
STATUTORY INSTRUMENTS

2016 No. 1239

The Bank Recovery and Resolution Order 2016

PART 5

Amendments of secondary legislation

Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009

36.—(1) The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 ^{F1} is amended as follows.

(2) In article 1(3)—

(a) in the definition of “banking institution”—

(i) at the end of sub-paragraph (d), omit “or”;

(ii) after sub-paragraph (e), insert—

“or

(f) a third-country institution (within the meaning of section 89JA of the Act (resolution of UK branches of third-country institutions) ^{F2}).”;

(b) in the definition of “continuity powers”, omit “(including that subsection as applied by sections 65(2) and 83(2)(f) of the Act)” and “(including that subsection as applied by sections 68(2) and 83(2)(f) of the Act)”.

(c) in the definition of “relevant authority”, in sub-paragraph (a)—

(i) for “or 5” substitute “, 5 or 6”;

(ii) for “and (4B)” substitute “, (4B) and (4C)”;

(d) after paragraph (4), insert—

“(5) References in this Order to sections of the Banking Act 2009 include, as the context requires, references to those provisions as applied with or without modifications by that Act, as that Act has effect on the day on which the Bank Recovery and Resolution Order 2016 comes into force.”

(3) In article 2—

(a) in paragraph (4)—

(i) in sub-paragraph (a), omit “(including that section as applied by section 82 of the Act)”;

(ii) in sub-paragraph (ii), omit “(including those sections as applied and modified by section 83 of the Act)”;

(b) after paragraph (4B), insert—

“(4C) Case 6 is where—

(a) the Bank has made a share transfer instrument in accordance with section 12(2) of the Act; and

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- (b) a property transfer instrument has been made by the Bank in accordance with section 44D(2) (bridge bank: supplemental property transfer powers) ^{F3} or section 44E(2) (bridge bank: supplemental reverse property transfer powers) of the Act which is a partial property transfer.”

(4) After article 5 ^{F4}, insert—

“Secured liabilities: eligible deposits

5A.—(1) This article applies where the property or rights against which a liability is secured consist of, or include, eligible deposits.

(2) Article 5 does not apply if the Bank of England considers that, in order to ensure that eligible deposits are available to depositors, it is necessary—

- (a) to transfer the eligible deposits without the other property or rights against which the liability is secured, or without the liability which they are securing, or
- (b) to transfer the other property or rights against which the liability is secured, or the liability, without the eligible deposits.

(3) For the purposes of this article, “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.”.

(5) In article 8 ^{F5}—

- (a) in paragraph (1)(a), for “or 44A ^{F6}” substitute “ , 44A or 44E ”;
- (b) in paragraph (4)(a) for “or 44A” substitute “ , 44A or 44E ”.

(6) In article 12(6), for “or 44A” substitute “ , 44A or 44E ”.

F1 [S.I. 2009/322](#). Article 1 was amended by [S.I. 2009/1826](#); 2013/472; 2013/3115; 2014/1831; 2014/3329.

F2 [Section 89JA](#) is inserted by article 28 of this Order.

F3 [Sections 44D](#) and [44E](#) are inserted by article 13 of this Order.

F4 [Article 5](#) has been amended by [S.I. 2009/1826](#) and [S.I. 2013/472](#).

F5 [Article 8](#) has been amended by [S.I. 2009/1826](#) and [S.I. 2014/3329](#).

F6 [Section 44A](#) was inserted by paragraph 5 of Schedule 2 to the [Financial Services \(Banking Reform\) Act 2013](#) (c.33).

Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014

37. In the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 ^{F7}, for article 2(1) (description of institution not included within the meaning of “investment firm”) substitute—

“(1) An institution which is not required under provisions implementing the Capital Requirements Directive to have initial capital of [euro]730,000 is specified for the purposes of section 258A(2)(b) of the Banking Act 2009 ^{F8}.”.

F7 [S.I. 2014/1832](#).

F8 [Section 258A](#) was inserted by section 101 of the Financial Services Act 2012.

Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009

38.—(1) The Banking Act 2009 (Third Party Compensation for Partial Property Transfers) Regulations 2009 ^{F9} are amended as follows.

