is a group institution within the meaning given in Chapter 2 ^{F112}..., in accordance with Chapter 1 as applied by article 24 ^{F112}....

(7) For the purposes of this article Part 3 and Chapter 1 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 7	In paragraph (3) the reference to a recovery plan is a reference to the up-dated plan.
Article 11	Ignore paragraph (1).
Articles 12 to 15	Each reference to the recovery plan (but not the reference to recovery plans in article 13(2)(b)) is a reference to the up-dated plan.

(8) In this article “up-dated plan” means the recovery plan after it has been reviewed pursuant to this article (whether or not it has been amended on review).

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- F108** Words in art. 33(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 20(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F109** Words in art. 33(4) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 20(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F110** Words in art. 33(6)(a) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 20(4)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F111** Words in art. 33(6)(a) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(4)**
- F112** Words in art. 33(6)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 20(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Review of group recovery plan assessed under Chapter 2

34.—(1) This article applies where, in relation to a relevant group, a group recovery plan has been assessed under Chapter 2.

(2) The appropriate regulator must require a [^{F113}UK parent undertaking] to review the plan and make any appropriate amendment at least—

- (a) once a year; or
- (b) if the appropriate regulator has made a determination under article 7(4), at the intervals determined.

(3) The appropriate regulator must require a [^{F114}UK parent undertaking] to—

- (a) review the plan where any material change has been made to the legal or organisational structure of the relevant group or any group entity or to its business or financial position; and
- (b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.

(4) Where the appropriate regulator considers that the plan ought to be reassessed following a decision ^{F115}... to prohibit or restrict the provision of financial support under an authorised agreement (within the meaning given in Chapter 4 of Part 7), it may require a [^{F116}UK parent undertaking] to review the plan and make any appropriate amendment.

(5) For the purposes of any review of the plan the appropriate regulator may make a determination under article 7(3).

(6) Where a group entity submits an up-dated plan for assessment, the appropriate regulator must assess that plan in accordance with Chapter 2.

(7) For the purposes of this article Part 3 and Chapter 2 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 7	In paragraph (3) the reference to a group recovery plan is a reference to the up-dated plan.
Article 16	Ignore paragraph (1).

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Articles 16 to 23, 25 and 26 Each reference to the group recovery plan is a reference to the up-dated plan.

(8) In this article—

^{F117} ...

“up-dated plan” means the group recovery plan after it has been reviewed pursuant to this article (whether or not it has been amended on review).

- F113** Words in art. 34(2) substituted (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. 21(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F114** Words in art. 34(3) substituted (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. 21(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F115** Words in art. 34(4) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 21(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F116** Words in art. 34(4) substituted (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. 21(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F117** Words in art. 34(8) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 21(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Review of group recovery plan assessed under Chapter 3

^{F118}**35.**

- F118** Art. 35 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 22**; 2020 c. 1, Sch. 5 para. 1(1)

PART 5

Resolution plans

CHAPTER 1

Resolution plans for institutions

Interpretation of Chapter 1

36. In this Chapter “relevant institution” means an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [^{F119}the capital requirements regulation and CRR rules].

- F119** Words in art. 36 substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021](#) (S.I. 2021/1376), regs. 1(3), **19(5)**

The Bank's duty to draw up resolution plans

37.—(1) The Bank must draw up and adopt a resolution plan for each relevant institution.

(2) Subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to a resolution plan, the plan must^{F120}—

(a) contain the information, and be drawn up with regard to the considerations, set out in Schedule 1; and

(b) contain information specified in any technical standards made under paragraph (2A).]

[^{F121}(2A) The Bank may make technical standards relating to information to be contained in the resolution plan for a relevant institution.]

(3) The resolution plan must be drawn up on the basis of the information provided for that purpose by the relevant institution or the appropriate regulator and any other relevant information.

[^{F122}(3A) The Bank may make technical standards relating to—

(a) the procedures for the provision of information by the relevant institution or the appropriate regulator under paragraph (3); and

(b) a minimum set of standard forms and templates for such provision of information.]

(4) For the purpose of drawing up a resolution plan the Bank must consult—

(a) the appropriate regulator;^{F123} ...

^{F124}(b)

(5) The Bank must provide the relevant institution with a summary of the key elements of the resolution plan.

F120 Words in art. 37(2) substituted (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. 24(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F121 Art. 37(2A) 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. 24(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F122 Art. 37(3A) 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. 24(4)**; 2020 c. 1, Sch. 5 para. 1(1)

F123 Word in art. 37(4)(a) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 24(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F124 Art. 37(4)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 24(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Duty to transmit a copy of the resolution plan

38. The Bank must send a copy of the resolution plan adopted for a relevant institution to the appropriate regulator.

CHAPTER 2

Group resolution plan where the PRA or FCA is the consolidating supervisor

Application of Chapter 2

39. This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

The Bank's duty to draw up group resolution plans

40.—(1) ^{F125}... The Bank must draw up and adopt a group resolution plan, and is solely responsible for the plan.

^{F126}(2)

(3) Subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to a group resolution plan, the plan must^{F127}—

- (a) contain the information, and be drawn up with regard to the considerations, set out in Schedule 2; and
- (b) contain information specified in any technical standards made under paragraph (3A).]

[^{F128}(3A) Taking into account the diversity of business models of groups in the United Kingdom, the Bank may make technical standards relating to information to be contained in the group resolution plan.]

(4) The resolution plan must be drawn up on the basis of—

- (a) the information provided for that purpose by a group entity set up in the United Kingdom or by the appropriate regulator; and
- (b) any other relevant information.

[^{F129}(4A) The Bank may make technical standards relating to—

- (a) the procedures for the provision of information under paragraph (4)(a); and
- (b) a minimum set of standard forms and templates for such provision of information.]

(5) For the purpose of drawing up a group resolution plan, the Bank must consult—

- (a) the appropriate regulator;

^{F130}(b)

^{F130}(c)

(6) A group resolution plan must not have a disproportionate impact on [^{F131}the United Kingdom].

[^{F132}(6A) In a relevant group, where a mixed-activity holding company has at least one subsidiary which is—

- (a) an institution; and
- (b) a subsidiary of a financial holding company,

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

(7) For the purpose of drawing up a group resolution plan, so far as the plan is relevant to—

- (a) a subsidiary within the relevant group which is set up in a third country, or
- (b) an institution within the relevant group which has a significant branch in a third country,

the Bank may consult the authorities which, in the country concerned, exercise any function equivalent to a function of [^{F133}the Bank under Part 1 of the Banking Act 2009 or the PRA or the FCA under FSMA].

[^{F134}(8) In paragraph (7)—

“branch” has the meaning given in point (17) of Article 4.1 of the capital requirements regulation; and

“significant branch” shall be construed with regard, in particular, to the following—

- (a) whether the market share of the branch in terms of deposits exceeds 2% in the third country;
- (b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the third country;
- (c) the size and importance of the branch in terms of number of clients within the context of the banking or financial system of the third country.]

- F125** Words in art. 40(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F126** Art. 40(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F127** Words in art. 40(3) substituted (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. 25(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F128** Art. 40(3A) 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. 25(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F129** Art. 40(4A) 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. 25(6)**; 2020 c. 1, Sch. 5 para. 1(1)
- F130** Art. 40(5)(b)(c) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 25(7)**; 2020 c. 1, Sch. 5 para. 1(1)
- F131** Words in art. 40(6) substituted (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. 25(8)**; 2020 c. 1, Sch. 5 para. 1(1)
- F132** Art. 40(6A) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **31**
- F133** Words in art. 40(7) substituted (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. 25(9)**; 2020 c. 1, Sch. 5 para. 1(1)
- F134** Art. 40(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. 25(10)**; 2020 c. 1, Sch. 5 para. 1(1)

Information to be transmitted for the purpose of drawing up group resolution plans

41.—(1) For the purposes of drawing up and adopting a group resolution plan the Bank must send relevant information [^{F135}to the appropriate regulator]—

^{F136}(a)

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^{F136}(b)

^{F136}(c)

(2) This article does not require any information to be disclosed if its disclosure would be contrary to section 348 of FSMA as applied for the purposes of Part 1 of the Banking Act 2009 (with modifications) by section 89L of that Act ^{F137} (restrictions on disclosure of confidential information).

^{F138}(3)

F135 Words in art. 41(1) 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. 26(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F136 Art. 41(1)(a)(b)(c) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 26(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F137 Section 89L was inserted by S.I. 2014/3329.

F138 Art. 41(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 26(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Joint decision on adoption of group resolution plan

^{F139}**42.**

F139 Art. 42 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 27**; 2020 c. 1, Sch. 5 para. 1(1)

References to EBA

^{F140}**43.**

F140 Art. 43 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 27**; 2020 c. 1, Sch. 5 para. 1(1)

Requesting the assistance of EBA

^{F141}**44.**

F141 Art. 44 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 27**; 2020 c. 1, Sch. 5 para. 1(1)

Duty to transmit a copy of the group resolution plan

45. The Bank must send a copy of the group resolution plan to the appropriate regulator ^{F142}....

F142 Words in [art. 45](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 28](#); 2020 c. 1, Sch. 5 para. 1(1)

F143 CHAPTER 3

Group resolution plan where neither the PRA nor the FCA is the consolidating supervisor

F143 [Pt. 5 Ch. 3](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 29](#); 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 3

F143 **46.**

Joint decision on adoption of group resolution plan

F143 **47.**

Failure to reach joint decision: disagreement by the Bank with a joint proposal

F143 **48.**

Failure to reach joint decision: agreement by the Bank with a joint proposal

F143 **49.**

Resolution plan for group entity

F143 **50.**

References to EBA

F143 **51.**

Requesting the assistance of EBA

F143 **52.**

CHAPTER 4

Review of resolution plans and group resolution plans

Review of resolution plan

53.—(1) The Bank must review a resolution plan and make any appropriate amendment at least—

- (a) once a year; or
- (b) if the Bank has made a determination under article 8(5), at the intervals determined.

(2) The Bank must—

[**F144**(a) review a resolution plan where—

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- (i) any material change has been made to the legal or organisational structure of the relevant entity or to its business or financial position; or
- (ii) a change results from the application of the resolution tools or the exercise of the powers under section 6B of the Banking Act 2009 in relation to the relevant entity.]
- (b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.
- (3) For the purposes of a review of a resolution plan the Bank may make a determination under article 8(3).
- (4) The Bank must review a resolution plan and adopt the up-dated plan—
 - (a) in the case of an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [F145]the capital requirements regulation and CRR rules], in accordance with Chapter 1; F146 ...
 - F147(b)
- (5) For the purposes of this article Part 3 and Chapter 1 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 8	In paragraph (3) the reference to a resolution plan is a reference to the up-dated plan.
Article 37	Ignore paragraph (1). In paragraph (2)— (a) the reference to a resolution plan is a reference to the up-dated plan; and (b) for “be drawn up” read “the review must be undertaken”. In paragraph (3) for “drawn up” read “reviewed”. In paragraph (4) for “drawing up” read “reviewing”. In paragraph (5) the reference to the resolution plan is a reference to the up-dated plan.
Article 38	The reference to the resolution plan is a reference to the up-dated plan.

- (6) In this article—
 - “relevant entity” means an institution or group entity for which the Bank has adopted a resolution plan;
 - “resolution plan” means a plan adopted by the Bank under Chapter 1 F148 ...; and
 - “up-dated plan”, in relation to a resolution plan, means that plan as reviewed in accordance with this article (whether or not it has been amended on review).

F144 Art. 53(2)(a) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **34**

F145 Words in art. 53(4)(a) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **19(6)**

F146 Word in art. 53(4)(a) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 30\(2\)\(a\)\(ii\)](#); 2020 c. 1, Sch. 5 para. 1(1)

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F147 Art. 53(4)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 30(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F148 Words in art. 53(6) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 30(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Review of group resolution plan drawn up by the Bank

54.—(1) The Bank must review a group resolution plan at least—

- (a) once a year; or
- (b) if the Bank has made a determination under article 8(5), at the intervals determined.

(2) The Bank must—

- (a) review a group resolution plan where any material change has been made to the legal or organisational structure of the relevant group or any group entity or to its business or financial position; and
- (b) make appropriate amendments if such a change could have a material impact on the effectiveness of the plan or necessitate amendment for any other reason.

(3) For the purposes of a review of a group resolution plan the Bank may make a determination under article 8(3).

(4) The Bank must review a group resolution plan and adopt the up-dated plan in accordance with Chapter 2.

(5) For the purposes of this article Part 3 and Chapter 2 have effect with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 8	In paragraph (3) the reference to a group resolution plan is a reference to the up-dated plan.
Article 40	In paragraphs (1) and (2) for “draw up and adopt a” read “review the”. In paragraph (3)— (a) the reference to a group resolution plan is a reference to the up-dated plan; and (b) for “be drawn up” read “the review must be undertaken”. In paragraph (4) for “drawn up” read “reviewed”. In paragraphs (5) and (7) for “drawing up a” read “reviewing the”.
Article 41	F149 ...
[^{F150} Article 45]	[^{F151} The] reference to a group resolution plan is a reference to the up-dated plan.

(6) In this article—

“group resolution plan” means a plan adopted by the Bank under Chapter 2; and

“up-dated plan”, in relation to a group resolution plan, means that plan as reviewed in accordance with this article (whether or not it has been amended on review).

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- F149** Words in art. 54(5) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 31(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F150** Words in art. 54(5) substituted (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. 31(b) (i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F151** Word in art. 54(5) substituted (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. 31(b) (ii)**; 2020 c. 1, Sch. 5 para. 1(1)

Review of group resolution plan drawn up by another resolution authority

^{F152}**55.**

- F152** Art. 55 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 32**; 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 5

Information and records for resolution planning

Information required for resolution planning

56.—(1) The regulator must provide the Bank with all information contained in a resolution pack prepared by a relevant person in accordance with rules made by the regulator under FSMA.

(2) This article does not require any information to be disclosed if its disclosure would be contrary to section 348 of FSMA.

(3) In this article—

“regulator” has the meaning given in section 3A(2) of FSMA ^{F153};

“relevant person” has the meaning given in subsection (2) of section 137K of FSMA ^{F154} (rules about resolution packs: duty to consult); and

“resolution pack” has the meaning given in subsection (3) of that section.

- F153** Section 3A was substituted by the Financial Services Act 2012, section 6(1), which substituted Part 1A of FSMA.

- F154** Section 137K was substituted by the Financial Services Act 2012, section 24(1), which substituted Part 9A of FSMA; and, together with the heading, is amended by paragraph 3 of Schedule 3 to this Order.

Notice of matters which could necessitate an amendment of a plan

57. The PRA and the FCA must notify the Bank without delay of any change of circumstances or other matter coming to their attention which could necessitate an amendment of a resolution plan or group resolution plan.

Records of financial contracts

58.—(1) The Bank may give directions to a relevant person in relation to maintaining detailed records of financial contracts ^{F155} to which the relevant person is a party.

