Draft Order laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No.

BANKS AND BANKING

FINANCIAL SERVICES AND MARKETS

The Bank Recovery and Resolution Order 2014

Made - - - -	*****
Coming into force - -	*1st January 2015*

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

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, makes the following Order.

A draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act.

Citation and commencement

1.—(1) This Order may be cited as the Bank Recovery and Resolution Order 2014.

(2) This Order comes into force on 1st January 2015.

Introduction to amendments of the Banking Act

2. The Banking Act 2009(**c**) is amended in accordance with Articles 3 to 111.

Creation of Chapter 1 of Part 1

3. Sections 1 to 3 become Chapter 1 of Part 1, entitled "Introduction" (and, accordingly, the existing italic heading before section 1 is omitted).

(**a**) SI 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 s. 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 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(**c**) 2009 c.1.

Overview of Part 1

4.—(1) Section 1 (overview)(**a**) is amended as follows.

(2) In subsection (2)(a) for "four" substitute "five".

(3) In subsection (3)—

(a) for "four" substitute "five", and

(b) after paragraph (b) insert—

"(ba) transfer to an asset management vehicle (section 12ZA),".

(4) In subsection (4)—

(a) for "four" substitute "five",

(b) after paragraph (b) insert—

"(c) the third country instrument powers (sections 89H to 89J).".

(5) In the Table in subsection (6), at the appropriate places insert—

"Sections 3A and 3B	Pre-resolution powers"
"Sections 6A to 6D	Mandatory write-down, conversion etc of capital instruments"
"Section 6E	Valuation before mandatory write-down or stabilisation action"
"Sections 48B to 48W	Bail-in option"
"Sections 48X and 48Y	Replacement of provisional valuation"
"Section 48Z	Termination rights etc"
"Section 62A	Independent valuer"
"Sections 62B to 62E	Resolution administrator"
"Sections 83ZA to 83Z2	Information and enforcement"
"Sections 89H to 89J	Third-country resolution actions"

Interpretation of Part 1 of the Banking Act 2009

5.—(1) Section 3 (interpretation: other expressions)(**b**) is amended as follows.

(2) The existing text becomes subsection (1) and, in that subsection, at the appropriate places, insert—

""Additional Tier 1 instruments" means capital instruments that meet the conditions laid down in Article 52(1) of the capital requirements regulation (or which qualify as Additional Tier 1 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),";

(**a**) Section 1 was amended by paragraph 12 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33), there are other amending instruments but none are relevant.

(**b**) 2009 c.1. Section 3 was amended by paragraph 4 of Schedule 17 to the Financial Services Act 2012 (c.21), section 96(2) of the Financial Services Act 2012 (c.21).

““the capital requirements regulation” means 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,”(**a**);

““Common Equity Tier 1 instruments” means capital instruments that meet the conditions laid down in Article 28(1) to (4), 29(1) to (5) or 31(1) of the capital requirements regulation (or which qualify as Common Equity Tier 1 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),”;

““critical functions”, subject to subsection (2), means activities, services or operations the discontinuance of which is likely in one or more EEA states—

(a) to lead to the disruption of services that are essential to the economy, or

(b) to disrupt financial stability,

due to the size, market share, external and internal connectedness, complexity or cross-border activities of a bank or a group which includes a bank (with particular regard to the substitutability of those activities, services or operations),”;

““eligible liabilities”, of an undertaking, means liabilities and capital instruments that—

(a) do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments, of the bank, and

(b) are not excluded liabilities listed in section 48B(8),”;

““extraordinary public financial support” has the meaning given in Article 2.1(28) of the recovery and resolution directive;”;

““own funds” means own funds as defined in Article 4.1(118) of the capital requirements regulation (read with Title I of Part Ten of that regulation),”;

““own funds requirements” means the requirements laid down in Articles 92 to 98 of the capital requirements regulation (read with Title I of Part Ten of that regulation),”;

““the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms,”(**b**);

““relevant capital instruments” means Additional Tier 1 instruments and Tier 2 instruments,”;

““Tier 2 instruments” means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of the capital requirements regulation (or which qualify as Tier 2 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),”.

(3) After that subsection insert—

“(2) For the purposes of the definition of “critical functions” in subsection (1)—

(a) a delegated act adopted by virtue of Article 2(2) of the recovery and resolution directive applies as it applies for the purposes of the definition of “critical functions” in Article 2(2) of that directive, and

(b) “group” means a parent undertaking within the meaning given by Article 4.1(15)(a) of the capital requirements regulation and its subsidiaries within the meaning given by Article 4.1(16) of that regulation.”

Power to address impediments to the resolution of institutions and their groups

6. In Part 1, after section 3 insert—

(**a**) OJ No L 176, 27.6.2013, p1. For Corrigenda, see OJ L321, 30.11.2013, p.6.
(**b**) OJ No L 173, 12.6.2014, p190.

"Chapter 2

Pre-resolution powers of the Bank of England

Removal of impediments to the exercise of stabilisation powers etc

3A.—(1) In this section "relevant person" means—

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

(b) a parent of such an institution which—

(i) is a financial holding company or a mixed financial holding company; and

(ii) is established in, or formed under the law of any part of, the United Kingdom, or

(c) a subsidiary of such an institution or of such a parent which—

(i) is a financial institution authorised by the PRA or FCA, and

(ii) is established in, or formed under the law of any part of, the United Kingdom.

(2) The Bank of England may give directions to a relevant person requiring that person to take measures which, in the opinion of the Bank of England, are required to address impediments to—

(a) the effective exercise of the stabilisation powers, or

(b) the winding up of that person (whether by use of the bank insolvency procedure provided for under Part 2 of this Act or otherwise).

(3) The power conferred by subsection (2) includes a power to direct a relevant person—

(a) to amend a group financial support agreement;

(b) where there is no such agreement, to review the need to enter into one;

(c) to enter into an agreement for the provision of services relating to the provision of critical functions;

(d) to limit that person's maximum individual and aggregate exposures (with "exposure" for this purpose having the meaning given in the capital requirements regulation);

(e) to produce information which is relevant to the exercise of the stabilisation powers, and to provide that information to the Bank of England;

(f) to dispose of specified assets;

(g) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;

(h) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;

(i) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions—

(i) to change its legal or operational structure, or

(ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;

(j) to establish a financial holding company which is not a subsidiary of an institution, another financial holding company or a mixed financial holding company.

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

(**a**) 2000 c.8.

(a) to maintain a minimum requirement for own funds and eligible liabilities expressed as a percentage of the total own funds and liabilities of the relevant person, and

(b) for the purposes of paragraph (a), to—

(i) maintain particular kinds of eligible liabilities, or

(ii) issue particular kinds of eligible liabilities or take other specified steps.

(5) Under subsection (4), the Bank may, in particular, direct a relevant person to endeavour to re-negotiate any eligible liability or relevant capital instruments issued by that person, for the purpose of ensuring that any decision by the Bank to write down or convert the liability or instrument concerned would have effect under the law which governs that liability or instrument.

(6) The Bank may give directions to a relevant MAHC requiring it to establish a separate financial holding company as a parent of an institution for the purpose of—

(a) facilitating the exercise of the stabilisation powers, or

(b) ensuring that the exercise of a stabilisation power does not have an adverse effect on the non-financial part of the group of the relevant MAHC.

(7) Directions under this section—

(a) must be in writing, and

(b) may be given with general effect or with respect to a particular relevant person or class of relevant persons.

(8) In this section—

"financial holding company" has the meaning given by Article 4.1(20) of the capital requirements regulation(**a**);

"financial institution" has the meaning given by Article 4.1(26) of the capital requirements regulation;

"group" has the meaning given in section 3(2)(b);

"group financial support agreement" has the meaning given by section 192JB(4) of the Financial Services and Markets Act 2000(**b**);

"institution" (except in the phrase "financial institution") means a bank or investment firm;

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

"parent" means a parent undertaking within the meaning given by section 1162 of the Companies Act 2006(**c**);

"relevant MAHC" means a mixed activity holding company (within the meaning given by Article 4.1(22) of the capital requirements regulation) which has at least one subsidiary which—

(a) is an institution, and

(b) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company; and

"subsidiary" means a subsidiary undertaking within the meaning given by section 1162 of the Companies Act 2006.

(**a**) OJ No L 176, 27.6.2013, p1.

(**b**) c.8. Section 192JB was inserted by the Financial Services (Banking Reform) Act 2013 (c.33), s.133(1), and is amended by article 119 of this Order. The reference to subsection (4) is to that subsection as substituted by article 119(5) of this Order.

(**c**) 2006 c.46.

Safeguards relating to directions under section 3A

3B.—(1) A direction given to a relevant person under section 3A must be accompanied by a notice which—

(a) states when the direction takes effect (see subsections (2) and (3)),

(b) gives the Bank of England's reasons for giving the direction, and,

(c) specifies a reasonable period within which the relevant person may make representations to the Bank about the direction.

(2) The direction may, if the Bank of England reasonably considers it necessary, take effect—

(a) immediately it is given to the relevant person, or

(b) on a later date specified in the direction.

(3) In any other case the direction takes effect when—

(a) it has been confirmed by a notice under subsection (5), and

(b) the period during which the direction may be referred to the Upper Tribunal (under subsection (6)) has expired and, if the matter was so referred, the reference and any appeal against the Tribunal's determination, has been finally disposed of.

(4) Where representations are made by the relevant person within the period specified under subsection (1)(c), the Bank must, within a reasonable period, consider those representations and decide—

(a) whether to confirm or revoke the direction, and

(b) if the direction is revoked, whether to give a different direction.

(5) The Bank must—

(a) if no representations are made within that specified period, give the relevant person written notice that the direction is confirmed, and

(b) if representations are made, give the relevant person written notice of its decision under subsection (4).

(6) If the relevant person is aggrieved by the confirmation of the direction, that person may refer the matter to the Upper Tribunal.

(7) A notice under subsection (5)(a) or (b) confirming the direction must—

(a) inform the relevant person of the right to refer the matter to the Upper Tribunal, and

(b) indicate the procedure on such a reference.

(8) A notice given under subsection (5)(b) of a decision by the Bank to give a different direction must comply with subsection (1).

(9) The Bank must prepare one or more statements of its policy with respect to the giving of directions under section 3A.

(10) No power conferred by section 3A may be exercised before the statement of policy in relation to the exercise of that power has been published."

Creation of Chapter 3 of Part 1

7. Sections 4 to 83 become Chapter 3 of Part 1, entitled "Special resolution action".

Special resolution objectives

8.—(1) Section 4 (special resolution objectives)(**a**) is amended as follows.

(**a**) 2009 c.1, section 4 was amended by paragraph 5 of Schedule 17 to the Financial Services Act 2012 (c.21), section 96(3) of the Financial Services Act 2012 (c.21).

(2) For subsections (4) to (9) substitute—

"(3A) Objective 1 is to ensure the continuity of banking services in the United Kingdom and of critical functions.