(2) In regulation 1—

(a) in paragraph (3) ^{F10}, in the definition of “banking institution”—

(i) at the end of subparagraph (b), omit “or”;

(ii) after subparagraph (c), insert—

“or

(d) a third-country institution (within the meaning of section 89JA of the Act (resolution of UK branches of third-country institutions)).”;

(b) in paragraph (3), in the definition of “relevant time”—

(i) in paragraph (c) omit “(including that section as applied by section 82 of the Act)”,

(ii) after paragraph (e) insert—

“(f) in relation to Case 6 (as specified in regulation 2(4C)), the time at which the share transfer instrument made in accordance with section 12(2) of the Act took effect.”;

(c) after paragraph (3), insert—

“(4) References in this Order to sections of the Banking Act 2009 include, as the context requires, references to those provisions as applied with or without modifications by that Act, as that Act has effect on the day on which the Bank Recovery and Resolution Order 2016 comes into force.”.

(3) In regulation 2 ^{F11}—

(a) in paragraph (4)—

(i) in sub-paragraph (a) omit “(including that section as applied by section 82 of the Act)”;

(ii) in sub-paragraph (b) omit “(including that section as modified by section 83 of the Act)”;

(b) after paragraph (4B), insert—

“(4C) Case 6 is where—

(a) the Bank has made a share transfer instrument in accordance with section 12(2) of the Act; and

(b) a property transfer instrument has been made by the Bank in accordance with section 44D(2) (bridge bank: supplemental property transfer powers) ^{F12} or section 44E(2) (bridge bank: supplemental reverse property transfer powers) of the Act which is a partial property transfer.”

(4) In regulation 6 ^{F13}, in paragraph (b)—

(a) in sub-paragraph (iii) omit “(including that section as applied by section 82 of the Act)”;

(b) after sub-paragraph (v), insert—

“(vi) in the case of Case 6 (as specified in regulation 2(4C)), the share transfer instrument made in accordance with section 12(2).”

F9 [S.I. 2009/319](#).

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F10 Regulation 1(3) was amended by S.I. 2014/1830 and 2014/3329.

F11 Regulation 2 was amended by S.I. 2014/3329.

F12 Sections 44D and 44E are inserted by article 13 of this Order.

F13 Regulation 6 was amended by S.I. 2014/3329.

Banking Act 2009 (Restriction of Special Bail-in Provision, etc) Order 2014

39.—(1) The Banking Act 2009 (Restriction of Special Bail-in Provision, etc) Order 2014 ^{F14} is amended as follows.

(2) In article 2—

(a) in paragraph (1), in the definition of “banking institution” after sub-paragraph (c) insert—

“(d) a third-country institution (within the meaning of section 89JA of the Act (resolution of UK branches of third-country institutions)).”;

(b) in paragraph (2), for “as applied by section 89A of the Act (application to investment firms) ^{F15}” substitute “as applied with or without modifications by that Act, as that Act has effect on the day on which the Bank Recovery and Resolution Order 2016 comes into force.”.

(3) In article 6, in paragraph (10)—

(a) at the end of sub-paragraph (a) omit “or”;

(b) after sub-paragraph (b), insert—

“(c) an onward property transfer instrument under section 43(2) of the Act in relation to which the original instrument (as defined in section 43(1)) is a property transfer instrument under section 12(2) of that Act, or

(d) a bridge bank supplemental property transfer instrument under section 44D(2) of the Act.”.

F14 S.I. 2014/3350.

F15 Section 89A was inserted by section 101 of the Financial Services Act 2012 (c.21).

Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014

40.—(1) The Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014 ^{F16} are amended as follows.

(2) In regulation 2—

(a) in paragraph (1), in the definition of “banking institution”, after paragraph (d) insert—

“(e) a third-country institution (within the meaning of section 89JA of the Act (resolution of UK branches of third-country institutions)).”;

(b) in paragraph (2), for “as applied by section 89A of the Act (application to investment firms)” substitute “as applied with or without modifications by that Act as that Act has effect on the day on which the Bank Recovery and Resolution Order 2016 comes into force.”.

(3) In regulation 3—

(a) in paragraph (3)(a), for “or 12ZA(3)” substitute “, 12ZA(3) or 44D(2) ”;

(b) in paragraph (4)(b)—

(i) for “an associated” substitute “a ”,

- (ii) for “(within the meaning of section 44B(2))” substitute “referred to in section 44B(2)(b) or in a property transfer instrument under section 43(2)”.

F16 [S.I. 2014/3330](#).

Bank Recovery and Resolution (No. 2) Order 2014

41.—(1) The Bank Recovery and Resolution (No. 2) Order 2014 ^{F17} is amended as follows.

(2) In article 107 (interpretation of Chapter 1),—

(a) at the end of the definition of “measure for early intervention”, omit “and”;

(b) at the end of the definition of “relevant institution”, insert—

“, and

“temporary manager” means a temporary manager appointed by the appropriate regulator under section 71C ^{F18} of FSMA;”.