(2) A “relevant person” is—

- (a) an institution authorised by the PRA or FCA; or
- (b) an undertaking set up in the United Kingdom which is a subsidiary of an institution authorised by the PRA or FCA ^{F156}...; or
- (c) the [^{F157}UK] parent undertaking.

[^{F158}(2A) “Financial contracts” means—

- (a) securities contracts, including—
 - (i) contracts for the purchase, sale or loan of a security, a group or index of securities;
 - (ii) options on a security or group or index of securities;
 - (iii) repurchase or reverse repurchase transactions on any such security, group or index;
- (b) commodities contracts, including—
 - (i) contracts for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;
 - (ii) options on a commodity or group or index of commodities;
 - (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;
- (c) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
- (d) swap agreements, including—
 - (i) swaps and options relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;
 - (ii) total return, credit spread or credit swaps;
 - (iii) any agreements or transactions that are similar to an agreement referred to in paragraph (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;
- (e) inter-bank borrowing agreements where the term of the borrowing is three months or less;
- (f) master agreements for any of the contracts or agreements referred to in sub-paragraphs (a) to (e).]

(3) A direction given by the Bank may—

- (a) require records of financial contracts to be maintained;
- (b) specify the details or kinds of detail which are to be recorded;
- (c) require records of financial contracts to be produced at the request of the Bank;
- (d) specify a period of time within which a relevant person is to be capable of producing records (“a time-limit”);
- (e) specify different time-limits for different kinds of financial contract.

[^{F159}(4) The Bank must exercise its functions under this article in accordance with any technical standards under paragraph (5).

(5) The Bank may make technical standards relating to—

- (a) the circumstances in which it will give a direction under this paragraph; and
- (b) the information that must be contained in the records required by such a direction.]

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(4) Directions may be given with general effect or with respect to a particular relevant person or class of relevant persons, but may not specify different time-limits for different relevant persons or classes of relevant person.

- F155** For the meaning of “financial contracts” see the recovery and resolution directive, Article 2.1, point (100).
- F156** Words in art. 58(2)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 33\(2\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F157** Word in art. 58(2)(c) substituted (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. 33\(2\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F158** Art. 58(2A) 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. 33\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F159** Art. 58(4)(5) 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. 33\(4\)](#); 2020 c. 1, Sch. 5 para. 1(1)

PART 6

Assessment of resolvability and removal of impediments to resolvability

CHAPTER 1

Assessment of resolvability of institutions

Application and interpretation of Chapter 1

59.—(1) This Chapter applies where the Bank draws up a resolution plan for an institution in accordance with Chapter 1 of Part 5, or reviews a resolution plan drawn up in accordance with that Chapter.

(2) In this Chapter “assessment of resolvability” means an assessment of the extent to which it would be feasible and credible to [^{F160}apply the resolution tools, exercise resolution powers or take] insolvency proceedings in respect of the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system of [^{F161}the United Kingdom] or the continuity of the institution's critical functions.

- F160** Words in art. 59(2) substituted (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. 34\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F161** Words in art. 59(2) substituted (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. 34\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Assessment of resolvability

60.—(1) For the purpose of drawing up or reviewing the resolution plan the Bank must make an assessment of resolvability.

(2) For the purpose of making the assessment of resolvability the Bank must—

- (a) consider all relevant matters, including the matters set out in [^{F162}Schedule 2B and in any technical standards under paragraph (2A)];
- (b) have regard to the circumstances under which the institution may fail or be likely to fail, in particular—
 - (i) supposing that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and
 - (ii) supposing that there is no such a situation or occurrence;
- (c) not assume that the institution will be in receipt of—
 - (i) extraordinary public financial support;
 - (ii) emergency liquidity assistance ^{F163}; or
 - (iii) any other liquidity assistance provided by the Bank under non-standard collateralisation, tenor and interest rate terms; and
- (d) consult—
 - (i) the appropriate regulator^{F164}...
 - ^{F165}(ii)

[^{F166}(2A) The Bank may make technical standards providing—

- (a) further examples of relevant matters to be considered; and
- (b) criteria to be examined,

for the purposes of making the assessment of resolvability.]

(3) Paragraph (2) has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to the assessment of resolvability.

(4) The institution is deemed to be resolvable if the Bank concludes that it would be feasible and credible to [^{F167}apply the resolution tools, exercise resolution powers or take] insolvency proceedings in respect of the institution while avoiding to the maximum extent possible any significant adverse effect on the financial system of [^{F168}the United Kingdom] or the continuity of the institution's critical functions.

^{F169}(5)

F162 Words in art. 60(2)(a) substituted (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. 35(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F163 For the meaning of “extraordinary public financial support” and “emergency liquidity assistance” see the recovery and resolution directive, Article 2.1, points (28 and (29).

F164 Word in art. 60(2)(d)(i) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 35(2)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)

F165 Art. 60(2)(d)(ii) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 35(2)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

F166 Art. 60(2A) 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. 35(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F167 Words in art. 60(4) substituted (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. 35(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F168** Words in art. 60(4) substituted (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. 35(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F169** Art. 60(5) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 35(5)**; 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 2

Assessment of resolvability of groups

Application and interpretation of Chapter 2

61.—(1) This Chapter applies where the Bank—

- (a) ^{F170}... draws up a group resolution plan in accordance with Chapter 2 of Part 5 or reviews a plan drawn up in accordance with that Chapter^{F170}...

^{F171}(b)

(2) In this Chapter “assessment of group resolvability” means an assessment of the extent to which it would be feasible and credible to [^{F172}apply the resolution tools or exercise resolution powers in respect of resolution entities, or take] insolvency proceedings in respect of group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system of [^{F173}the United Kingdom] or the continuity of the critical functions of group entities.

- F170** Words in art. 61(1)(a) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 36(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F171** Art. 61(1)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 36(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F172** Words in art. 61(2) substituted (31.12.2020) by S.I. 2018/1394, Sch. 3 para. 36(3)(a) (as substituted by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), 77(2))
- F173** Words in art. 61(2) substituted (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. 36(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Assessment of group resolvability where the PRA or FCA is the consolidating supervisor

62.—(1) This article applies in relation to a relevant group in respect of which the PRA or FCA is the consolidating supervisor.

(2) For the purpose of drawing up or reviewing a group resolution plan the Bank must make an assessment of group resolvability [^{F174}in respect of the relevant group and, where there is more than one resolution group in the relevant group, in respect of each resolution group].

(3) For the purpose of making the assessment of group resolvability the Bank must—

- (a) consider all relevant matters, including the matters set out in [^{F175}Schedule 2B and in any technical standards under paragraph (2A);]
- (b) have regard to the circumstances under which [^{F176}resolution entities] may meet the conditions for resolution, in particular—

- (i) supposing that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and
- (ii) supposing that there is no such a situation or occurrence;
- (c) not assume that any of the group entities will be in receipt of—
 - (i) extraordinary public financial support;
 - (ii) emergency liquidity assistance; or
 - (iii) any other liquidity assistance provided by the Bank under non-standard collateralisation, tenor and interest rate terms; and
- (d) consult—
 - (i) the appropriate regulator;
 - ^{F177}(ii)
 - ^{F177}(iii)

[^{F178}(3A) The Bank may make technical standards providing—

- (a) further examples of relevant matters to be considered; and
- (b) criteria to be examined,

for the purposes of making the assessment of group resolvability.]

(4) Paragraph (3) has effect subject to the imposition of any simplified obligations (within the meaning given by article 9(3)(b)) with respect to the assessment of group resolvability.

(5) The relevant group [^{F179}or a resolution group] is deemed to be resolvable if the Bank concludes that it would be feasible and credible to [^{F180}apply the resolution tools or exercise resolution powers in respect of resolution entities, or take] insolvency proceedings in respect of group entities while avoiding to the maximum extent possible any significant adverse effect on the financial system of [^{F181}the United Kingdom] or the continuity of the critical functions of group entities.

^{F182}(6)

^{F182}(7)

^{F182}(8)

F174 Words in art. 62(2) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **36(a)**

F175 Words in art. 62(3)(a) substituted (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. 37(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F176 Words in art. 62(3)(b) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **36(b)**

F177 Art. 62(3)(d)(ii)(iii) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 37(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F178 Art. 62(3A) 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. 37(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F179 Words in art. 62(5) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **36(c)(i)**

F180 Words in art. 62(5) substituted (31.12.2020) by S.I. 2018/1394, Sch. 3 para. 37(4)(a) (as substituted by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **77(3)**)

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- F181** Words in art. 62(5) substituted (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. 37(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F182** Art. 62(6)-(8) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 37(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Assessment of group resolvability where neither the PRA nor the FCA is the consolidating supervisor

^{F183}**63.**

- F183** Art. 63 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 38**; 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 3

Removal of impediments to resolvability of institutions

Application and interpretation of Chapter 3

64.—(1) This Chapter applies where the Bank, after consulting the appropriate regulator and having made an assessment of resolvability in accordance with Chapter 1, determines that there are substantive impediments to the resolvability of an institution (“the impediments”).

(2) In this Chapter—

“determination” means a determination of a kind referred to in paragraph (1);

“pre-resolution powers” means the powers conferred on the Bank by section 3A of the Banking Act 2009 ^{F184} (removal of impediments to the exercise of stabilisation powers etc); and

“relevant proposals” means proposals which—

- (a) are prepared by an institution to which notice is given under article 65;
- (b) are for taking measures to address or remove the impediments [^{F185}including a timetable for doing so]; and
- (c) are required to be submitted by the institution within [^{F186}the response period].

[^{F187}“response period” means—

- (a) in a case [^{F188}where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act], two weeks beginning with the date on which the institution received the notice; and
- (b) in any other case, four months beginning with that date.]

- F184** Section 3A was inserted by S.I. 2014/3329.

- F185** Words in art. 64(2) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **37(a)(i)**

- F186** Words in art. 64(2) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **37(a)(ii)**

F187 Words in art. 64(2) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **37(b)**

F188 Words in art. 64 substituted (31.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(3), **74(3)**

Notice of determination

65.—(1) The Bank must give notice of a determination to—

(a) the institution concerned; [^{F189}and]

(b) the appropriate regulator^{F190} ...

^{F191}(c)

(2) The notice must—

(a) be in writing;

(b) set out the impediments; and

(c) give reasons for the determination.

F189 Word in art. 65(1)(a) added (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. 39(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F190 Word in art. 65(1)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 39(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F191 Art. 65(1)(c) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 39(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Effect of notice of determination

66.—(1) A notice under article 65 has the effect of suspending the Bank's duty to draw up a resolution plan for the institution (or review the resolution plan adopted for the institution) until the Bank has approved relevant proposals or exercised pre-resolution powers.

(2) The Bank, after consulting the appropriate regulator, must assess whether the measures set out in relevant proposals would adequately address or effectively remove the impediments.

(3) Where the institution—

(a) fails to submit relevant proposals within the [^{F192}response] period, or

(b) the Bank concludes that the measures set out in relevant proposals would not adequately address or effectively remove the impediments,

the Bank must exercise pre-resolution powers with the object of requiring the institution to take specified measures to address or remove the impediments (“remedial measures”).

(4) In a direction given by the Bank for that purpose the Bank must—

(a) demonstrate how the measures set out in relevant proposals would not adequately address or effectively remove the impediments;

(b) demonstrate how the remedial measures will adequately address or effectively remove the impediments in a manner proportionate to the burden or restriction imposed by the direction; and

(c) require the institution to—

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- (i) prepare a plan showing how it will comply with the remedial measures; and
- (ii) submit that plan within one month beginning on the date of the direction.

(5) [^{F193}Where the consent of the appropriate regulator is not required under section 3A(5) of the Banking Act 2009,] the Bank must consult the appropriate regulator and, where appropriate, the Financial Policy Committee before determining remedial measures.

(6) For the purpose of assessing relevant proposals and determining remedial measures the Bank must take account of—

- (a) the threat to financial stability posed by the impediments; and
- (b) the effect of the remedial measures on—
 - (i) the business and financial stability of the institution and its ability to contribute to the economy of the United Kingdom ^{F194} ...;
 - (ii) the [^{F195}market in the United Kingdom] for financial services;
 - (iii) the financial stability of [^{F196}the United Kingdom].

(7) The Bank must give the institution written notice of the remedial measures, including a reasoned account of its decision to require the institution to take those measures.

- F192** Word in art. 66(3)(a) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **38(a)**
- F193** Words in art. 66(5) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **38(b)**
- F194** Words in art. 66(6)(b)(i) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 40(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F195** Words in art. 66(6)(b)(ii) substituted (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. 40(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F196** Words in art. 66(6)(b)(iii) substituted (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. 40(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Right of appeal

67.—(1) A person who is aggrieved by—

- (a) a determination,
- (b) the Bank's conclusion that the measures set out in relevant proposals would not adequately address or effectively remove the impediments, or
- (c) the exercise of pre-resolution powers,

may refer the matter to the Tribunal (within the meaning given in section 417(1) of FSMA ^{F197}).

(2) Part 9 of FSMA (hearings and appeals) has effect in relation to a reference to the Tribunal under paragraph (1) as if it were a reference of a decision of the Bank under FSMA.

- F197** This definition was inserted by [S.I. 2010/22](#).

CHAPTER 4

Removal of impediments to resolvability of group entities where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 4

68.—(1) This Chapter applies where, in relation to a relevant group—

- (a) the PRA or FCA is the consolidating supervisor; and
- (b) the Bank, having made an assessment of group resolvability in accordance with Chapter 2, has identified substantive impediments to the resolvability of a group entity (“the impediments”).

(2) In this Chapter—

“group entity” means the [^{F198}UK parent undertaking] or a subsidiary within the relevant group which is—

- (a) an institution
- (b) a financial institution; or
- (c) a parent undertaking of an institution which is ^{F199}...—
 - (i) ^{F199} ...
 - (ii) a qualifying parent undertaking;

“measures for structural change” means—

- (a) measures for changing the legal or operational structure of a group entity in order to ensure, through the application of resolution tools and the exercise of resolution powers, that critical functions can be separated, legally or operationally, from the performance of other functions;
- (b) measures for establishing [^{F200}a UK] parent financial holding company; or
- (c) where an institution is a subsidiary of a relevant MAHC, measures for establishing a financial holding company as a parent undertaking of the institution for the purpose of—
 - (i) facilitating the application of resolution tools and the exercise of resolution powers to achieve any of the resolution objectives; or
 - (ii) ensuring that applying the resolution tools and exercising the resolution powers does not have an adverse effect on the non-financial part of the group of the relevant MAHC;

“the plan” means the group resolution plan being drawn up for the relevant group (or the group resolution plan which has been adopted for the group and is being reviewed);

“pre-resolution powers” has the same meaning as in Chapter 3;

“qualifying parent undertaking” has the meaning given by section 192B of FSMA ^{F201} (meaning of “qualifying parent undertaking”); and

“remedial measures” means measures to address or remove the impediments.

[^{F202}“response period” means—

- (a) in a case [^{F203}where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act], two weeks beginning with the date on which the institution received the notice; and

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- (b) in any other case, four months beginning with that date.]
- (3) “Relevant MAHC”, in the definition of “measures for structural change”, means a mixed activity holding company which has at least one subsidiary which—
- (a) is an institution; and
 - (b) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company.

