

STATUTORY INSTRUMENTS

2020 No. 1350

The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020

PART 2

Amendment of Primary Legislation made under the European Communities Act 1972

CHAPTER 1

Amendment of the Financial Services and Markets Act 2000

Amendment of the Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000 ^{F1} is amended in accordance with this regulation.

(2) In section 137R(5)(financial promotion rules) ^{F2}—

(a) omit the “or” at the end of paragraph (b)(iv);

(b) after paragraph (b)(v) insert—

“or

(vi) Article 44a of the recovery and resolution directive (as defined in section 71I(5)),”.

F1 2000 c.8.

F2 Section 137R was amended by [S.I. 2017/701](#), [S.I. 2018/546](#) and [S.I. 2015/910](#); there are other amendments but none is relevant.

Commencement Information

I1 Reg. 2 in force at 28.12.2020, see [reg. 1\(2\)](#)

CHAPTER 2

Amendment of the Banking Act 2009

Introduction

3. The Banking Act 2009 ^{F3} is amended in accordance with this Chapter.

F3 2009 c.1.

Commencement Information

I2 Reg. 3 in force at 28.12.2020, see [reg. 1\(2\)](#)

Interpretation

4. In section 3 (interpretation: other expressions), in subsection (1)—
 - (a) in the definition of “Additional Tier 1 instruments” after “Chapter 2” insert “ or 4 ”;
 - (b) after the definition of “Additional Tier 1 instruments” insert—

““bail-in liabilities”, of an undertaking, means liabilities and capital instruments that—

 - (a) do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments, of the undertaking, and
 - (b) are not excluded liabilities listed in section 48B(8),”;
 - (c) for the definition of “eligible liabilities” substitute—

““eligible liabilities” has the meaning given by section 3A(4A),”;
 - (d) in the definition of “the recovery and resolution directive”, at the end, insert “ as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019 ”;
 - (e) after the definition of “relevant capital instruments” insert—

““relevant internal liabilities” of a bank or banking group company means—

 - (a) eligible liabilities, or
 - (b) instruments used to meet any of the requirements set out in Article 92b of the capital requirements regulation,

in each case held by a resolution entity in the same resolution group as the bank or banking group company, either directly or indirectly (through other entities in the same resolution group that bought the liabilities or instruments from the bank or banking group company),

“resolution entity” means an entity which is identified by the Bank of England in a resolution plan or a group resolution plan under Part 5 of the Bank Recovery and Resolution (No.2) Order 2014 as an entity in respect of which—

 - (a) the Bank of England might exercise a stabilisation power,
 - (b) an EU resolution authority might take EU resolution action, or
 - (c) a relevant third-country authority might take third-country resolution action,

and for the purposes of this definition, “EU resolution authority” has the meaning given by section 81AA(14), “relevant third-country authority” has the meaning given by section 81AA(14), “EU resolution action” has the meaning given to “resolution action” in Article 2.1(40) of the recovery and resolution directive and “third-country resolution action” has the meaning given by section 89H(7),

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

 - (a) is not a resolution entity itself,
 - (b) is not a subsidiary of another resolution entity, and
 - (c) where the subsidiary is established in a third country, is stated by the group resolution plan under Part 5 of the Bank Recovery and Resolution (No.2) Order 2014 to be included in the resolution group,

and for the purpose of this definition “subsidiary” has the meaning given by Article 4.1(16) of the capital requirements regulation,”;
 - (f) in the definition of “Tier 2 instruments” after “Chapter 2” insert “ or 4 ”.

Commencement Information

I3 Reg. 4 in force at 28.12.2020, see [reg. 1\(2\)](#)

Removal of impediments to the exercise of stabilisation powers etc.

5. In section 3A (removal of impediments to the exercise of stabilisation powers etc)—

(a) for subsection (4) substitute—

“(4) The Bank of England may give directions to a relevant person requiring that person to maintain or issue particular kinds of bail-in liabilities.

(4A) Where the Bank of England gives directions to a relevant person under subsection (4) the bail-in liabilities that the person is required to maintain or issue are referred to, in relation to that person, as “eligible liabilities”.

