Draft Regulations laid before Parliament under paragraph 2A(3)(a) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1

The Treasury are designated(**a**) for the purpose of section 2(2) of the European Communities Act 1972(**b**) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**c**).

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 2A(3)(a) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

Citation and commencement

1.—(1) These Regulations may be cited as the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) The following provisions come into force on the day after the day on which these Regulations are made—

(a) this regulation,

(**a**) S.I. 2012/1759.

(**b**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 c.7. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1993 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183). The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(**c**) 2018 c.16.

(b) in Schedule 1, paragraphs 3(2), 7(2)(b) and 15(3),

(c) in Schedule 2, paragraph 3(b)(ii),

(d) in Schedule 3, paragraph 1(29) and

(e) in Schedule 4, paragraphs 2(2)(c), 4(2)(b) and 7(3).

Amendments of the Banking Act 2009

2. Schedule 1 amends the Banking Act 2009(**a**).

Amendments of other primary legislation

3. Schedule 2 amends—

(a) the Insolvency Act 1986(**b**) and

(b) the Financial Services (Banking Reform) Act 2013(**c**).

Amendments of the Bank Recovery and Resolution (No.2) Order 2014

4. Schedule 3 amends the Bank Recovery and Resolution (No.2) Order 2014(**d**).

Amendments of other secondary legislation

5. Schedule 4 amends—

(a) the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009(**e**),

(b) the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(**f**),

(c) the Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014(**g**),

(d) the Banking Act 2009 (Banking Group Companies) Order 2014(**h**),

(e) the Bank Recovery and Resolution Order 2014(**i**),

(f) the Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014(**j**),

(g) the Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014(**k**),

(h) the Building Societies (Bail-in) Order 2014(**l**) and

(i) the Bank Recovery and Resolution Order 2016(**m**).

Revocation and amendments of retained direct EU legislation

6. The following instruments are revoked—

(**a**) 2009 c.1. Relevant amendments were made by S.I. 2014/3329 and 2016/1239, the Financial Services Act 2012 c.21 and the Financial Services (Banking Reform) Act 2013 c.33.
(**b**) 1986 c.45. The relevant amendments are mentioned in the footnotes to Schedule 2 to these Regulations.
(**c**) 2013 c.33.
(**d**) S.I. 2014/3348, amended by S.I. 2016/1239 and 2017/80.
(**e**) S.I. 2009/319, amended by S.I. 2014/1830, 3329 and 2016/1239.
(**f**) S.I. 2009/322. Relevant amendments were made by S.I. 2009/1826, 2011/1043, 2013/3115 and 2016/1239.
(**g**) S.I. 2014/1828.
(**h**) S.I. 2014/1831.
(**i**) S.I. 2014/3329.
(**j**) S.I. 2014/3330; amended by S.I. 2014/3344 and 2016/1239.
(**k**) S.I. 2014/3350; amended by S.I. 2016/1239.
(**l**) S.I. 2014/3344.
(**m**) S.I. 2016/1239.

(a) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements,

(b) Commission Delegated Regulation (EU) 2016/1434 of 14 December 2015 correcting Delegated Regulation (EU) 2015/63 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements and

(c) Commission Delegated Regulation (EU) 2017/867 of 7 February 2017 on classes of arrangements to be protected in a partial property transfer under Article 76 of Directive 2014/59/EU of the European Parliament and of the Council.

7. The following instruments are amended in accordance with Schedule 5—

(a) Commission Delegated Regulation (EU) 2016/778 of 2 February 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to the circumstances and conditions under which the payment of extraordinary *ex post* contributions may be partially or entirely deferred, and on the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines and

(b) Commission Delegated Regulation (EU) 2016/860 of 4 February 2016 specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms.

Transitional provisions: pre-exit EEA resolution action

8.—(1) Section 89H of the Banking Act 2009 (recognition of third-country resolution actions) does not apply in relation to any of the following where taken before exit day under the law of an EEA State other than the United Kingdom—

(a) the application of a resolution tool within the meaning of Article 2.1(19) of the recovery and resolution directive;

(b) the exercise of a resolution power within the meaning of Article 2.1(20) of the recovery and resolution directive;

(c) any other measure to which Article 66 of the recovery and resolution directive applied immediately before exit day.

(2) In paragraph (1) "recovery and resolution directive" has the meaning given in section 3(1) of the Banking Act 2009.

(3) Paragraph (1) is without prejudice to the provision made by paragraph 37 of Schedule 8 to the European Union (Withdrawal) Act 2018.

Name
Name

Date — Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulation 2

Amendments of the Banking Act 2009

Introduction

1. The Banking Act 2009 is amended as follows.

Special resolution regime: introduction

2. Section 3 (interpretation of Part 1) is amended in accordance with paragraphs 3 to 6.

3.—(1) Subsection (1) is amended as follows.

(2) In the definition of "the capital requirements regulation" at the end insert "as it had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/xxxx) were made,".

(3) In the definition of "critical functions"—

(a) for "subsection (2)" substitute "subsections (2) and (2A)";

(b) after "operations" insert "(wherever carried out)";

(c) omit "in one or more EEA states";

(d) in paragraph (a), at the end insert "of the United Kingdom";

(e) in paragraph (b), at the end insert "in the United Kingdom".

(4) After that definition insert—

> ""FSCS" means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000);".

(5) After that definition insert—

> ""normal insolvency proceedings" means the collective insolvency proceedings which—
>
> (a) entail the partial or total divestment of a debtor and the appointment of a liquidator or administrator (or a similar officeholder),
>
> (b) are normally applicable to institutions under the law of any part of the United Kingdom, and
>
> (c) are either specific to those institutions or generally applicable to any natural or legal person;
>
> and, in particular, includes the bank insolvency procedure and the bank administration procedure;".

4. In subsection (2), for paragraph (a) (but not the "and" after it) substitute—

> "(a) Article 6 of Commission Delegated Regulation (EU) 2016/778 (criteria relating to the determination of critical functions) applies,".

5. After subsection (2) insert—

> "(2A) The Treasury may by regulations made by statutory instrument specify criteria for the determination of the activities, services and operations referred to in the definition of "critical functions".
>
> (2B) The power conferred by subsection (2A) includes—
>
> (a) power to amend or revoke Article 6 of Commission Delegated Regulation (EU) 2016/778; and
>
> (b) power to amend or repeal subsection (2)(a).
>
> (2C) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.".

6. After subsection (3) insert—

> "(4) In this Part a reference to the PRA rulebook is to the rulebook published by the PRA containing rules made by the PRA under the Financial Services and Markets Act 2000 as the rulebook has effect on exit day.".

Objectives and Code

7.—(1) Section 4 (special resolution objectives) is amended as follows.

(2) In subsection (4)(a)—

(a) for the words from "authorised" to "Article 25," substitute "authorised or recognised in the United Kingdom in accordance with Article 14 or 25";

(b) at the end insert ", as that Regulation had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (SI 000/2018) were made".

(3) For subsection (7) substitute—

"(7) Objective 5 is to protect investors and depositors to the extent that they have investments or deposits covered by the FSCS.".

Mandatory write-down, conversion etc of capital instruments

8.—(1) Section 6A (cases where mandatory write-down, conversion, etc applies) is amended as follows.

(2) In subsection (4)(d), for the words from the beginning to "directive" substitute "the Bank of England makes a determination".

(3) In subsection (9)—

(a) omit the definition of "appropriate authority";

(b) in the definition of "consolidated basis" for "Article 2.1(7) of the recovery and resolution directive" substitute "Article 4.1(47) and (48) of the capital requirements regulation".

9. In section 6B (mandatory write-down, conversion, etc of capital instruments), in subsection (9), for the words from ", pursuant" to the end substitute—

"—

(a) pursuant to this section as it applies in relation to a banking group company by virtue of section 81AA, or

(b) in the course of applying the bail-in option provided for by section 12A or section 81BA.".

10.—(1) Section 6C (mandatory reduction instruments: implementation of requirements of section 6B) is amended as follows.

(2) In subsection (4)(a)—

(a) for "parent" (where it first appears) substitute "UK parent", and

(b) for the words from "resolution" to the end substitute "Bank of England".

(3) In subsection (4)(b) for "State or a government entity" substitute "Treasury".

(4) In subsection (4)(d), for the words from "complies" to the end substitute "represents appropriate compensation to the affected creditor for any loss incurred in consequence of the conversion of that instrument.".

(5) After subsection (4) insert—

"(4A) Where different conversion rates are applied to different classes of instrument, a lower conversion rate must be applied to subordinated debt than is applied to debts ranking higher in the hierarchy of claims in normal insolvency proceedings.".

(6) In subsection (7), omit the definition of "resolution authority".

Valuation before mandatory write-down of capital or stabilisation action

11.—(1) Section 6E (pre-resolution valuation) is amended as follows.

(2) For subsection (6) substitute—

"(6) The valuation carried out under this section must follow the methodology specified in—

(a) any Commission Regulation containing regulatory technical standards adopted by the European Commission under article 36.16 of the recovery and resolution directive, so far as they are retained EU law, or

(b) technical standards made under subsection (11)(a)".

(3) For subsection (10) substitute—

"(10) A provisional valuation carried out under subsection (1) must make provision in respect of additional losses by the bank in accordance with—

(a) any Commission Regulation containing regulatory technical standards adopted by the European Commission under article 36.16 of the recovery and resolution directive, so far are as they are retained EU law, or

(b) technical standards made under subsection (11)(b).

(11) The Bank of England may make technical standards relating to—

(a) the methodology for assessing the value of the assets and liabilities of a bank for the purposes of a valuation under this section;

(b) the methodology for calculating and including a buffer for additional losses in the provisional valuation.".

Exercise of powers: general

12. In section 7 (general conditions for exercise of stabilisation powers), in subsection (5E)(a) for "central banks" substitute "the Bank of England".

13.—(1) Section 7A (effect on other group members, financial stability in EU etc) is amended as follows.

(2) In the heading, for "EU" substitute "UK".

(3) In subsection (1)—

(a) in paragraph (b) for "EEA" substitute "United Kingdom";

(b) in paragraph (c) for "European Union or of the EEA states" substitute "United Kingdom".

(4) In subsection (2)—

(a) in paragraph (b) for the words from "European" to "operating)" substitute "United Kingdom";

(b) in paragraph (c)—

(i) for "third countries" in the first place it appears substitute "countries other than the United Kingdom";

(ii) omit "third" in the second place it appears.

14. In section 8ZA (specific conditions: asset management vehicle), omit subsection (5).

The stabilisation options

15.—(1) Section 11A (private sector purchaser: marketing) is amended as follows.

(2) In subsection (5)(a) omit "or another EEA state".

(3) After subsection (7) insert—

"(8) The reference in subsection (7) to Regulation (EU) No 596/2014 is to that Regulation as it had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/xxxx) were made.".

16. In section 12AA (bail-in: sequence of write-down and conversion of capital instruments and liabilities), in subsection (2), omit the definition of "normal insolvency proceedings".

Transfer of securities

17. In section 14 (interpretation: "securities"), in subsection (5)(b) for the words from "Regulation" to the end substitute "the capital requirements regulation".

Transfer of property

18. In section 35 (transferable property), in subsection (1)—

(a) in paragraph (d) at the end insert "(including under legislation of the European Union)";

(b) in paragraph (e) omit "(including legislation of the European Union)".

Bail-in option

19.—(1) Section 48B (special bail-in provision) is amended as follows.

(2) In subsection (8)(g) for the words from "as referred" to the end substitute "within the meaning of rule 3 of Part 152 (remuneration) of the PRA rulebook (other than persons deemed by virtue of rule 3.2 not to be material risk takers and notified to the PRA in accordance with rule 3.2)."