- F198** Words in art. 68(2) substituted (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. 41(2)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F199** Words in art. 68(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 41(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F200** Words in art. 68(2) substituted (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. 41(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F201** Section 192B was inserted by the Financial Services Act 2012, section 27, which inserted Part 12A of FSMA.
- F202** Words in art. 68(2) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **39**
- F203** Words in art. 68 substituted (31.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(3), **74(4)**

Report on substantive impediments to the resolvability of group entities

69.—(1) The Bank, in co-operation with ^{F204}... the appropriate regulator ^{F204}..., must prepare a report which—

- (a) contains an analysis of the impediments;
- (b) proposes remedial measures for the impediments; and
- (c) examines the impact of the remedial measures on the business of the group entities.

[^{F205}(2) The Bank must submit its report to the UK parent undertaking and the appropriate regulator.]

- F204** Words in art. 69(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 42(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F205** Art. 69(2) substituted (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. 42(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Suspension of requirement to draw up or review group resolution plan

70.—(1) ^{F206}... The submission of the Bank's report under article 69 has the effect of suspending the Bank's duty to draw up or review the plan until the Bank determines remedial measures under article 71(3)(c).

^{F207}(2)

^{F207}(3)

F206 Words in art. 70(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 43(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F207 Art. 70(2)(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 43(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Determining remedial measures

71.—(1) The [^{F208}UK] parent undertaking may, within [^{F209}the response period] beginning with the date on which it receives the Bank's report, submit to the Bank its observations on the report and a proposal to take alternative remedial measures ("alternative proposal").

(2) The Bank must send such observations and any alternative proposal to [^{F210}the appropriate regulator].

(3) ^{F211}... The Bank must—

- (a) confirm the impediments with or without modification;
- (b) assess any alternative proposal; and
- (c) determine remedial measures in the exercise of pre-resolution powers—
 - (i) where the Bank concludes that the measures set out in an alternative proposal would adequately address or effectively remove the impediments, by approving that proposal (with or without modification);
 - (ii) otherwise, by specifying the measures which are to be taken.

^{F212}(4)

(5) The Bank must consult the appropriate regulator and, where appropriate, the Financial Policy Committee before determining remedial measures under paragraph (3)(c).

(6) In considering any matter referred to in paragraph (3) or (4) the Bank must take account of—

- (a) the threat to financial stability posed by the impediments; and
- (b) the effect of the measures on—
 - (i) the business and financial stability of each group entity and its ability to contribute to the economy of the United Kingdom ^{F213}...
 - (ii) the [^{F214}market in the United Kingdom] for financial services;
 - (iii) the financial stability of [^{F215}the United Kingdom].

(7) Paragraphs (8) and (9) apply where remedial measures determined under paragraph (3) ^{F216}... are to be implemented by a group entity set up in the United Kingdom.

(8) The Bank must exercise pre-resolution powers with the object of requiring the entity to take the remedial measures.

(9) In a direction given for that purpose, the Bank—

- (a) if it has specified the measures which are to be taken, must demonstrate how the measures set out in an alternative proposal would not adequately address or effectively remove the impediments;
- (b) must demonstrate how the remedial measures will adequately address or effectively remove the impediments in a manner proportionate to the burden or restriction imposed by the direction; and
- (c) must require the entity to—

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- (i) prepare a plan showing how it will comply with the remedial measures; and
- (ii) submit that plan within one month beginning on the date of the direction.

- F208** Word in art. 71(1) substituted (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. 44(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F209** Words in art. 71(1) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **40**
- F210** Words in art. 71(2) substituted (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. 44(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F211** Words in art. 71(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F212** Art. 71(4) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F213** Words in art. 71(6)(b)(i) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F214** Words in art. 71(6)(b)(ii) substituted (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. 44(6)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F215** Words in art. 71(6)(b)(iii) substituted (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. 44(6)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F216** Words in art. 71(7) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 44(7)**; 2020 c. 1, Sch. 5 para. 1(1)

Joint decision on impediments to group resolvability and remedial measures

^{F217}**72.**

- F217** Art. 72 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 45**; 2020 c. 1, Sch. 5 para. 1(1)

References to EBA

^{F218}**73.**

- F218** Art. 73 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 45**; 2020 c. 1, Sch. 5 para. 1(1)

Requesting the assistance of EBA

^{F219}**74.**

F219 Art. 74 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 45**; 2020 c. 1, Sch. 5 para. 1(1)

F220 CHAPTER 5

Removal of impediments to resolvability of groups where
neither the PRA nor the FCA is the consolidating supervisor

F220 Pt. 6 Ch. 5 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 46**; 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 5

F220 75.

Report on substantive impediments to the resolvability of group entities

F220 75A.

Suspension of requirement to draw up or review group resolution plan

F220 76.

Determining remedial measures

F220 77.

Joint decision on impediments to group resolvability and remedial measures

F220 78.

Failure to reach joint decision: disagreement by the Bank with joint proposals

F220 79.

Failure to reach joint decision: agreement by the Bank with joint proposals

F220 80.

References to EBA

F220 81.

Requesting the assistance of EBA

F220 82.

PART 7

Intra-group financial support

CHAPTER 1

Authorisation of agreement for group financial support where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 1

83.—(1) This Chapter applies where, in relation to a relevant group—

- (a) the PRA or FCA is the consolidating supervisor; and
- (b) the PRA or FCA (or each of them) receives from the [F221UK] parent undertaking an application for authorisation of a group financial support agreement (“the application”).

(2) In this Chapter—

F222
...

[F223“conditions for financial support” means the following conditions—

- (a) there is a reasonable prospect that the financial support provided significantly redresses the financial difficulties of the group entity receiving the financial support;
- (b) the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the financial support;
- (c) the financial support is provided on terms, including consideration, in accordance with Article 19.7 of the recovery and resolution directive;
- (d) there is a reasonable prospect, on the basis of the information available to the management body of the group entity providing financial support at the time when the decision to grant financial support is taken, that the consideration for the support will be paid and, if the financial support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the financial support;
- (e) if the financial support is given in the form of a guarantee or any form of security and the guarantee or the security is enforced, the condition referred to in paragraph (d) shall apply to the liability arising for the recipient;
- (f) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the financial support;
- (g) the provision of the financial support would not create a threat to financial stability in the United Kingdom;
- (h) the group entity providing the financial support complies, at the time the financial support is provided, with—
 - (i) the requirements relating to capital or liquidity imposed by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to the capital requirements directive; and
 - (ii) the requirements imposed by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to Article 104.2 of the capital requirements directive,
 and the provision of the financial support shall not cause the group entity to infringe those requirements, unless the group entity is authorised by the appropriate regulator on an individual basis;

- (i) the provision of the financial support would not undermine the resolvability of the group entity providing the financial support.]

“financial support” includes—

- (a) a loan, a guarantee, the provision of assets for use as collateral or any combination of these forms of support; and
- (b) provision for support (in any form) in one or more transactions or in a transaction entered into by the group institution which is the intended recipient of the support and any other person;

“group entity” means a relevant parent undertaking or group subsidiary which proposes to enter into the group financial support agreement;

“group financial support agreement” means an agreement—

- (a) which is proposed for the provision of financial support to a group institution which, at any time after the agreement has been concluded, meets the conditions for early intervention; and
- (b) the parties to which include a relevant parent undertaking and one or more group subsidiaries set up in any country ^[F224], other than the United Kingdom, in which the relevant parent undertaking is set up];

“group institution” means a group entity which is an institution;

“group subsidiary” means an undertaking which is—

- (a) a subsidiary of a relevant parent undertaking; and
- (b) an institution or financial institution;

“relevant competent authority” means a competent authority, other than the consolidating supervisor, which has authorised a group entity; and

“relevant parent undertaking” means a ^[F225]UK parent institution, a financial holding company, a mixed financial holding company or a mixed activity holding company.

^[F226](2A) The PRA and the FCA may each make technical standards relating to conditions (a), (c), (f) and (i) of the definition of “conditions for financial support” provided in paragraph (2) in so far as those conditions apply to a group financial support agreement submitted to it by a UK parent undertaking.]

- F221** Word in art. 83(1)(b) substituted (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. 47\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F222** Words in art. 83(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 47\(3\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F223** Words in art. 83(2) substituted (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. 47\(3\)\(b\)](#) (as amended by [S.I. 2020/1301](#), regs. 1, 3, [Sch. para. 10\(c\)\(ii\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F224** Words in art. 83(2) substituted (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. 47\(3\)\(c\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F225** Word in art. 83(2) substituted (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. 47\(3\)\(d\)](#); 2020 c. 1, Sch. 5 para. 1(1)

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F226 Art. 83(2A) 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. 47(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Review of group financial support agreement and decision on authorisation

84.—(1) The appropriate regulator must review the group financial support agreement jointly with the relevant competent [^{F227}authority].

(2) The purpose of the review is to determine whether—

- (a) the terms of the agreement are compatible with the conditions for financial support, including whether they make provision to ensure that financial support would be given in accordance with those conditions; and
- (b) any group institution already meets the conditions for early intervention.

(3) The matter referred to in paragraph (2)(a) is to be determined having regard to the potential impact of the agreement, if it is concluded, on the financial stability of [^{F228}the United Kingdom].

(4) The appropriate regulator must refuse the application and prohibit the conclusion of the group financial support agreement if it is determined on review that—

- (a) the terms of the agreement are not compatible with the conditions for financial support; or
- (b) a group institution already meets the conditions for early intervention.

(5) The appropriate regulator must otherwise grant the application.

F227 Word in art. 84(1) substituted (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. 48(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F228 Words in art. 84(3) substituted (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. 48(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Duty to transmit a copy of application

85.—(1) The appropriate regulator must send a copy of the application or, where paragraph (2) has effect in relation to any information, of the application without that information, without delay to [^{F229}any] relevant competent authority.

(2) This article does not require any information contained in the application to be disclosed if its disclosure would be contrary to section 348 of FSMA.

F229 Word in art. 85(1) substituted (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. 49**; 2020 c. 1, Sch. 5 para. 1(1)

Joint decision with other competent authorities

^{F230}**86.**

F230 Art. 86 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 50**; 2020 c. 1, Sch. 5 para. 1(1)

References to EBA

^{F231}87.

F231 Art. 87 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 50**; 2020 c. 1, Sch. 5 para. 1(1)

Requesting the assistance of EBA

^{F232}88.

F232 Art. 88 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 50**; 2020 c. 1, Sch. 5 para. 1(1)

Duty to transmit a copy of authorised agreement

89. The appropriate regulator must send a copy of the group financial support agreement, if it is authorised, to the Bank ^{F233}....

F233 Words in art. 89 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 51**; 2020 c. 1, Sch. 5 para. 1(1)

Amendment of authorised agreement

90.—(1) This article applies where—

- (a) the parties to an agreement authorised under this Chapter wish to amend the agreement; and
- (b) rules made by the PRA or FCA under FSMA require the amendment to be authorised before it is made.

(2) If the [^{F234}UK] parent undertaking submits to the appropriate regulator an application for authorisation of the amendment (“the amendment application”), the appropriate regulator must treat the amendment application as if it were an application for authorisation of a group financial support agreement.

(3) Articles 84 to 89 apply for that purpose, but have effect in relation to the amendment application as if—

- (a) each reference to a group financial support agreement were a reference to the amendment set out in the amendment application; and
- (b) each reference to the application were a reference to the amendment application.

F234 Word in art. 90(2) substituted (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. 52(2)**; 2020 c. 1, Sch. 5 para. 1(1)

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^{F235}CHAPTER 2

Authorisation of agreement for group financial support where
neither the PRA nor the FCA is the consolidating supervisor

F235 Pt. 7 Ch. 2 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 53**; 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 2

^{F235}91.

Review of group financial support agreement and decision on authorisation

^{F235}92.

Joint decision with other competent authorities

^{F235}93.

References to EBA

^{F235}94.

Requesting the assistance of EBA

^{F235}95.

Amendment of authorised agreement

^{F235}96.

CHAPTER 3

Approval of authorised agreements by the members of a UK group entity

Interpretation of Chapter 3

97.—(1) In this Chapter—

“authorised agreement” means a group financial support agreement (within the meaning given in Chapter 1) authorised by the PRA [^{F236}or FCA], and includes any amendment authorised [^{F237}by the PRA or FCA];

“director” includes—

- (a) a director of a company;
- (b) a member of a limited liability partnership; and
- (c) a director of a building society established under the Building Societies Act 1986 ^{F238};

“member” includes—

- (a) a shareholder of a company;
- (b) a member of a limited liability partnership; and

- (c) a shareholding or borrowing member of a building society established under the Building Societies Act 1986 (“shareholding member” and “borrowing member” have the meaning given in paragraph 5(2) of Schedule 2 to that Act);

“ordinary resolution”—

- (a) in relation to a resolution passed at a meeting on a show of hands, means a resolution passed by a simple majority of the votes cast by those entitled to vote;
- (b) in relation to a resolution passed on a poll taken at a meeting, means a resolution passed by members representing a simple majority of the total voting rights of the members who (being entitled to do so) vote on the resolution;
- (c) in relation to a written resolution, means a resolution passed by members representing a simple majority of the total voting rights of those eligible to vote on a written resolution;
- and

“UK group entity”, in relation to an authorised agreement, means—

- (a) the relevant parent undertaking, if it is set up in the United Kingdom;
- (b) a group subsidiary set up in the United Kingdom.

(2) In this article, for the interpretation of “UK group entity”, the expressions “group subsidiary” and “relevant parent undertaking” have the meaning given in Chapter 1.

- F236** Words in [art. 97](#) substituted (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. 54\(2\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F237** Words in [art. 97](#) substituted (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. 54\(2\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F238** 1986 c. 53.

Requirement for approval of authorised agreement

98.—(1) An authorised agreement entered into by a UK group entity is only valid in respect of that entity if its members have approved the agreement in accordance with this article.

(2) An authorised agreement is deemed to be approved by the members of a UK group entity if an ordinary resolution approving the agreement is passed by the members—

- (a) present and voting either in person or by proxy at a meeting; or
- (b) by way of a written resolution proposed by the directors of the entity.

(3) An ordinary resolution may not be passed unless the directors of the entity make available to its members a memorandum setting out the proposed resolution and the terms of the authorised agreement—

- (a) in the case of a written resolution, by sending the memorandum to every member at or before the time at which the proposed resolution is submitted to the members;
- (b) in the case of a resolution at a meeting, by making the memorandum available for inspection by the members—
- (i) at the entity's registered office for not less than fifteen days ending with the date of the meeting; and
- (ii) at the meeting itself.

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[^{F239} **Publication of information concerning group financial support agreements**

98A. The PRA and the FCA may each make technical standards relating to the form and content of any description of entry into a group financial support agreement which the directors of a UK group entity are required to publish by rules made by the PRA or the FCA under Part 9A of FSMA.]