(4B) The Bank of England may give directions to a relevant person requiring that person—

(a) to maintain a minimum requirement for own funds and eligible liabilities, and

(b) for the purpose of paragraph (a), to change the maturity profile of own funds instruments and eligible liabilities or take other specified steps.

(4C) The Bank of England must not exercise the power under subsection (4B)(b) in relation to the maturity profile of own funds instruments—

(a) in the case of a relevant person which is—

(i) an institution authorised for the purpose of the Financial Services and Markets Act 2000 by the PRA, or

(ii) a parent of such an institution or subsidiary of such an institution or such a parent for the purposes of paragraph (b) or (c) of subsection (1),

without the consent of the PRA, or

(b) in the case of a relevant person to which paragraph (a) does not apply, without the consent of the FCA.”;

(b) in subsection (5) for “(4)” substitute “(4B)”.

Commencement Information

I4 Reg. 5 in force at 28.12.2020, see [reg. 1\(2\)](#)

Mandatory write-down, conversion etc.

6. In the heading for section 6B at the end insert “ and liabilities ”.

Commencement Information

I5 Reg. 6 in force at 28.12.2020, see [reg. 1\(2\)](#)

7. In section 6B (mandatory write-down, conversion, etc of capital instruments) ^{F4}—

(a) in subsection (2)—

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- (i) in paragraph (b), after the semi-colon, omit “and”;
- (ii) in paragraph (c) after “the principal amount of Tier 2 instruments” insert “ of the bank ”;
- (iii) after paragraph (c), insert—
 - “and
 - (d) where this section applies by virtue of section 6A(3) (Case 2) and the bank is not a resolution entity, but is in a resolution group, the principal amount of the relevant internal liabilities is reduced or such liabilities are converted (directly or indirectly) into Common Equity Tier 1 instruments (or both)—
 - (i) to the extent required to achieve the special resolution objectives set out in section 4 (so far as not achieved under paragraphs (b) and (c)), or
 - (ii) to the extent of the capacity of such liabilities,
- whichever is lower.”;
- (b) in subsection (3)—
 - (i) in paragraph (b), for “or Tier 2 instruments” substitute “ , Tier 2 instruments or relevant internal liabilities ”;
 - (ii) in paragraph (c), after “capital instruments” insert “ or relevant internal liabilities ”.

F4 Section 6B was inserted by S.I. 2014/3329.

Commencement Information

I6 Reg. 7 in force at 28.12.2020, see reg. 1(2)

8. In section 6C (mandatory reduction instruments: implementation of requirements of section 6B) ^{F5}—

- (a) in subsection (1), in the opening words after “relevant capital instrument”, insert “ or a relevant internal liability ”;
- (b) in subsection (1), in paragraphs (b) and (c) after “relevant capital instrument”, insert “ or the relevant internal liability ”;
- (c) in subsection (1), in paragraph (b) after “the instrument”, in both places it occurs insert “ or relevant internal liability ”;
- (d) in subsection (2), after “relevant capital instruments” insert “ or relevant internal liabilities ”;
- (e) in subsection (3), after “relevant capital instruments” in both places it occurs insert “ or relevant internal liabilities ”;
- (f) in subsection (4), after “relevant capital instruments” insert “ or relevant internal liabilities ”; and
- (g) in subsection (4)(d), after “capital instrument” insert “ or relevant internal liability ”.

F5 Section 6C was inserted by S.I. 2014/3329.

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Commencement Information

I7 [Reg. 8](#) in force at 28.12.2020, see [reg. 1\(2\)](#)

Bail-in: sequence of write-down and conversion of capital instruments and liabilities

9. In section 12AA (bail-in: sequence of write-down and conversion of capital instruments and liabilities) ^{F6}—

- (a) in subsection (1)(e), for “eligible” substitute “bail-in”;
- (b) in subsection (4), for “eligible” in both places it occurs substitute “bail-in”;
- (c) in subsection (5), for “eligible” substitute “bail-in”.

F6 [Section 12AA](#) was inserted by [S.I. 2014/3329](#).