(3) In subsection (8)(j) for the words from "Financial Services Compensation" to the end substitute "FSCS in relation to levies imposed by the scheme manager under section 213(3)(b) of the Financial Services and Markets Act 2000.".

(4) In subsection (10), omit paragraph (b) (and the "and" before it).

(5) In subsection (12)(c)—

(a) for "micro-enterprises, small enterprises or medium-sized enterprises" substitute "micro, small and medium-sized enterprises";

(b) for "an EEA State" substitute "the United Kingdom".

(6) After subsection (13) insert—

"(13A) The Treasury may by regulations made by statutory instrument make further provision in connection with the exercise of functions under subsection (10) (including provision about further circumstances in which functions under that subsection may or must be exercised).

(13B) Regulations under subsection (13A) may—

(a) amend subsections (12) and (13) by adding any provision;

(b) amend or revoke Commission Delegated Regulation (EU) 2016/860;

(c) amend that Regulation by adding, omitting or varying any provision (pending the revocation of the whole Regulation under paragraph (b).

(13C) A statutory instrument containing regulations under subsection (13A) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.".

(7) In subsection (14)—

(a) at the appropriate place insert—

""core business lines" means business lines and associated services which represent material sources of revenue, profit or franchise value for the bank or a group which includes the bank (or in the case of an instrument made in relation to a resolution company, of the resolution company);";

(b) for the words from ""micro-enterprise"" to the end substitute—

""micro, small and medium-sized enterprises" means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.".

(8) After subsection (14) insert—

"(15) For the purposes of the definition of "core business lines"—

(a) Article 7 of Commission Delegated Regulation (EU) 2016/778 (criteria relating to the determination of core business lines) applies, and

(b) "group" has the meaning given by section 3(2)(b).

(16) The Treasury may by regulations made by statutory instrument specify criteria for the determination of the business lines and associated services referred to in the definition of "core business lines".

(17) The power conferred by subsection (16) includes—

(a) power to amend or revoke Article 7 of Commission Delegated Regulation (EU) 2016/778; and

(b) power to amend or repeal subsection (15)(a).

(18) A statutory instrument containing regulations under subsection (16) is subject to annulment in pursuance of a resolution of either House of Parliament.".

20. In section 48C (meaning of "protected deposit"), in subsection (1) for the words from "a deposit" to the end substitute "the FSCS".

21.—(1) In section 48D (general interpretation of section 48B), subsection (1) is amended as follows.

(2) In the definition of "credit institution" for "Article 2.5(2) to (23)" substitute "Article 2.5(2), (3) or (23)".

(3) In the definition of "designated settlement system" for the words from "in accordance" to the end substitute "by an order under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) for the purposes of those regulations;".

(4) In the definition of "investment firm"—

(a) for "Regulation (EU)No 575/2013 of the European Parliament and of the Council" substitute "the capital requirements regulation";

(b) after "specified in" insert "rules made by the FCA or PRA for the purpose of implementing".

22.—(1) Section 48H (business reorganisation plans) is amended as follows.

(2) In subsection (1)—

(a) omit the "and" after paragraph (a);

(b) after paragraph (b) insert—

"; and

(c) submit to the Bank of England progress reports on the implementation of the plan at such intervals as the instrument may require.".

(3) After subsection (7) insert—

"(7A) The Bank of England may make technical standards which—

(a) require progress reports mentioned in subsection (1)(c) to include such matters as are specified in the technical standards; or

(b) otherwise relate to the content of those progress reports, so far as dealing with matters so specified.".

Termination rights etc

23.—(1) Section 48Z (termination rights etc) is amended as follows.

(2) In subsection (1)—

(a) in the definition of "crisis management measure" omit the words from "has" to "Kingdom";

(b) in the definition of "crisis prevention measure"—

(i) omit the words from "has" to "Kingdom";

(ii) in paragraph (a), for the words from "of a" to the end substitute "under the Bank Recovery and Resolution (No 2) Order 2014 (SI 2014/3348) of a requirement to take relevant measures as described in article 15, 16, or 23 of that Order,";

(iii) in paragraph (b), for the words from "Article" to the end substitute "section 3A,";

(iv) for paragraph (c) substitute—

"(c) the taking by the FCA or the PRA of a measure for early intervention under article 111 of the Bank Recovery and Resolution (No. 2) Order 2014,";

(c) for the definition of "third-country institution" substitute—

""third-country institution" means an institution established in a country or territory other than the United Kingdom that would, if it were established within the United Kingdom, be regarded as a bank, building society, credit union or investment firm;";

(d) after the definition of "third country institution" insert—

""third country parent financial holding company" means a parent financial holding company (within the meaning of Article 4.1(30) of the capital requirements regulation) established or formed under the law of a country or territory outside the United Kingdom;

"third country parent institution" means a parent institution (within the meaning of Article 4.1(28) of the capital requirements regulation) established or formed under the law of a country or territory outside the United Kingdom;

"third country parent mixed financial holding company" means a parent mixed financial holding company (within the meaning of Article 4.1(32) of the capital requirements regulation) established or formed under the law of a country or territory outside the United Kingdom;";

(e) for the definition of "third country parent undertaking" substitute—

""third country parent undertaking" means a third country parent institution, a third country parent financial holding company or a third country parent mixed financial holding company.".

Independent valuer: valuation under section 6E or 48X

24.—(1) Section 62A (meaning of independent valuer in sections 6E and 48X) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a) omit the words from "adopted" to "directive";

(b) in paragraph (b) for "have been adopted by the European Commission" substitute "exist".

(3) After subsection (2) insert—

"(2A) In subsection (2) "regulatory technical standards" means—

(a) any Commission Regulation containing regulatory technical standards adopted by the European Commission under article 36.16 of the recovery and resolution directive, so far as they are retained EU law, or

(b) technical standards made under subsection (2B).

(2B) The Bank of England may make technical standards specifying the circumstances in which for the purposes of this section a person is to be considered independent from the Bank of England and the bank to which the valuation relates.".

Incidental functions

25. In section 70A (suspension of obligations), in subsection (7)—

(a) in the definition of "eligible claim" omit the words from "or a" to the end;

(b) in the definition of "eligible deposit" omit the words from "or a" to the end.

26. In section 70C (suspension of termination rights), in subsection (6) omit the words from "and, where" to the end.

27.—(1) Section 70D (suspension: general provisions) is amended as follows.

(2) In subsection (1), in the definition of "excluded person"—

(a) omit paragraph (b);

(b) in paragraph (c) omit ", EEA central counterparty".

(3) In subsection (2) omit ","EEA central counterparty"".

28. In section 75 (power to change law), in subsection (9), for the definition of "third-country institution" substitute—

""third-country institution" has the same meaning as in section 48Z;".

Groups

29.—(1) Section 81AA (cases where mandatory write-down, conversion etc applies: banking group companies) is amended as follows.

(2) In subsection (2)(c)—

(a) in sub-paragraph (i) for "article 2.1(23) of the recovery and resolution directive" substitute "Article 4.1A of the capital requirements regulation";

(b) in sub-paragraph (ii) for "Article 1.1(c) or (d) of that directive" substitute "subsection (2A).".

(3) After subsection (2) insert—

"(2A) The entities covered by subsection (2)(c)(ii) are—

(a) an entity of any of the following kinds which is established in the United Kingdom—

(i) a financial holding company;

(ii) a mixed financial holding company;

(iii) a mixed-activity holding company;

(b) a UK parent financial holding company or a UK parent mixed financial holding company,

and expressions used in this subsection have the same meaning as in the capital requirements regulation.".

(4) In subsection (3)(b) omit sub-paragraph (ii) (but not the "and" after it).

(5) In subsection (4)(c) omit ", (6)".

(6) Omit subsection (6).

(7) In subsection (8)(b) omit "or EU institution".

(8) In subsection (9) omit ", EU resolution authority, competent authority".

(9) In subsection (11)(c)—

(a) omit sub-paragraphs (i) and (ii);

(b) in sub-paragraph (iii), for the words from "neither" to "but" substitute "the parent undertaking of the group is not a UK authorised person and".

(10) In subsection (14)—

(a) omit the definitions of "competent authority", "consolidating supervisor", "EU institution" and "EU resolution authority";

(b) in the definition of "financial institution", for the words from "meaning" to the end substitute "same meaning as in the capital requirements regulation".

(c) in the definition of "relevant third-country authority", for the words from "has" to the end substitute "means an authority in a country or territory other than the United Kingdom which has functions corresponding to those of the Bank of England, the FCA or the PRA, in relation to bank recovery and resolution".

30.—(1) Section 81B (sale to commercial purchaser and transfer to bridge bank) is amended as follows.

(2) In subsection (2) omit paragraph (b).

(3) In subsection (2A) omit ", EU resolution authority".

(4) In subsection (9)—

(a) omit the definitions of "EU institution" and "EU resolution authority";

(b) in the definition of "relevant third-country authority", for the words from "Article" to the end substitute "section 81AA(14)".

31.—(1) Section 81ZBA (transfer to asset management vehicle) is amended as follows.

(2) In subsection (2) omit paragraph (b).

(3) In subsection (2A) omit ", EU resolution authority".

(4) In subsection (9), omit the definition of "normal insolvency proceedings".

32. In section 81BA (bail-in option)—

(a) in subsection (2) omit paragraph (b);

(b) in subsection (2A) omit ", EU resolution authority".

33. In section 81CA (section 81BA: supplemental), in subsection (5), omit ", EU institution".

34. In section 81D (interpretation: "banking group company" etc), in subsection (1)—

(a) omit "EU institution";

(b) for "81B(9)" substitute "81AA(14)".

Appointment of investigators

35. In section 83ZD (appointment of person to carry out investigations in particular cases), in subsection (3)(b) for "gives" substitute ", immediately before exit day, gave".

36.—(1) Section 83ZE (investigations etc in support of foreign resolution authorities) is amended as follows.

(2) In subsection (3)—

(a) omit paragraph (a) (with the "or" after it);

(b) in paragraph (b), for the words from "those" to the end substitute "the stabilisation powers of the Bank of England under this Part.".

(3) Omit subsections (5), (8) and (9).

(4) In subsection (10)—

(a) omit paragraph (a) (with the "or" after it);

(b) in paragraph (b)—

(i) for the words from "territory" to "state" substitute "country or territory outside the United Kingdom";

(ii) for "(2)(b)" substitute "(3)(b)".

Enforcement of relevant requirements

37. In section 83ZY (publication of information relating to certain Bank of England decisions etc), in subsection (10) omit paragraph (b) (with the "and" preceding it).

38. In section 83ZZ (co-operation), in paragraph (c) for "giving" substitute "which, immediately before exit day, gave".

Special cases

39.—(1) In Section 83A (Modifications of Part 1), the Table of modifications of Part 1 (in its application to an FCA-regulated bank) is amended as follows.

(2) At the beginning insert—

"Section 3	Treat the definition of "normal insolvency proceedings" in subsection (1) as including investment bank special administration established by the Investment Bank Special Administration Regulations 2011 (S/I. 2011/245).".

(3) In the entry for section 8ZA omit paragraph (b).

(4) Omit the entry for section 12AA.

(5) In the entry for section 81ZBA omit paragraph (c).

(6) Omit the entry for section 89H.

40. In section 89A (application of Part 1 to investment firms), in subsection (1), in the Table, in the entry for section 12AA, for the words in column 2 substitute "References to normal insolvency proceedings do not include a reference to the bank insolvency procedure.".

Third-country resolution actions

41.—(1) Section 89H (recognition of third-country resolution actions) is amended as follows.