(4) Objective 2 is to protect and enhance the stability of the financial system of the United Kingdom, including in particular by—

(a) preventing contagion (including contagion to market infrastructures such as investment exchanges, clearing houses and central counterparties authorised in accordance with Article 14, or recognised in accordance with Article 25, of Regulation (EU) 648/2012 of the European Parliament and the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories)(**a**), and

(b) maintaining market discipline.

(5) Objective 3 is to protect and enhance public confidence in the stability of the financial system of the United Kingdom.

(6) Objective 4 is to protect public funds, including by minimising reliance on extraordinary public financial support.

(7) Objective 5 is to protect—

(a) investors to the extent that they have investments covered by an investor compensation scheme under Directive 97/9/EC of the European Parliament and of the Council(**b**), and

(b) depositors to the extent that they have deposits covered by the Financial Services Compensation Scheme or a deposit guarantee scheme under Directive 94/19/EC(**c**) or Directive 2014/49/EU(**d**) of the European Parliament and of the Council.

(8) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.

(9) Objective 7 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998(**e**)).".

Code of practice

9.—(1) Section 5 (code of practice)(**f**) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Treasury shall issue a code of practice about—

(a) the discharge of the duty imposed by section 6B (mandatory write-down, conversion etc of capital instruments), and

(b) the use of—

(i) the stabilisation powers,

(ii) the bank insolvency procedure, and

(iii) the bank administration procedure."

(3) In subsection (2), in paragraph (f), for "test for the use of the stabilisation powers in section 8 is" substitute "tests for the use of the stabilisation powers in sections 8 and 8ZA are".

(4) In subsection (3)—

(a) after "12" insert ", 12ZA", and

(b) after "bridge banks" insert ", asset management vehicles".

(**a**) OJ L 201, 27.7.2012, p.1.
(**b**) OJ No L 84, 26.03.1997, p.22.
(**c**) OJ No L 135, 31.5.1994, p.5.
(**d**) OJ No L 173, 12.6.2014, p.149.
(**e**) 1998 c. 42.
(**f**) 2009 c.1. Section 5 was amended by paragraph 6 of Schedule 17 to the Financial Services Act 2012 (c.21).

Mandatory write-down, conversion, etc of capital instruments

10. After section 6(**a**) insert—

"Mandatory write-down, conversion etc of capital instruments

Cases where mandatory write-down, conversion, etc applies

6A.—(1) Section 6B applies in relation to a bank in the cases set out in subsections (2) to (6).

(2) Case 1 is where—

(a) the conditions imposed by sections 7 to 9 on the exercise of a stabilisation power in respect of the bank are met,

(b) the Bank of England or the Treasury (as the case may be) has decided to exercise the power, and

(c) section 12AA (mandatory write-down etc in bail-in cases) does not apply.

(3) Case 2 is where—

(a) the PRA is satisfied that Condition 1 in section 7 is met in respect of the bank, and

(b) the Bank of England is satisfied that—

(i) (ignoring section 6B) Condition 2 in section 7 is met, and

(ii) that Condition will continue to be met unless the action required by section 6B is taken in respect of the bank.

(4) Case 3 is where—

(a) the bank is viable,

(b) it is a subsidiary,

(c) relevant capital instruments issued by it are recognised for the purpose of meeting own funds requirements on an individual basis and on a consolidated basis, and

(d) the appropriate authority of the EEA state in which the consolidating supervisor is situated and the Bank of England make a joint determination in accordance with Article 59.3(c) of the recovery and resolution directive that the group of which the bank is a member will not be viable unless the action required by section 6B is taken in relation to those instruments.

(5) Case 4 is where—

(a) the bank is a parent undertaking,

(b) relevant capital instruments issued by the bank are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and

(c) the Bank of England makes a determination that the group will not be viable unless the action required by section 6B is taken in relation to those instruments.

(6) Case 5 is where—

(a) extraordinary public financial support is required by the bank other than in circumstances where subsection (5E)(**b**) of section 7 applies by virtue of paragraph (c) of that subsection, and

(b) the Bank of England is satisfied, on the basis of the valuation carried out in accordance with section 6E(**c**), that, in order for the bank to fulfil its own funds requirements, relevant capital instruments of the bank need to be written down or converted into Common Equity Tier 1 instruments (or both).

(**a**) Section 6 was amended by paragraph 7(2) and paragraph 7(3) of Schedule 17 to the Financial Services Act 2012 (c.21).
(**b**) Substituted, with subsections (1) to (5H), by article 12 of this Order.
(**c**) Inserted by article 11 of this Order.

(7) For the purposes of Case 3, the bank is viable unless—

(a) the PRA is satisfied that the bank is failing or likely to fail (within the meaning of section 7(5C)), and

(b) having regard to timing and other relevant circumstances, the Bank of England is satisfied that it is not reasonably likely that (ignoring section 6B and the stabilisation powers) action will be taken by or in respect of the bank that will result in the bank no longer being a bank which is failing or likely to fail.

(8) For the purposes of Cases 3 and 4 a group is not viable if (and only if)—

(a) the consolidating supervisor is satisfied that a requirement under the capital requirements regulation that applies, on a consolidated basis, to a bank which is a member of the group is infringed (or will in the near future be infringed) in a way that justifies action by the consolidating supervisor, and

(b) having regard to timing and other relevant circumstances (but ignoring section 6B and the stabilisation powers), it is not reasonably likely that action will be taken by or in respect of the bank that will prevent the requirement being infringed.

(9) In this section—

"appropriate authority" means the authority authorised, under the law of the EEA state mentioned in paragraph (d) of subsection (4), to enter into the joint determination mentioned in that paragraph,

"consolidated basis" has the meaning given by Article 2.1(7) of the recovery and resolution directive,

"consolidating supervisor" means a consolidating supervisor as defined in Article 4.1(41) of the capital requirements regulation,

"group" has the meaning given in section 3(2)(b),

"parent undertaking" has the meaning given by Article 4.1(15)(a) of the capital requirements regulation, and

"subsidiary" has the meaning given by Article 4.1(16) of the capital requirements regulation.

Mandatory write-down, conversion, etc of capital instruments

6B.—(1) In a case where this section applies, the Bank of England must without delay make—

(a) an instrument in relation to the bank containing the mandatory reduction provision, or

(b) two or more instruments which (taken together) contain that provision.

An instrument made under this subsection is a "mandatory reduction instrument".

(2) "The mandatory reduction provision" is provision which produces the following results—

(a) existing Common Equity Tier 1 instruments of the bank are cancelled, transferred or diluted in accordance with the principle that losses should be borne first by the holders of such instruments,

(b) the principal amount of Additional Tier 1 instruments of the bank is reduced or such instruments are converted (directly or indirectly) into Common Equity Tier 1 instruments (or both)—

(i) to the extent required to achieve the special resolution objectives set out in section 4, or

(ii) to the extent of the capacity of the relevant capital instruments,

whichever is lower; and

(c) the principal amount of Tier 2 instruments is reduced or Tier 2 instruments are converted (directly or indirectly) into Common Equity Tier 1 instruments (or both)—

(i) to the extent required to achieve the special resolution objectives set out in section 4 (so far as not achieved under paragraph (b)), or

(ii) to the extent of the capacity of the relevant capital instruments,

whichever is lower.

(3) For the purposes of subsection (2), a mandatory reduction instrument may contain—

(a) provision cancelling existing Common Equity Tier 1 instruments of the bank,

(b) provision transferring (directly or indirectly), to holders of Additional Tier 1 instruments or Tier 2 instruments of the bank, Common Equity Tier 1 instruments of the bank,

(c) provision converting relevant capital instruments of the bank (directly or indirectly) into Common Equity Tier 1 instruments of the bank or a parent undertaking of the bank,

(d) provision cancelling a liability owed by the bank,

(e) provision modifying, or changing the form of, a liability owed by the bank,

(f) provision that a contract under which the bank has a liability is to have effect as if a specified right had been exercised under it.

(4) The following rules apply to the interpretation of subsection (3)—

A. The reference to cancelling a liability owed by the bank includes a reference to cancelling a contract under which the bank has a liability.

B. The reference to modifying a liability owed by the bank includes a reference to modifying the terms (or the effect of the terms) of a contract under which the bank has a liability.

C. The reference to changing the form of a liability owed by the bank includes, for example—

(i) converting an instrument under which the bank owed a liability from one form or class to another,

(ii) replacing such an instrument with another instrument of a different form or class, or

(iii) creating a new security (of any form or class) in connection with the modification of such an instrument.

(5) Provision made by virtue of subsection (3) may include—

(a) provision for securities issued by a specified bank to be transferred to a resolution administrator (see section 62B(**a**)) or another person;

(b) where a previous mandatory reduction instrument ("the original instrument) has contained provision under paragraph (a), provision for the transfer of—

(i) securities which were transferred by the original instrument, or

(ii) securities which were issued by the bank after the original instrument was made.

(6) Provision made in accordance with subsection (5) may relate to—

(a) specified securities, or

(b) securities of a specified description.

(7) Where the Bank of England has exercised the power in subsection (5)(a) to transfer securities to a resolution administrator, the Bank must exercise its functions under this Part

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(**a**) Inserted by article 70 of this Order.

with a view to ensuring that any securities held by that person in the capacity of resolution administrator are so held only for so long as is, in the Bank of England's opinion, appropriate having regard to the special resolution objectives.

(8) Where Case 1 in section 6A applies, the Bank must comply with subsection (1) before or at the same time as exercising the stabilisation power.

(9) Where Case 3 in section 6A applies, the principal amount of a relevant capital instrument issued by the bank must not be reduced under this section to a greater extent, or converted on worse terms, than equally ranked capital instruments at the level of any parent undertaking of the bank which are reduced, or converted, pursuant to Article 59 of the recovery and resolution directive or in the course of applying the bail-in tool provided for by that directive.

(10) In this section "parent undertaking" has the meaning given by Article 4.1(15)(a) of the capital requirements regulation.

Mandatory reduction instruments: implementation of requirements of section 6B

6C.—(1) Where the principal amount of a relevant capital instrument is reduced under section 6B—

(a) the reduction must be permanent, subject to any provision made by virtue of section 48Y(1)(a)(**a**);

(b) no liability to the holder of the relevant capital instrument remains under, or in connection with, so much of the amount of the instrument as constitutes the reduction, except for—

(i) any liability already accrued in a case where the principal amount of the instrument is not reduced or converted (or both) to the full extent of its capacity, and

(ii) any liability for damages that may arise as a result of any challenge to the legality of the exercise of the power of reduction;

(c) no compensation is to be paid to any holder of the relevant capital instrument other than in accordance with subsection (4).

(2) Nothing in subsection (1)(b) prevents the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with subsection (4).

(3) In order to effect a conversion of relevant capital instruments under section 6B, the Bank of England may require the bank, or a UK parent undertaking, to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments.