F239 Art. 98A 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. 55**; 2020 c. 1, Sch. 5 para. 1(1)

Revocation of authorised agreement

99.—(1) This article applies where a UK group entity has entered into an authorised agreement which has been approved in accordance with article 98.

(2) The authorised agreement remains valid in respect of the UK group entity for as long as the members of the entity have not revoked their approval in accordance with this article.

(3) Paragraph (4) applies where at least five per cent. of the members of the entity require the directors to—

- (a) call a general meeting of the entity to determine whether their approval of the authorised agreement should be revoked; or
- (b) circulate a written resolution proposing that the approval should be revoked.

(4) The members' approval of the authorised agreement is revoked if an ordinary resolution revoking it is passed by the members—

- (a) present and voting either in person or by proxy at a general meeting; or
- (b) by way of a written resolution proposed by the directors.

(5) An ordinary resolution may not be passed unless the directors of the entity make available to its members a memorandum setting out the proposed resolution—

- (a) in the case of a written resolution, by sending the memorandum to every member at or before the time at which the proposed resolution is submitted to the members;
- (b) in the case of a resolution at a general meeting, by making the memorandum available for inspection by the members—
 - (i) at the entity's registered office for not less than fifteen days ending with the date of the meeting; and
 - (ii) at the meeting itself.

Obligation to provide annual report

100.—(1) The directors of the UK group entity which has entered into an authorised agreement must prepare an annual report on the performance of the agreement and the implementation of any decision taken pursuant to it.

(2) The directors must deliver a copy of the annual report to every member of the entity, electronically or by other means, no later than the first and each subsequent anniversary of the date on which the entity enters into the agreement.

CHAPTER 4

Provision of group financial support

Interpretation of Chapter 4

101.—(1) In this Chapter—

[^{F240}“authorised agreement” has the same meaning as in Chapter 3;]

^{F241} ...

“conditions for financial support” has the same meaning as in Chapter 1;

“financial support” has the same meaning as in Chapter 1;

“group entity” means a relevant parent undertaking or group subsidiary which has entered into a group financial support agreement authorised by the PRA [^{F242}or FCA] (“the agreement”);

“intended recipient” means the group institution named in a relevant notice as the recipient of the financial support referred to in the notice;

“notifying group entity” means the group entity which has given a relevant notice;

“relevant competent authority” means a competent authority, other than the consolidating supervisor, which has authorised a group entity;

[^{F243}“relevant notice” means a notice—

- (a) given by a group entity;
- (b) stating an intention to provide financial support under an authorised agreement; and
- (c) required by rules made by the PRA or FCA under Part 9A of FSMA;]

“UK group entity” means a group entity set up in the United Kingdom.

(2) In this article, for the interpretation of “group entity” and “intended recipient”, the expressions “group subsidiary”, “group financial support agreement”, “group institution” and “relevant parent undertaking” have the meaning given in Chapter 1.

F240 Words in art. 101(1) 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. 56(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F241 Words in art. 101(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 56(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F242 Words in art. 101(1) substituted (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. 56(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F243 Words in art. 101(1) substituted (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. 56(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

Relevant notice from UK group entity: decision by the PRA or FCA

102.—(1) Where the PRA or FCA receives a relevant notice from a UK group entity, it must, within five business days beginning with the date on which it receives the notice, decide whether to—

- (a) agree the provision of the financial support to which the notice refers; or
- (b) prohibit or restrict the provision of that financial support on the ground that the conditions for financial support have not been met.

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(2) The regulator must give written notice of its decision, including a reasoned account of the decision—

- (a) to the notifying group entity; [^{F244}and]
 - ^{F245}(b)
 - (c) unless the regulator is the consolidating supervisor, to the consolidating supervisor;
 - (d) unless the regulator is the competent authority for the intended recipient, to that authority; and
 - (e) where the regulator has authorised the intended recipient, to the intended recipient.
- (3) In this article “the regulator”—
- (a) where the relevant notice is received from a PRA-authorised person, means the PRA; and
 - (b) where the relevant notice is received from any other UK group entity, means the FCA.

[^{F246}(4) In this article “business day” has the same meaning as in section 70D(1) of the Banking Act 2009 ^{F247}.]

F244 Word in art. 102(2)(a) added (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. 57(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F245 Art. 102(2)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 57(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F246 Art. 102(4) 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. 57(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F247 Section 70D inserted by [S.I. 2014/3329](#).

Duties of consolidating supervisor where financial support agreed, prohibited or restricted

103.—(1) This article applies where the PRA or FCA is the consolidating supervisor.

^{F248}(2)

(3) Paragraph (4) applies where—

- (a) a competent authority prohibits or restricts the provision of financial support to which a relevant notice refers;
- (b) the group recovery plan refers to the provision of group financial support; and
- (c) either—
 - (i) the relevant competent authority for the intended recipient asks the appropriate regulator for a re-assessment of the plan; or
 - (ii) the appropriate regulator is the competent authority for the intended recipient.

(4) The appropriate regulator—

- (a) must consider whether to require the group recovery plan to be reviewed under article 34; and
- (b) if the appropriate regulator is the competent authority for the intended recipient and the intended recipient has drawn up a recovery plan on an individual basis, must consider whether to require that plan to be reviewed under article 33.

^{F249}(5)

- F248** Art. 103(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 58(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F249** Art. 103(5) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 58(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Re-assessment of recovery plans by the PRA or FCA where it is not the consolidating supervisor

^{F250}**104.**

- F250** Art. 104 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 59**; 2020 c. 1, Sch. 5 para. 1(1)

Requesting the assistance of EBA

^{F251}**105.**

- F251** Art. 105 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 59**; 2020 c. 1, Sch. 5 para. 1(1)

Reciprocal support

106. Where the PRA or FCA agrees the provision, with or without restrictions, of the financial support to which a relevant notice refers, the notifying group entity may agree with the intended recipient of that support to receive financial support from the intended recipient.

PART 8

Early intervention

CHAPTER 1

Early intervention with respect to an institution

Interpretation of Chapter 1

107. In this Chapter—

“measure for early intervention” means a [^{F252}relevant] measure which may be taken by the PRA or FCA in exercise of its powers under FSMA with the object of addressing the conditions [^{F253}for early intervention]; ^{F254}...

“relevant institution” means an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [^{F255}the capital requirements regulation and CRR rules][^{F256}, and

[^{F257}“relevant measure” means a measure—

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- (a) requiring an institution to—
 - (i) implement one or more of the arrangements or measures set out in the recovery plan; or
 - (ii) review and (if appropriate) amend a recovery plan in accordance with article 33 when the circumstances that led to early intervention are different from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a specified timeframe and to ensure that the conditions referred to in the introductory phase no longer apply;
- (b) requiring the management body of an institution to examine the situation, identify measures to overcome any problems identified and draw up an action programme to overcome those problems and a timetable for its implementation;
- (c) requiring the management body of an institution to convene, or, if the management body fails to comply with the requirement, to convene directly, a meeting of shareholders of the institution, and in both cases setting the agenda and requiring certain decisions to be considered for adoption by the shareholders;
- (d) requiring any person to be removed or replaced if an approval is withdrawn from that person under section 63 of FSMA;
- (e) requiring the management body of an institution to draw up a plan for negotiation on restructuring of debt with some or all of its creditors in accordance with any recovery plan;
- (f) requiring changes to the institution's business strategy;
- (g) requiring changes to the legal or operational structures of the institution; or
- (h) acquiring (including through on-site inspections) and providing to the Bank all the information necessary to update the resolution plan and preparing for the possible resolution of the institution and for valuation of the assets and liabilities of the institution in accordance with section 6E or 48X of the Banking Act 2009;]

“temporary manager” means a temporary manager appointed by the appropriate regulator under section 71C of FSMA].

- F252** Word in art. 107 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. 60(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F253** Words in art. 107 substituted (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. 60(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F254** Word in art. 107 omitted (16.12.2016) by virtue of The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(2)(a)**
- F255** Words in art. 107 substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(7)**
- F256** Words in art. 107 inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(2)(b)**
- F257** Words in art. 107 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. 60(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Notice that institution meets the conditions for early intervention

108.—^{F258}(1) The appropriate regulator must notify the Bank without delay if it determines that a relevant institution meets the conditions for early intervention ^{F259}or the appointment of a temporary manager].

^{F260}(2) The PRA and the FCA may each make technical standards relating to the circumstances in which a relevant institution may be taken as meeting the conditions for early intervention.]

F258 Art. 108 renumbered as art. 108(1) (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. 61(1)**; 2020 c. 1, **Sch. 5 para. 1(1)**

F259 Words in art. 108 inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(3)**

F260 Art. 108(2) 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. 61(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Deadline for compliance with measure for early intervention

109. The appropriate regulator may not take a measure for early intervention in respect of a relevant institution without prescribing a date before which the action required to be taken in compliance with the measure is to be completed.

CHAPTER 2

Early intervention with respect to groups where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 2

110.—(1) This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

“measure for early intervention”—

(a) ^{F261}... has the same meaning as in Chapter 1;

(b) ^{F262}...

^{F263}...

^{F264}“temporary manager” means—

(a) in relation to a UK group entity, a temporary manager appointed by the appropriate regulator under section 71C of FSMA;

(b) ^{F265}...

“UK group entity” means—

(a) the ^{F266}[UK] parent undertaking^{F267}...;

(b) a group subsidiary which is an institution authorised by the PRA or FCA.

F261 Words in art. 110(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 62(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F262** Words in art. 110(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 62(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F263** Words in art. 110(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 62(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F264** Words in art. 110 inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(4)**
- F265** Words in art. 110(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 62(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F266** Word in art. 110(2) substituted (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. 62(5)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F267** Words in art. 110(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 62(5)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Procedure for early intervention in respect of a UK group entity

111.—(1) This article applies where the appropriate regulator proposes to take a measure for early intervention [^{F268}or appoint a temporary manager] in respect of a UK group entity.

(2) The appropriate regulator must without delay give notice of its proposal to the Bank^{F269}
^{F270}(3)

(4) The appropriate regulator must give the [^{F271}Bank] notice of a decision to take a measure for early intervention [^{F272}or to appoint a temporary manager] in respect of a UK group entity.

(5) The appropriate regulator may not take a measure for early intervention without prescribing a date before which the action required to be taken in compliance with the measure is to be completed.

(6) The appropriate regulator must give the UK group entity referred to in a notice given under paragraph (4) and the [^{F273}UK] parent undertaking, if it is not the entity concerned, written notice of its decision to take a measure for early intervention [^{F274}or to appoint a temporary manager], including a reasoned account of the decision.

- F268** Words in art. 111(1) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(5)(a)**
- F269** Words in art. 111(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 63(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F270** Art. 111(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 63(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F271** Word in art. 111(4) substituted (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. 63(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F272** Words in art. 111(4) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(5)(c)**
- F273** Word in art. 111(6) substituted (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. 63(5)**; 2020 c. 1, Sch. 5 para. 1(1)

F274 Words in art. 111(6) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **41(5)(c)**

Procedure for early intervention in respect of a non-UK group entity

F275 **112.**

F275 Art. 112 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

Joint decisions about early intervention

F276 **113.**

F276 Art. 113 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

References to EBA

F277 **114.**

F277 Art. 114 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

Requesting the assistance of EBA

F278 **115.**

F278 Art. 115 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 64**; 2020 c. 1, Sch. 5 para. 1(1)

F279 CHAPTER 3

Early intervention with respect to groups where neither
the PRA nor the FCA is the consolidating supervisor

F279 Pt. 8 Ch. 3 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 65**; 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 3

F279 **116.**

Procedure for early intervention in respect of a UK group entity

^{F279}117.

Joint decisions about early intervention

^{F279}118.

References to EBA

^{F279}119.

Requesting the assistance of EBA

^{F279}120.

PART 9

Minimum requirement for own funds and eligible liabilities

CHAPTER 1

Determination of minimum requirement for an institution

Interpretation of Chapter 1

121.—(1) In this Chapter—

[^{F280}“covered bond” means a regulated covered bond within the meaning of regulation 1(2) of the Regulated Covered Bonds Regulations 2008; and;]

“relevant institution” means an institution, other than a mortgage credit institution, which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [^{F281}the capital requirements regulation and CRR rules].

(2) “Mortgage credit institution” means an institution—

(a) which does not have permission under Part 4A of FSMA to carry on the regulated activity of accepting deposits (within the meaning given by section 22 of that Act, read with Schedule 2 and any order under section 22); and

(b) whose lending—

(i) relates to an agreement under which the obligation of the borrower to repay is secured, or is to be secured, by a legal mortgage on land; and

(ii) is financed by covered bonds ^{F282}.

F280 Words in art. 121(1) 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. 66(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F281 Words in art. 121(1) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(8)**

F282 For the meaning of “covered bond” see the recovery and resolution directive, Article 2.1, point (96).

Duties of the Bank in relation to minimum requirement

122.—(1) The Bank must exercise the powers conferred by section 3A of the Banking Act 2009 ^{F283} (removal of impediments to the exercise of stabilisation powers etc)—

- (a) to ensure that a relevant institution is required at all times to maintain a minimum requirement for own funds and eligible liabilities ^{F284} ...; and
- (b) with the object of ensuring that at all times the institution meets the minimum requirement specified in a direction given for that purpose.

^{F285}(2)

F283 Section 3A was inserted by [S.I. 2014/3329](#).

F284 Words in [art. 122\(1\)\(a\)](#) omitted (28.12.2020) by virtue of [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **45**

F285 [Art. 122\(2\)](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 67**; 2020 c. 1, Sch. 5 para. 1(1)

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) [^{F286}An eligible liability must be excluded] from the amount of the relevant institution's [^{F287}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 [^{F288}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

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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; ^{F289} ...

- (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; ^{F290} 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.

[^{F291}(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.]

F286 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)**

F287 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)**

F288 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**

F289 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)**)

F290 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)**

F291 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)

Review of minimum requirement

124.—(1) The Bank must review the minimum requirement for own funds and eligible liabilities when, in accordance with Chapter 4 of Part 5, it reviews the resolution plan (within the meaning given in Chapter 1 or 3 of that Part) adopted for the relevant institution.

(2) Article 123 applies for the purpose of the review, but paragraph (6) of that article has effect for that purpose as if the reference to the determination (of the minimum requirement for own funds and eligible liabilities) were a reference to the re-determination of the requirement on review.

CHAPTER 2

Determination of minimum consolidated requirement
where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 2

125.—(1) This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

F292 ...