(2) In subsection (4)—

(a) in paragraph (a) omit "or another EEA state";

(b) in paragraph (c)—

(i) for "an EEA state" substitute "the United Kingdom";

(ii) for "EEA state" substitute "United Kingdom";

(iii) omit the word "third" before "country concerned";

(c) in paragraph (e) omit "or contrary to a provision of EU law".

(3) Omit subsection (6).

(4) In subsection (7)—

(a) omit the definitions of "EU institution" and "normal insolvency proceedings";

(b) for the definition of "third-country institution" substitute—

> ""third-country institution" means an institution established in a country or territory other than the United Kingdom that would, if it were established within the United Kingdom, be regarded as a bank, building society, credit union or investment firm;";

(c) for the definition of "third-country parent undertaking" for the words from "has" to the end substitute "means a parent undertaking, parent financial holding company or a parent mixed financial holding company established in a country or territory outside the United Kingdom;";

(d) in the definition of "third-country resolution action"—

(i) in the opening words, for "law of a third country" substitute "law of a country or territory outside the United Kingdom" and for "an EU institution" substitute "a bank, building society, credit union or investment firm,";

(ii) in paragraph (a) for "EU institution" substitute "a bank, building society, credit union or investment firm";

(iii) in paragraph (b) for "third country" substitute "country or territory concerned";

(e) omit the definition of "third country".

42.—(1) Section 89I (effect of recognition of third-country resolution action by the Bank of England) is amended as follows.

(2) In subsection (6), in the modified subsection (9A), for "third country" substitute "country or territory";

(3) In subsection (9)—

(a) in the modified subsection (3), after "United Kingdom and the", for "third-country" substitute "country or territory";

(b) in the modified subsection (3A) for ""third-country group company" and "third country"" substitute "and "third-country group company"".

Resolution of UK branches of third-country institutions

43. Section 89JA (resolution of UK branches of third-country institutions) is amended as follows.

44. In subsection (2)(c) for the words from "meaning" to "directive" substitute "same meaning as in section 89H".

45.—(1) The modified version of section 6E substituted by subsection (4) is amended as follows.

(2) In subsection (5) omit the words from "(within" to "directive)".

(3) After subsection (5) insert—

"(5A) In subsection (5)(b) "relevant third-country authority" means an authority in a country or territory outside the United Kingdom that has functions corresponding to the stabilisation powers of the Bank of England, the FCA or the PRA.".

(4) For subsection (6) substitute—

"(6) The valuation carried out under this section must follow the methodology specified in—

(a) any Commission Regulation containing regulatory technical standards adopted by the European Commission under article 36.16 of the recovery and resolution directive, so far as they are retained EU law, or

(b) technical standards made under subsection 12(a).".

(5) In subsection (8) for "third country" substitute "country or territory outside the United Kingdom".

(6) For subsection (11) substitute—

"(11) A provisional valuation carried out under subsection (1) must make provision in respect of additional losses by the third-country institution in accordance with—

(a) any Commission Regulation containing regulatory technical standards adopted by the European Commission under article 36.16 of the recovery and resolution directive, so far are as they are retained EU law, or

(b) technical standards made under subsection (12)(b).

(12) The Bank of England may make technical standards relating to—

(a) the methodology for assessing the value of the assets and liabilities of a branch for the purposes of a valuation under this section;

(b) the methodology for calculating and including a buffer for additional losses in the provisional valuation.".

46.—(1) The modified version of section 7 substituted by subsection (5) is amended as follows.

(2) In subsection (4)(a) for "EEA" substitute "UK".

(3) In subsection (9) for the definitions of "EEA creditor" and "normal insolvency proceedings" substitute—

> ""UK creditor", in relation to a third-country institution, means a creditor of the institution who—
>
> (a) in the case of an individual, is ordinarily resident in the United Kingdom; and
>
> (b) in the case of a body corporate or unincorporated association, has its head office in the United Kingdom.".

47.—(1) The modified version of section 7A substituted by subsection (6) is amended as follows.

(2) In paragraph (b), for the words from "European" to "operating)" substitute "United Kingdom";

(3) In paragraph (c)—

(a) for "third country" (in the first place it appears) substitute "country or territory";

(b) for the words "third country (as defined in section 89H(7))" substitute "country or territory (other than the United Kingdom)".

48.—(1) The modified version of section 48B substituted by subsection (8) is amended as follows.

(2) In subsection (10)—

(a) in paragraph (f)(ii) for "as referred" to the end substitute "within the meaning of rule 3 of Part 152 (remuneration) of the PRA rulebook (other than persons deemed by virtue of rule 3.2 not to be material risk takers and notified to the PRA in accordance with rule 3.2).";

(b) in paragraph (i), for the words from "Financial Services Compensation" to the end substitute "the FSCS in relation to levies imposed by the scheme manager under section 213(3)(b) or (4) of the Financial Services and Markets Act 2000".

(3) In subsection (12) omit paragraph (b) (and the "and" before it).

(4) In subsection (14)(c)—

(a) for "an EEA state" substitute "the United Kingdom";

(b) for "micro-enterprises, small enterprises or medium-sized enterprises" substitute "micro, small and medium-sized enterprises".

(5) In subsection (15) for "third country" substitute "country or territory outside the United Kingdom";

(6) In subsection (17)—

(a) at the appropriate place insert—

> ""core business lines" means business lines and associated services which represent material sources of revenue, profit or franchise value for the third-country institution or its UK branch (or in the case of an instrument made in relation to a resolution company, of the resolution company);";

(b) for the words from ""micro-enterprise"" to the end substitute—

> ""micro, small and medium-sized enterprises" means micro, small and medium-sized enterprises as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission Recommendation 2003/361/EC.".

(7) After subsection (17) insert—

"(17A) For the purposes of the definition of "core business lines" Article 7 of Commission Delegated Regulation (EU) 2016/778 (criteria relating to the determination of core business lines) applies.

(17B) The Treasury may by regulations made by statutory instrument specify criteria for the determination of the business lines and associated services referred to in the definition of "core business lines".

(17C) The power conferred by subsection (16) includes—

(a) power to amend or revoke Article 7 of Commission Delegated Regulation (EU) 2016/778; and

(b) power to amend or repeal subsection (17A).

(17D) A statutory instrument containing regulations under subsection (17B) is subject to annulment in pursuance of a resolution of either House of Parliament.".

49.—(1) In the Table of further modifications in subsection (11), column 2 is amended as follows.

(2) In the entry relating to section 44C(4), for " third country)" substitute "country or territory outside the United Kingdom)".

(3) In the entry relating to section 60(3)(b) for "third country" substitute "country or territory outside the United Kingdom;

(4) In the entry relating to section 60B(4) for "third country" substitute "country or territory outside the United Kingdom";

(5) In the entry relating to section 63(1A) for "third country" substitute "country or territory outside the United Kingdom".

General provisions

50. In section 89K (insolvency proceedings), in subsection (3)(f) for the words from "2.15" to the end substitute "4.1(21) of the capital requirements regulation.".

Bank Insolvency

51. In section 120A (notice to the regulators and the Bank of England of preliminary steps), in subsection (2) for the words from "2.15" to the end substitute "4.1(21) of the capital requirements regulation (within the meaning of section 3).".

Payment Systems

52. In section 206B (international obligations), in subsection (1) for "EU obligations or any other" substitute "any".

Miscellaneous provisions

53. In section 251 (financial assistance to building societies), in subsection (1)—

(a) after paragraph (a) insert "or";

(b) omit paragraphs (c) and (d).

General

54. In section 258A ("investment firm"), in subsection (1) at the end insert "as it had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (SI 2018/xxxx) were made".

55.—(1) In section 259 (statutory instruments), in subsection (3), the Table is amended as follows.

(2) After the row relating to the meaning of "bank" insert—

"2(2A)	Criteria for determining what are critical functions	Negative resolution".

(3) After the row relating to the protection of interests insert—

"48B(13A)	Further provision connected with functions under section 48B(10)	Draft affirmative resolution
48B(16)	Criteria for determining what are core business lines	Negative resolution".

(4) After the row relating to recognised central counterparty compensation orders insert—

"89JA(8) (modified section 48B(17B))	Criteria for determining what are core business lines	Negative resolution".

56.—(1) In section 261 (index of defined terms), the Table is amended as follows.

(2) For the entry relating to the FSCS substitute—

"FSCS (in Part 1)	3
FSCS (in Part 2)	93".

(3) At the appropriate place insert—

"Normal insolvency proceedings (in Part 1)	3".

SCHEDULE 2

Regulation 3

Amendments of other primary legislation

Amendments of the Insolvency Act 1986

1. Schedule 6 to the Insolvency Act 1986 (preferential debts) is amended in accordance with paragraphs 2 and 3.

2. In paragraph 15BB(**a**)—

(a) in sub-paragraph (a)—

(i) for "non-EEA" substitute "non-UK"; and

(ii) for "an EEA state" substitute "the United Kingdom";

(b) in sub-paragraph (b), for "an EEA" substitute "a UK".

3. In paragraph 15C(**b**)—

(a) in sub-paragraph (3) for paragraph (b) substitute—

"(b) any micro, small and medium-sized enterprise, as defined with regard to the annual turnover criterion referred to in Article 2(1) of the Annex to Commission recommendation 2003/361/EC.".

(b) in sub-paragraph (4)—

(i) for paragraphs (b) and (c) substitute—

"(b) "non-UK branch" means a branch, as defined in Article 4.1(17) of the capital requirements regulation, which is established outside the United Kingdom;

(c) "UK branch" means a branch, as so defined, which is established in the United Kingdom,";

(ii) at the end, insert ", as it had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 were made".

(**a**) Inserted by S.I. 2014/3486.
(**b**) Inserted by the Financial Services (Banking Reform) Act 2013 and amended by S.I. 2014/3486 and 2015/486.

Amendments of the Financial Services (Banking Reform) Act 2013

4. Paragraph 5 of Schedule 7 to the Financial Services (Banking Reform) Act 2013 (provision that may be made by a financial market infrastructure transfer scheme) is amended as follows—

(a) at the end of sub-paragraph (2)(e), insert the words "(including under legislation of the European Union)"; and

(b) in sub-paragraph (2)(f), omit ", EU instrument".

SCHEDULE 3

Regulation 4

Amendments of the Bank Recovery and Resolution (No.2) Order 2014

Introductory provisions

1.—(1) Article 2(1) (interpretation of Order) is amended as follows.

(2) Omit the definition of "another EEA State".

(3) In the definition of "appropriate regulator" in paragraph (a) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013(**a**)".

(4) Omit the definition of "college".

(5) For the definition of "competent authority" substitute—

""competent authority" means the supervisor of an authorised person under FSMA;".

(6) After the definition of "competent authority" insert—

""conditions for early intervention" means where—

(a) an institution infringes the requirements of—

(i) the capital requirements regulation;

(ii) legislation upon which the United Kingdom relied immediately before exit 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.".

(7) In the definition of "conditions for resolution"—

(a) in paragraph (b) after "Banking Act 2009;" omit "and";

(b) omit paragraph (c).

(**a**) S.I. 2013/3115.

(8) In the definition of "the consolidating supervisor" for "an EEA" in each case substitute "a UK".

(9) After the definition of "consolidating supervisor" insert—

> ""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;
>
> "credit institution" has the meaning given in section 48D(1) of the Banking Act 2009;".

(10) In the definition of "critical functions"—

(a) in paragraph (a) omit "in relation to an undertaking set up in the United Kingdom," and omit "and";

(b) omit paragraph (b).

(11) After the definition of "critical functions" insert—

> ""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;
>
> "depositor" means the holder or, in the case of a joint account, each of the holders, of a deposit;".

(12) Omit the definitions of "EBA", "the EBA Regulation", "EEA parent financial holding company", "EEA parent institution", "EEA parent mixed financial holding company" and "EEA parent undertaking".