(4) The relevant capital instruments may only be so converted if—

(a) the Common Equity Tier 1 instruments are issued by the bank, or by a parent undertaking of the bank with the agreement of the resolution authority in respect of that parent undertaking,

(b) the Common Equity Tier 1 instruments are issued prior to the issue of any shares by the bank, or by a parent undertaking of the bank, for the purposes of provision of own funds by the State or a government entity,

(c) the Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power, and

(d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with—

(i) the principles set out in Article 50 of the recovery and resolution directive, and

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(**a**) Section 48Y is inserted by article 61 of this Order.

(ii) any guidelines issued by the European Banking Authority under Article 50(4) of the resolution and recovery directive, other than any guidelines which the Bank of England has notified the Authority it does not intend to comply with.

(5) For the purposes of the provision of Common Equity Tier 1 instruments in accordance with subsections (2), (3) and (4), the Bank of England may require the bank or a UK parent undertaking of the bank to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.

(6) Before making a mandatory reduction instrument, the Bank must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(7) In this section—

"parent undertaking" has the meaning given by Article 4.1(15)(a) of the capital requirements regulation,

"resolution authority" has the meaning given by Article 2.1(18) of the recovery and resolution directive,

"UK parent undertaking" means a parent undertaking that is incorporated in, or formed under the law of, any part of the United Kingdom.

Mandatory reduction instruments: supplementary matters

6D.—(1) The following provisions apply in relation to a mandatory reduction instrument as they apply to a resolution instrument—

(a) section 48L(3) and (5) (powers relating to securities issued by the bank),

(b) section 48O (power to direct directors of the bank),

(c) section 48Q (continuity),

(d) section 48R (execution and registration of instruments etc),

(e) section 48S (general matters), and

(f) section 48T (procedure).

(2) Where the Bank of England makes one or more mandatory reduction instruments in respect of a bank, the Bank must, on request by the Treasury, report to the Chancellor of the Exchequer about—

(a) the exercise of the power to make a mandatory reduction instrument,

(b) the activities of the bank, and

(c) any other matters in relation to the bank that the Treasury may specify.

(3) In relation to the matters in subsection (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.

(4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament."

Valuation

11. After section 6D (inserted by article 10) insert—

"*Valuation before mandatory write-down of capital or stabilisation action*

Pre-resolution valuation

6E.—(1) Before the Bank of England makes a mandatory reduction instrument or exercises any stabilisation power in respect of a bank, it must ensure that the assets and liabilities of the bank are valued.

(2) Unless subsection (3) applies, the Bank of England must arrange for the appointment of an independent valuer in accordance with section 62A(**a**) to carry out a valuation for the purposes of subsection (1).

(3) Where the Bank of England considers that the urgency of the case makes it appropriate to make a mandatory reduction instrument, or exercise a stabilisation power, before a valuation can be carried out by a person appointed in accordance with subsection (2), the Bank may carry out a provisional valuation of the assets and liabilities of the bank for the purposes of subsection (1).

(4) The purpose of a valuation carried out pursuant to subsection (1) is to—

(a) inform the decision as to—

(i) whether the conditions for the making of a mandatory reduction instrument or the exercise of a stabilisation power is satisfied,

(ii) which stabilisation option should be employed,

(iii) the extent to which any shares, capital instruments or eligible liabilities should be cancelled, diluted, transferred, written down or converted through the use of a mandatory reduction instrument or a resolution instrument,

(iv) what assets, liabilities or securities (if any) are to be transferred by a property transfer instrument or a share transfer instrument, and

(v) the value of any consideration to be paid to the bank or the owners of the securities for any assets, liabilities or securities so transferred, and

(b) ensure that the full extent of any losses on the assets of that bank is appreciated at the time the Bank of England makes a mandatory reduction instrument or exercises a stabilisation power.

(5) In carrying out a valuation required under subsection (1), the person carrying out the valuation must—

(a) make prudent assumptions as to possible rates of default and the severity of losses suffered by the bank,

(b) disregard potential financial assistance which may be provided by the Bank of England or the Treasury after the Bank has made any mandatory reduction instrument or exercised any stabilisation power (except for ordinary market assistance offered by the Bank on its usual terms),

(c) take account of the fact that—

(i) the Bank of England and the Treasury may recover expenses incurred in connection with the exercise of a stabilisation power under section 58(2)(b),

(ii) the Bank of England and the Treasury may charge interest or fees in respect of any loans or guarantees provided to the bank after the Bank has made any mandatory reduction instrument or exercised any stabilisation power in respect of it.

(6) The valuation carried out under this section must follow the methodology specified in regulatory technical standards adopted by the European Commission under article 36.16 of the recovery and resolution directive.

(7) A valuation under subsection (1) must be accompanied by—

(a) a balance sheet of the bank as at the date of the valuation,

(b) a report on the financial position of the bank,

(c) an analysis and an estimate of the accounting value of the assets of the bank,

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(**a**) Inserted by article 69 of this Order.

(d) a list of the outstanding liabilities of the bank (including any off-balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would receive in insolvency proceedings, and

(e) an estimate of the amount that each class of creditors and shareholders might be expected to receive if the bank went into insolvent liquidation.

(8) Where appropriate, the information in subsection (7)(c) may be supplemented by an analysis and estimate of the value of the assets and liabilities of the bank on a market value basis in order to inform the decision referred to in paragraph (a)(iv) or (v) of subsection (4).

(9) Where a provisional valuation is carried out under subsection (3), the Bank need only comply with subsection (7) as far as it is reasonable to do so in the circumstances.

(10) A provisional valuation carried out under subsection (1) must make provision in respect of additional losses by the bank in accordance with regulatory technical standards adopted by the European Commission under Article 36.16 of the recovery and resolution directive."

Exercise of stabilisation powers: general conditions

12. In section 7 (general conditions for exercise of stabilisation powers)(**a**), for subsections (1) to (5) substitute—

"(1) A stabilisation power may be exercised in respect of a bank only if—

(a) the PRA is satisfied that Condition 1 is met, and

(b) the Bank of England is satisfied that Conditions 2, 3 and 4 are met.

(2) Condition 1 is that the bank is failing or likely to fail.

(3) Condition 2 is that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will result in Condition 1 ceasing to be met.

(4) Condition 3 is that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.

(5) Condition 4 is that one or more of the special resolution objectives would not be met to the same extent by the winding up of the bank (whether under Part 2 or otherwise).

(5A) The PRA must treat Condition 1 as met if satisfied that it would be met but for financial assistance provided by—

(a) the Treasury, or

(b) the Bank of England,

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

(5B) The Bank of England must treat Condition 2 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (5A).

(5C) For the purposes of Condition 1, a bank is failing or likely to fail if—

(a) it is failing, or is likely to fail, to satisfy the threshold conditions in circumstances where that failure would justify the variation or cancellation by the PRA under section 55J of the Financial Services and Markets Act 2000(**b**) of the bank's permission under Part 4A of that Act to carry on one or more regulated activities,

(b) the value of the assets of the bank determined in accordance with the valuation carried out for the purposes of section 6E(1) is less than the amount of its liabilities as so determined,

(c) the bank is unable to pay its debts or other liabilities as they fall due,

(d) one or more of paragraphs (a) to (c) will, in the near future, apply to the bank, or

(**a**) 2009 c.1. Section 7 was amended by paragraph 8 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**b**) 2000 c.8. Sections 55A to 55Z4 were inserted by section 11 of the Financial Services Act 2012 (c.8).

(e) extraordinary public financial support is required in respect of the bank and subsection (5E) does not apply to that support.

(5D) "The threshold conditions" means the threshold conditions, as defined by subsection (1) of section 55B of the Financial Services and Markets Act 2000, for which the PRA is treated as responsible under subsection (2) of that section.

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

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

(b) a State guarantee of newly issued liabilities,

(c) an injection of own funds, or purchase of capital instruments, at prices and on terms that do not confer an advantage upon the bank, where none of the circumstances referred to in subsection (5C)(a), (b), (c) or (d) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.

(5F) Before determining that Condition 1 is met, the PRA must consult the Bank of England.

(5G) Before determining whether or not Condition 2 is met, the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(5H) Before determining that Conditions 3 and 4 are met, the Bank must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury."

Effect on other group members, financial stability in EU etc

13. After section 7 insert—

"**Effect on other group members, financial stability in EU etc**

7A.—(1) Where the Bank of England is considering the imposition of a requirement under section 3A(2), (4)(b)(ii), (5) or (6), the Bank must consult the PRA and the FCA, and have regard to the potential impact of the requirement on—

(a) the institution in question,

(b) the market for financial services within the EEA, and

(c) the financial stability of the European Union or of the EEA states.

(2) Where the Bank of England is considering the exercise of a stabilisation power in respect of a bank which is a member of a group, the Bank must have regard to—

(a) the need to minimise the effect of the exercise of the power on other undertakings in the same group,

(b) the need to minimise any adverse effects on the financial stability of the European Union or of the EEA states (particularly those EEA states in which any member of that group is operating), and

(c) the potential effect of the exercise of the power on the financial stability of third countries (particularly those third countries in which any member of that group is operating).

(3) In this section "group" has the meaning given by section 474 of the Companies Act 2006(**a**)."

Specific conditions in section 8

14. For section 8 (specific conditions: private sector purchaser and bridge bank) substitute—

"**Specific Condition: private sector purchaser, bridge bank or asset management vehicle**

8.—(1) In a financial assistance case, the Bank may exercise a stabilisation power in respect of the bank concerned in accordance with section 11(2), 12(2) or 12ZA(3) only with the approval of the Treasury.

(2) "Financial assistance case" means a case where the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.

(3) The condition in this section is in addition to the conditions in sections 7 and 8ZA."

Specific conditions: asset management vehicle

15. After section 8(**b**) insert—

"**Specific conditions: asset management vehicle**

8ZA.—(1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 12ZA(3) only if satisfied that Conditions A and B are met.

(2) Condition A is that the power is exercised in connection with the exercise of one or more stabilisation powers in respect of the bank, or a company which is a banking group company in relation to the bank, otherwise than for the purposes of the third stabilisation option.

(3) Condition B is that the Bank of England is satisfied that—

(a) the situation of the market for the assets which it is proposed to transfer by the exercise of the stabilisation power is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets,

(b) the transfer is necessary to ensure the proper functioning of the bank or bridge bank from which the transfer is to be made, or

(c) the transfer is necessary to maximise the proceeds available for distribution.

(4) Before determining whether Conditions A and B are met, and if so how to react, the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(5) "Normal insolvency proceedings" has the meaning given in Article 2.1(47) of the recovery and resolution directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure).

(6) The conditions in this section are in addition to the conditions in sections 7 and 8.".

(**a**) 2006 c.46. There have been amendments to section 474 but none are relevant to this Order.

(**b**) 2009 c.1, section 8 was amended by paragraph 9 of Schedule 17 to the Financial Services Act 2012 (c.21) and section 96 of the Financial Services Act 2012 (c.21).