Commencement Information

I8 [Reg. 9](#) in force at 28.12.2020, see [reg. 1\(2\)](#)

Special bail-in provision

10. In section 48B (special bail-in provision) ^{F7}—

- (a) in subsection (8), after paragraph (e) insert—
 - “(ea) liabilities with a remaining maturity of less than 7 days owed by the bank to a recognised central counterparty, an EEA central counterparty or a third country central counterparty.”;
- (b) in the same subsection, after paragraph (j) insert—
 - “(k) liabilities owed by the bank to another bank or a banking group company which (in either case)—
 - (i) is part of the same resolution group as the bank, and
 - (ii) is not itself a resolution entity,where the liabilities do not rank below ordinary non-preferential debts under the hierarchy of claims in normal insolvency proceedings.”;
- (c) in subsection (10), for “eligible” in both places it occurs substitute “bail-in”;
- (d) in subsection (11)—
 - (i) for “an eligible liability” in each place it occurs substitute “a bail-in liability”;
 - (ii) for “the eligible liabilities” substitute “the bail-in liabilities”.

F7 [Section 48B](#) was inserted by [S.I. 2014/3329](#).

Commencement Information

I9 [Reg. 10](#) in force at 28.12.2020, see [reg. 1\(2\)](#)

General interpretation of section 48B

11. In section 48D (general interpretation of section 48B) ^{F8}, in subsection (1)—

- (a) after the definition of “designated settlement system” insert—

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““EEA central counterparty” has the meaning given in section 285 of the Financial Services and Markets Act 2000;”;

(b) after the definition of “investment firm” insert—

““normal insolvency proceedings” has the meaning given in section 12AA(2);”;

(c) after the definition of “pension scheme” insert—

““recognised central counterparty” has the meaning given in section 285 of the Financial Services and Markets Act 2000;”;

(d) after the definition of “secured” insert—

““third country central counterparty” has the meaning given in section 285 of the Financial Services and Markets Act 2000;”.

F8 Section 48D was inserted by paragraph 4 of Schedule 2 of the [Financial Services \(Banking Reform\) Act 2013](#) (c. 33).

Commencement Information

I10 Reg. 11 in force at 28.12.2020, see [reg. 1\(2\)](#)

Pre-conditions for financial assistance: duty of Bank to give information

12. In section 78A (pre-conditions for financial assistance: duty of Bank to give information) ^{F9}, in subsection (2)(b) for “eligible” substitute “ bail-in ”.

F9 Section 81AA was inserted by [S.I. 2014/3329](#).

Commencement Information

I11 Reg. 12 in force at 28.12.2020, see [reg. 1\(2\)](#)

Cases where mandatory write-down, conversion etc. applies: banking group companies

13. In section 81AA (cases where mandatory write-down, conversion etc applies: banking group companies)—

(a) in subsection (1)—

(i) after “capital instruments” insert “ and relevant internal liabilities ”; and

(ii) for “and (8)” substitute “ , (8) and (8A) ”;

(b) in subsections (6)(a), (7)(a), and (8)(b), after “capital instruments”, insert “ or relevant internal liabilities ”;

(c) after subsection (8) insert—

“(8A) Case 4 is where—

(a) the banking group company is (or, but for the exercise of a stabilisation power, would be) a parent undertaking of a bank from which it has purchased (directly or indirectly) relevant capital instruments or relevant internal liabilities,

(b) the banking group company is not a resolution entity,

(c) the relevant capital instruments or relevant internal liabilities of the banking group company have been purchased (directly or indirectly) by a resolution entity in the same resolution group as the banking group company,

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- (d) any of the cases provided for in section 6A applies to the bank referred to in paragraph (a) above, and
- (e) none of cases 1 to 3 in this section applies to the banking group company.”;
- (d) in subsection (14) after the definition of “financial institution” insert—
““parent undertaking” has the meaning given in Article 4.1(15)(a) of the capital requirements regulation.”.

Commencement Information

I12 Reg. 13 in force at 28.12.2020, see [reg. 1\(2\)](#)

Groups: sale to commercial purchaser and transfer to bridge bank: holding companies

14. After section 81B insert—

“81ZZBA Sale to commercial purchaser and transfer to bridge bank: supplemental powers in relation to certain holding companies

(1) Without prejudice to the operation of section 81B, the Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.

(2) Condition 1 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(3) Condition 2 is that the banking group company is an entity within Article 1.1(c) or (d) of the recovery and resolution directive.