(13) In the definition of "eligible liabilities" —

(a) in paragraph (a) omit "in relation to an undertaking set up in the United Kingdom,";

(b) omit paragraph (b) (together with the preceding "and").

(14) After the definition of "eligible liabilities" insert—

> ""extraordinary public financial support" has the meaning given in section 3(1) of the Banking Act 2009;".

(15) After the definition of "FSMA" insert—

> ""group" means a parent undertaking and its subsidiaries;".

(16) In the definition of "group entity" for "EEA" substitute "UK".

(17) After the definition of "insolvency proceedings" insert—

> ""institution" means a credit institution or an investment firm;
>
> "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;
>
> "investment firm" means an investment firm within the meaning of point (2) of Article 4.1 of the capital requirements regulation that is subject to the initial capital requirement laid down in Article 28.2 of the capital requirements directive;
>
> "management body" has the meaning given in point (9) of Article 4.1 of the capital requirements regulation;".

(18) Omit the following definitions—

(a) "parent financial holding company in an EEA State",

(b) "parent institution in an EEA State" and

(c) "parent mixed financial holding company in an EEA State".

(19) Omit the definition of "relevant competent authority".

(20) In the definition of "relevant group" for "EEA" substitute "UK".

(21) In the definition of "resolution objectives"—

(a) omit paragraph (a); and

(b) in paragraph (b) for "in relation to the United Kingdom, includes" substitute "means".

(22) After the definition of "resolution plan" insert—

""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;".

(23) In the definition of "resolution tools"—

(a) omit paragraph (a); and

(b) in paragraph (b) for the words from the start to "includes the" substitute "means".

(24) After the definition of "resolution tools" insert—

""shareholders" means shareholders or holders of other instruments of ownership.".

(25) In the definition of "third country"—

(a) for "State" substitute "country or territory";

(b) for "an EEA State; and" substitute "the United Kingdom;".

(26) At the end of the paragraph add—

""UK parent financial holding company" has the meaning given in point (30) of Article 4.1 of the capital requirements regulation;

"UK parent institution" has the meaning given in point (28) of Article 4.1 of the capital requirements regulation;

"UK parent mixed financial holding company" has the meaning given in point (32) of Article 4.1 of the capital requirements regulation;

"UK parent undertaking" means a UK parent institution, UK parent financial holding company or UK parent mixed financial holding company;".

(27) Omit article 2(2).

(28) In article 2(3)—

(a) in the opening words for "State" substitute "country or territory";

(b) for sub-paragraph (a) substitute—

"(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";

(c) in sub-paragraph (b) for "State", in both cases substitute "country or territory".

(29) After article 2(3) insert—

"(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 had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 were made.".

2. In article 3 (application of Order), in the opening words, for "lays down" substitute "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)".

Designation of authorities and competent ministry

3. Omit Part 2.

Recovery and resolution planning

4.—(1) Article 7 (recovery planning: preparatory steps and simplified obligations) is amended as follows.

(2) In paragraph (3)—

(a) in sub-paragraph (a) for the words from "Section A" to "recovery plans)" substitute "Schedule A1";

(b) in sub-paragraph (b) for "Section A of that Annex" substitute "that Schedule".

(3) After paragraph (3) insert—

"(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) In paragraph (4) for "an EEA" substitute "a UK".

(5) After paragraph (4) insert—

"(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.".

5.—(1) Article 8 (resolution planning: preparatory steps and simplified obligations) is amended as follows.

(2) In paragraph (3)(a) for the words from "information set out in Section B" to "plans)" substitute "additional information specified in Schedule 2A".

(3) After paragraph (3) insert—

"(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) In paragraph (4)(a) for the words from "set out in" to "group)" substitute "provided for in Schedule 2B".

6. Omit article 10 (provision of information to EBA).

Assessment of recovery plan drawn up by an institution

7.—(1) Article 11 (application and interpretation of Chapter 1 of Part 4) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013";

(b) in sub-paragraph (b) omit the words from "in accordance with" to the end.

8. In article 12 (assessment of plan) omit paragraph (2).

9.—(1) Article 13 (criteria for assessment) is amended as follows.

(2) In paragraph (1) for the words from "Articles 5" to "indicators)" substitute "Schedule A1".

(3) After paragraph (1) insert—

"(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.".

Assessment of group recovery plan

10.—(1) Article 16 (application and interpretation of Chapter 2 of Part 4) is amended as follows.

(2) In paragraph (1) in sub-paragraph (b) omit the words from "in" to the end.

(3) In paragraph (2)—

(a) in the definition of "group institution" for "EEA" substitute "UK";

(b) omit the definition of "UK group entity".

11. In article 17(1) (duty to transmit a copy of group recovery plan)—

(a) in sub-paragraph (a) at the end insert "and";

(b) omit sub-paragraphs (b) and (c);

(c) for sub-paragraph (d) substitute—

"(d) the PRA or FCA, where either is not the appropriate regulator but supervises a group entity as an authorised person under FSMA.";

(d) omit sub-paragraph (e).

12.—(1) Article 18 (assessment of group recovery plan) is amended as follows.

(2) In paragraph (1) omit "Where every group institution is a UK authorised person,".

(3) Omit paragraphs (2) and (3).

(4) In paragraph (4)—

(a) in sub-paragraph (a) omit "or another resolution authority";

(b) in sub-paragraph (b) for "any EEA State in which a group entity conducts business" substitute "the United Kingdom".

13.—(1) Article 19 (purpose of assessment) is amended as follows.

(2) In paragraph (2)—

(a) for the words from "Articles 5" to "indicators)" substitute "Schedule A1";

(b) in sub-paragraph (b) for "any EEA State" substitute "the United Kingdom".

(3) After paragraph (2) insert—

"(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.".

14. For article 20 substitute—

"Timing of assessment of plan

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

15. Omit article 21 (joint assessment of plan).

16.—(1) Article 22 (revision of plan) is amended as follows.

(2) In paragraphs (1) and (2) for "group entity" in each case substitute "parent undertaking".

(3) In paragraph (2) for "the entity" in both cases substitute "the undertaking".

17.—(1) Article 23 (business changes and relevant measures) is amended as follows.

(2) In paragraph (1)(a) for "group entity" substitute "parent undertaking".

(3) In paragraph (1)(b) for "the entity" substitute "the UK parent undertaking".

(4) In paragraph (2)—

(a) in the opening words, omit the words from "Subject to" to "relevant matters,";

(b) in sub-paragraph (a), for "group entity" substitute "parent undertaking";

(c) in sub-paragraph (b), for "the entity" in each case substitute "the UK parent undertaking".

18. Omit articles 25 (references to EBA) and 26 (requesting the assistance of the EBA).

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

19. Omit Chapter 3 of Part 4 (assessment of group recovery plan where neither the PRA nor the FCA is the consolidating supervisor).

Review of recovery plans and group recovery plans

20.—(1) Article 33 (review of recovery plan) is amended as follows.

(2) In paragraph (1) omit "or 30".

(3) In paragraph (4) omit "by a competent authority".

(4) In paragraph (6)—

(a) in sub-paragraph (a)—

(i) omit "is authorised by the PRA or FCA and";

(ii) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013"; and

(b) in sub-paragraph (b) omit "or 3" and "or 30".

21.—(1) Article 34 (review of group recovery plan assessed under Chapter 2 of Part 4) is amended as follows.

(2) In paragraphs (2) and (3) for "UK group entity" in both cases substitute "UK parent undertaking".

(3) In paragraph (4)—

(a) omit "by a competent authority"; and

(b) for "UK group entity" substitute "UK parent undertaking".

(4) In paragraph (8) omit the definition of "UK group entity".

22. Omit article 35 (review of group recovery plan assessed under Chapter 3 of Part 4).

Resolution plans for institutions

23. In Article 36 (interpretation of Chapter 1 of Part 5) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013".

24.—(1) Article 37 (the Bank's duty to draw up resolution plans) is amended as follows.

(2) In paragraph (2) for the words from "contain" to the end substitute—

"—

(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).".

(3) After paragraph (2) insert—

"(2A) The Bank may make technical standards relating to information to be contained in the resolution plan for a relevant institution.".

(4) After paragraph (3) insert—

"(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.".

(5) In paragraph (4)—

(a) in sub-paragraph (a) omit "and";

(b) omit sub-paragraph (b).

Group resolution plan

25.—(1) Article 40 (the Bank's duty to draw up group resolution plans) is amended as follows.

(2) In paragraph (1) omit "Where every group entity is set up in the United Kingdom,".

(3) Omit paragraph (2).

(4) In paragraph (3) for the words from "contain" to the end substitute—

"—

(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).".

(5) After paragraph (3) insert—

"(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.".

(6) After paragraph (4) insert—

"(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.".

(7) Omit paragraph (5)(b) and (c).

(8) In paragraph (6) for "any EEA State" substitute "the United Kingdom".

(9) In paragraph (7) for "a resolution authority or competent authority" substitute "the Bank under Part 1 of the Banking Act 2009 or the PRA or the FCA under FSMA".

(10) After paragraph (7) insert—

"(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.".

26.—(1) Article 41 (information to be transmitted for the purpose of drawing up group resolution plans) is amended as follows.

(2) In paragraph (1)—

(a) in the opening words after "relevant information" insert "to the appropriate regulator";

(b) omit paragraphs (a), (b) and (c).

(3) Omit paragraph (3).

27. Omit articles 42 (joint decision on adoption of group resolution plan), 43 (references to EBA) and 44 (requesting the assistance of EBA).

28. In article 45 (duty to transmit a copy of the group resolution plan) omit "and each relevant competent authority".

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

29. Omit Chapter 3 of Part 5.

Review of resolution plans and group resolution plans

30.—(1) Article 53 (review of resolution plan) is amended as follows.

(2) In paragraph (4)—

(a) in sub-paragraph (a)—

(i) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013";

(ii) at the end, omit "or";

(b) omit sub-paragraph (b).

(3) In paragraph (6) in the definition of "resolution plan" omit ", including that Chapter as applied by article 50".

31. In article 54 (review of group resolution plan drawn up by the Bank), in paragraph (5), in the table—

(a) omit the three rows relating to article 41;

(b) in the final row—

(i) in the first column, for "Articles 42 to 45" substitute "Article 45";

(ii) in the second column for "Each" substitute "The".

32. Omit article 55 (review of group resolution plan drawn up by another resolution authority).

Information and records for resolution planning

33.—(1) Article 58 (records of financial contracts) is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (b) omit "or in another EEA State"; and

(b) in sub-paragraph (c) for "EEA" substitute "UK".

(3) After paragraph (2) insert—

"(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).".

(4) After paragraph (3) insert—

"(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.".

Assessment of resolvability of institutions

34. In article 59 (application and interpretation of Chapter 1 of Part 6), in paragraph (2)—

(a) for "take resolution action or" substitute "apply the resolution tools, exercise resolution powers or take"; and

(b) for "any EEA State" substitute "the United Kingdom".

35.—(1) Article 60 (assessment of resolvability) is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (a) for the words from "Section C" to the end substitute "Schedule 2B and in any technical standards under paragraph (2A);";

(b) in sub-paragraph (d)—

(i) in paragraph (i) omit "; and";

(ii) omit paragraph (ii).

(3) After paragraph (2) insert—

"(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.".

(4) In paragraph (4)—

(a) for "take resolution action or" substitute "apply the resolution tools, exercise resolution powers or take";

(b) for "any EEA State" substitute "the United Kingdom".

(5) Omit paragraph (5).

Assessment of resolvability of groups

36.—(1) Article 61 (application and interpretation of Chapter 2 of Part 6) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) omit "alone or jointly with other resolution authorities," and "; or";

(b) omit sub-paragraph (b).