“group entity” includes an undertaking which is—

- (a) a parent undertaking of the [**F293**UK] parent undertaking; and
- (b) a mixed activity holding company which has at least one subsidiary which—
 - (i) is an institution; and
 - (ii) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company;

“group institution” means—

- (a) the [**F294**UK] parent undertaking, if it is a relevant institution;
- (b) a group subsidiary which is a relevant institution;
- (c) a group entity, other than an institution, which is—
 - (i) required under article 139 **F295** ... to maintain a minimum requirement for own funds and eligible liabilities; **F295** ...
 - (ii) **F296** ...
- (d) where the group resolution plan does not provide for the separate resolution **F297** of a subsidiary set up in a third country, that subsidiary if it would be a relevant institution if it were set up in [**F298**the UK];

“minimum consolidated requirement” means the requirement for a minimum level of own funds and eligible liabilities of the group institutions **F299** ...;

“minimum requirement”, in relation to a group institution, means a minimum requirement for own funds and eligible liabilities **F300** ...; and

“netting arrangement”—

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- (a) in relation to an institution authorised by the PRA or FCA, means 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);
- (b) ^{F301} ...
- (3) “Relevant institution”, in the definition of “group institution”, means an institution which—
 - (a) if authorised by the PRA or FCA, is not a mortgage credit institution within the meaning given in Chapter 1; and
 - (b) if set up in a country other than the United Kingdom, does not meet criteria which are equivalent in that country to the criteria set out in article 121(2).

- F292** Words in art. 125(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), [Sch. 3 para. 69\(2\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F293** Word in art. 125(2) substituted (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. 69\(2\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F294** Word in art. 125(2) substituted (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. 69\(2\)\(c\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F295** Words in art. 125(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), [Sch. 3 para. 69\(2\)\(c\)\(ii\)\(aa\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F296** Words in art. 125(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), [Sch. 3 para. 69\(2\)\(c\)\(ii\)\(bb\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F297** For the meaning of “resolution” see the recovery and resolution directive, Article 2.1, point (1).
- F298** Words in art. 125(2) substituted (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. 69\(2\)\(c\)\(iii\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F299** Words in art. 125(2) omitted (28.12.2020) by virtue of [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1350), regs. 1(2), [47\(a\)](#)
- F300** Words in art. 125(2) omitted (28.12.2020) by virtue of [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1350), regs. 1(2), [47\(b\)](#)
- F301** Words in art. 125(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), [Sch. 3 para. 69\(2\)\(d\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Determination of minimum consolidated requirement

126.—(1) This article applies for the purpose of determining the minimum consolidated requirement [^{F302}for each resolution group].

(2) ^{F303} ... The Bank must determine the minimum consolidated requirement, and is solely responsible for the determination.

^{F304}(3)

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

(5) 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 netting arrangement.

(6) [^{F305}An eligible liability must be excluded] from the amount of the group institution's [^{F306}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.

(7) For the purpose of paragraph (6)(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.

(8) The determination—

(a) must be based on an assessment of the [^{F307}following criteria—

- (i) the need to ensure that each group institution can be resolved by the application of the resolution tools including, where appropriate, by making special bail-in provision within the meaning of section 48B of the Banking Act 2009, in a way that meets the special resolution objectives;
- (ii) the need to ensure, in appropriate cases, that each group institution has sufficient eligible liabilities to ensure that, if mandatory reduction provision within the meaning of section 6B of the Banking Act 2009 or special bail-in provision were made—
 - (aa) losses could be absorbed; and
 - (ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored, to a level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;
- (iii) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under section 48B(10) of the Banking Act 2009 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer—
 - (aa) each group institution has sufficient other eligible liabilities or own funds to ensure that losses could be absorbed; and
 - (ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored, to the level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;
- (iv) the size, the business model, the funding model and the risk profile of each group institution; ^{F308} ...

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- (v) the extent to which the failure of each group institution would have an adverse effect on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities]; ^{F309} and
 - (vi) 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.] and
 - (b) must take account of any provision made in the group resolution plan for the separate resolution of a subsidiary set up in a third country.
- (9) Where the Bank makes an assessment under paragraph (8)(a) with respect to a group institution authorised by the PRA or FCA, it must make the assessment in consultation with the appropriate regulator.

- F302** Words in art. 126(1) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **48(a)**
- F303** Words in art. 126(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 70(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F304** Art. 126(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 70(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F305** Words in art. 126(6) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(a)**
- F306** Words in art. 126(6) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(b)**
- F307** Words in art. 126(8)(a) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **48(d)**
- F308** Word in art. 126(8)(a)(iv) omitted (31.12.2020) by virtue of S.I. 2018/1394, Sch. 3 para. 70(4)(a) (as substituted by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **77(5)(a)**)
- F309** Art. 126(8)(a)(vi) and word inserted by virtue of S.I. 2018/1394, Sch. 3 para. 70(4)(b) (as substituted by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **77(5)(a)**)

Joint determination

^{F310} **127.**

- F310** Art. 127 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 71**; 2020 c. 1, Sch. 5 para. 1(1)

References to EBA: determination of minimum consolidated requirement

^{F311} **128.**

- F311** Art. 128 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 71**; 2020 c. 1, Sch. 5 para. 1(1)

Review of minimum consolidated requirement

129.—(1) The Bank must review the minimum consolidated requirement [^{F312}for each resolution group] when, in accordance with Chapter 4 of Part 5, it reviews the group resolution plan.

(2) [^{F313}Article 126 applies] for the purpose of the review, but have effect for that purpose as if each reference to determining (or the determination of) the minimum consolidated requirement were a reference to re-determining (or the re-determination of) the requirement on review.

F312 Words in art. 129(1) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **51**

F313 Words in art. 129(2) substituted (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. 72**; 2020 c. 1, Sch. 5 para. 1(1)

^{F314}CHAPTER 3

Determination of minimum consolidated requirement where
neither the PRA nor the FCA is the consolidating supervisor

F314 Pt. 9 Ch. 3 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 73**; 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 3

^{F314}**130.**

Joint determination of minimum consolidated requirement

^{F314}**131.**

Review of minimum consolidated requirement

^{F314}**132.**

CHAPTER 4

Determination of minimum requirements for group institutions
where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 4

133.—(1) This Chapter applies where the PRA or FCA is the consolidating supervisor in relation to a relevant group.

(2) In this Chapter—

^{F315}... “group entity” and “minimum requirement” have the same meaning for the relevant group as they have for a relevant group in Chapter 2;

[^{F316}“group institution” means an institution, other than a mortgage credit institution within the meaning given in Chapter 1, that—

- (a) is authorised by the PRA or FCA and
- (b) forms part of a relevant group;]

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“minimum consolidated requirement” means the minimum consolidated requirement (within the meaning given in Chapter 2) which is determined for the relevant group;

“netting arrangement” has the same meaning as in Chapter 2;

F317 ...

F317 ...

- F315** Words in art. 133(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 74(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F316** Words in art. 133(2) substituted (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. 74(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F317** Words in art. 133(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 74(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Duties of the Bank in relation to minimum requirement

134.—(1) The Bank must exercise the powers conferred by section 3A of the Banking Act 2009—

- (a) to ensure that a [^{F318}group institution] is required at all times to maintain a minimum requirement; and
- (b) with the object of ensuring that at all times the institution meets the minimum requirement specified in a direction given for that purpose.

F319 (2)

F319 (3)

- F318** Words in art. 134(1)(a) substituted (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. 75(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F319** Art. 134(2)(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 75(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Determination of minimum requirement

135.—(1) This article applies for the purpose of determining the minimum requirement for a group institution.

(2) The amount of the 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 netting arrangement.

(4) [^{F320}An eligible liability must be excluded] from the amount of the institution's [^{F321}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—
- (a) must be based on an assessment of the criteria set out in [^{F322}article 126(8)(a)]; and
 - (b) must take account of the minimum consolidated requirement.
- (7) ^{F323}... The Bank must make the assessment under paragraph (6)(a) in consultation with—
- (a) the PRA, if the institution is a PRA-authorised person;
 - (b) the FCA, if the institution is any other UK authorised person.

F320 Words in art. 135(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(a)**

F321 Words in art. 135(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(14)(b)**

F322 Words in art. 135(6)(a) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **53**

F323 Words in art. 135(7) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 76(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Joint determination of minimum requirements

^{F324}**136.**

F324 Art. 136 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 77**; 2020 c. 1, Sch. 5 para. 1(1)

References to EBA: determination of minimum requirement

^{F325}**137.**

F325 Art. 137 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 77**; 2020 c. 1, Sch. 5 para. 1(1)

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Review of minimum requirements

138.—(1) The Bank must review the minimum requirements for group institutions when, in accordance with Chapter 4 of Part 5, it reviews the group resolution plan.

(2) Articles 134 [^{F326}and 135] apply for the purpose of the review, but have effect for that purpose as if each reference to determining (or the determination of) a minimum requirement were a reference to re-determining (or the re-determination of) the requirement on review.

F326 Words in art. 138(2) substituted (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. 78\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Minimum requirement for other group entities set up in the United Kingdom

139.—(1) The Bank may decide, after consulting the regulator, that a group entity, other than a [^{F327}group institution], set up in the United Kingdom should be required to maintain a minimum requirement for own funds and eligible liabilities ^{F328}....

(2) Where the Bank makes a such decision, articles 134 [^{F329}, 135 and 138] apply for the purpose of determining and reviewing the requirement and ensuring that the requirement is maintained and met, but have effect for that purpose as if each reference to an institution ^{F330}... included a reference to the group entity for which the requirement is being (or has been) determined.

(3) In this article “the regulator”—

- (a) where there is a PRA-authorised person and any other UK authorised person in the relevant group, means the PRA and the FCA;
- (b) where there is a PRA-authorised person and no other UK authorised person in the relevant group, means the PRA;
- (c) where there is no PRA-authorised person in the relevant group, means the FCA.

F327 Words in art. 139(1) substituted (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. 79\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F328 Words in art. 139(1) omitted (28.12.2020) by virtue of [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), [54](#)

F329 Words in art. 139(2) substituted (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. 79\(3\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F330 Words in art. 139(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 79\(3\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

^{F331}CHAPTER 5

Determination of minimum requirements for group institutions
where neither the PRA nor the FCA is the consolidating supervisor

F331 Pt. 9 Ch. 5 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 80](#); 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 5

^{F331}140.

Duties of the Bank in relation to minimum requirement

^{F331}141.

Determination of minimum requirement

^{F331}142.

Joint determination of minimum requirements

^{F331}143.

References to EBA: determination of minimum requirement

^{F331}144.

Review of minimum requirements

^{F331}145.

Minimum requirement for other group entities set up in the United Kingdom

^{F331}146.

CHAPTER 6

Minimum requirement for own funds and eligible liabilities: other provisions

Waiver of application of Chapter 4 ^{F332}...

147.—(1) This article applies in relation to a relevant group.

(2) The Bank may waive the application of Chapter 4 ^{F333}... in relation to [^{F334}a UK parent institution] where it—

- (a) complies with the minimum consolidated requirement determined in accordance with Chapter 2 ^{F335}...; and
- (b) benefits from the exercise of the discretion laid down in Article 7.3 of the capital requirements regulation.

(3) The Bank may waive the application of Chapter 4 ^{F336}... in relation to a [^{F337}group institution] which is a group subsidiary where—

- (a) both the institution and its parent undertaking are UK authorised persons;
- (b) the supervision of the institution by the PRA or FCA (“the regulator”) is part of the supervision on a consolidated basis of the parent undertaking in accordance with [^{F338}the capital requirements regulation and CRR rules];
- (c) the highest level UK institution in the relevant group, if that is not the [^{F339}UK parent institution], complies on a sub-consolidated basis with the minimum consolidated requirement determined in accordance with Chapter 2 ^{F340}...;

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- (d) there is no legal or other material impediment, whether actual or foreseeable, to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the institution;
 - (e) either—
 - (i) the parent undertaking has satisfied the regulator that no significant risks arise from the institution's operations; or
 - (ii) the parent undertaking has satisfied the regulator that the institution is prudently managed, and has declared, with the consent of the regulator, that it guarantees the institution's commitments;
 - (f) the institution is covered by the risk evaluation, measurement and control procedures of the parent undertaking;
 - (g) the parent undertaking holds more than 50 per cent. of the voting rights attached to shares in the capital of the institution or has the right to appoint or remove the majority of the members of the institution's management body (within the meaning given by point (7) of Article 3.1 of the capital requirements directive); and
 - (h) the institution benefits from the exercise of the discretion laid down in Article 7.1 of the capital requirements regulation.
- (4) In this article—
- “parent undertaking”, in relation to a UK institution, means an undertaking which is a parent undertaking of the institution and has no other subsidiary which is also a parent undertaking of the institution; and
- “UK institution” means an institution which is authorised by the PRA or FCA and is not a mortgage credit institution within the meaning given in Chapter 1.

- F332** Words in art. 147 heading omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 81\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F333** Words in art. 147(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 81\(3\)\(a\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F334** Words in art. 147(2) substituted (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. 81\(3\)\(a\)\(ii\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F335** Words in art. 147(2)(a) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 81\(3\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F336** Words in art. 147(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 81\(4\)\(a\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F337** Words in art. 147(3) substituted (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. 81\(4\)\(a\)\(ii\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F338** Words in art. 147(3)(b) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), [19\(9\)](#)
- F339** Words in art. 147(3)(c) substituted (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. 81\(4\)\(c\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F340 Words in art. 147(3)(c) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 81\(4\)\(c\)\(ii\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Meeting minimum requirement through contractual bail-in instruments etc

148.—(1) This article applies where—

- (a) a minimum requirement is determined in accordance with Chapter 1 for an institution authorised by the PRA or FCA;
- (b) a minimum requirement is determined in accordance with Chapter 4 ^{F341}... for an undertaking set up in the United Kingdom; or
- (c) a minimum consolidated requirement is determined in accordance with Chapter 2 ^{F342}... for a relevant group.

(2) The Bank may determine that a minimum requirement or minimum consolidated requirement to which this article applies must be met partially through contractual bail-in instruments or composed wholly or partially of own funds or a specified kind of liability.

(3) In this article “contractual bail-in instrument” means an instrument which —

- (a) contains a contract term that where the Bank decides to apply the stabilisation option referred to in paragraph (c) of section 1(3) of the Banking Act 2009 ^{F343} (the bail-in option) in respect of the institution, undertaking or relevant group concerned, the instrument is to be written down or converted to the extent required before other eligible liabilities are written down or converted; and
- (b) is subject to a binding subordination agreement, undertaking or provision under which, in the event that normal insolvency proceedings are commenced, the instrument ranks below other eligible liabilities and cannot be repaid until other eligible liabilities outstanding on the date of commencement of the insolvency proceedings have been repaid.

[^{F344}(4) “Normal insolvency proceedings” has the meaning given in section 3(1) of the Banking Act 2009.]

F341 Words in art. 148(1)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 82\(2\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F342 Words in art. 148(1)(c) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 82\(2\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F343 Section 1(3) was substituted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 12(1) and (3); and was amended by [S.I. 2014/3329](#).

F344 Art. 148(4) 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. 82\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)

PART 10

Requirement to write down or convert capital instruments

Application and interpretation of Part

149.—(1) This Part applies in relation to a relevant group.

(2) In this Part—

“alternative measure” means—

- (a) a measure for early intervention within the meaning given in Chapter 1 of Part 8;
- (b) [^{F345} a power of the FCA or PRA by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to] Article 104.1 of the capital requirements directive (supervisory powers); or
- (c) a transfer of funds or capital from a parent undertaking;

^{F346}
...