Specific conditions: bail-in

16. Omit section 8A (specific conditions: bail-in)(**a**).

Specific conditions: temporary public ownership

17. In section 9 (specific conditions: temporary public ownership)(**b**), in subsection (3), after "Kingdom" insert "or the Bank of England has provided extraordinary public financial support in respect of the bank".

Bridge bank

18.—(1) Section 12 (bridge bank) is amended as follows.

(2) In subsection (1) for "is wholly owned by the Bank of England" substitute "meets the requirements of subsection (1A)".

(3) For subsection (2) substitute—

"(1A) Those requirements are that the company—

(a) is wholly or partially owned by the Bank of England,

(b) is controlled by the Bank, and

(c) is created for the purposes of receiving a transfer by virtue of this section with a view to maintaining access to critical functions and (in due course) selling the bank or its business.

(2) For the purpose of subsection (1) the Bank of England may make—

(a) one or more share transfer instruments;

(b) one or more property transfer instruments."

(4) After subsection (3) insert—

"(3A) Where—

(a) all or substantially all of the bridge bank's assets, rights and liabilities have been transferred to a third party, or

(b) following a transfer to the bridge bank under this section, no further transfer to the bridge bank is made under this section during the relevant post-transfer period,

the Bank of England must, without delay, take all necessary steps to wind up the bridge bank.

(3B) But subsection (3A)(b) does not apply if the bridge bank—

(a) has merged with another entity,

(b) has ceased to meet the requirements of subsection (1A)(a) or (b), or

(c) has already been wound up.

(3C) "The relevant post-transfer period" means the period of two years beginning with the day of the transfer mentioned in subsection (3A)(a), subject to any extension under subsection (3D).

(3D) The Bank of England may extend (or further extend) the relevant post-transfer period by one year if it is satisfied that the extension—

(a) would support one or more of the outcomes mentioned in subsection (3A)(a) or (3B)(a), (b) or (c), or

(b) is necessary to ensure the continuity of essential banking or financial services."

(**a**) Section 8A was inserted by the Financial Services (Banking Reform) Act 2013 (c.33), Schedule 2, paragraphs 1 and 3.
(**b**) Section 9 was amended by paragraph 10 of Schedule 17 to the Financial Services Act 2012 (c.21).

(5) In subsection (4), for "is wholly owned by the Bank of England" substitute "meets the requirements of subsection (1A)".

(6) For subsection (5)(a)(i) substitute—

"(i) subsections (3) to (3B),

(ia) section 8ZA(3)(b),

(ib) section 12ZA(1)(b) and (2)(c),".

Asset management vehicle

19. After section 12 insert—

"**Asset management vehicle**

12ZA.—(1) The third stabilisation option is to transfer all or part of the business of—

(a) the bank, or

(b) a bridge bank to which shares or property, rights or liabilities of the bank have been transferred under section 12,

to an asset management vehicle.

(2) An "asset management vehicle" is an undertaking which—

(a) is wholly or partially owned (directly or indirectly) by the Bank of England or the Treasury,

(b) is controlled by the Bank of England, and

(c) is created for the purpose of receiving some or all of the assets, rights and liabilities of one or more banks or of one or more bridge banks (or both).

(3) For the purpose of subsection (1) the Bank of England may make one or more property transfer instruments.

(4) An asset management vehicle must manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind down.

(5) The code of practice under section 5 must include provision about the management and control of asset management vehicles including, in particular, provision about—

(a) setting objectives,

(b) the content of the articles of association,

(c) the content of reports under section 80(1),

(d) different arrangements for management and control at different stages, and

(e) eventual disposal.

(6) Where property, rights or liabilities are transferred to an asset management vehicle pursuant to the third stabilisation option, the Bank of England may make one or more supplemental property transfer instruments transferring any of that property, or those rights or liabilities, to one or more other asset management vehicles.".

Bail-in option

20.—(1) Section 12A (bail-in option)(**a**) is amended as follows.

(2) In subsection (1) for "third" substitute "fourth".

(3) For subsection (2) substitute—

"(2) The Bank of England may make one or more resolution instruments.

(**a**) 2009 c.1, section 12A was inserted by paragraph 2 of Schedule 17 to the Financial Services (Banking Reform) Act 2013 (c.33).

(2A) A resolution instrument may contain provision or proposals of any kind mentioned in subsections (3) to (6).

(2B) The power in subsection (2) must be exercised in accordance with section 12AA(**a**).

(2C) When the Bank of England exercise that power, at least one resolution instrument must include provision under section 48H(1) (business reorganisation plan)(**b**).".

(4) In subsection (4)(a) for "bail-in administrator (see section 12B)" substitute "resolution administrator (see section 62B)(**c**)".

(5) In subsection (8), for "bail-in administrator" in both places substitute "resolution administrator".

Conditions to be met when exercising bail-in option

21. After section 12A insert—

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

12AA.—(1) When the Bank of England exercises the fourth stabilisation option, it must use the powers conferred by sections 12A, 48B to 48W and 48Z(**d**) and this section in a way which ensures that—

(a) existing Common Equity Tier 1 instruments of the bank are cancelled, transferred or diluted in accordance with the principle that losses should be borne first by the holders of such instruments,

(b) the principal amount of Additional Tier 1 instruments is reduced or converted (directly or indirectly) into Common Equity Tier 1 instruments (or both), to the extent of the capacity of the Additional Tier 1 instruments,

(c) the principal amount of Tier 2 instruments is reduced or converted (directly or indirectly) into Common Equity Tier 1 instruments (or both), to the extent of the capacity of the Tier 2 instruments,

(d) where the total of any reduction or conversion pursuant to paragraphs (b) and (c) is less than the shortfall amount, the principal amount of subordinated debt that is not within either of those paragraphs is—

(i) reduced or converted (directly or indirectly) into shares or other securities, or both reduced and so converted, in accordance with the hierarchy of claims in normal insolvency proceedings, by the difference or to the extent of the capacity of those instruments, whichever is lower, and

(ii) losses are born by the holders of shares of the bank that are not within paragraph (a), (b) or (c) in accordance with the hierarchy of claims in normal insolvency proceedings,

(e) where the total of any reduction or conversion pursuant to paragraphs (b), (c) and (d), and any reduction or conversion pursuant to subsection (6), is less than the shortfall amount, the principal amount of, or outstanding amount payable in respect of, the remaining eligible liabilities is reduced or converted (directly or indirectly) into shares or other securities, or both reduced and so converted, in accordance with the hierarchy of claims in normal insolvency proceedings, by the difference or to the extent of their capacity, whichever is lower.

(2) In this section—

(**a**) Section 12AA is inserted by article 21 of this Order.
(**b**) Section 48H in inserted by Schedule 2 to the Financial Services (Banking Reform) Act 2013, paragraphs 1 and 4.
(**c**) Section 62A is inserted by article 69 of this Order.
(**d**) Section 48Z is inserted by article 62 of this Order.

"normal insolvency proceedings" has the meaning given by Article 2.1(47) of the resolution and recovery directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure),

"the shortfall amount" means the sum of the amounts referred to in Article 47.3(b) and (c) of the resolution and recovery directive.

(3) Subsections (1) to (4) of section 6C apply for the purpose of this section as if references in those subsections to section 6B were references to subsection (1)(a) to (c) of this section.

(4) When complying with subsection (1)(d) and (e), the Bank of England must allocate the losses represented by the shortfall amount equally between eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those eligible liabilities to the same extent in proportion to their value, except where a different allocation of losses amongst liabilities of the same rank is allowed by virtue of section 48B(10) and (11)(**a**).

(5) Subsection (4) does not prevent excluded liabilities (as defined by section 48B(7A)(**b**)) from receiving more favourable treatment than eligible liabilities which are of the same rank in normal insolvency proceedings.

(6) The Bank may take the action required by subsection (1)(e) only if it converts or reduces the principal amount of any instruments referred to in subsection (1)(d) which contain—

(a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the bank, or

(b) terms that provide for the conversion of the instruments to shares on the occurrence of any such event,

in accordance with those terms.

(7) Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of the kind referred to in subsection (6)(a) before the application of the bail-in option, the Bank must take the action required by subsection (1) in relation to the residual amount of that principal.

(8) When taking the action required by subsection (1), the Bank must not convert or reduce one class of liabilities while a class of liabilities that is subordinated to that class remains substantially unconverted or the principal amount of those liabilities is not reduced to nil.

(9) For the purpose of subsection (8), excluded liabilities within the meaning of section 48B(7A) are to be ignored.

(10) For the purposes of this section "existing" Common Equity Tier 1 instruments includes Common Equity Tier 1 instruments issued or conferred in the following circumstances—

(a) pursuant to conversion of debt instruments to Common Equity Tier 1 instruments in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded, or occurred at the same time as, the assessment by the Bank of England that the bank met the conditions in section 7;

(b) pursuant to any previous conversion of relevant capital instruments to Common Equity Tier 1 instruments in accordance with section 6B.".

(**a**) Section 48B was inserted by Schedule 2 to the Financial Services (Banking Reform) Act 2013, paragraphs 1 and 4.
(**b**) Subsection (7A) is inserted into section 48B by article 48 of this Order.

Bail-in administrators

22. Omit section 12B (bail-in administrators)(**a**).

Temporary public ownership

23. In section 13 (temporary public ownership), in subsection (1)(**b**), for "fourth" substitute "fifth".

Effect of a transfer

24.—(1) Section 17 (effect of a share transfer instrument or order)(**c**) is amended as follows.

(2) In subsection (1), after "order" insert ", by a mandatory reduction instrument".

(3) In subsection (5), after "order" insert ", a mandatory reduction instrument".

(4) In subsection (6), after "order" insert ", a mandatory reduction instrument".

Continuity

25. In section 18 (continuity following transfer of shares etc)(**d**), after subsection (5) insert—

"(5A) This section applies to a mandatory reduction instrument as it applies to a share transfer instrument; and in relation to a mandatory reduction instrument references in this section to a "transfer" are to a transfer of securities (whether made by that or another mandatory reduction instrument) and "transferor" and "transferee" are to be read accordingly.".

Share transfer instruments and orders: delisting

26.—(1) Section 19 (conversion and delisting) is amended as follows.

(2) In subsection (2), at the end insert "or suspended".

(3) After that subsection insert—

"(3) Where the listing of securities is suspended in accordance with a share transfer instrument or order, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000(**e**) as still being listed.".

Share transfer instruments: directors and senior managers

27.—(1) Section 20 (directors)(**f**) is amended as follows.

(2) In subsections (1), (1A) and (2), after "a director", in each place it occurs, insert "or senior manager".