(3) In paragraph (2)—

(a) for "take resolution action" substitute "apply the resolution tools, exercise resolution powers or take";

(b) for "any EEA State" substitute "the United Kingdom".

37.—(1) Article 62 (assessment of group resolvability where the PRA or FCA is the consolidating supervisor) is amended as follows.

(2) In paragraph (3)—

(a) in sub-paragraph (a) for the words from "Section C" to the end substitute "Schedule 2B and in any technical standards under paragraph (2A);";

(b) omit sub-paragraph (d)(ii) and (iii).

(3) After paragraph (3) insert—

"(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) In paragraph (5)—

(a) for "take resolution action" substitute "apply the resolution tools, exercise resolution powers or take";

(b) for "any EEA State" substitute "the United Kingdom".

(5) Omit paragraphs (6) to (8).

38. Omit article 63 (assessment of group resolvability where neither the PRA nor the FCA is the consolidating supervisor).

Removal of impediments to resolvability of institutions

39.—(1) Article 65 (notice of determination) is amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (a) add "and";

(b) in sub-paragraph omit "; and";

(c) omit sub-paragraph (c).

40.—(1) Article 66 (effect of notice of determination) is amended as follows.

(2) In paragraph (6)(b)—

(a) in paragraph (i) omit "and other EEA States;";

(b) in paragraph (ii) for "EEA market" substitute "market in the United Kingdom";

(c) in paragraph (iii) for "any EEA State or of the EEA as a whole" substitute "the United Kingdom".

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

41.—(1) Article 68 (application and interpretation of Chapter 4 of Part 6) is amended as follows.

(2) In paragraph (2)—

(a) in the definition of "group entity"—

(i) in the opening words for "EEA parent undertaking" substitute "UK parent undertaking"; and

(ii) in paragraph (c) omit "either" and sub-paragraph (i);

(b) in the definition of "measures for structural change", in paragraph (b), for "a parent financial holding company in an EEA State or an EEA" substitute "a UK".

42.—(1) Article 69 (report on substantive impediments to the resolvability of group entities) is amended as follows.

(2) In paragraph (1) omit "EBA and" and "and after consulting the relevant competent authorities".

(3) For paragraph (2) substitute—

"(2) The Bank must submit its report to the UK parent undertaking and the appropriate regulator.".

43.—(1) Article 70 (suspension of requirement to draw up or review group resolution plan) is amended as follows.

(2) In paragraph (1) omit "Where every group entity is set up in the United Kingdom,".

(3) Omit paragraphs (2) and (3).

44.—(1) Article 71 (determining remedial measures) is amended as follows.

(2) In paragraph (1) for "EEA" substitute "UK".

(3) In paragraph (2) for "each of the authorities to which it submitted its report" substitute "the appropriate regulator".

(4) In paragraph (3) omit "Where every group entity is set up in the United Kingdom,".

(5) Omit paragraph (4).

(6) In paragraph (6)(b)—

(a) in paragraph (i) omit "and other EEA States;";

(b) in paragraph (ii) for "EEA market" substitute "market in the United Kingdom";

(c) in paragraph (iii) for the words from "any" to the end substitute "the United Kingdom".

(7) In paragraph (7) omit "or (4)".

45. Omit articles 72 (joint decision on impediments to group resolvability and remedial measures), 73 (references to EBA) and 74 (requesting the assistance of EBA).

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

46. Omit Chapter 5 of Part 6.

Authorisation of agreement for group financial support

47.—(1) Article 83 (application and interpretation of Chapter 1 of Part 7) is amended as follows.

(2) In paragraph (1) in sub-paragraph (b) for "EEA" substitute "UK".

(3) In paragraph (2)—

(a) omit the definition of "conditions for early intervention";

(b) for the definition of "conditions for financial support" substitute—

""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 exit 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 exit 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.";

(c) in the definition of "group financial support agreement", in paragraph (b), for the words from "other" to the end substitute ", other than the United Kingdom, in which the relevant parent undertaking is set up";

(d) in the definition of "relevant parent undertaking" for "parent institution in an EEA State, an EEA" substitute "UK".

(4) After paragraph (2) insert—

"(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.".

48.—(1) Article 84 (review of group financial support agreement and decision on authorisation) is amended as follows.

(2) In paragraph (1) for "authorities" substitute "authority".

(3) In paragraph (3) for the words from "any EEA State" to the end substitute "the United Kingdom".

49. In article 85 (duty to transmit a copy of application), in paragraph (1), for "each" substitute "any".

50. Omit 86 (joint decision with other competent authorities), 87 (references to EBA) and 88 (requesting the assistance of EBA).

51. In article 89 (duty to transmit a copy of authorised agreement) omit the words from "and to" to the end.

52.—(1) Article 90 (amendment of authorised agreement) is amended as follows.

(2) In paragraph (2) for "EEA" substitute "UK".

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

53. Omit Chapter 2 of Part 7.

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

54.—(1) Article 97 (interpretation of Chapter 3 of Part 7) is amended as follows.

(2) In the definition of "authorised agreement"—

(a) for ", FCA or other competent authority" substitute "or FCA"; and

(b) for "by the competent authority" substitute "by the PRA or FCA".

55. After article 98 insert—

"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.".

Provision of group financial support

56.—(1) Article 101 (interpretation of Chapter 4 of Part 7) is amended as follows.

(2) In paragraph (1)—

(a) after "In this Chapter—" insert—

""authorised agreement" has the same meaning as in Chapter 3;";

(b) omit the definition of "college members";

(c) in the definition of "group entity" for ", FCA or other competent authority" substitute "or FCA";

(d) for the definition of "relevant notice" substitute—

""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;".

57.—(1) Article 102 (relevant notice from UK group entity: decision by the PRA or FCA) is amended as follows.

(2) In paragraph (2)—

(a) at the end of sub-paragraph (a) add "and";

(b) omit sub-paragraph (b).

(3) After paragraph (3) insert—

"(4) In this article "business day" has the same meaning as in section 70D(1) of the Banking Act 2009(**a**).".

58.—(1) Article 103 (duties of consolidating supervisor where financial support agreed, prohibited or restricted) is amended as follows.

(2) Omit paragraphs (2) and (5).

59. Omit articles 104 (re-assessment of recovery plans by the PRA or FCA where it is not the consolidating supervisor) and 105 (requesting the assistance of EBA).

Early intervention with respect to an institution

60.—(1) Article 107 (interpretation of Chapter 1 of Part 8) is amended as follows.

(2) In the definition of "measure for early intervention"—

(a) after "means a" insert "relevant";

(b) for the words from "referred to" to the end substitute "for early intervention".

(3) In the definition of "relevant institution" for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013".

(4) After the definition of "relevant institution" insert—

""relevant measure" means a measure—

(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;

(**a**) Section 70D inserted by S.I. 2014/3329.

(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(**a**).”

61.—(1) Article 108 (notice that institution meets the conditions for early intervention) is renumbered as paragraph (1) of that article.

(2) After paragraph (1) as so renumbered, insert—

“(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.”.

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

62.—(1) Article 110(2) (application and interpretation of Chapter 2 of Part 8) is amended as follows.

(2) In the definition of “measure for early intervention”—

(a) in paragraph (a) omit “in relation to a UK group entity,”;

(b) omit paragraph (b).

(3) Omit the definition of “non-UK group entity”.

(4) In the definition of “temporary manager” omit paragraph (b).

(5) In the definition of “UK group entity”, in paragraph (a)—

(a) for “EEA” substitute “UK”;

(b) omit “, if it is set up in the United Kingdom”.

63.—(1) Article 111 (procedure for early intervention in respect of a UK group entity) is amended as follows.

(2) In paragraph (2) omit the words from “, the relevant” to the end.

(3) Omit paragraph (3).

(4) In paragraph (4) for “recipients of a notice given under paragraph (2)” substitute “Bank”.

(5) In paragraph (6) for “EEA” substitute “UK”.

64. Omit articles 112 (procedure for early intervention in respect of a non-UK group entity), 113 (joint decisions about early intervention), 114 (references to EBA) and 115 (requesting the assistance of EBA).

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

65. Omit Chapter 3 of Part 8.

Minimum requirement for own funds and eligible liabilities: determination of minimum requirement for an institution

66. In article 121 (interpretation of Chapter 1 of Part 9), in paragraph (1)—

(a) before the definition of “relevant institution” insert—

(**a**) Sections 6E and 48X were inserted by S.I. 2014/3329.

""covered bond" means a regulated covered bond within the meaning of regulation 1(2) of the Regulated Covered Bonds Regulations 2008(**a**); and;".

(b) in the definition of "relevant institution" for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013".

67. In article 122 (duties of the Bank of England in relation to minimum requirement), omit paragraph (2).

68.—(1) Article 123 (determination of minimum requirement) is amended as follows.

(2) In paragraph (6), for the words from "criteria" to the end substitute—

"following criteria—

(a) the need to ensure that the relevant institution can be resolved by the application of the resolution tools including, where appropriate, the bail-in option referred to in section 1(3)(c) 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 special bail-in provision were made—

(i) losses could be absorbed; and

(ii) the Common Equity Tier 1 capital 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 and to sustain market confidence in the relevant institution;

(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 to ensure that losses could be absorbed; and

(ii) the Common Equity Tier 1 capital ratio of the relevant institution could be restored,

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

(d) the size, the business model, the funding model and the risk profile of the relevant institution;

(e) the extent to which the scheme manager could be required to contribute to the financing of resolution in accordance with section 214B of FSMA;

(f) 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 with the rest of the financial system through contagion to other institutions;

(g) 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

(h) any assessment criteria specified in technical standards made under subsection (8).".

(3) After paragraph (7) insert—

(**a**) S.I. 2008/346.

"(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.".

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

69.—(1) Article 125 (application and interpretation of Chapter 2 of Part 9) is amended as follows.

(2) In paragraph (2)—

(a) omit the definition of "four month period";

(b) in the definition of "group entity" for "EEA" substitute "UK";

(c) in the definition of "group institution"—

(i) in paragraph (a) for "EEA" substitute "UK";

(ii) in paragraph (c)—

(aa) in sub-paragraph (i) omit "or 146"; and, where it appears after the semi-colon, "or";

(bb) omit sub-paragraph (ii);

(iii) in paragraph (d) for "an EEA State" substitute "the UK";

(d) in the definition of "netting arrangement" omit paragraph (b).

70.—(1) Article 126 (determination of minimum consolidated requirement) is amended as follows.

(2) In paragraph (2) omit the words from the start to "United Kingdom,".

(3) Omit paragraph (3).

(4) In paragraph (8)(a) for "set out in Article 45.6 of the recovery and resolution directive" substitute "specified in article 123(6)".

71. Omit articles 127 (joint determination) and 128 (references to EBA: determination of minimum consolidated requirement).

72. In article 129 (review of minimum consolidated requirement), in paragraph (2) for "Articles 126 to 128 apply" substitute "Article 126 applies".

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

73. Omit Chapter 3 of Part 9.

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

74.—(1) Article 133 (application and interpretation of Chapter 4 of Part 9) is amended as follows.

(2) In paragraph (2)—

(a) omit ""four month period, ";

(b) for the definition of "group institution" substitute—

""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;".

(3) Omit the definitions of "non-UK institution" and "UK institution".

75.—(1) Article 134 (duties of the Bank of England in relation to minimum requirement) is amended as follows.

(2) In paragraph (1)(a) for "UK institution" substitute "group institution".

(3) Omit paragraphs (2) and (3).

76.—(1) Article 135 (determination of minimum requirement) is amended as follows.

(2) In paragraph (6)(a) for "set out in Article 45.6 of the recovery and resolution directive" substitute "specified in article 123(6)".