“Case 2”—

- (a) in relation to a bank, means Case 2 set out in subsection (3) of section 6A of the Banking Act 2009 (cases where mandatory write-down, conversion, etc applies);
- (b) in relation to a banking group company, means Case 2 set out in subsection (4) of section 81AA of that Act ^{F347} (cases where mandatory write-down, conversion, etc applies: banking group companies);

“Case 3”, in relation to a bank, means Case 3 set out in section 6A(4) of that Act;

“Case 4”, in relation to a bank, means Case 4 set out in section 6A(5) of that Act;

“Case 5”—

- (a) in relation to a bank, means Case 5 set out in section 6A(6) of that Act;
- (b) in relation to a banking group company, means Case 3 set out in section 81AA(8) of that Act;

^{F346}
...

“recognised capital instruments” means Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments which have been recognised for the purpose of meeting the own funds requirements (within the meaning given in section 3(1) of the Banking Act 2009 ^{F348}) of institutions on an individual and a consolidated basis; and

“UK group entity” means a group entity which is a bank or banking group company and has issued recognised capital instruments.

(3) In this article, for the interpretation of expressions defined in paragraph (2)—

“Additional Tier 1 instruments”, “Common Equity Tier 1 instruments” and “Tier 2 instruments” have the meaning given in section 3(1) of the Banking Act 2009 ^{F349} (interpretation: other expressions);

“bank” has the meaning given by section 2 of the Banking Act 2009 ^{F350} (interpretation: “bank”), but includes—

- (a) a building society within the meaning given in section 119 of the Building Societies Act 1986; and
- (b) an investment firm within the meaning given in section 258A of the Banking Act ^{F351} (“investment firm”);

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“banking group company” has the meaning given by section 81D of that Act^{F352}; and

“group entity” includes an undertaking which is—

- (a) ^{F353} ...
- (b) a mixed activity holding company.

F345 Words in art. 149(2) substituted (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. 83\(2\)\(a\)](#) (as amended by [S.I. 2020/1301](#), regs. 1, 3, [Sch. para. 10\(c\)\(iii\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

F346 Words in art. 149(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 83\(2\)\(b\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

F347 Sections 6A and 81AA were inserted by [S.I. 2014/3329](#).

F348 Section 3 was amended by the Financial Services Act 2012, section 96(2) and Schedule 17, paragraphs 1 and 4, and by [S.I. 2014/3329](#), which inserted the definition of “own funds requirements”.

F349 These definitions were inserted by [S.I. 2014/3329](#).

F350 Section 2 was amended by the Financial Services Act 2012, sections 101(1) and (3) and 102(1) and (3) and Schedule 17, paragraph 3, and by [S.I. 2011/2832](#).

F351 Section 258A was inserted by the Financial Services Act 2012, section 101(1) and (7). See [S.I. 2014/1832](#), which was made under subsection (2)(b). No other order has been made under that subsection.

F352 Section 81D was inserted by the Financial Services Act 2012, section 100(5); and was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 7(3), and by [S.I. 2014/3329](#).

F353 Words in art. 149(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 83\(3\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Determinations [^{F354}under section 6A and 81AA of the Banking Act 2009]: preliminary steps for UK group entities

150.—(1) Before the Bank makes a determination that Case 2, 4 or 5 is satisfied in relation to a UK group entity, the Bank must give notice that it is considering whether to make that determination (“a Case 2, 4 or 5 notice”) without delay [^{F355}to the appropriate regulator].

(2) Before the Bank makes a determination^{F356}... that Case 3 is satisfied in relation to a UK group entity, the Bank must give notice that it is considering whether to make that determination (“a Case 3 notice”) without delay [^{F357}to the appropriate regulator].

(3) Where the Bank gives a Case 2, 4 or 5 notice or a Case 3 notice, it must—

- (a) send with the notice an explanation of its reasons for considering whether to make the determination concerned; and
- (b) after consulting the authorities to which the notice has been given assess whether—
 - (i) any alternative measure is available;
 - (ii) any alternative measure which is available could feasibly be taken; and
 - (iii) there is any reasonable prospect that any alternative measure which is available and could feasibly be taken would, within a reasonable time, avoid the need for the determination.

^{F358}(4)

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F358(5)

- F354** Words in art. 150 heading substituted (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. 84\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F355** Words in art. 150(1) substituted (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. 84\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F356** Words in art. 150(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 84\(4\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F357** Words in art. 150(2) substituted (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. 84\(4\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F358** Art. 150(4)(5) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 84\(5\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Regulator to take alternative measures

151.—(1) Where, in the Bank's assessment, there is a reasonable prospect that an alternative measure which is available and could feasibly be taken would, within a reasonable time, avoid the need for the determination referred to in a Case 2, 4 or 5 notice or a Case 3 notice—

- (a) the Bank must notify the regulator of that fact; and
 - (b) except where the measure is a transfer of funds from a parent undertaking, the regulator must take the alternative measure in exercise of its powers under FSMA.
- (2) In this article “the regulator”—
- (a) where there is a PRA-authorised person and any other UK authorised person in the relevant group, means the PRA and the FCA;
 - (b) where there is a PRA-authorised person and no other UK authorised person in the relevant group, means the PRA;
 - (c) where there is no PRA-authorised person in the relevant group, means the FCA.

Determination that Case 2, 3, 4 or 5 is satisfied

152.—(1) This article applies where, in the Bank's assessment, there is no reasonable prospect that any alternative measure which is available and could feasibly be taken would, within a reasonable time, avoid the need for the determination referred to in a Case 2, 4 or 5 notice or a Case 3 notice.

- (2) ^{F359} ... The Bank must decide whether to make the determination referred to in the notice.

^{F360}(3)

^{F360}(4)

- F359** Words in art. 152(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 85\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F360** Art. 152(3)(4) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 85\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)

Joint determination under Article 59(3)(c) of the recovery and resolution directive in relation to a non-UK group entity

^{F361}**153.**

F361 Art. 153 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 86**; 2020 c. 1, Sch. 5 para. 1(1)

PART 11

Removal of procedural impediments to application of bail-in tool

Interpretation of Part

154. In this Part—

“Common Equity Tier 1 instruments” has the meaning given in section 3(1) of the Banking Act 2009 ^{F362}, and

[^{F363}“relevant capital instruments” has the meaning given in section 3(1) of the Banking Act 2009;]

“UK entity” means—

- (a) an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [^{F364}the capital requirements regulation and CRR rules]; or
- (b) in relation to a relevant group, a group entity set up in the United Kingdom.

F362 This definition was inserted by S.I. 2014/3329.

F363 Words in art. 154 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. 87(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F364 Words in art. 154 substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(10)**

Requirement to increase or remove limit on share capital

155.—(1) This article applies where—

- (a) the memorandum of association of a UK entity which is a company includes a statement of the amount of the entity's authorised share capital; and
- (b) the resolution plan being drawn up for the entity or the group resolution plan being drawn up for the relevant group of which the entity is the [^{F365}UK] parent undertaking or a group subsidiary includes provision for the application in respect of the entity of the stabilisation option referred to in paragraph (c) of section 1(3) of the Banking Act 2009 (the bail-in option).

(2) The Bank must determine whether it is appropriate to require the entity to alter the memorandum for the purpose of increasing the amount of authorised share capital or removing the statement of that amount.

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(3) For this purpose the Bank must have regard to the provision which the plan concerned is to make in relation to resolution [^{F366}tools and resolution powers] and to the matters referred to in paragraphs (4) and (5).

(4) The amount of authorised share capital must be adequate to ensure that where the Bank exercises a relevant power, the entity is able to issue new shares or other instruments of ownership to facilitate the conversion of liabilities into shares or other instruments of ownership.

(5) The amount of the authorised share capital must not be less than the sum of [^{F367}the following amounts—

- (a) the amount by which the Bank has assessed that Common Equity Tier 1 instruments must be reduced and relevant capital instruments must be written down or converted pursuant to section 6B, 12AA, 48Y or 81AA of the Banking Act 2009; and
- (b) the aggregate amount assessed by the Bank pursuant to section 6E or 48X of that Act.]

(6) The Bank must make the determination under paragraph (2) when it draws up the resolution plan ^{F368}....

(7) In this article “relevant power” means the power conferred by sections 12A (bail-in option), 48B (special bail-in provision) and 81BA (bail-in option) of the Banking Act 2009 ^{F369} to convert the entity's eligible liabilities into Common Equity Tier 1 instruments of—

- (a) the entity; or
- (b) a parent undertaking of the entity.

F365 Word in art. 155(1)(b) substituted (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. 88\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F366 Words in art. 155(3) substituted (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. 88\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F367 Words in art. 155(5) substituted (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. 88\(4\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F368 Words in art. 155(6) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 88\(5\)](#); 2020 c. 1, Sch. 5 para. 1(1)

F369 Sections 12A, 48B and 81BA were inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1, 2, 4 and 7(1); and were amended by [S.I. 2014/3329](#).

Removal of impediments to the conversion of liabilities into shares

156. Where the articles or memorandum of association of a UK entity which is a company confer pre-emption rights on shareholders, require the consent of shareholders to an increase in capital or make any other provision which could prevent or otherwise impede the conversion of any liabilities of the company into shares or other instruments of ownership, the Bank must determine whether it is necessary to require the entity to alter the articles or memorandum with the object of removing the impediment created by the provision concerned.

[^{F370}PART 11A

Contractual recognition of bail-in

F370 Pt. 11A 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. 89](#); 2020 c. 1, Sch. 5 para. 1(1)

Contractual recognition of bail-in: technical standards

156A.—(1) The Bank may make technical standards relating to requirements concerning the contractual recognition of bail-in.

(2) Technical standards under paragraph (1) may include provision specifying—

- (a) liabilities that must be excluded from these requirements; or
- (b) the content of the contractual term that is comprised in these requirements.

(3) In exercising its functions under this article the Bank must take into account the different business models of banks.]

PART 12

Treatment of derivative contracts where bail-in option is applied

Application and interpretation of Part

157.—(1) This Part applies where the Bank has decided to apply the stabilisation option referred to in paragraph (c) of section 1(3) (the bail-in option) in relation to liabilities arising from a derivative contract.

(2) In this Part each reference to a section is a reference to a section of the Banking Act 2009.

Liabilities arising from derivative contracts

158.—(1) This article applies for the purposes of valuing a derivative contract and the liabilities arising from it under section 6E(1) ^{F371} (pre-resolution valuation), a provisional valuation by the Bank under section 6E(3) or a valuation under section 48X ^{F372} (replacement of Bank's provisional valuation).

(2) Where the parties to the contract have rights 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)), the Bank must ensure that the value of the contract and of the liabilities arising from it are determined—

- (a) on a net basis in accordance with the terms of the contract; and
- (b) in accordance with—
 - (i) appropriate methodologies for determining the value of classes of derivative contracts, including transactions that are subject to netting arrangements;
 - (ii) principles for establishing the time at which the value of a derivative position should be established; and
 - (iii) appropriate methodologies for comparing with each other the following amounts—

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- (aa) the loss in value that would result from closing out a derivative contract and making special bail-in provision (within the meaning given by section 48B) in respect of that contract; and
- (bb) the reduction in the liabilities of the institution which is subject to the special bail-in provision as a result of making that provision in respect of the derivative contract.

[^{F373}(3) Subject to paragraph (4), the Bank may make technical standards specifying—

- (a) appropriate methodologies for the purposes of paragraph (2)(b)(i);
- (b) principles for the purposes of paragraph (2)(b)(ii); or
- (c) appropriate methodologies for the purposes of paragraph (2)(b)(iii).

(4) When exercising its functions under paragraph (3) in relation to derivative contracts that are subject to a netting arrangement, the Bank must take into account the methodology for close-out set out in the netting arrangement.]

F371 Section 6E was inserted by [S.I. 2014/3329](#).

F372 Section 48X was inserted by [S.I. 2014/3329](#).

F373 [Art. 158\(3\)\(4\)](#) 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. 90\(2\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

PART 13

Preparation of business reorganisation plans after application of bail-in tool

CHAPTER 1

Assessment of business reorganisation plan drawn up by an institution

Application and interpretation of Chapter 1

159.—(1) This Chapter applies where—

- (a) an institution is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [^{F374}the capital requirements regulation and CRR rules];
- (b) the Bank has made a resolution instrument under section 12A of the Banking Act 2009 ^{F375} (bail-in option) in respect of the institution; and
- (c) the management body [^{F376}of the institution or the] resolution administrator submits a business reorganisation plan to the Bank for assessment in accordance with [^{F377}section 48H of the Banking Act 2009] (business reorganisation plan).

(2) In this Chapter—

^{F378}
...

^{F378}
...

“resolution administrator” means the individual or body corporate appointed by the Bank under section 62B of the Banking Act 2009 ^{F379} as the resolution administrator of the institution.

- F374** Words in art. 159(1)(a) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(11)**
- F375** Section 12A was inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 2; and was amended by S.I. 2014/3329.
- F376** Words in art. 159(1)(c) substituted (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. 91(2)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F377** Words in art. 159(1)(c) substituted (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. 91(2)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F378** Words in art. 159(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 91(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F379** Section 62B was inserted by S.I. 2014/3329.

Assessment of business reorganisation plan

160. The Bank must assess the business reorganisation plan jointly with the appropriate regulator within one month beginning with the date on which it receives the plan.

Purpose of assessment

161.—(1) The purpose of the assessment of the business reorganisation plan is to determine whether the plan meets the criteria for assessment.

(2) The Bank must approve the plan when the Bank and the appropriate regulator are satisfied that the plan meets the criteria for assessment.

(3) The criteria for assessment are that—

[^{F380}(a) the plan must include the details specified in—

(i) section 48H(2) of the Banking Act 2009;

(ii) any technical standards made under paragraph (4)(a);]

[^{F381}(b)]

(c) the arrangements proposed in the plan would, if implemented, be reasonably likely to restore the long-term viability of the institution or of part of its business.

[^{F382}(d) the arrangements proposed in the plan must be based on realistic assumptions as to the economic and financial market conditions under which the institution will operate;

(e) the plan must take account of the current state of the financial markets and their future prospects, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the institution's main vulnerabilities;

(f) the assumptions made in the plan must be compared with appropriate sector-wide benchmarks;

(g) the plan meets any further criteria specified in technical standards made under paragraph (4)(b).]

[^{F383}(4) The Bank may make technical standards specifying—

(a) further details to be included in business reorganisation plans; or

(b) further criteria for the assessment of business reorganisation plans.]

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- F380** Art. 161(3)(a) substituted (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. 92(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F381** Art. 161(3)(b) omitted (31.12.2020) by virtue of The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1470), reg. 1(2), **Sch. 2 para. 15(2)** (with Sch. 3)
- F382** Art. 161(3)(d)-(g) 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. 92(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F383** Art. 161(4) 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. 92(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Revision of plan

162.—(1) The Bank—

- (a) must notify the management body or resolution administrator if the business reorganisation plan is found on assessment to contain any material deficiency or measure which would impede its implementation or the object of restoring the long-term viability of the institution or of part of its business; and
- (b) may not require the management body or resolution administrator to revise the plan without giving it an opportunity to state its opinion on that requirement.