(4) Condition 3 is that the PRA is satisfied that the banking group company is failing or likely to fail.

(5) Condition 4 is that the Bank of England is satisfied that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the banking group company that will result in Condition 3 ceasing to be met.

(6) Condition 5 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives.

(7) Condition 6 is that the Bank of England is satisfied that one or more of the special resolution objectives would not be met to the same extent by the winding up of the banking group company.

(8) Condition 7 (which applies only in a financial assistance case) is that—

- (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
- (b) in the Bank of England's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

(9) In exercising a stabilisation power in reliance on this section, the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

(10) In this section “financial assistance case” has the meaning given in section 81B(8).

81ZZBB Assessment of conditions for section 81ZZBA

- (1) This section applies for the purposes of section 81ZZBA.
- (2) The PRA must treat Condition 3 as met if satisfied that it would be met but for financial assistance provided by—
 - (a) the Treasury, or
 - (b) the Bank of England,
 disregarding ordinary market assistance offered by the Bank of England on its usual terms.
- (3) The Bank of England must treat Condition 4 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (2).
- (4) For the purposes of Condition 3, a banking group company is failing or likely to fail if—
 - (a) it is contravening or likely to contravene a regulatory requirement where that contravention is serious in nature or directly related to a deterioration in the financial situation of the banking group company which threatens the viability of—
 - (i) the banking group company, or
 - (ii) another undertaking in the same resolution group,
 - (b) it is failing, or is likely to fail, to meet the approval conditions set out in section 192R(3) to (6) of the Financial Services and Markets Act 2000 in circumstances where that failure—
 - (i) would justify the taking of measures in relation to the company by the PRA under section 192T(1) of that Act, and
 - (ii) is serious in nature,
 - (c) the value of the assets of the banking group company is less than the amount of its liabilities,
 - (d) the banking group company is unable to pay its debts or other liabilities as they fall due,
 - (e) paragraph (c) or (d) (or both) will, in the near future, apply to the banking group company, or
 - (f) extraordinary public financial support is required in respect of the banking group company and subsection (5) does not apply to it.
- (5) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary financial support takes any of the following forms—
 - (a) a State guarantee to back liquidity facilities provided by central banks,
 - (b) a State guarantee of newly issued liabilities,
 - (c) an injection of own funds, or purchase of capital instruments or liabilities, at prices and on terms that do not confer an advantage upon the banking group company, where none of the circumstances referred to in subsection (4)(a), (b), (c), (d) or (e) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.
- (6) Before determining that Condition 3 is met, the PRA must consult the Bank of England.
- (7) Before determining whether or not Conditions 4 and (where applicable) 7 are met, the Bank of England must consult—

- (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (8) Before determining that Conditions 5 and 6 are met the Bank of England must consult—
- (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (9) The special resolution objectives are not relevant to Conditions 3 and 4.
- (10) In this section “regulatory requirement” means a requirement imposed—
- (a) by or under the Financial Services and Markets Act 2000,
 - (b) by or under the capital requirements regulation,
 - (c) by any enactment which gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation made under that directive, or
 - (d) by the Bank of England under this Act,
- and for the purposes of this definition, “capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.”.

Commencement Information

I13 Reg. 14 in force at 28.12.2020, see [reg. 1\(2\)](#)

Groups: transfer to asset management vehicle: holding companies

15. After section 81ZBA insert—

“81ZBB Transfer to asset management vehicle: supplemental powers in relation to certain holding companies

- (1) Without prejudice to the operation of section 81ZBA, the Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12ZA(3) if the following conditions are met.
- (2) Condition 1 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (3) Condition 2 is that the banking group company is an entity within Article 1.1(c) or (d) of the recovery and resolution directive.
- (4) Condition 3 is that the PRA is satisfied that the banking group company is failing or likely to fail.
- (5) Condition 4 is that the Bank of England is satisfied that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the banking group company that will result in Condition 3 ceasing to be met.

(6) Condition 5 is that the power is exercised in connection with the exercise of one or more stabilisation powers in respect of the banking group company otherwise than for the purposes of the third stabilisation option.

(7) Condition 6 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives.