(3) In paragraph (7) omit "Where the determination is for a UK institution, ".

77. Omit articles 136 (joint determination of minimum requirements) and 137 (references to EBA: determination of minimum requirement).

78.—(1) Article 138 (review of minimum requirements) is amended as follows.

(2) In paragraph (2) for "to 137" substitute "and 135".

79.—(1) Article 139 (minimum requirement for other group entities set up in the United Kingdom) is amended as follows.

(2) In paragraph (1) for "UK institution" substitute "group institution".

(3) In paragraph (2)—

(a) for " to 138" substitute ", 135 and 138";

(b) omit ", except a reference to a non-UK institution,".

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

80. Omit Chapter 5 of Part 9.

Minimum requirement for own funds and eligible liabilities: other provisions

81.—(1) Article 147 (waiver of application of Chapter 4 or 5) is amended as follows.

(2) In the heading omit "or 5".

(3) In paragraph (2)—

(a) in the opening words—

(i) omit "or 5";

(ii) for "an EEA parent institution which is a UK institution" substitute "a UK parent institution";

(b) in sub-paragraph (a) omit "or 3".

(4) In paragraph (3)—

(a) in the opening words—

(i) omit "or 5";

(ii) for "UK institution" substitute "group institution";

(b) in sub-paragraph (b) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013";

(c) in sub-paragraph (c)—

(i) for "EEA parent institution" substitute "UK parent institution";

(ii) omit "or 3".

82.—(1) Article 148 (meeting minimum requirement through contractual bail-in instruments etc) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (b) omit "or 5";

(b) in sub-paragraph (c) omit "or 3".

(3) At the end insert—

"(4) "Normal insolvency proceedings" has the meaning given in section 3(1) of the Banking Act 2009."

Requirement to write down or convert capital instruments

83.—(1) Article 149 (application and interpretation of Part 10) is amended as follows.

(2) In paragraph (2)—

(a) in the definition of "alternative measure", in paragraph (b), for "a measure referred to in" substitute "a power of the FCA or PRA by or under legislation upon which the United Kingdom relied immediately before exit day to meet its obligations with respect to";

(b) omit the definitions of "appropriate authority" and "non-UK group entity".

(3) In paragraph (3) in the definition of "group entity" omit paragraph (a).

84.—(1) Article 150 (determinations pursuant to Article 59.3 of the recovery and resolution directive: preliminary steps for UK group entities) is amended as follows.

(2) In the heading for "pursuant to Article 59.3 of the recovery and resolution directive" substitute "under section 6A and 81AA of the Banking Act 2009".

(3) In paragraph (1), for sub-paragraphs (a) and (b) (and the preceding "—"), substitute "to the appropriate regulator".

(4) In paragraph (2)—

(a) omit the words from "(where appropriate" to "established)";

(b) for sub-paragraphs (a) to (d) (and the preceding "—") substitute "to the appropriate regulator".

(5) Omit paragraphs (4) and (5).

85.—(1) Article 152 (determination that Case 2, 3, 4 or 5 is satisfied) is amended as follows.

(2) In paragraph (2) omit "If the notice is a Case 2, 4 or 5 notice,".

(3) Omit paragraphs (3) and (4).

86. Omit article 153 (joint determination under Article 59(3)(c) of the recovery and resolution directive in relation to a non-UK group entity).

Removal of procedural impediments to application of bail-in tool

87.—(1) Article 154 (interpretation of Part 11) is amended as follows.

(2) After the definition of "Common Equity Tier 1 instruments" insert—

""relevant capital instruments" has the meaning given in section 3(1) of the Banking Act 2009;".

(3) In the definition of "UK entity", in paragraph (a) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013".

88.—(1) Article 155 (requirement to increase or remove limit on share capital) is amended as follows.

(2) In paragraph (1)(b) for "EEA" substitute "UK".

(3) In paragraph (3) for "action" substitute "tools and resolution powers".

(4) In paragraph (5) for the words from "the amounts" to the end substitute—

"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.".

(5) In paragraph (6) omit the words from "or when" to the end.

89. After article 156 insert—

"PART 11A

Contractual recognition of bail-in

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.".

Treatment of derivative contracts where bail-in option is applied

90.—(1) Article 158 (liabilities arising from derivative contracts) is amended as follows.

(2) At the end insert—

"(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.".

Preparation of business reorganisation plans after application of bail-in tool: assessment of plan drawn up by an institution

91.—(1) Article 159 (application and interpretation of Chapter 1 of Part 13) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013";

(b) in sub-paragraph (c)—

(i) for "or" substitute "of the institution or the";

(ii) for "Article 52 of the recovery and resolution directive" substitute "section 48H of the Banking Act 2009".

(3) In paragraph (2) omit the definitions of "business reorganisation plan" and "management body".

92.—(1) Article 161 (purpose of assessment) is amended as follows.

(2) In paragraph (3)—

(a) for sub-paragraph (a) substitute—

"(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);";

(b) after sub-paragraph (c) insert—

"(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).".

(3) After paragraph (3) insert—

"(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.".

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

93.—(1) Article 163 (application and interpretation of Chapter 2 of Part 13) is amended as follows.

(2) In paragraph (1)(b)—

(a) for the words from "(within" to "or" substitute "of the relevant entity or the";

(b) omit "in accordance with Article 52 of the recovery and resolution directive".

(3) In paragraph (2)—

(a) after ""business reorganisation plan" insert "has the meaning given in section 48H of the Banking Act 2009, as applied by section 81BA of that Act";

(b) for "have the" substitute "has the";

(c) for "they have" substitute "it has".

94.—(1) Article 164 (assessment etc of business reorganisation plan) is amended as follows.

(2) In the table, in the rows relating to articles 160, 161 and 162, in the second column, omit the two sentences beginning "Where".

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

95.—(1) Article 165 (application and interpretation of Chapter 3 of Part 13) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (c), for "Article 52 of the recovery and resolution directive" substitute "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)".

(3) In paragraph (2)—

(a) omit the definition of "business reorganisation plan";

(b) in the definition of "four month period" for the words from "transmits" to the end substitute "receives the business reorganisation plan under paragraph (1)(c)";

(c) in the definition of "group institution" for "EEA" substitute "UK";

(d) for the definition of "relevant bail-in power" substitute—

""relevant bail-in power" in relation to a group entity means the power in section 12A(2) of the Banking Act 2009;";

(e) omit the definition of "UK group entity".

96. Omit article 166 (duty to transmit a copy of business reorganisation plan).

97.—(1) Article 167 (assessment of business reorganisation plan) is amended as follows.

(2) In paragraph (1) omit the words from the start to "United Kingdom,".

(3) Omit paragraphs (2) and (3).

98.—(1) Article 168 (purpose of assessment) is amended as follows.

(2) In paragraph (2) omit the words from "or the Bank" to "assessment of the plan".

(3) In paragraph (3)—

(a) for sub-paragraph (a) substitute—

"(a) the plan must include the details specified in section 48H(2) of the Banking Act 2009;";

(b) after sub-paragraph (c) insert—

"(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.".

99. Omit article 170 (joint assessment of plan).

100.—(1) Article 171 (revision of plan) is amended as follows.

(2) Omit "UK" in each place that it appears.

101. Omit articles 173 (references to European Banking Authority) and 174 (requesting the assistance of EBA).

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

102. Omit Chapter 4 of Part 13.

Procedural obligations where an undertaking is failing or likely to fail

103.—(1) Article 181 (interpretation of Part 14) is amended as follows.

(2) After "In this Part—" insert—

""crisis prevention measure" has the meaning given in section 48Z(1) of the Banking Act 2009;".

(3) After the definition of "the regulator" insert—

""supervisory measure" means a power of the FCA or PRA by or under legislation upon which the United Kingdom relied immediately before exit day to meet its obligations with respect to Article 104.1 of the capital requirements directive;".

(4) In the definition of "undertaking" for "Article 111 of the capital requirements directive" substitute "Part 6 of the Capital Requirements Regulations 2013".

104.—(1) Article 182 (matters to be notified by the regulator to the Bank of England) is amended as follows.

(2) In paragraph (a) for "Article 32.4 of the recovery and resolution directive" substitute "section 7(5C) of the Banking Act 2009".

(3) In paragraph (b) for "measure referred to in Article 104.1 of the capital requirements directive" substitute "supervisory measure".

105.—(1) Article 183 (notification that an undertaking is failing or likely to fail) is amended as follows.

(2) In paragraph (3)—

(a) omit sub-paragraphs (a) and (b);

(b) in sub-paragraph (d) for the words from "in their" to the end substitute "; and";

(c) in paragraph (e) omit "; and";

(d) omit paragraph (f).

(3) Omit paragraph (4).

106. In Part 14, after article 184 insert—

"**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.".

Cross-border group resolution

107. Omit Part 16.

Modified application of company law to banks etc in resolution

108.—(1) Article 216 (interpretation of Part 17) is amended as follows.

(2) In paragraph (1)—

(a) after "In this Part—" insert—

""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;

"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;".

(b) in the definition of "the use of resolution tools, powers and mechanisms" for paragraph (c) substitute—

"(c) 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, where the Treasury is applying the public equity support tool; and".

(3) Omit paragraph (2).

109.—(1) Article 218 (modified application of legislation on cross-border mergers) is amended as follows.

(2) Omit paragraph (1).

110.—(1) Article 219 (modified application of the Companies Act 2006 (disapplication of Article 5.1 of the Takeovers Directive)) is amended as follows.

(2) In the heading for "Article 5.1 of the Takeovers Directive" substitute "Takeover Rules".

(3) Omit paragraph (1).

(4) In paragraph (2) for "(1A) Rules giving effect to Article 5.1 of the Takeovers Directive" substitute "(1ZA) Rules made in accordance with paragraph 7(1) and (2) of Part 2 of Schedule 1C".

111.—(1) Article 220 (modified application of the Companies Act 2006 (disapplication of other directives) is amended as follows.

(2) In the heading for "directives" substitute "requirements".

(3) Omit paragraphs (1) to (3).

(4) In paragraph (4) omit "For the purposes of this article" and "and with any other necessary modification".

(5) In paragraph (5) omit "For the second purpose".

(6) Omit paragraph (6).

Miscellaneous provisions

112. Omit article 222 (continuity).

113.—(1) Article 223 (duty to co-operate) is amended as follows.

(2) For paragraph (2) substitute—

"(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."

114. Omit articles 224 (non-binding co-operation arrangements in line with EBA framework arrangements) and 225 (duty to inform EBA of imposition of penalties).

115.—(1) Article 227 (review) is amended as follows.

(2) Omit paragraph (2).

Requirements concerning recovery plans

116. Before Schedule 1 insert—

"SCHEDULE A1 Articles 7(3), 13(1) & 19(2)

Information to be contained in a recovery plan or group recovery plan

1. In this Schedule—

(a) "entity" means, in relation to the drawing up of —

(i) a recovery plan for an institution, the institution;

(ii) a group recovery plan for a relevant group, the group entities;

(b) except where provision is made to the contrary, "plan" means a recovery plan or a group recovery plan.