(2) If the Bank requires the management body or resolution administrator to revise the plan, the Bank—

- (a) must allow two weeks for the preparation of a plan which demonstrates that the impediment has been addressed;
- (b) within one week beginning with the date on which a revised plan is submitted, must notify the management body or resolution administrator whether the impediment has been adequately addressed in the revised plan; and
- (c) if the impediment has not been adequately addressed in the revised plan, must direct the management body or resolution administrator to make specific changes to the plan.

CHAPTER 2

Assessment of business reorganisation plan drawn up by a single group entity

Application and interpretation of Chapter 2

163.—(1) This Chapter applies where, in relation to a relevant group—

- (a) the Bank has made a resolution instrument under section 12A of the Banking Act 2009 in respect of a single group entity which is not an institution (“the relevant entity”); and
- (b) the management body [^{F384}of the relevant entity or the] resolution administrator submits a to the Bank for assessment ^{F385}....

(2) In this Chapter “business reorganisation plan” [^{F386}has the meaning given in section 48H of the Banking Act 2009, as applied by section 81BA of that Act] and “resolution administrator” [^{F387}has the] same meaning for the relevant entity as [^{F388}it has] for an institution in Chapter 1.

- F384** Words in art. 163(1)(b) substituted (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. 93(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F385** Words in art. 163(1)(b) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 93(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F386** Words in art. 163(2) 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. 93(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F387** Words in art. 163(2) substituted (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. 93(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F388** Words in art. 163(2) substituted (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. 93(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Assessment etc of business reorganisation plan

164. Chapter 1 applies for the purpose of the assessment and approval of the business reorganisation plan, but has effect for that purpose with the modifications specified in the table—

<i>Article</i>	<i>Modification</i>
Article 159	Ignore this article.
Articles 160, 161 and 162	Each reference to an institution is a reference to the relevant entity. F389 ... F389 ...

- F389** Words in art. 164 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 94(2)**; 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 3

Assessment of business reorganisation plan drawn up for relevant group where the PRA or FCA is the consolidating supervisor

Application and interpretation of Chapter 3

165.—(1) This Chapter applies where, in relation to a relevant group—

- (a) the PRA or FCA is the consolidating supervisor;
- (b) a relevant bail-in power has been exercised in respect of two or more group entities; and
- (c) a group entity submits a business reorganisation plan to the Bank for assessment in accordance with [^{F390}section 48H of the Banking Act 2009 (including that section as applied in consequence of the provision made by section 81BA, 83A, 84 or 89A of that Act)].

(2) In this Chapter—

F391 ...

“four month period” means four months beginning with the date on which the Bank [^{F392}receives the business reorganisation plan under paragraph (1)(c)];

“group institution” means—

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(a) the [^{F393}UK] parent undertaking, if it is an institution;

(b) a group subsidiary which is an institution;

“impediment”, in relation to the business reorganisation plan, means any material deficiency or measure in the plan which would impede its implementation or the object of restoring the long-term viability of any group entity (or of part of its business) or of the whole or part of the relevant group;

[^{F394}“relevant bail-in power” in relation to a group entity means the power in section 12A(2) of the Banking Act 2009;]

“the regulator”—

(a) where there is a PRA-authorized person and any other UK authorised person in the relevant group, means the PRA and the FCA;

(b) where there is a PRA-authorized person and no other UK authorised person in the relevant group, means the PRA;

(c) where there is no PRA-authorized person in the relevant group, means the FCA;

“relevant matters”, in relation to the assessment of the business reorganisation plan, means the following matters for decision—

(a) whether the plan meets the criteria for assessment;

(b) whether group entities should be required to draw up and submit business reorganisation plans on an individual basis;

(c) whether the plan contains an impediment;

(d) whether a group entity should be required to revise the plan;

(e) whether an impediment has been adequately addressed in a revision of the plan; and

(f) where an impediment has not been adequately addressed in a revision of the plan, how it can be adequately addressed by directing a group entity to make specific changes to the plan; and

^{F395} ...

F390 Words in art. 165(1)(c) substituted (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. 95(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F391 Words in art. 165(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F392 Words in art. 165(2) substituted (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. 95(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F393 Word in art. 165(2) substituted (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. 95(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F394 Words in art. 165(2) substituted (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. 95(3)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

F395 Words in art. 165(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 95(3)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

Duty to transmit a copy of business reorganisation plan

^{F396}166.

F396 Art. 166 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 96**; 2020 c. 1, Sch. 5 para. 1(1)

Assessment of business reorganisation plan

167.—(1) ^{F397}... The Bank must assess the business reorganisation plan jointly with the regulator.

^{F398}(2)

^{F398}(3)

F397 Words in art. 167(1) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 97(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F398 Art. 167(2)(3) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 97(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Purpose of assessment

168.—(1) The purpose of the assessment of the business reorganisation plan is to determine whether the plan meets the criteria for assessment and decide other relevant matters.

(2) The Bank must approve the plan when the Bank and the regulator ^{F399}... are satisfied that the plan meets the criteria for assessment.

(3) The criteria for assessment are that—

[^{F400}(a) the plan must include the details specified in section 48H(2) of the Banking Act 2009;]

^{F401}(b)

(c) the arrangements proposed in the plan would, if implemented, be reasonably likely to restore the long-term viability of the group entities, or parts of the business of the group entities, in respect of which a relevant bail-in power has been exercised and of the whole or part of the relevant group.

[^{F402}(d) the arrangements proposed in the plan must be based on realistic assumptions as to the economic and financial market conditions under which the group entities will operate;

(e) the plan must take account of the current state of the financial markets and their future prospects, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the group entities' main vulnerabilities; and

(f) the assumptions made in the plan must be compared with appropriate sector-wide benchmarks.]

F399 Words in art. 168(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 98(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F400 Art. 168(3)(a) substituted (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. 98(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F401** Art. 168(3)(b) omitted (31.12.2020) by virtue of [The State Aid \(Revocations and Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1470\)](#), reg. 1(2), **Sch. 2 para. 15(3)** (with Sch. 3)
- F402** Art. 168(3)(d)-(f) 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. 98(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Assessment of plan where every group entity is set up in the United Kingdom

169. Where the Bank assesses the business reorganisation plan jointly with the regulator, the assessment must be concluded within the four month period.

Joint assessment of plan

^{F403}**170.**

- F403** Art. 170 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 99**; 2020 c. 1, Sch. 5 para. 1(1)

Revision of plan

171. The Bank—

- (a) must notify a ^{F404}... group entity if the business reorganisation plan is found on assessment to contain an impediment; and
 - (b) may not require a ^{F404}... group entity to revise the plan without giving it an opportunity to state its opinion on that requirement.
- (2) If the Bank requires a ^{F404}... group entity to revise the plan, the Bank—
- (a) must allow two weeks for the preparation of a plan which demonstrates that the impediment has been addressed;
 - (b) within one week beginning with the date on which a revised plan is submitted, must notify the entity whether the impediment has been adequately addressed in the revised plan; and
 - (c) if the impediment has not been adequately addressed in the revised plan, must direct the entity to make specific changes to the plan.

- F404** Word in [art. 171](#) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 100(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Assessment of business reorganisation plans drawn up on an individual basis

172. Where the Bank requires a group entity to draw up and submit a business reorganisation plan on an individual basis, Chapter 1 applies for the purpose of the assessment of the plan, but has effect for that purpose as if each reference to an institution were a reference to the group entity.

References to EBA

^{F405}**173.**

F405 Art. 173 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 101**; 2020 c. 1, Sch. 5 para. 1(1)

Requesting the assistance of EBA

F406 174.

F406 Art. 174 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 101**; 2020 c. 1, Sch. 5 para. 1(1)

F407 CHAPTER 4

Assessment of business reorganisation plan drawn up for relevant group
where neither the PRA nor the FCA is the consolidating supervisor

F407 Pt. 13 Ch. 4 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 102**; 2020 c. 1, Sch. 5 para. 1(1)

Application and interpretation of Chapter 4

F407 175.

Purpose of assessment

F407 176.

Joint assessment of plan

F407 177.

Assessment of business reorganisation plans drawn up on an individual basis

F407 178.

References to EBA

F407 179.

Requesting the assistance of EBA

F407 180.

PART 14

Procedural obligations where an undertaking is failing or likely to fail

Interpretation of Part

181. In this Part—

[^{F408}“crisis prevention measure” has the meaning given in section 48Z(1) of the Banking Act 2009;]

“the regulator”—

- (a) in relation to an undertaking which is a PRA-authorised person, means the PRA; and
- (b) in relation to any other undertaking, means the FCA.

[^{F409}“supervisory measure” means a power of the FCA or PRA by or under legislation upon which the United Kingdom relied immediately before IP completion day to meet its obligations with respect to Article 104.1 of the capital requirements directive;]

“undertaking” means—

- (c) an institution which is authorised by the PRA or FCA and is not part of a group subject to supervision on a consolidated basis in accordance with [^{F410}the capital requirements regulation and CRR rules];
- (d) in relation to a relevant group, a group entity set up in the United Kingdom; or
- (e) a mixed activity holding company set up in the United Kingdom.

F408 Words in art. 181 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. 103(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F409 Words in art. 181 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. 103(3)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(c)(vi)**); 2020 c. 1, **Sch. 5 para. 1(1)**

F410 Words in art. 181 substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(12)**

Matters to be notified by the regulator to the Bank

182. The regulator must notify the Bank if—

- (a) an undertaking notifies the regulator that the undertaking is failing or likely to fail (within the meaning given in [^{F411}section 7(5C) of the Banking Act 2009]); or
- (b) the regulator requires an undertaking to take crisis prevention measures ^{F412} or a [^{F413}supervisory measure].

F411 Words in art. 182(a) substituted (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. 104(2)**; 2020 c. 1, Sch. 5 para. 1(1)

F412 For the meaning of “crisis prevention measures” see the recovery and resolution directive, Article 2.1, point (101).

F413 Words in art. 182(b) substituted (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. 104(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Notification that an undertaking is failing or likely to fail

183.—(1) Where the regulator is satisfied that an undertaking is failing or likely to fail, it must give notice of that fact to the Bank.

(2) Where the Bank is satisfied, having regard to timing and other relevant circumstances, that it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the undertaking that will prevent the failure of the undertaking, the Bank must give notice of that fact to the regulator.

(3) The Bank must also give notice of that fact—

^{F414}(a)

^{F414}(b)

(c) to the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of FSMA);

(d) to the Treasury [^{F415}; and]

(e) to the Financial Policy Committee^{F416}...

^{F417}(f)

^{F418}(4)

(5) This article does not require any information to be disclosed if its disclosure would be contrary to section 348 of FSMA.

F414 Art. 183(3)(a)(b) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F415 Word in art. 183(3)(d) substituted (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. 105(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F416 Word in art. 183(3)(e) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

F417 Art. 183(3)(f) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

F418 Art. 183(4) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 105(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Duty to send copy of share transfer instrument etc to members and creditors of institution

184.—(1) This article applies where, in respect of an undertaking—

(a) the Bank has applied one or more of the resolution tools; or

(b) the Treasury have made a share transfer order for the purpose of taking the undertaking into temporary public ownership.

(2) Except where securities issued by the undertaking have been admitted to trading on a regulated market (within the meaning given in section 103(1) of FSMA), the Bank must send a copy of any property transfer instrument, resolution instrument, share transfer instrument, share transfer order or third-country instrument made in respect of the undertaking to the members and creditors of the undertaking who are known to the Bank.

(3) In this article—

“member” includes—

- (a) a shareholder of a company;
- (b) a member of a limited liability partnership; and
- (c) a shareholding or borrowing member of a building society established under the Building Societies Act 1986 ^{F419} (“shareholding member” and “borrowing member” have the meaning given in paragraph 5(2) of Schedule 2 to that Act);

“property transfer instrument” means a property transfer instrument (within the meaning given by section 33 ^{F420}) made under section 11 (private sector purchaser), section 41A ^{F421} (transfer of property subsequent to resolution instrument), section 42 ^{F422} (supplemental instruments), section 42A ^{F423} (private sector purchaser: reverse property transfer), section 43 ^{F424} (onward transfer), section 44 ^{F425} (resolution company: reverse property transfer) or section 44A ^{F426} (bail-in: reverse property transfer);

“resolution instrument” means a resolution instrument made under section 12A (bail-in option), section 48U (supplemental resolution instruments), section 48V (onward transfer) or section 48W (reverse transfer) ^{F427};

“share transfer instrument” means a share transfer instrument (within the meaning given by section 15) made under section 11, section 26 ^{F428} (supplemental instruments), section 26A ^{F429} (private sector purchaser: reverse share transfer), section 30 ^{F430} (resolution company: share transfers) or section 31 ^{F431} (resolution company: reverse share transfer);

“share transfer order” means a share transfer order (within the meaning given by section 16) made by the Treasury under section 13 ^{F432} (temporary public ownership), section 27 ^{F433} (supplemental orders), section 28 ^{F434} (onward transfer) or section 29 ^{F435} (reverse share transfer); and

“third-country instrument” has the meaning given in section 89I(4) ^{F436}.

(4) In paragraph (3) each reference to a section is a reference to a section of the Banking Act 2009.

F419 1986 c. 53.

F420 Section 33 was amended by [S.I. 2014/3329](#).

F421 Section 41A was inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 5(1); and was amended by [S.I. 2014/3329](#).

F422 Section 42 was amended by [S.I. 2014/3329](#).

F423 Section 42A was inserted by the Financial Services Act 2012, section 97(1) and (5).

F424 Section 43 was amended by the Financial Services Act 2012, Schedule 17, paragraph 22, and by [S.I. 2014/3329](#).

F425 Section 44 was amended by the Financial Services Act 2012, section 97 and Schedule 17, paragraph 23, by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraph 16, and by [S.I. 2014/3329](#).

F426 Section 44A was inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 5(3); and was amended by [S.I. 2014/3329](#).

F427 Sections 12A, 48U, 48V and 48W were inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1, 2 and 4; and were amended by [S.I. 2014/3329](#).

- F428** Section 26 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 14, and by [S.I. 2014/3329](#).
- F429** Section 26A was inserted by the Financial Services Act 2012, section 97(1) and (2).
- F430** Section 30 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 18, and by [S.I. 2014/3329](#).
- F431** Section 31 was amended by the Financial Services Act 2012, section 97(4)(a) and (b), section 97(4)(c) and Schedule 17(1), paragraph 12, and by [S.I. 2014/3329](#).
- F432** Section 13 was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraph 13, and by [S.I. 2014/3329](#).
- F433** Section 27 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 15.
- F434** Section 28 was amended by the Financial Services Act 2012, Schedule 17(1), paragraph 16.
- F435** Section 29 was amended by the Financial Services Act 2012, section 97(3) and Schedule 17(1), paragraph 17.
- F436** Section 89I was inserted by [S.I. 2014/3329](#).