(3) After subsection (4) insert—

"(5) In this section "senior manager" means a person who—

(a) exercises executive functions within a specified bank or banking group company, and

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(**a**) 2009 c.1. Section 12B was inserted by paragraph 2 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) Section 13 was amended by paragraph 13 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**c**) Section 17 was amended by paragraph 14 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**d**) Section 18 was amended by paragraph 15 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**e**) 2000 c.8. Section 96 was amended by section 16 of the Financial Services Act 2012 (c.21); Schedule 1ZA was substituted by section 6(2) of and Schedule 3 to the Financial Services Act 2012 (c.21).
(**f**) Subsection (1A) was inserted into section 20 by section 100 of the Financial Services Act 2012 (c.21).

(b) is responsible, and directly accountable to the directors, for the day to day management of that bank or banking group company.".

(4) Accordingly, in the heading, after "**Directors**" insert "**and senior managers**".

Termination rights: share transfer instruments and orders

28. Omit section 22 (termination rights etc: share transfer instruments and orders).

Procedure: share transfer instruments

29. In section 24 (procedure: share transfer instruments)(**a**), in subsection (2) omit the "and" after paragraph (a) and after paragraph (b) insert

", and

(c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act)(**b**),

and arrange for the publication of a copy on the internet website of the bank in respect of which the instrument was made.".

Procedure: share transfer orders

30. In section 25 (procedure: share transfer orders)(**c**), in subsection (3) omit the "and" after paragraph (a) and after paragraph (b) insert—

", and

(c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),

and arrange for the publication of a copy on the internet website of the bank in respect of which the order was made."

Supplemental share transfer instruments

31.—(1) Section 26 (supplemental instruments)(**d**) is amended as follows.

(2) In subsection (1), after "11(2)" insert "or 12(2)".

(3) In subsection (6), after "11(2)" insert "or 12(2)".

Meaning of "resolution company"

32. After section 29(**e**) insert—

"**Interpretation: "resolution company"**

29A. In this Act "resolution company" means a bridge bank or an asset management vehicle.".

(**a**) Section 24 was amended by paragraph 12 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**b**) Section 313D was inserted into the Financial Services and Markets Act 2000 by SI 2007/126. The definition of "regulatory information service" was inserted by SI 2010/1193.
(**c**) Section 25 was amended by paragraph 13 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**d**) Section 26 was amended by paragraph 14 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**e**) Section 29 was amended by section 97(3)(a), section 97(3)(b), and paragraph 12 of Schedule 17 to the Financial Services Act 2012 (c.21).

Asset management vehicles: share transfers

33.—(1) Section 30 (bridge bank: share transfers)(**a**) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies where the Bank of England has made—

(a) a property transfer instrument in respect of a resolution company in accordance with section 12(2) or 12ZA(3), or

(b) a share transfer instrument in respect of a resolution company in accordance with section 12(2).".

(3) In subsections (2) to (6), for "bridge bank", in each place it occurs, substitute "resolution company".

(4) Accordingly, in the heading for section 30, for "**Bridge bank:**" substitute "**Resolution company:**".

Asset management vehicles: reverse share transfer

34.—(1) Section 31 (bridge bank: reverse share transfer)(**b**) is amended as follows.

(2) For "bridge bank", in each place it occurs, substitute "resolution company".

(3) Accordingly in the heading for that section, for "**Bridge bank:**" substitute "**Resolution company:**".

Property transfer instruments

35. In section 33 (property transfer instruments), after subsection (2) insert—

"(3) In this section references to a bank include a resolution company (whether or not it is a bank).".

Directors

36.—(1) Section 36A (directors)(**c**) is amended as follows.

(2) In subsections (1) and (2), after "a director", in each place it occurs, insert "or senior manager".

(3) After subsection (3) insert—

"(4) In this section "senior manager" means a person who—

(a) exercises executive functions within a specified bank or banking group company, and

(b) is responsible, and directly accountable to the directors, for the day to day management of that bank or banking group company.

(5) In this section references to a bank include a resolution company (whether or not it is a bank).".

(4) Accordingly, in the heading, after "**Directors**" insert "**and senior managers**".

Termination rights: property transfer instruments

37. Omit section 38 (termination rights etc: property transfer instruments).

(**a**) Section 30 was amended by paragraph 18 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**b**) Section 31 was amended by section 97(4)(a), section 97(4)(b), section 97(4)(c), and paragraph 12 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**c**) Section 36A was inserted by section 100 of the Financial Services Act 2012 (c.21).

Foreign Property

38. In section 39 (foreign property)—

(a) after subsection (4) insert—

"(4A) If the Bank of England determines that, in spite of any action taken by the transferee or the transferor, it is not possible for the transfer of certain property to be effective under the law of the jurisdiction where the property is located or (where the property consists of rights or liabilities) the law under which it arises—

(a) subsection (4) ceases to apply, and

(b) the provisions of the property transfer instrument relating to that property are void.

(4B) The Bank must give notice of any determination under subsection (4A) to the transferor and the transferee.", and

(b) for subsection (5) substitute—

"(5) The transferor must meet any expenses of the transferee in complying with this section.".

Property transfer instruments: delisting

39. After section 39A(**a**) insert—

"**Property transfer instrument: delisting**

39B.—(1) A property transfer instrument may provide for the listing of securities, under section 74 of the Financial Services and Markets Act 2000(**b**), to be discontinued or suspended.

(2) Where the listing of securities is suspended in accordance with a property transfer instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000(**c**) as still being listed.".

Property transfer instrument: procedure

40.—(1) Section 41 (procedure)(**d**) is amended as follows.

(2) In subsection (2) omit the "and" after paragraph (a) and after paragraph (b) insert—

", and

(c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D(**e**) of that Act),

and arrange for the publication of a copy on the internet website of the bank in respect of which the instrument was made.".

(3) After subsection (3) insert—

"(4) In this section references to a "bank" include a resolution company even if it is not a bank.".

(**a**) Section 39A was inserted by section 102 of the Financial Services Act 2012 (c.21), amended by SI 2013/504.
(**b**) 2000 c.8. Section 74 was amended by section 16 of the Financial Services Act 2012 (c.21), SI 2005/381.
(**c**) Section 96 was amended by section 16 of the Financial Services Act 2012 (c.21); Schedule 1ZA was inserted in the Financial Services and Markets Act 2000 by Schedule 3 to the Financial Services Act 2012 (c.21).
(**d**) Section 41 was amended by paragraph 20 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**e**) Section 313D was inserted into the Financial Services and Markets Act 2000 by SI 2007/126. The definition of "regulatory information service" was inserted by SI 2010/1193.

Transfer of property subsequent to resolution instrument

41. In section 41A (transfer of property subsequent to resolution instrument)(**a**), in subsection (3) for "Sections 7 and 8A do" substitute "Section 7 does".

Supplementary instruments

42.—(1) Section 42 (supplemental instruments)(**b**) is amended as follows.

(2) In subsection (1), after "12(2)" insert ", 12ZA(3)".

(3) In subsection (4), for "8A" substitute "8ZA".

(4) In subsection (6), after "12(2)" insert ", 12ZA(3)".

Onward transfer

43.—(1) Section 43 (onward transfer)(**c**) is amended as follows.

(2) In subsection (1)—

(a) for "bridge bank" substitute "resolution company", and

(b) after "12(2)" insert "or 12ZA(3)".

(3) In subsection (3), for "bridge bank", in both places, substitute "resolution company".

(4) In subsection (4), for "bridge bank" substitute "resolution company".

(5) In subsection (6), after "8" insert ", 8ZA".

Bridge bank: reverse property transfer

44.—(1) Section 44 (bridge bank: reverse property transfer)(**d**) is amended as follows.

(2) For "bridge bank", in each place it occurs, substitute "resolution company".

(3) In subsection (1), after "12(2)" insert "or 12ZA(3)".

(4) In subsection (5) after "8" insert ", 8ZA".

(5) Accordingly, in the heading of that section, for "**Bridge bank**" substitute "**Resolution company**".

Bail in: reverse property transfer

45. In section 44A (bail in: reverse property transfer)(**e**), in subsection (5) for "sections 7 and 8A do" substitute "section 7 does".

Property transfer instruments: special bail-in provision

46.—(1) Section 44B (property transfer instruments: special bail-in provision)(**f**) is amended as follows.

(2) In subsection (1), for "12(2)" substitute "11(2), 12(2), 12ZA(3)".

(3) In subsection (2), for "12(2)" substitute "11(2), 12(2), 12ZA(3)".

(4) In subsection (3)—

(a) after "12(2)" in both places insert "or 12ZA(3),"

(**a**) Section 41A was inserted by paragraph 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) Section 42 was amended by paragraph 21 of Schedule 17 to the Financial Services Act 2012 (c.21), paragraph 5 of the Financial Services (Banking Reform) Act 2013 (c.33).
(**c**) Section 43 was amended by paragraph 22 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**d**) Section 44 was amended by section 97 and paragraph 23 of Schedule 17 to the Financial Services Act 2012 (c.21), paragraph 16 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**e**) Section 44A was inserted by paragraph 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**f**) Section 44BA was inserted by paragraph 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(b) after "class)" insert "of the bank or", and

(c) after "12(1)" insert "or the asset management vehicle mentioned in section 12ZA(1) (as the case may be)".

(5) In subsection (4)—

(a) for "12(1)" substitute "12(1A) and 12ZA(2)", and

(b) for "continues to hold" substitute "is entitled to exercise, or control the exercise of, voting rights in respect of".

Restriction of partial transfers

47. In section 47 (restriction of partial transfers)(**a**), after subsection (1) insert—

"(1A) In subsection (1) the reference to a "bank" includes a resolution company (even if it is not a bank).".

Liabilities excluded from scope of special bail-in provision

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

(2) After subsection (7) insert—

"(7A) Liabilities of the bank are "excluded liabilities" if they are—

(a) liabilities listed in subsection (8), or

(b) liabilities which the Bank of England has excluded under subsection (10) from the application of special bail-in provision.".

(3) In subsection (5), in rule 3, omit the "or" at the end of paragraph (b) and after paragraph (c) insert—

", or

(d) converting those liabilities into securities issued by a bridge bank or a UK parent undertaking (within the meaning of section 6C(7)).".

(4) In subsection (8)—

(a) for "are "excluded liabilities"" substitute "are the excluded liabilities referred to in subsection (7A)(a)",

(b) in paragraph (e), after "liabilities" insert "with a remaining maturity of less than 7 days",

(c) omit paragraph (f) (liabilities owed to central counterparties recognised by the European Securities and Markets Authority),

(d) in paragraph (g) (liabilities to employees), for "variable remuneration;" substitute—

"—

(i) variable remuneration that is not regulated by a collective bargaining agreement, and

(ii) variable remuneration of material risk takers as referred to in Article 92(2) of Directive 2013/36/EU of the European Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms(**c**);".

(e) for paragraph (h) (liabilities in respect of rights under a pension scheme) substitute—

"(h) liabilities owed to a pension scheme, except for liabilities owed in connection with variable remuneration of the kind mentioned in paragraph (g)(i) or (ii),",

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(**a**) Section 47 was amended by section 96 of the Financial Services Act 2012 (c.21).