2. A plan must include—

(a) a summary of its key elements and a summary of the overall capacity of the entity to restore its financial position following a significant deterioration;

(b) a summary of any material changes to the entity, including any change to its legal or organisational structure or its business or financial position, which has occurred since the date on which the plan was last revised;

(c) a communication and disclosure plan outlining how the entity intends to manage any potentially negative market reactions;

(d) a range of capital and liquidity actions required to maintain or restore the viability and financial position of the entity;

(e) an estimation of the time required for the execution of each material aspect of the plan;

(f) a detailed description of any material impediment to the effective and timely execution of the plan, including consideration of the impact on the rest of the group (where applicable), customers and counterparties;

(g) identification of critical functions;

(h) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the entity;

(i) a detailed description of how recovery planning is integrated into the corporate governance structure of the entity as well as the policies and procedures governing the approval of the plan and identification of the persons in the organisation responsible for preparing and implementing the plan;

(j) arrangements and measures to conserve or restore the entity's own funds;

(k) arrangements and measures to ensure that the entity has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility of transferring liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;

(l) arrangements and measures to reduce risk and leverage;

(m) arrangements and measures to restructure liabilities;

(n) arrangements and measures to restructure business lines;

(o) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;

(p) arrangements and measures necessary to maintain the continuous functions of the entity's operational processes, including infrastructure and information technology services;

(q) preparatory arrangements to facilitate the sale of assets or business lines in a time-frame appropriate for the restoration of financial soundness;

(r) any other management actions or strategies to restore financial soundness and the anticipated financial effect of those actions or strategies;

(s) preparatory measures that the entity has taken or plans to take in order to facilitate the implementation of the plan, including those necessary to enable the timely recapitalisation of the entity;

(t) a framework of indicators which identifies the points at which appropriate actions referred to in the plan may be taken.

3. The plan must provide for measures to be taken by the entity to restore its financial position following a significant deterioration of its financial situation.

4. In drawing up the plan the entity must not assume any access to or receipt of extraordinary public financial support.

5. The plan must include, where applicable, an analysis of the conditions under which the entity may apply for the use of the Bank's facilities.

6. The analysis must identify the assets of the entity which would be expected to qualify as collateral for the use of the Bank's facilities.

7. The plan must include possible measures which could be taken by the entity where the conditions for early intervention are met.

8. The plan must include appropriate conditions and procedures to ensure the timely implementation of recovery actions as well as a wide range of recovery options.

9. The plan must contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the entity's specific conditions including system-wide events and stress specific to individual legal persons and to groups.

10. The plan must provide evidence that the management body of the entity has assessed and approved it before submitting it to the appropriate regulator.

11. The plan must include an appropriate framework of indicators established by the entity which identifies the points at which appropriate actions referred to in the plan may be taken.

12. The indicators may be of a qualitative or quantitative nature relating to the entity's financial position and shall be capable of being monitored easily.

13. The plan must provide details of appropriate arrangements which the entity has put in place for the regular monitoring of the indicators.

14. An entity may—

(a) take action under its plan where the relevant indicator has not been met, but where the management body of the entity considers action to be appropriate in the circumstances; or

(b) refrain from taking such an action where the relevant indicator has been met, but the management body of the entity does not consider action to be appropriate in the circumstances.

15. The entity must without delay notify the appropriate regulator of a decision under paragraph 14(a) or (b).".

Information to be contained in a resolution plan

117.—(1) Schedule 1 is amended as follows.

(2) In paragraph 1 (impediments to the effectiveness of resolution action)—

(a) in sub-paragraph (a) for "resolution action" substitute "the application of resolution tools or the exercise of resolution powers"; and

(b) in sub-paragraph (b) for the words from "Chapter" to the end substitute "Part 6".

(3) In paragraph 2(3)(a) (the context for resolution action) for the words from "Article" to the end substitute "section 228 or 229 of the Banking Act 2009".

Information to be contained in a group resolution plan

118.—(1) Schedule 2 is amended as follows.

(2) In paragraph 1(3)(a) for the words from "Article 100" to the end substitute "section 228 or 229 of the Banking Act 2009".

(3) In paragraph 2—

(a) in sub-paragraph (a) for "action" substitute "tools that would be applied, the resolution powers that would be exercised";

(b) in sub-paragraphs (d)(i) and (ii) for "resolution action" in both cases substitute "the application of resolution tools or the exercise of resolution powers";

(c) in sub-paragraph (e)(i)—

(i) for "resolution action" substitute "the application of resolution tools or the exercise of resolution powers";

(ii) for "a resolution authority or" substitute "the Bank under Part 1 of the Banking Act 2009 or a";

(d) at the end of sub-paragraph (h) add "and";

(e) in sub-paragraph (i)—

(i) for "resolution action" substitute "application of resolution tools or the exercise of resolution powers"; and

(ii) omit "; and";

(f) omit sub-paragraph (j).

(4) Omit paragraph 3.

(5) At the end of the Schedule add—

"**4.** In this Schedule, "group resolution" means—

(a) the taking of resolution action at the level of—

(i) a parent undertaking; or

(ii) an institution,

which forms part of a group that is subject to consolidated supervision in accordance with Part 6 of the Capital Requirements Regulations 2013; or

(b) the co-ordination of the application of resolution tools and the exercise of resolution powers by the Bank in relation to group entities that meet the conditions for resolution.".

Additional information for purposes of a resolution plan and matters the Bank is to consider when assessing resolvability

119. After Schedule 2 insert—

"SCHEDULE 2A

Article 8(3)(a)

Additional information which may be required for the purposes of a resolution plan or group resolution plan

1. In this Schedule, "entity" means in relation to the drawing up of—

(a) a resolution plan for an institution, the institution;

(b) a group resolution plan for a relevant group, the group entities.

2. The additional information referred to in article 8(3)(a) is as follows—

(a) a detailed description of the entity's organisational structure including a list of all legal persons contained in this structure;

(b) identification of the direct holders and the percentage of voting and non-voting rights of each legal person;

(c) the location, jurisdiction of incorporation, licensing and senior management of each legal person;

(d) a mapping of the entity's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;

(e) a detailed description of the components of the entity's liabilities, separating, as a minimum by types and amounts of short-term and long-term debt, secured, unsecured and subordinated liabilities;

(f) details of those liabilities of the entity that are eligible liabilities;

(g) an identification of the processes needed to determine to whom the entity has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;

(h) a description of the off-balance sheet exposures of the entity, including a mapping to its critical operations and core business lines;

(i) the material hedges of the entity including a mapping to legal persons;

(j) identification of the major or most critical counterparties of the entity as well as an analysis of the impact of the failure of major counterparties in the entity's financial situation;

(k) each system on which the entity conducts a material number or value amount of trades, including a mapping to the entity's legal persons, critical operations and core business lines;

(l) each payment, clearing or settlement system of which the entity is directly or indirectly a member, including a mapping to the entity's legal persons, critical operations and core business lines;

(m) a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial and regulatory reporting used by the entity, including a mapping to the entity's legal persons, critical operations and core business lines;

(n) an identification of the owners of the systems identified in paragraph (m), related service level agreements and any software and systems or licences, including a mapping to their legal entities, critical operations and core business lines;

(o) an identification and mapping of the legal persons and interconnections and interdependencies among the different legal persons such as—

  (i) common or shared personnel, facilities and systems;

  (ii) capital, funding or liquidity arrangements;

  (iii) existing or contingent credit exposures;

  (iv) cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;

  (v) risks transfers and back-to-back trading arrangements and service level agreements;

(p) the competent authority for each legal person;

(q) the member of the management body responsible for providing the information necessary to prepare the plan as well as those responsible, if different, for the different legal persons, critical operations and core business lines;

(r) a description of the arrangements that the entity has in place to ensure that, in the event of resolution, the Bank will have all the necessary information, as determined by the Bank, for applying the resolution tools and resolution powers;

(s) all the agreements entered into by the entity with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;

(t) a description of possible liquidity sources for supporting resolution; and

(u) information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

SCHEDULE 2B Articles 60(2)(a) and 62(3)(a)

Matters that the Bank is to consider when assessing resolvability

1. In this Schedule—

(a) "back-to-back transaction" means a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;

(b) "entity" means, in relation to an assessment of resolvability of—

(i) an institution in accordance with article 60(2)(a), the institution;

(ii) a relevant group in accordance with article 62(3)(a), the group entities;

(c) "intra-group guarantee" means a contract by which one group entity guarantees the obligations of another group entity to a third party.

2. The matters referred to in articles 60(2)(a) and 62(3)(a) are—

(a) the extent to which the entity is able to map core business lines and critical operations to legal persons;

(b) the extent to which legal and corporate structures are aligned with core business lines and critical operations;

(c) the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;

(d) the extent to which the service agreements that the entity maintains are fully enforceable in the event of resolution of the entity;

(e) the extent to which the governance structure of the entity is adequate for managing and ensuring compliance with the entity's internal policies with respect to its service level agreements;

(f) the extent to which the entity has a process for the transition of the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;

(g) the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

(h) the adequacy of the management information systems in ensuring that the Bank is able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;

(i) the capacity of the management information systems to provide the information essential for the effective resolution of the entity at all times even under rapidly changing conditions;

(j) the extent to which the entity has tested its management information systems under stress scenarios as defined by the Bank;

(k) the extent to which the entity can ensure the continuity of its management information systems both for the affected entity and the new entity in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;

(l) the extent to which the entity has established adequate processes to ensure that it provides the Bank with the information necessary to identify depositors and the amounts covered by the Financial Services Compensation Scheme established under Part 15 of FSMA in respect of deposits;

(m) where the entity uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;

(n) where the entity engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;

(o) the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;

(p) the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;

(q) the amount and type of eligible liabilities of the entity;

(r) where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;

(s) the existence and robustness of service level agreements;

(t) whether authorities in third countries have the resolution tools necessary to support resolution actions by the Bank, and the scope for coordinated action between the Bank and authorities in third countries.

(u) the feasibility of using resolution tools in such a way which meets the resolution objectives, given the resolution tools available and the entity's structure;

(v) the extent to which the group structure allows the Bank to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value or the group as a whole;

(w) the arrangements and means through which resolution could be facilitated in the case of groups that have subsidiaries established in different jurisdictions;

(x) the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that authorities in third countries may take;

(y) the extent to which the impact of the entity's resolution on the financial system and on confidence in financial markets can be adequately evaluated;

(z) the extent to which the resolution of the entity could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;

(aa) the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers; and

(bb) the extent to which the resolution of the entity could have a significant effect on the operation of payment and settlement systems.".

SCHEDULE 4

Regulation 5

Amendments of other secondary legislation

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

1.—(1) The Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 are amended as follows.

(2) After regulation 7 insert—

"Valuation methodology: technical standards

7A. The Bank may make technical standards specifying the methodology for the assessments referred to in regulation 5(2) to (4).".

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

2.—(1) The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 is amended as follows.

(2) In article 1 (interpretation etc.)—

(a) in paragraph (3)—

(i) after the definition of "the Act" insert—

""Annex 1 activity" has the meaning given in point (26A) of Article 4.1 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms;";

(ii) omit the definition of "capital requirements directive";

(iii) in the definition of "excluded rights", in paragraphs (c) and (d), for "an activity referred to in Annex I to the capital requirements directive" in both cases substitute "an Annex 1 activity";

(iv) in the definition of "financial instrument" in paragraph (a) for the words from "Section C" to "Instruments Directive" substitute "Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001";

(v) omit the definition of "Markets in Financial Instruments Directive";

(vi) in the definition of "transferable securities" for the words from "Article 4.44" to the end substitute "point (24) of Article 2.1 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012(**a**)";

(b) in paragraph (5) for "Order 2016 comes" substitute "(Amendment) (EU Exit) Regulations 2018 come"; and

(c) after paragraph (5) insert—

"(6) In this Order any reference to an EU regulation or EU tertiary legislation within the meaning of the European Union (Withdrawal) Act 2018 is to be read as a reference to the instrument as it had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 were made.".

(3) Omit article 4 (EU law).

(**a**) OJ L 173, 12.6.2014, p.84.

The Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014

3.—(1) The Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014 is amended as follows.

(2) Omit article 4 (EU law).