[^{F437}Notifications under articles 182, 183 and 184

184A.—(1) The PRA and the FCA may each make technical standards specifying the procedures for, and contents of notifications under article 182 or 183(1) in circumstances where it is the regulator.

(2) The Bank may make technical standards specifying—

- (a) the procedures for, and contents of notifications under article 183(2); or
- (b) the procedures for sending documents under article 184.]

- F437** Art. 184A 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. 106**; 2020 c. 1, Sch. 5 para. 1(1)

PART 15

Applications to the court in relation to resolution action

Stay of legal proceedings

185.—(1) Where—

- (a) the Bank has made a mandatory reduction instrument or exercised a stabilisation power in relation to any bank, building society, investment firm or banking group company (“institution under resolution”),
- (b) the institution under resolution is a party to legal proceedings before any court in the United Kingdom, and
- (c) the Bank reasonably considers that a stay of those proceedings is necessary for an effective application of the resolution tools or the stabilisation powers,

the Bank may apply to that court for a stay of the proceedings.

(2) In this article—

“bank” has the meaning given by section 2 of the Banking Act 2009 ^{F438};

“banking group company” has the meaning given in section 81D of the Banking Act 2009 ^{F439};

“building society” has the meaning given in section 119 of the Building Societies Act 1986;

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“mandatory reduction instrument” has the meaning given in section 6B(1) of the Banking Act 2009 ^{F440}; and

“stabilisation powers” has the meaning given in section 1(4) of the Banking Act 2009 ^{F441}.

F438 Section 2 was amended by the Financial Services Act 2012, sections 101(1) and (3) and 102(1) and (3) and Schedule 17, paragraph 3, and by [S.I. 2011/2832](#).

F439 Section 81D was inserted by the Financial Services Act 2012, section 100(5); and was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 7(3), and by [S.I. 2014/3329](#).

F440 Section 6B was inserted by [S.I. 2014/3329](#).

F441 Section 1(4) was substituted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 12(1) and (4); and was amended by [S.I. 2014/3329](#).

Remedies on judicial review

186.—(1) Where an application is made for judicial review of a decision of the Bank to exercise the stabilisation powers in relation to an institution under resolution (“relevant proceedings”)—

(a) a ruling by the court that the decision is unlawful shall not affect—

- (i) a relevant transfer,
- (ii) special bail-in provision (within the meaning given by section 48B of the Banking Act 2009), or
- (iii) provision under section 48L of that Act in relation to securities issued by the institution under resolution,

made by a stabilisation instrument made by the Bank pursuant to that decision; and

(b) the court may not quash any provision in a stabilisation instrument made by the Bank if that provision makes—

- (i) a relevant transfer;
- (ii) special bail-in provision; or
- (iii) provision under section 48L of the Banking Act 2009 in relation to securities issued by the institution under resolution.

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

(a) “stabilisation instrument” means—

- (i) a share transfer instrument,
- (ii) a property transfer instrument,
- (iii) a resolution instrument, or
- (iv) a third-country instrument,

made by the Bank in the exercise of the stabilisation powers provided for in section 1(4) of the Banking Act 2009, and for these purposes “share transfer instrument”, “property transfer instrument”, “resolution instrument” and “third country instrument” have the meaning given in article 184;

(b) a transfer is a “relevant transfer” if it transfers to any person—

- (i) property, rights or liabilities of the institution under resolution or of a relevant resolution company; or
- (ii) securities issued by the institution under resolution or by a relevant resolution company;

- (c) for the purposes of sub-paragraph (b)—
- (i) “resolution company” has the meaning given by section 29A of the Banking Act 2009 ^{F442}; and
 - (ii) a resolution company is a relevant resolution company if property, rights or liabilities of the institution under resolution have been transferred to it.
- (3) For the purposes of this article “institution under resolution” has the meaning given in article 185.
- (4) Paragraph (1) does not affect the power of the court, subject to section 244 of the Banking Act 2009 ^{F443} (immunity), to award damages as a remedy in relevant proceedings.

F442 Section 29A was inserted by [S.I. 2014/3329](#).

F443 Section 244 was amended by the Financial Services Act 2012, Schedule 2, paragraph 3, and by [S.I. 2014/3329](#).

^{F444}PART 16

Cross-border group resolution

.....

F444 Pt. 16 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 107**; 2020 c. 1, Sch. 5 para. 1(1)

PART 17

Modified application of company law to banks etc in resolution

Interpretation of Part

216.—(1) In this Part—

[^{F445}“applying the public equity support tool” means participating in the recapitalisation of an institution or an entity by providing capital to the institution or entity in exchange for Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments;]

[^{F445}“Common Equity Tier 1 instruments”, “Additional Tier 1 instruments” and “Tier 2 instruments” have the meanings given in section 3(1) of the Banking Act 2009;]

“the use of resolution tools, powers and mechanisms” means—

- (a) the exercise by the Bank or the Treasury of a stabilisation power (within the meaning given in section 1(4) of the Banking Act 2009);
- (b) the making by the Bank of a mandatory reduction instrument (within the meaning given in section 6B of that Act ^{F446}); or
- (c) [^{F447}the exercise by the Treasury of its powers under section 228 of the Banking Act 2009, subject to the requirements of the capital requirements regulation [^{F448}and CRR rules], where the Treasury is applying the public equity support tool; and]

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“UK-registered company” has the meaning given in section 1158 of the Companies Act 2006^{F449} (meaning of UK-registered company).

^{F450}(2)

(3) For the purposes of this Part a company is a company under resolution if it is a UK-registered company which is subject to the use of resolution tools, powers and mechanisms.

(4) But such a company is not a company under resolution if—

- (a) it has ceased to be subject to the exercise of a stabilisation power or the application of the public equity support tool; and
- (b) the results which are to be achieved by an instrument made in respect of the company under Part 1 of the Banking Act 2009 have been achieved.

F445 Words in art. 216(1) 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. 108(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F446 Section 6B was inserted by S.I. 2014/3329.

F447 Words in art. 216(1) substituted (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. 108(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F448 Words in art. 216(1) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **19(13)**

F449 2006 c. 46.

F450 Art. 216(2) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 108(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Shadow directorship

217.—(1) A relevant person is not to be treated, in relation to a company under resolution, as—

- (a) a shadow director for the purposes of the enactments specified in paragraph (3);
- (b) a person who discharges managerial responsibilities for the purposes of those enactments (unless that person has been appointed as a director); or
- (c) a director by virtue of paragraph (b) of the definition of “director” given in section 417(1) of FSMA (a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act).

(2) “Relevant persons” are—

- (a) the Bank;^{F451} ...
- (b) persons who are employed by, or act on behalf of, the Bank.

[^{F452}(c) a resolution administrator appointed under section 62B of the Banking Act 2009; and]

[^{F452}(d) a temporary manager appointed under section 71C of the Financial Services and Markets Act 2000.]

(3) The specified enactments are—

- (a) the Companies Act 2006;
- (b) the Insolvency Act 1986^{F453};
- (c) the Company Directors Disqualification Act 1986^{F454}; and

(d) FSMA.

- F451** Word in art. 217(2)(a) omitted (16.12.2016) by virtue of [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(15)(a)**
- F452** Art. 217(2)(c)(d) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(15)(b)**
- F453** 1986 c. 45.
- F454** 1986 c. 46.

Modified application of legislation on cross-border mergers

^{F455}**218.**

- F455** Art. 218 omitted (31.12.2020) by virtue of [The Companies, Limited Liability Partnerships and Partnerships \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/348\)](#), reg. 2, **Sch. 3 para. 36**; 2020 c. 1, Sch. 5 para. 1(1)

Modified application of the Companies Act 2006 (disapplication of [^{F456}Takeover Rules])

219.—^{F457}(1)

(2) Part 28 of the Companies Act 2006 (Takeovers etc) has effect as if, in section 943 (rules), after subsection (1) there were inserted—

[^{F458}“(1ZA) Rules made in accordance with paragraph 7(1) and (2) of Part 2 of Schedule 1C] must provide that they do not apply in relation to any change in interests in shares or other transaction which is effected by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014).”.

- F456** Words in art. 219 heading substituted (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. 110(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F457** Art. 219(1) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 110(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F458** Words in art. 219(2) substituted (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. 110(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Modified application of the Companies Act 2006 (disapplication of other [^{F459}requirements])

220.—^{F460}(1)

^{F460}(2)

^{F460}(3)

(4) ^{F461}... The Companies Act 2006 applies with the modifications set out in Schedule 4 ^{F461}....

(5) ^{F462}... The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 ^{F463} applies as if in Schedule 2 (transitional provisions and savings) after paragraph 43

(power of directors to allot shares etc: private company with only one class of shares (s. 550)) there were inserted—

“**43A.** Paragraph 43 does not apply in relation to an existing company or a transitional company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014.”.

^{F464}(6)

- F459** Word in art. 220 heading substituted (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. 111\(2\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F460** Art. 220(1)-(3) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 111\(3\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F461** Words in art. 220(4) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 111\(4\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F462** Words in art. 220(5) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 111\(5\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F463** S.I. 2008/2860. There are amendments, but none is relevant.
- F464** Art. 220(6) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), [Sch. 3 para. 111\(6\)](#); 2020 c. 1, Sch. 5 para. 1(1)

[^{F465}**Modified application of the Companies Act 2006 (shareholders’ rights)**

220A.—(1) The provisions of the Companies Act 2006 concerning the rights of shareholders to call general meetings and to amend the articles of association of the company apply to traded companies to which Part 1 of the Banking Act 2009 applies with the following modifications.

(2) “Traded company” has the meaning given in section 360C of the Companies Act 2006.

(3) Section 21 (amendment of articles) has effect as if, after subsection (3) there were inserted—

“(4) A traded company (within the meaning of section 360C) to which Part 1 of the Banking Act 2009 applies may also amend its articles in accordance with section 307B.”

(4) Section 307A (notice required of general meeting: certain meetings of traded companies), has effect as if, at the beginning of subsection (1), there were inserted “Subject to section 307B,”.

(5) Part 13 (resolutions and meetings) has effect as if after section 307A there were inserted—

“**Notice required of general meeting: traded companies meeting the conditions for early intervention**

307B.—(1) Where the conditions in subsections (2) and (3) are satisfied, the members of a traded company to which Part 1 of the Banking Act 2009 applies may, by a resolution passed at a general meeting by a majority of two-thirds of those voting in person or by proxy—

- (a) require the company to call a general meeting to pass a resolution to increase the company’s share capital, provided that the meeting is to be called by notice of at least 10 days;

- (b) amend the company's articles of association to permit a general meeting to be called to consider a proposal to increase the company's share capital by notice of at least 10 days.
- (2) The condition in this subsection is satisfied if—
 - (a) the company has infringed, or is likely in the near future to infringe—
 - (i) a relevant requirement within the meaning of section 204A of the Financial Services and Markets Act 2000; or
 - (ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments; or
 - (b) the conditions for appointment of a temporary manager under section 71C(1) of the Financial Services and Markets Act 2000 (temporary manager) are met in relation to the company.
- (3) The condition in this subsection is satisfied if an increase in the share capital of the company is necessary to prevent the conditions in section 7 of the Banking Act 2009 for the exercise of the stabilisation powers provided for in Part 1 of that Act being met in relation to the company.”]

F465 Art. 220A inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **41(16)**

PART 18

Treasury support for investment firms

Investment firms to be treated as financial institutions

221. An investment firm within the meaning given in section 258A of the Banking Act 2009 ^{F466} (“investment firm”) is to be treated as a financial institution for the purposes of section 228 (Consolidated Fund) and 229 (National Loans Fund) of that Act.

F466 Section 258A was inserted by the Financial Services Act 2012, section 101(1) and (7); and was amended by [S.I. 2013/3115](#). Also, see [S.I. 2014/1832](#), which was made under subsection (2)(b).

PART 19

Miscellaneous provisions

Continuity

^{F467}**222.**

F467 Art. 222 omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 112**; 2020 c. 1, Sch. 5 para. 1(1)

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Duty to co-operate

223.—(1) The Bank, the PRA and the FCA must ensure that all persons who are responsible for performing relevant functions under authority delegated by the Bank, PRA or FCA co-operate closely with one another in the course of performing those functions.

[^{F468}(2) “Relevant functions” means any functions conferred on the Bank, the PRA or the FCA by or under—

- (a) Part 1 of the Banking Act 2009;
- (b) section 17 of the Financial Services (Banking Reform) Act 2013;
- (c) any Regulations adopted under the recovery and resolution directive;
- (d) this Order.]

F468 Art. 223(2) substituted (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. 113(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Non-binding co-operation arrangements in line with EBA framework arrangements

^{F469}**224.**

F469 Art. 224 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 114**; 2020 c. 1, Sch. 5 para. 1(1)

Duty to inform EBA of imposition of penalties

^{F470}**225.**

F470 Art. 225 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 3 para. 114**; 2020 c. 1, Sch. 5 para. 1(1)

PART 20

Amendments

Amendments of primary and secondary legislation

226. Schedule 3, which contains amendments of primary and secondary legislation, has effect.

PART 21

Review

Review

227.—(1) The Treasury must from time to time—

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- (a) carry out a review of articles 2 to 226;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

^{F471}(2)

- (3) The report must in particular—
 - (a) set out the objectives intended to be achieved by the regulatory system established by articles 2 to 226;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this article must be published before the end of the period of five years beginning with the day on which this Order comes into force.
- (5) Reports under this article are afterwards to be published at intervals not exceeding five years.

F471 Art. 227(2) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 3 para. 115(2)**; 2020 c. 1, Sch. 5 para. 1(1)

Mark Lancaster
Gavin Barwell
Two of the Lords Commissioners of Her
Majesty's Treasury

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Changes and effects yet to be applied to :

- art. 61(2) words substituted by [S.I. 2018/1394 Sch. 3 para. 36\(3\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 3 para. 36(3)(a) substituted (28.12.2020) by S.I. 2020/1350, regs. 1(2), 77(2))
- art. 62(5) words substituted by [S.I. 2018/1394 Sch. 3 para. 37\(4\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 3 para. 37(4)(a) substituted (28.12.2020) by S.I. 2020/1350, regs. 1(2), 77(3))
- art. 123(6) words substituted by [S.I. 2018/1394 Sch. 3 para. 68\(2\)](#) (This amendment not applied to legislation.gov.uk. Sch. 3 para. 68(2) substituted (28.12.2020) by S.I. 2020/1350, regs. 1(2), 77(4)(a))
- art. 126(8)(a) words substituted by [S.I. 2018/1394 Sch. 3 para. 70\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 3 para. 70(4) substituted (28.12.2020) by S.I. 2020/1350, regs. 1(2), 77(5)(a))
- art. 135(6)(a) words substituted by [S.I. 2018/1394 Sch. 3 para. 76\(2\)](#) (This amendment not applied to legislation.gov.uk. Sch. 3 para. 76(2) omitted (28.12.2020) by virtue of S.I. 2020/1350, regs. 1(2), 77(6))

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Order power to apply (with modifications) conferred by [2023 c. 29 Sch. 11 para. 165](#)
- Order power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)