(**b**) Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(**c**) OJ No L 176, 27.6.2013, p.338.

and

(f) after paragraph (i) insert—

"(j) liabilities owed by the bank to the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000) in relation to levies imposed by the scheme manager for the purpose of meeting expenses in relation to payments required to be made by Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes(**a**)."

(5) In subsection (9)(a) for "mentioned in subsection (8)(d) is not an excluded liability" substitute "is not within subsection (8)(d)".

(6) After that subsection insert—

"(10) The Bank of England may, in a resolution instrument, exclude any eligible liability or class of eligible liabilities from the application of any special bail-in provision in relation to the bank if, and only if, the Bank of England—

(a) thinks the exclusion is justified on one or more of the grounds set out in subsection (12), and

(b) notifies the European Commission of its intention to exclude the liabilities before making the instrument that gives effect to the exclusion.

(11) The power conferred by subsection (10) may be exercised to exclude only part of an eligible liability, or part of each of the eligible liabilities of a particular class; and where it is so exercised that part is treated as an eligible liability excluded under that subsection and the remainder is treated as an eligible liability which has not been so excluded.

(12) The grounds are—

(a) that it is not reasonably possible to give effect to special bail-in provision in relation to the liability or class within a reasonable time;

(b) that the exclusion is necessary and proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the bank to continue key operations, services and transactions;

(c) that the exclusion is necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards protected deposits held by natural persons or micro-enterprises, small enterprises or medium-sized enterprises, which would severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause a serious disturbance to the economy of an EEA state;

(d) that the making of special bail-in provision in relation to the liability would cause a reduction in value such that the losses borne by other creditors would be higher than if the liability were excluded.

(13) When deciding whether to exclude liabilities under subsection (10) or (11), the Bank of England must give due consideration to—

(a) the principle that all the liabilities of the bank ought to be treated in accordance with the priority they would enjoy on a liquidation,

(b) the principle that any creditors who would have equal priority on a liquidation ought to bear losses on an equal footing with each other,

(c) the level of loss absorbing capacity that would remain in the bank if the liability or liabilities of a class were wholly or partly excluded, and

(d) the need to maintain adequate resources to deal with the implications for public funds of anything done, in future, in connection with the exercise of one or more of the stabilisation powers.

(**a**) OJ L 173, 12.6.2014, p.149.

(14) For the purposes of subsection (12)—

"protected deposit" has the meaning given by section 48C, and

"micro-enterprise", "small-enterprise" and "medium-sized enterprise" have the meaning given by Article 2.1(107) of the recovery and resolution directive.".

Meaning of "protected deposit"

49.—(1) Section 48C (meaning of "protected deposit")(**a**) is amended as follows.

(2) For subsections (1) to (3) substitute—

"(1) A deposit is "protected" so far as it is covered by a deposit guarantee scheme under Directive 94/19/EC of the European Parliament and of the Council of 30th May 1994 on deposit guarantee schemes(**b**) or Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes(**c**).".

(3) In subsection (4) for "subsections (1) and (2)" substitute "subsection (1)".

General interpretation of section 48B

50. In section 48D (general interpretation of section 48B), omit subsection (3).

Business reorganisation plans

51. In section 48H (business reorganisation plans), in subsection (1) for "bail-in administrator" substitute "resolution administrator".

Functions of bail-in administrators

52. Omit sections 48I to 48K (which make provision about bail-in administrators).

Powers in relation to securities

53.—(1) Section 48L (powers in relation to securities) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (b), at the end insert "or suspended", and

(b) after that paragraph insert—

"(c) provide for the listing or admission to trading on a regulated market of securities in class 1 (and related class 3 securities) created in accordance with that or any other resolution instrument;

(d) provide for the listing or admission to trading on a regulated market of existing securities in class 2 modified by that or any other resolution instrument (and, in that connection, for the disapplication of section 85(1) and (2) of the Financial Services and Markets Act 2000 (prohibition on listing etc of transferable securities without approved prospectus).".

(3) After subsection (4) insert—

"(4A) In subsection (2) any reference to a class of securities is to be construed in accordance with section 14.".

(4) In subsection (5)(b) for "bail-in administrator" substitute "resolution administrator".

(5) For subsection (6) substitute—

(**a**) Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) OJ L135, 31.5.1995, p5.
(**c**) OJ L173, 12.6.2014, p149.

"(6) In subsection (3)—

(a) the reference to "listing" is to listing under section 74 of the Financial Services and Markets Act 2000, and

(b) "regulated market" has the meaning given in section 103(1) of the Financial Services and Markets Act 2000."

(6) After subsection (6) insert—

"(6A) Where the listing of securities is suspended in accordance with a resolution instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000 as still being listed.".

Termination rights, etc: resolution instruments

54. Omit section 48M (termination rights etc: resolution instruments)(**a**).

Resolution instruments: directors and senior managers

55.—(1) Section 48N (directors) is amended as follows.

(2) In subsections (1) and (2), after "a director", in each place it occurs, insert "or senior manager".

(3) After subsection (3) insert—

"(4) In this section "senior manager" means a person who—

(a) exercises executive functions within a specified bank or banking group company, and

(b) is responsible, and directly accountable to the directors, for the day to day management of that bank or banking group company.".

(4) Accordingly, in the heading, after "**Directors**" insert "**and senior managers**".

Directions in or under resolution instrument

56. In section 48O (directions in or under resolution instrument), after subsection (4) insert—

"(5) See also section 83ZR for further provision about enforcement of a direction under this section."

Procedure: resolution instruments

57. In section 48T (procedure: resolution instruments), in subsection (2) omit the "and" after paragraph (a) and after paragraph (b) insert—

", and

(c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act)(**b**)),

and arrange for the publication of a copy on the internet website of the bank in respect of which the instrument was made.".

(**a**) Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(**b**) Section 313D was inserted into the Financial Services and Markets Act 2000 by SI 2007/126. The definition of "regulatory information service" was inserted by SI 2010/1193.

Supplemental resolution instruments

58. In section 48U (supplemental resolution instruments), in subsection (3) for "Sections 7 and 8A do" substitute "Section 7 does".

Onward transfer

59. In section 48V (onward transfer), in subsection (5) for "Sections 7 and 8A do" substitute "Section 7 does".

Reverse transfer

60.—(1) Section 48W (reverse transfer) is amended as follows.

(2) In subsection (6)(a) for "bail-in administrator" substitute "resolution administrator".

(3) In subsection (8) for "Sections 7 and 8A do" substitute "Section 7 does".

Replacement of provisional valuation

61. After section 48W insert—

"*Replacement of provisional valuation*

Replacement of Bank's provisional valuation

48X.—(1) Where the Bank of England has carried out a provisional valuation under section 6E(3) before making a mandatory reduction instrument or exercising a stabilisation power, the Bank must arrange for the appointment of an independent valuer in accordance with section 62A to carry out a full valuation in accordance with this section as soon as reasonably practicable.

(2) The purpose of the valuation carried out under subsection (1) is to—

(a) ensure the full extent of any losses on the assets of the bank is recognised in the accounting records of the bank, and

(b) inform a decision by the Bank as to whether—

(i) additional consideration should be paid by a bridge bank or asset management vehicle for any property, rights or liabilities transferred by a property transfer instrument, or securities transferred by a share transfer instrument, or

(ii) the Bank should exercise the power under section 48Y(1) to increase or reinstate any liability which has been reduced or cancelled by a resolution instrument.

(3) A valuation carried out under subsection (1) must comply with subsections (5) and (6) of section 6E, and be accompanied by the information required in subsection (7) of that section.

Consequences of a replacement valuation

48Y.—(1) Where the independent valuation carried out under section 48X(1) produces a higher valuation of the net asset value of the bank than a provisional valuation carried out under section 6E(3), the Bank of England may—

(a) modify any liability of the bank which has been reduced, deferred or cancelled by a mandatory reduction instrument or a resolution instrument so as to increase or reinstate that liability; or

(b) instruct a resolution company to pay additional consideration—

(i) to the bank for any property, rights or liabilities transferred to the resolution company by a property transfer instrument, or

(ii) to the previous holders of securities issued by the bank for any securities transferred to the resolution company by a share transfer instrument.

(2) The power in subsection (1)(a)—

(a) may not be exercised so as to increase the value of the liability beyond the value it would have had if the resolution instrument which reduced, cancelled or deferred it had not been made, and

(b) must be exercised by a mandatory reduction instrument or supplemental resolution instrument (whether or not that instrument contains any other provision authorised by this Part).”

Termination rights, etc

62. After section 48Y (inserted by Article 61) insert—

“*Termination rights etc*

Termination rights etc

48Z.—(1) In this section—

“crisis management measure” has the meaning given in Article 2.1(102) of the recovery and resolution directive, and accordingly in relation to the United Kingdom means—

(a) the exercise of a stabilisation power in relation to the bank by the Bank of England or the Treasury,

(b) the appointment of a resolution administrator under section 62B,

(c) the recognition by the Bank of England of third-country resolution action (or part of such action) in accordance with Chapter 5 of this Part, or

(d) the exercise by the Bank of a stabilisation power by virtue of section 89I(3) (exercise of powers in support of third-country resolution action);

“crisis prevention measure” has the meaning given in Article 2.1(101) of the recovery and resolution directive, and accordingly in relation to the United Kingdom means—

(a) the imposition by the PRA or the FCA of a requirement to take relevant measures described in Article 6(6) of the resolution and recovery directive,

(b) the imposition by the Bank of England of a requirement to take measures to remove impediments to resolvability under Article 17 or 18 of the recovery and resolution directive,

(c) the imposition by the FCA or the PRA of a requirement to take action described in Article 27 of the recovery and resolution directive, or

(d) the making of a mandatory reduction instrument by the Bank of England under section 6B;

“default event provision” means a Type 1 or Type 2 default event provision (see subsections (2) and (3));

“group” has the meaning given by section 474 of the Companies Act 2006(**a**);

“Part 1 instrument” means—

(a) a mandatory reduction instrument,

(b) a share transfer instrument,

(c) a property transfer instrument, or

(d) a resolution instrument.

(**a**) 2006 c.46. Section 474 has been amended, but the amendments are not relevant to this Order.

"recognised third-country resolution action" means third-country resolution action, or a part of such action, recognised by the Bank of England in an instrument under section 89H(2)(**a**);

"third-country institution" has the meaning given by Article 2.1(86) of the recovery and resolution directive;

"third-country parent undertaking" has the meaning given by Article 2.1(87) of that directive.

(2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises—

(a) the agreement is terminated, modified or replaced,

(b) rights or duties under the agreement are terminated, modified or replaced,

(c) a right accrues to terminate, modify or replace the agreement,

(d) a right accrues to terminate, modify or replace rights or duties under the agreement,

(e) a sum becomes payable or ceases to be payable,

(f) delivery of anything becomes due or ceases to be due,

(g) a right to claim a payment or delivery accrues, changes or lapses,

(h) any other right accrues, changes or lapses, or

(i) an interest is created, changes or lapses.