The Banking Act 2009 (Banking Group Companies) Order 2014

4.—(1) The Banking Act 2009 (Banking Group Companies) Order 2014 is amended as follows.

(2) In article 2 (interpretation)—

(a) in paragraph (1), in the definition of "the bank", omit ", EU institution"; and

(b) in paragraph (2), in the definition of "the capital requirements regulation", at the end insert "as it had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 were made".

The Bank Recovery and Resolution Order 2014

5.—(1) The Bank Recovery and Resolution Order 2014 is amended as follows.

(2) In article 128 (review), omit paragraph (2).

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

6.—(1) The Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014 are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (2) for "Order 2016 comes" substitute "(Amendment)(EU Exit) Regulations 2018 come".

(3) After regulation 8 insert—

"Valuation methodology: technical standards

8A. The Bank may make technical standards specifying the methodology for the assessments referred to in regulation 6(2) to (4).".

(4) In regulation 13 (review), omit paragraph (2).

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

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

(2) In article 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition of "eligible liabilities" substitute—

""eligible liabilities" has the meaning given in section 3(1) of the Act."; and

(ii) in the definition of "transferable securities" for the words from "4.1(44)" to "instruments" substitute, "2.1(24) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012";

(b) in paragraph (2) for "Order 2016 comes" substitute "(Amendment) (EU Exit) Regulations 2018 come".

(3) In article 5 (set-off and netting: meaning of "derivative" etc.), in paragraph (1), at the end insert "as it had effect on the day on which the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 were made".

(4) In article 8 (review), omit paragraph (2).

The Building Societies (Bail-in) Order 2014

8.—(1) The Building Societies (Bail-in) Order 2014 is amended as follows.

(2) In article 7 (review) omit paragraph (2).

The Bank Recovery and Resolution Order 2016

9.—(1) The Bank Recovery and Resolution Order 2016 is amended as follows.

(2) In article 42 (review) omit paragraph (2).

SCHEDULE 5

Regulation 7

Amendments of Retained Direct EU legislation

Amendment of Commission Delegated Regulation (EU) 2016/778

1.—(1) Commission Delegated Regulation (EU) 2016/778 is amended as follows.

(2) In Article 1 (subject matter)—

(a) omit paragraph (a);

(b) in paragraph (b) for the words from "point (35)" to the end substitute "the definition of "critical functions" in section 3(1) of the Banking Act 2009 (including as applied by that Act in relation to persons other than a bank)";

(c) in paragraph (c) for the words from "point (36)" to the end substitute "the definition of "core business lines" in section 48B(14) of the Banking Act 2009 (including as applied in relation to other persons by that Act)";

(d) omit the words from "Those rules" to the end.

(3) In Article 2 (definitions) at the end insert—

"(4) 'resolution authority' means the Bank of England;

(5) 'institution' has the meaning given in section 3A(8) of the Banking Act 2009;

(6) 'group' has the meaning given in section 3(2)(b) of the Banking Act 2009.".

(4) Omit Chapter II (deferral of ex post contributions).

(5) In Article 6 (criteria relating to the determination of critical functions), in paragraph (2), in point (b), for ", national or European" substitute "or national".

(6) After Article 8 omit the sentence beginning "This regulation shall be binding".

Amendment of Commission Delegated Regulation (EU) 2016/860

2.—(1) Commission Delegated Regulation (EU) 2016/860 is amended as follows.

(2) In Article 1 (subject matter)—

(a) in paragraph 1 for the words from "Article 44(3)" to the end substitute "section 48B of the Banking Act 2009 (including as applied by sections 81CA, 83A, 84, 89A and 89JA of that Act), where the Bank of England may in a resolution instrument or a property transfer instrument exclude any eligible liability or class of eligible liabilities from the application of any special bail-in provision"; and

(b) omit paragraph 2.

(3) Omit Article 2 (scope).

(4) In Article 3 (definitions)—

(a) in paragraph (1) for "imminent" substitute "immediate future";

(b) at the end insert—

"(3) 'Institution' has the meaning given in section 3A(8) of the Act.

(4) 'The resolution authority' means the Bank of England.

(5) 'The Act' means the Banking Act 2009.

(6) 'Bail-in' means special bail-in provision within the meaning of section 48B of the Act and 'bail-in tool' means the power to make such provision.

(7) 'Conditions for early intervention' means the conditions specified in section 71D of the Financial Services and Markets Act 2000.".

(5) In Article 4—

(a) omit paragraph 1;

(b) in paragraph 2 for "pursuant to Article 44(3) of Directive 2014/59/EU" substitute "under section 48B(10) of the Act";

(c) in paragraphs 3 and 4 for "Article 44(3) of Directive 2014/59/EU" in both cases substitute "section 48B(10) of the Act";

(d) in paragraph 4 omit the second sentence;

(e) in paragraph 5—

(i) for "Article 44(3) of Directive 2014/59/EU" substitute "section 48B(10) of the Act"; and

(ii) for "described under Article 31(2) of that Directive" substitute "set out in section 4 of the Act";

(f) in paragraph 6—

(i) for "pursuant to Article 44(3) of Directive 2014/59/EU" substitute "under section 48B(10) of the Act"; and

(ii) for "resolution fund" substitute "Consolidated Fund or the National Loans Fund";

(g) in paragraph 7—

(i) for "Article 44(3)" in both cases substitute "section 48B(10) of the Act"; and

(ii) for "resolution fund" substitute "Consolidated Fund or the National Loans Fund";

(h) in paragraph 8—

(i) in the opening words, for "Article 44(3)(a) of Directive 2014/59/EU" substitute "section 48B(10) of the Act on the ground set out in section 48B(12)(a) of the Act";

(ii) in the opening words, for "resolution fund" substitute "Consolidated Fund or the National Loans Fund"; and

(iii) in sub-paragraph (b) for "Article 36 of Directive 2014/59/EU" substitute "section 6E of the Act";

(i) in paragraph 9, in the opening words—

(i) for "Article 44(3)(b) of Directive 2014/59/EU" substitute "section 48B(10) of the Act on the ground set out in section 48B(12)(b) of the Act"; and

(ii) for "resolution fund" substitute "Consolidated Fund or the National Loans Fund";

(j) in paragraph 10—

(i) in the opening words, for "Article 44(3)(c) of Directive 2014/59/EU" substitute "section 48B(10) of the Act on the ground set out in section 48B(12)(c) of the Act";

(ii) in the opening words, for "resolution fund" substitute "Consolidated Fund or the National Loans Fund"; and

(iii) in sub-paragraph (b), for "Article 44(3)(c) of Directive 2014/59/EU" substitute "section 48B(12)(c) of the Act";

(k) in paragraph 11—

(i) for "Article 44(3)(d) of Directive 2014/59/EU" substitute "section 48B(10) of the Act on the ground set out in section 48B(12)(d) of the Act"; and

(ii) for "resolution fund" substitute "Consolidated Fund or the National Loans Fund".

(6) In Article 5 (exclusion on grounds of impossibility to bail-in under Article 44(3)(a) of Directive 2014/59/EU)—

(a) in the heading for "Article 44(3)(a) of Directive 2014/59/EU" substitute "section 48B(12)(a) of the Banking Act 2009";

(b) in paragraph 1 for "Resolution authorities" substitute "The resolution authority";

(c) in paragraph 2—

(i) for "resolution authorities" substitute "the resolution authority"; and

(ii) for "Articles 36 and 49 of Directive 2014/59/EU" substitute "section 6E of the Act".

(7) In Article 6 (reasonable time)—

(a) in paragraph 1—

(i) for "under Article 44(3)(a) of Directive 2014/59/EU" substitute "on the ground specified in section 48B(12)(a) of the Act";

(ii) for "authorities" substitute "authority"; and

(b) in paragraph 2 for "authorities" substitute "authority".

(8) In Article 7 (exclusion on grounds of preservation of certain critical functions and core business lines under Article 44(3)(b) of Directive 2014/59/EU)—

(a) in the heading for "Article 44(3)(b) of Directive 2014/59/EU" substitute "section 48B(12)(b) of the Banking Act 2009";

(b) in paragraphs 1 to 5 for "Resolution authorities" in each case substitute "The resolution authority"; and

(c) in paragraph 5 for the words from "points" to the end substitute "section 4(3A) and (4) of the Act".

(9) In Article 8 (exclusion on grounds of avoidance of widespread contagion under Article 44(3)(c) of Directive 2014/59/EU)—

(a) in the heading for "Article 44(3)(c) of Directive 2014/59/EU" substitute "section 48B(12)(c) of the Banking Act 2009";

(b) in paragraphs 1 and 2 for "Article 44(3)(c) of Directive 2014/59/EU" in both cases substitute "section 48B(10) of the Act on the ground specified in section 48B(12)(c) of the Act";

(c) in paragraph 1 for "resolution authorities" substitute "the resolution authority"; and

(d) in paragraph 2— in point (g) for "pursuant to Article 32(4) of Directive 2014/59/EU" substitute "specified in section 7(5C) of the Act".

(10) In Article 9 (exclusion on grounds of avoidance of a decrease in value under Article 44(3)(d) of Directive 2014/59/EU)—

(a) in the heading for "Article 44(3)(d) of Directive 2014/59/EU" substitute "section 48B(12)(d) of the Banking Act 2009";

(b) in paragraph 1 for "Resolution authorities" substitute "The resolution authority"; and

(c) in paragraph 2—

(i) for "resolution authorities" substitute "the resolution authority";

(ii) for the words from "Article 36(16)" to the end substitute—

"—

(a) any regulatory technical standards referred to in section 6E(10)(a) and 62A(2A)(a) of the Act or any regulatory technical standards contained in a Commission Regulation adopted by the European Commission under Article 49(5) of Directive 2014/59/EU so far as they are retained EU law; and

(b) any technical standards made under section 6E(11) or 62A(2B) of the Act or article 158(3) of the Bank Recovery and Resolution (No. 2) Order 2014.".

(11) After Article 10 omit the sentence beginning "This regulation shall be binding".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are principally made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) ("the Act") to address failures of retained European Union law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union ("deficiencies"). In particular, these Regulations address deficiencies under paragraphs (a), (b), (c) and (g) of section 8(2) of the Act and transfer functions under section 8(6) of the Act.

Deficiencies are contained in the legislation upon which the United Kingdom relies before its exit from the European Union to comply with its obligations relating to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms. The principal instruments are the Banking Act 2009 and the Bank Recovery and Resolution (No.2) Order 2014. These Regulations also address deficiencies in other provisions of primary and secondary legislation that relate to the recovery and resolution of credit institutions and investment firms and in the Financial Services (Banking Reform) Act 2013 and the Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014. These Regulations also address deficiencies in EU Delegated Regulations adopted by the Commission under powers conferred by Directive 2014/59.

The concept of bank resolution was a response to the financial crisis and was enacted in UK in the Banking Act 2009 (c.1). Powers were conferred on the Bank of England, other financial regulators and the Treasury to prevent insolvency of institutions, having regard to objectives such as maintaining financial stability and minimising reliance on extraordinary public financial support. Directive 2014/59/EU spread this concept across the European Economic Area and, in recognition of the existence of cross-border groups, provided for co-operation between resolution authorities in States in the European Economic Area and with the European Banking Authority.

The provisions of these Regulations referred to in regulation 1(3) are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c.68). These provisions bring up to date certain references in UK legislation to European legislation in advance of exit day.

These Regulations refer to the Rulebook made by the Prudential Regulation Authority under the Financial Services and Markets Act 2000 (c.8). The Rulebook is available on http://www.prarulebook.co.uk and copies of the rules referred to can be obtained from the Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA, where it is also available for inspection.

An impact assessment has not been produced for this instrument, as no significant impact on the costs of business or the voluntary sector is foreseen.

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