(8) Condition 7 is that the Bank of England is satisfied that one or more of the special resolution objectives would not be met to the same extent by the winding up of the banking group company.

(9) Condition 8 (which applies only in a financial assistance case) is that—

- (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
- (b) in the Bank of England's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

(10) Condition 9 is that the Bank of England is satisfied that—

- (a) the situation of the market for the assets which it is proposed to transfer by the exercise of the stabilisation power is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets,
- (b) the transfer is necessary to ensure the proper functioning of the banking group company from which the transfer is to be made, or
- (c) the transfer is necessary to maximise the proceeds available for distribution.

(11) In this section—

“financial assistance case” has the meaning given in section 81B(8); and

“normal insolvency proceedings” has the meaning given in section 81ZBA.

81ZBC Assessment of conditions for section 81ZBB

(1) This section applies for the purposes of section 81ZBB.

(2) The PRA must treat Condition 3 as met if satisfied that it would be met but for financial assistance provided by—

- (a) the Treasury, or
- (b) the Bank of England,

disregarding ordinary market assistance offered by the Bank of England on its usual terms.

(3) The Bank of England must treat Condition 4 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (2).

(4) For the purposes of Condition 3, a banking group company is failing or likely to fail if—

- (a) it is contravening or likely to contravene a regulatory requirement where that contravention is serious in nature or directly related to a deterioration in the financial situation of the banking group company which threatens the viability of—
 - (i) the banking group company, or
 - (ii) another undertaking in the same resolution group,

- (b) it is failing, or is likely to fail, to meet the approval conditions set out in section 192R(3) to (6) of the Financial Services and Markets Act 2000 in circumstances where that failure—
 - (i) would justify the taking of measures in relation to the company by the PRA under section 192T(1) of that Act, and
 - (ii) is serious in nature,
 - (c) the value of the assets of the banking group company is less than the amount of its liabilities,
 - (d) the banking group company is unable to pay its debts or other liabilities as they fall due,
 - (e) paragraph (c) or (d) (or both) will, in the near future, apply to the banking group company, or
 - (f) extraordinary public financial support is required in respect of the banking group company and subsection (5) does not apply to it.
- (5) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary financial support takes any of the following forms—
- (a) a State guarantee to back liquidity facilities provided by central banks,
 - (b) a State guarantee of newly issued liabilities,
 - (c) an injection of own funds, or purchase of capital instruments, at prices and on terms that do not confer an advantage upon the banking group company, where none of the circumstances referred to in subsection (4)(a), (b), (c), (d) or (e) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.
- (6) Before determining that Condition 3 is met, the PRA must consult the Bank of England.
- (7) Before determining whether or not Conditions 4, 5 and (where applicable) 8 are met, the Bank of England must consult—
- (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (8) Before determining that Conditions 6 and 7 are met the Bank of England must consult—
- (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (9) The special resolution objectives are not relevant to Conditions 3 and 4.
- (10) In this section “regulatory requirement” means a requirement imposed—
- (a) by or under the Financial Services and Markets Act 2000,
 - (b) by or under the capital requirements regulation,
 - (c) by any enactment which gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation made under that directive, or
 - (d) by the Bank of England under this Act,

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and for the purposes of this definition, “capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.”.

Commencement Information

I14 Reg. 15 in force at 28.12.2020, see [reg. 1\(2\)](#)

Groups: bail-in option: holding companies

16. After section 81BA insert—

“81BB Bail-in option: supplemental powers in relation to certain holding companies

(1) Without prejudice to the operation of section 81BA, the Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12A(2) if the following conditions are met.

(2) Condition 1 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(3) Condition 2 is that the banking group company is an entity within Article 1.1(c) or (d) of the recovery and resolution directive.

(4) Condition 3 is that the PRA is satisfied that the banking group company is failing or likely to fail.

(5) Condition 4 is that the Bank of England is satisfied that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the banking group company that will result in Condition 3 ceasing to be met.

(6) Condition 5 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives.

(7) Condition 6 is that the Bank of England is satisfied that one or more of the special resolution objectives would not be met to the same extent by the winding up of the banking group company.