(3) In article 108, at the end insert “or the appointment of a temporary manager”.

(4) In article 110 (application and interpretation of Chapter 2) after the definition of “non-UK group entity”, insert—

“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) in relation to a non-UK group entity, a temporary administrator appointed by a competent authority under measures implementing Article 29 of the recovery and resolution directive;”.

(5) In article 111 (procedure for early intervention in respect of a UK group entity)—

(a) in paragraph (1), after “early intervention” insert “or appoint a temporary manager”;

(b) in paragraph (3)—

(i) after “early intervention” insert “or appoint a temporary manager”;

(ii) in subparagraph (b) for “measure” substitute “proposal”;

(c) in paragraphs (4) and (6), after “early intervention” insert “or to appoint a temporary manager”.

(6) In article 112 (procedure for early intervention in respect of a non-UK group entity)—

(a) in paragraph (1) after “early intervention” insert “or to appoint a temporary manager”;

(b) in paragraph (2) for “measure” substitute “proposal”.

(7) In article 113 (joint decisions about early intervention)—

(a) after paragraph (1) insert—

“(1A) Where two or more competent authorities decide to appoint a temporary manager, the appropriate regulator must endeavour to reach a decision jointly with the relevant competent authorities on whether it is more appropriate to appoint the same temporary manager for all the entities concerned.”;

(b) in paragraph (2)(a) after “early intervention” both times it appears, insert “or to appoint a temporary manager”.

(8) In article 114 (references to EBA), for paragraph (7) substitute—

“(7) In this article, “referable measure means—

- (a) a measure for early intervention which is also—
 - (i) a measure of the kind specified in sub-paragraph (a) of Article 27.1 of the recovery and resolution directive relating to information included in a recovery plan or group recovery plan by virtue of points (4), (10), (11) and (19) of Section A of the Annex to that directive (information to be included in recovery plans); or
 - (ii) a measure of the kind specified in sub-paragraph (e) or (g) of Article 27.1 of that directive, or
- (b) the appointment of a temporary manager.”.
- (9) In article 115 (requesting the assistance of EBA), after “113(1)” insert “ or (1A) ”.
- (10) In article 116 (application and interpretation of Chapter 3), after “early intervention” insert “, “temporary manager” ”.
- (11) In article 117 (procedure for early intervention in respect of a UK group entity)—
 - (a) in paragraphs (1), (3) and (5), after “early intervention” insert “ or appoint a temporary manager ”;
 - (b) in paragraph (4) and (6), after “early intervention” insert “ or to appoint a temporary manager ”;
 - (c) in paragraph (3)(b) for “measure” both times it appears, substitute “ proposal ”.
- (12) In article 118 (joint decisions about early intervention)—
 - (a) after paragraph (1) insert—
 - “(1A) Where the appropriate regulator and one or more other competent authorities decide to appoint a temporary manager, the appropriate regulator must endeavour to reach a decision jointly with those authorities on whether it is more appropriate to appoint the same temporary manager for all the entities concerned.”;
 - (b) in paragraph (2) at the end insert “ or to appoint a temporary manager ”.
- (13) In article 120 (requesting the assistance of EBA), after “118(1)” insert “ or (1A) ”.
- (14) In articles 123(4), 126(6), 135(4) and 142(4) (determination of minimum requirement)—
 - (a) for “A liability must be excluded” substitute “ An eligible liability must be excluded ”; and
 - (b) for “own funds or eligible liabilities” substitute “ own funds and eligible liabilities ”.
- (15) In article 217(2) (shadow directorship)—
 - (a) at the end of sub-paragraph (a), omit “and”;
 - (b) after sub-paragraph (b) insert—
 - “(c) a resolution administrator appointed under section 62B of the Banking Act 2009^{F19}; and
 - (d) a temporary manager appointed under section 71C of the Financial Services and Markets Act 2000.”.
- (16) After article 220, insert—

“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—

“307B Notice required of general meeting: traded companies meeting the conditions for early intervention

(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^{F20}; 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.”

F17 [S.I. 2014/3348](#).

F18 [Section 71C](#) is inserted into the Financial Services and Markets Act 2000 by article 31 of this Order.

F19 [Section 62B](#) was inserted by [S.I. 2014/3329](#).

F20 OJ L173, 12.4.2014, p.84.

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Order power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Order revoked by [2023 c. 29 Sch. 1 Pt. 2](#)