(3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement—

(a) takes effect only if a specified event occurs or does not occur,

(b) takes effect only if a specified situation arises or does not arise,

(c) has effect only for so long as a specified event does not occur,

(d) has effect only while a specified situation lasts,

(e) applies differently if a specified event occurs,

(f) applies differently if a specified situation arises, or

(g) applies differently while a specified situation lasts.

(4) For the purposes of subsections (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).

(5) Subsection (6) applies where a contract or other agreement—

(a) is entered into by a bank, a third-country institution or a third-country parent undertaking,

(b) is entered into by a subsidiary undertaking of a bank, a third-country institution or a third-country parent undertaking, whose obligations are guaranteed by a company which is a member of the same group as the bank, third-country institution or third-country parent undertaking, or

(c) is entered into by an undertaking which is a member of the same group as a bank, third-country institution, or third country parent undertaking,

and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

(6) The following are to be disregarded in determining whether a default event provision applies—

(**a**) Section 89H is inserted by article 102 of this Order.

(a) a crisis prevention measure, crisis management measure or recognised third-country resolution action taken in relation to the bank, third country institution or a member of the same group as the bank or third country institution, and

(b) the occurrence of any event directly linked to the application of such a measure or action.

(7) A Part 1 instrument or share transfer order may provide for subsection (8) or (9) to apply (but need not apply either) in circumstances where subsection (6) would not apply.

(8) If this subsection applies, the Part 1 instrument or share transfer order is to be disregarded in determining whether a default event provision applies.

(9) If this subsection applies, the Part 1 instrument or share transfer order is to be disregarded in determining whether a default event provision applies except so far as the instrument or order provides otherwise.

(10) In subsections (7), (8) and (9) a reference to the Part 1 instrument or share transfer order is a reference to—

(a) the making of the instrument or order,

(b) anything that is done by the instrument or order or is to be, or may be, done under or by virtue of the instrument or order, and

(c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument or order.

(11) Provision under subsection (7) may apply subsection (8) or (9)—

(a) generally or only for specified purposes, cases or circumstances, or

(b) differently for different purposes, cases or circumstances.

(12) A thing is not done by virtue of a Part 1 instrument or share transfer order for the purposes of subsection (10)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument or order."

Transfer to resolution company

63.—(1) In section 52 (transfer to bridge bank)(**a**), for subsection (1) substitute—

"(1) This section applies if the Bank of England makes—

(a) a share transfer instrument or a property transfer instrument under section 12(2), or

(b) a property transfer instrument under section 12ZA(3).".

(2) Accordingly, in the heading of that section, for "**bridge bank**" substitute "**resolution company**".

Onward and reverse transfers etc

64. In section 53 (onward and reverse transfers etc)(**b**), in subsection (1)(c) and (d) for "bridge bank" substitute "resolution company".

Independent valuer: compensation

65. In section 54 (independent valuer)(**c**), in the heading, at the end insert "**: compensation scheme order or bail-in compensation order**".

(**a**) Section 52 was amended by paragraph 6(2) of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) Section 53 was amended by paragraph 6(4) of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**c**) Section 54 was amended by paragraph 6(5) of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

Resolution fund

66. In section 58 (resolution fund), in subsection (6), for "bridge bank" substitute "resolution company".

Third party compensation: mandatory provision

67.—(1) Section 60 (third party compensation: mandatory provision) is amended as follows.

(2) In subsection (2) after "pre-transfer" insert "shareholders or".

(3) In subsection (3)(b)—

(a) after "pre-transfer" insert "shareholder or", and

(b) in sub-paragraph (i), for "is a creditor of a" substitute "holds securities issued by, or is a creditor of, a".

Principle of no less favourable treatment

68. In section 60B(2)(a)—

(a) for "12(2)" substitute "11(2), 12(2) or 12ZA(2)";

(b) for "that provision" substitute "those provisions".

Independent valuer: valuation under section 6E or 48X

69. After section 62 insert—

"*Independent valuer: valuation under section 6E or 48X*

Independent valuer: sections 6E and 48X

62A.—(1) The Bank of England must make arrangements for the appointment of a person to act as independent valuer for the purposes of a valuation to be conducted under section 6E or 48X.

(2) A person may not be appointed as independent valuer under subsection (1) unless that person—

(a) qualifies as "independent" in accordance with regulatory technical standards adopted by the European Commission under Article 36.16 of the recovery and resolution directive, or

(b) if no such regulatory technical standards have been adopted by the European Commission, satisfies the independence requirement set out in section 1151 of the Companies Act 2006.

(3) An independent valuer is to hold and vacate office in accordance with the terms of his or her appointment.

(4) An independent valuer may be removed from office only on the grounds of incapacity or serious misconduct.

(5) In the event of the death of an independent valuer, or an independent valuer being removed from office or resigning, a new independent valuer must be appointed by the Bank in accordance with this section.

(6) Sections 55(1) to (5) and (7) to (10), and 56 apply in relation to an independent valuer appointed in accordance with this section as they apply to an independent valuer appointed by virtue of section 54.".

Resolution administrator

70. After section 62A insert—

Resolution administrator

62B.—(1) The Bank of England may appoint an individual or body corporate as a resolution administrator.

(2) The power under subsection (1) may be exercised—

(a) by a separate instrument of appointment under this section, or

(b) by way of provision in a mandatory reduction instrument, a share transfer instrument, a property transfer instrument or a resolution instrument.

(3) In this section and sections 62C to 62E—

"appointment instrument" means an instrument under subsection (2)(a);

"Part 1 instrument" means an instrument of a kind mentioned in subsection (2)(b).

(4) A resolution administrator is appointed—

(a) to hold any securities that may be transferred or issued to that person in the capacity of resolution administrator, and

(b) to perform any other functions that may be conferred under any provision of this Part.

(5) The Bank of England may appoint more than one resolution administrator to perform functions in relation to a bank (but no more than one of them may at any one time be authorised to hold securities as mentioned in subsection (4)(a)).

(6) Securities held by a resolution administrator (in that capacity, and whether as a result of a Part 1 instrument or otherwise) are to be held in accordance with the terms of a Part 1 instrument that transfers those, or other, securities to the resolution administrator.

(7) For example, the following provision may be made by virtue of subsection (6)—

(a) provision that specified rights of a resolution administrator with respect to all or any of the securities are to be exercisable only as directed by the Bank of England;

(b) provision specifying rights or obligations that the resolution administrator is, or is not, to have in relation to some or all of the securities.

(8) A resolution administrator must—

(a) in accordance with the Part 1 instrument or the appointment instrument, take all measures necessary to promote the special resolution objectives, and

(b) have regard, in performing any functions of the office, to any other objectives that may be specified in a Part 1 instrument or the appointment instrument.

(9) Where one or more objectives are specified in accordance with subsection (8), the objectives are to be taken to have equal status with each other, unless the contrary is stated in the Part 1 instrument or the appointment instrument.

(10) The following provisions apply in relation to an appointment instrument as they apply in relation to a resolution instrument—

(a) section 48S(2) and (3) (power to make incidental, consequential provision etc)(**a**);

(b) section 48T (procedure).

Resolution administrator: further functions

62C.—(1) An appointment instrument or a Part 1 instrument may—

(**a**) Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(a) authorise a resolution administrator to manage the bank's business (or confer on a resolution administrator any other power with respect to the management of the bank's business);

(b) authorise a resolution administrator to exercise any other powers of the bank;

(c) confer on a resolution administrator any other power the Bank of England may consider appropriate;

(d) provide that the exercise of any power conferred by the instrument in accordance with this section is to be subject to conditions specified in the instrument.

(2) An appointment instrument or a Part 1 instrument may require a resolution administrator to make reports to the Bank of England—

(a) on any matter specified in the instrument, and

(b) at the times or intervals specified in the instrument.

(3) If an instrument specifies a matter in accordance with subsection (2)(a), it may provide for further requirements as to the contents of the report on that matter to be specified in an agreement between the Bank of England and the resolution administrator.

(4) An appointment instrument or a Part 1 instrument may—

(a) require a resolution administrator to consult specified persons before exercising specified functions (and may specify particular matters on which the specified person must be consulted);

(b) provide that a resolution administrator is not to exercise specified functions without the consent of a specified person.

Resolution administrator: supplementary

62D.—(1) A resolution administrator may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.

(2) A resolution administrator is not a servant or agent of the Crown (and, in particular, is not a civil servant).

(3) Where a resolution administrator is appointed under this Part, the Bank of England—

(a) must make provision in the appointment instrument or a Part 1 instrument for the resignation and replacement of the resolution administrator;

(b) may remove the resolution administrator from office only (i) on the ground of incapacity or misconduct, or (ii) on the ground that there is no further need for a person to perform the functions conferred on the resolution administrator.

Resolution administrator: money

62E.—(1) An appointment instrument or a Part 1 instrument may provide for the payment of remuneration and allowances to a resolution administrator.

(2) Provision made under subsection (1) may provide that the amounts are—

(a) to be paid by the Bank of England, or

(b) to be determined by the Bank of England and paid by the bank.

(3) A resolution administrator is not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the office (subject to section 8 of the Human Rights Act 1998(**a**)).".

(**a**) 1998 c.42.

General continuity obligation: property transfers

71.—(1) Section 63 (general continuity obligation: property transfers)(**a**) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after "12(2)" insert ", 12ZA(3)", and

(b) in paragraph (e), for "bridge bank" substitute "resolution company".

(3) After subsection (1) insert—

"(1A) In this section a reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors and (vii) a scheme of arrangement.".

(4) After subsection (3) insert—

"(3A) The continuity obligation continues to apply despite the residual bank or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986(**b**) or Article 152(2) of the Insolvency (Northern Ireland) Order 1989(**c**).".

(5) After subsection (4) insert—

"(4A) But if the services and facilities provided in pursuance of the continuity obligation were provided to the bank whose business has been transferred, under an agreement with that bank, before the property transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and subsection (4) does not apply).".

Special continuity obligations: property transfers

72.—(1) Section 64 (special continuity obligations: property transfers) is amended as follows.

(2) In subsection (2)(a), (b) and (c) for "a group company" (in each place it occurs) substitute "a third party".

(3) For subsection (4) substitute—

"(4) The power under subsection (2) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

(5) The power in subsection (2)(d) and (e) may be exercised only—

(a) in so far as the Bank of England thinks it necessary to do so to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business, or part of it, effectively, and

(b) with the consent of the Treasury.

(6) An obligation imposed on the residual bank or a group company under subsection (2)(d) or (e) continues to apply despite the residual bank or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986(**d**) or Article 152(2) of the Insolvency (Northern Ireland) Order 1989(**e**).".

(4) After subsection (6) insert—

"(7) For the purposes of subsection (2), "third party" includes a group company.".