(8) In exercising a stabilisation power in reliance on this section, the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

81BC Assessment of conditions for section 81BB

(1) This section applies for the purposes of section 81BB.

(2) The PRA must treat Condition 3 as met if satisfied that it would be met but for financial assistance provided by—

- (a) the Treasury, or
- (b) the Bank of England,

disregarding ordinary market assistance offered by the Bank of England on its usual terms.

(3) The Bank of England must treat Condition 4 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (2).

(4) For the purposes of Condition 3, a banking group company is failing or likely to fail if—

(a) it is contravening or likely to contravene a regulatory requirement where that contravention is serious in nature or directly related to a deterioration in the financial situation of the banking group company which threatens the viability of—

(i) the banking group company, or

(ii) another undertaking in the same resolution group,

(b) it is failing, or is likely to fail, to satisfy the approval conditions set out in section 192R(3) to (6) of the Financial Services and Markets Act 2000 in circumstances where that failure—

(i) would justify the taking of measures in relation to the company by the PRA under section 192T(1) of that Act, and

(ii) is serious in nature,

(c) the value of the assets of the banking group company is less than the amount of its liabilities,

(d) the banking group company is unable to pay its debts or other liabilities as they fall due,

(e) paragraph (c) or (d) (or both) will, in the near future, apply to the banking group company, or

(f) extraordinary public financial support is required in respect of the banking group company and subsection (5) does not apply to it.

(5) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary financial support takes any of the following forms—

(a) a State guarantee to back liquidity facilities provided by central banks,

(b) a State guarantee of newly issued liabilities,

(c) an injection of own funds, or purchase of capital instruments, at prices and on terms that do not confer an advantage upon the banking group company, where none of the circumstances referred to in subsection (4)(a), (b), (c), (d) or (e) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.

(6) Before determining that Condition 3 is met, the PRA must consult the Bank of England.

(7) Before determining whether or not Condition 4 is met, the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(8) Before determining that Conditions 5 and 6 are met the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

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- (c) the FCA.
- (9) The special resolution objectives are not relevant to Conditions 3 and 4.
- (10) In this section “regulatory requirement” means a requirement imposed—
 - (a) by or under the Financial Services and Markets Act 2000,
 - (b) by or under the capital requirements regulation,
 - (c) by any enactment which gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation made under that directive, or
 - (d) by the Bank of England under this Act,
 and for the purposes of this definition, “capital requirements directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.”.

Commencement Information

I15 Reg. 16 in force at 28.12.2020, see [reg. 1\(2\)](#)

17. For the heading for section 81C substitute “ Sections 81AA to 81ZBB: supplemental ”.

Commencement Information

I16 [Reg. 17](#) in force at 28.12.2020, see [reg. 1\(2\)](#)

18. In section 81C (section 81B or 81ZBA: supplemental) ^{F10}—
- (a) in subsection (1A) after paragraph (a) insert—
 - “(aa) where Case 4 in section 81AA applies, section 6B(2) is to be read as providing that “the mandatory reduction provision” is provision which, together with the mandatory reduction provision made in respect of any other subsidiary of the resolution entity that is in the same resolution group as the banking group company, produces the results referred to in subsection (1AA) of this section.”;
 - (b) after subsection (1A) insert—
 - “(1AA) The results are that—
 - (a) the principal amount of the relevant capital instruments or relevant internal liabilities of the banking group company is reduced, or
 - (b) such instruments or liabilities of the banking group company are converted (directly or indirectly) into Common Equity Tier 1 instruments,
 (or both (a) and (b)) in accordance with the principle that losses of the bank referred to in relation to that banking group company in section 81AA(8A)(a) are effectively passed on to, and the bank is recapitalised by, the resolution entity that is in the same resolution group as the banking group company.”;
 - (c) in section 81C(2), for “or 81ZBA” substitute “ , 81ZZBA, 81ZBA or 81ZBB ”.

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F10 Section 81C was inserted by S.I. 2014/3329.

Commencement Information

I17 Reg. 18 in force at 28.12.2020, see reg. 1(2)

19. In the heading for section 81CA, after “Section 81BA” insert “ and Section 81BB ”.

Commencement Information

I18 Reg. 19 in force at 28.12.2020, see reg. 1(2)

20. In section 81CA(1), after “section 81BA” insert “ or section 81BB ”.

Commencement Information

I19 Reg. 20 in force at 28.12.2020, see reg. 1(2)

Resolution of banks not regulated by the PRA

21.—(1) In section 83A (modifications of Part 1 for banks not regulated by the PRA), the Table of modifications in subsection (2) is amended as follows.

(2) In the appropriate places, insert—

| | |
|-----------------|--|
| “Section 81ZZBA | Treat the reference to the PRA in subsection (4) as a reference to the FCA.” |
| “Section 81ZZBB | (a) Treat the references to the PRA in subsections (2) and (6) as references to the FCA. (b) Subsections (7)(b) and (8)(b) do not apply unless the banking group company has as a member of its immediate group a PRA-authorised person.” |
| “Section 81ZBB | Treat the reference to the PRA in subsection (4) as a reference to the FCA.” |
| “Section 81ZBC | (a) Treat the references to the PRA in subsections (2) and (6) as references to the FCA. (b) Subsections (7)(b) and (8)(b) do not apply unless the banking group company has as a member of its immediate group a PRA-authorised person.” |
| “Section 81BB | Treat the reference to the PRA in subsection (4) as a reference to the FCA.” |

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“Section 81BC

- (a) Treat the references to the PRA in subsections (2) and (6) as references to the FCA.
- (b) Subsections (7)(b) and (8)(b) do not apply unless the banking group company has as a member of its immediate group a PRA-authorised person.”

Commencement Information

I20 Reg. 21 in force at 28.12.2020, see [reg. 1\(2\)](#)

Resolution of recognised central counterparties

22. In section 89B (application to recognised central counterparties), in subsection (1ZA), after “2016”, insert “ or by the Bank Recovery and Resolution (Amendment)(EU Exit) Regulations 2020 ”.

Commencement Information

I21 Reg. 22 in force at 28.12.2020, see [reg. 1\(2\)](#)

Recognition of third-country resolution actions

23. In section 89I (effect of recognition of third-country resolution action by Bank of England)—

- (a) in subsection (5), for “(8)”, substitute “ (9A) ”; and
- (b) after subsection (9), insert—

“(9A) Sections 81ZZBA, 81ZZBB, 81ZBB, 81ZBC, 81BB and 81BC do not apply.”.

Commencement Information

I22 Reg. 23 in force at 28.12.2020, see [reg. 1\(2\)](#)

Resolution of UK branches of third-country institutions

24. In section 89JA (resolution of UK branches of third-country institutions) ^{F11}—

- (a) in subsection (8), in substituted section 48B(10)—

- (i) after paragraph (e) insert—

“(ea) liabilities with a remaining maturity of less than 7 days owed by the relevant institution to a recognised central counterparty, an EEA central counterparty or a third country central counterparty;”;

- (ii) after paragraph (i) insert—

“(j) liabilities owed by the relevant institution to another institution or a banking group company which (in either case)—

- (i) is part of the same resolution group as the relevant institution, and
- (ii) is not itself a resolution entity,

where the liabilities do not rank below ordinary non-preferential debts under the hierarchy of claims in normal insolvency proceedings.”;

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- (b) in the same subsection in substituted section 48B(12) for “ eligible ” in both places it occurs substitute “ bail-in ”;
- (c) in the same subsection in substituted section 48B(13)—
 - (i) for “an eligible liability” in each place it occurs substitute “ a bail-in liability ”;
 - (ii) for “the eligible liabilities” substitute “ the bail-in liabilities ”.

F11 Section 81B was inserted by S.I. 2016/1239.

Commencement Information

I23 Reg. 24 in force at 28.12.2020, see [reg. 1\(2\)](#)

Index of defined terms

25. In section 261 (index of defined terms) in the Table, insert each of the following entries at the appropriate place—

| | |
|--------------------------------|----|
| “bail in liabilities | 3” |
| “relevant internal liabilities | 3” |
| “resolution entity | 3” |
| “resolution group | 3” |

Commencement Information

I24 Reg. 25 in force at 28.12.2020, see [reg. 1\(2\)](#)

Changes to legislation:

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Changes and effects yet to be applied to :

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