Continuity obligations: onward property transfers

73. In section 65 (continuity obligations: onward property transfers), in subsection (1)(a)—

(**a**) Section 63 was amended by paragraph 17 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) 1986 c.45.
(**c**) SI 1989/2405 (N.I. 19).
(**d**) 1986 c. 45
(**e**) SI 1989/2405 (N.I. 19).

(a) in sub-paragraph (i), after "12(2)" insert "or 12ZA(3)", and

(b) in sub-paragraph (ii), after "transferred by" insert "a share transfer instrument under section 12(2) or".

General continuity obligation: share transfers

74.—(1) Section 66 (general continuity obligation: share transfers)(**a**) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after "11(2)(a)" insert ", 12(2)(a)", and

(b) in paragraph (d), after "11(2)(a)" insert ", 12(2)(a)".

(3) After subsection (1) insert—

"(1ZA) In this section a reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors and (vii) a scheme of arrangement.".

(4) In subsection (1A), after "if a" insert "mandatory reduction instrument or".

(5) After subsection (3) insert—

"(3A) The continuity obligation continues to apply despite the former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989(**b**). ".

(6) After subsection (4) insert—

"(4A) But if the services and facilities provided in pursuance of the continuity obligation were provided to the transferred bank, under an agreement with that bank, before the share transfer instrument or order or the resolution instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and subsection (4) does not apply).".

Contractual variation: share transfers

75.—(1) Section 67 (special continuity obligations: share transfers)(**c**) is amended as follows.

(2) In subsection (2)(a) and (b), for "a former group company" substitute "a third party".

(3) For subsection (4) substitute—

"(4) The power under subsection (2) must be exercised by way of provision in a share transfer instrument or order or resolution instrument (or supplemental instrument or order).

(5) The power in subsection (2)(c) may be exercised—

(a) only in so far as the continuity authority thinks it necessary to do so to ensure the provision of such services and facilities as are required to enable the transferred bank to operate effectively, and

(b) by the Bank of England only with the consent of the Treasury.

(6) An obligation imposed on the transferred bank or a former group company under subsection (2)(b) or (c) continues to apply despite the transferred bank or former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986(**d**) or Article 152(2) of the Insolvency (Northern Ireland) Order 1989(**e**).".

(**a**) Section 66 was amended, and subsection (1A) inserted, by paragraph 18 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) SI 1989/2405 (N.I. 19).
(**c**) Section 67 was amended by paragraph 19 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**d**) 1986 c. 45
(**e**) SI 1989/2405 (N.I. 19).

Continuity obligations: onward share transfers

76. In section 68 (continuity obligations: onward share transfers)(**a**), in subsection (1)(a), after "transferred by" insert "a share transfer instrument under section 12(2),".

Suspension powers

77. After section 70 insert—

"**Suspension of obligations**

70A.—(1) The Bank of England may suspend obligations to make a payment, or delivery, under a contract where one of the parties to the contract is a bank in respect of which the Bank is exercising a stabilisation power.

(2) A suspension imposed under subsection (1) does not apply to—

(a) payments of eligible deposits or eligible claims, or

(b) payments or deliveries to excluded persons.

(3) A suspension imposed under subsection (1)—

(a) begins when the instrument providing for the suspension is first published,

(b) must end no later than midnight at the end of the first business day following the day on which the instrument providing for the suspension is published, and

(c) subject to subsection (2), suspends all obligations to make a payment or delivery under the contract in question, whether the obligation concerned is that of the bank under resolution or of any other party to the contract.

(4) Where a payment or delivery under the contract concerned first fell due within the period of the suspension, that payment or delivery is treated as being due immediately on the expiry of the suspension.

(5) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(6) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(7) In this section—

"eligible claim" means a claim in respect of which compensation is payable under the Financial Services Compensation Scheme or a compensation scheme established under Directive 97/9/EC of the European Parliament and of the Council of 3rd March 1997 on investor-compensation schemes(**b**)

"eligible deposit" means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme or a scheme established under Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes(**c**).

Restriction of security interests

70B.—(1) Where the Bank of England is exercising a stabilisation power in respect of bank, the Bank may suspend the rights of a secured creditor of the bank to enforce any security interest the creditor has in relation to any assets of the bank.

(2) A suspension under subsection (1)—

(**a**) Section 68 was amended by paragraph 20 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) OJ L84, 26.03.1997, p.22.
(**c**) OJ L 173, 12.06.2014, p.149.

(a) begins when the instrument providing for the suspension is first published, and

(b) must end no later than midnight at the end of the first business day following the day on which that instrument is published.

(3) But the Bank of England may not suspend the rights of an excluded person to enforce any security interest that person may have in relation to any asset of the bank under resolution which has been pledged or provided to the excluded person in question as collateral or as cover for margin.

(4) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(5) Where the power in subsection (1) is being exercised in a partial property transfer, the Bank of England must ensure that any restrictions on the enforcement of security interests which it imposes under that subsection are applied consistently for all banking group companies in respect of which the Bank is exercising a stabilisation power.

(6) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(7) For the purposes of this section, a "security interest" means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

Suspension of termination rights

70C.—(1) The Bank of England may suspend the termination right of any party to a qualifying contract (other than a party who is an excluded person).

(2) A contract is a "qualifying contract" for the purpose of this section if—

(a) one of the parties to the contract is a bank in respect of which the Bank is exercising a stabilisation power (a "bank under resolution") and all the obligations under the contract to make a payment, make delivery or provide collateral continue to be performed, or

(b) one of the parties to the contract is a subsidiary undertaking of a bank under resolution and the condition in subsection (3) is met.

(3) The condition is that—

(a) the obligations of the subsidiary undertaking are guaranteed or otherwise supported by the bank under resolution,

(b) the termination rights under the contract are triggered by the insolvency or the financial condition of the bank under resolution, and

(c) if a property transfer instrument has been made in relation to the bank under resolution—

(i) all the assets and liabilities relating to the contract have been or are being transferred to, or assumed by, a single transferee, or

(ii) the Bank of England is providing adequate protection for the performance of the obligations of the subsidiary undertaking under the contract in any other way.

(4) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(5) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(6) A suspension imposed under subsection (1)—

(a) begins when the instrument providing for the suspension is first published, and

(b) must end no later than midnight at the end of the first business day following the day on which that instrument is published;

and, where the suspension is imposed in relation to a subsidiary undertaking of a bank under resolution, "midnight" means midnight in the EEA state in which the subsidiary undertaking is established.

(7) A person may exercise a termination right under a contract before the expiry of the suspension if that person is given notice by the Bank of England that the rights and liabilities of the bank under resolution covered by the contract are not—

(a) to be transferred to another undertaking through the exercise of a stabilisation power, or

(b) to be made subject to a mandatory reduction instrument or a resolution instrument.

(8) If—

(a) no notice has been given by the Bank of England under subsection (7), and

(b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under subsection (1) (or the occurrence of an event directly linked to the exercise of a stabilisation power),

a person may, on the expiry of the suspension, exercise the termination right in accordance with the terms of the contract.

(9) But, where the rights and liabilities of the bank under resolution or the subsidiary undertaking under the contract have been transferred to another undertaking, subsection (8) applies only if the event giving rise to the termination right has been triggered by that undertaking.

(10) For the purposes of this section, "termination right" means—

(a) a right to terminate a contract,

(b) a right to accelerate, close out, set-off or net obligations, or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract, or

(c) a provision that prevents an obligation from arising under the contract.

Suspension: general provisions

70D.—(1) For the purposes of sections 70A to 70C—

"business day" means any day other than a Saturday, a Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

"excluded person" means—

(a) a person who has been declared to be, or who is an operator of, a designated system under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**a**),

(b) a person who has been designated by an EEA state as a system under Article 2(a) of the Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems or an operator of such a system(**b**),

(c) a recognised central counterparty, EEA central counterparty or third country central counterparty, or

(d) a central bank.

(**a**) SI 1999/2979, amended by SI 2010/2993; 2013/472 (others not relevant).
(**b**) OJ L166, 11.6.1998, p 45.

(2) For the purposes of subsection (1), "EEA central counterparty", "recognised central counterparty" and "third country central counterparty" have the meaning given in section 285 of the Financial Services and Markets Act 2000(**a**).".

Pensions

78. In section 71 (pensions)(**b**), before subsection (1)(a) insert—

"(za) mandatory reduction instruments,".

Enforcement

79. Omit section 72 (enforcement)(**c**).

Disputes

80.—(1) In section 73 (disputes)(**d**), in subsection (1)—

(a) before paragraph (a) insert—

"(za) mandatory reduction instruments,",

and

(b) omit the "and" at the end of paragraph (c) and after paragraph (d) insert—

", and

(e) third-country instruments.".

Tax

81.—(1) Section 74 (tax)(**e**) is amended as follows.

(2) In subsection (1), after "exercise of" insert "the power to make a mandatory reduction instrument or".

(3) In subsection (5)—

(a) after "exercise of" insert "the power to make a mandatory reduction instrument or", and

(b) in paragraph (a), after "on which" insert "the power to make the mandatory reduction instrument or (as the case may be)".

(4) After subsection (5) insert—

"(5A) Where the mandatory reduction provision required by section 6B is made in two or more mandatory reduction instruments, in subsection (5)(a) above the reference to the date on which the power to make the mandatory reduction instrument is exercised is, in relation to any of those instruments, a reference to the date on which the power is exercised to make the first of those instruments.".

International obligation notice: general

82.—(1) Section 76 (international obligation notice: general) is amended as follows.

(2) In subsection (1) after "exercise" insert "the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or".

(3) In subsection (3) after "exercises of" insert "the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or".

(**a**) 2000 c.8. Section 285 was amended by SI 2013/504.
(**b**) Section 71 was amended by paragraph 21 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**c**) Section 72 was amended by paragraph 22 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**d**) Section 73 was amended by paragraph 23 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**e**) Section 74 was amended by sections 101 and 102 of the Financial Services Act 2012 (c.21), and by SI 2013/504.

(4) After subsection (4) insert—

"(5) "Resolution administrator appointment instrument" means an instrument under section 62B(2)(a).".

International obligation notice: bridge bank

83.—(1) In section 77 (international obligation notice: bridge bank), for "bridge bank", in each place it occurs, substitute "resolution company".

(2) Accordingly in the heading for that section for "**bridge bank**" substitute "**resolution company**".

Public funds: general

84.—(1) Section 78 (public funds: general) is amended as follows.

(2) In subsection (1), after "exercise" insert "the power to make a mandatory reduction instrument or".

(3) In subsection (4), after "exercises of" insert "the power to make a mandatory reduction instrument or".

Duty of Bank of England to notify Treasury

85. After section 78 insert—

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

78A.—(1) The Treasury may at any time require the Bank of England to inform them in writing whether or not a condition for financial assistance has been met in relation to a particular bank.

(2) "Condition for financial assistance" means a condition specified in—

(a) Article 37(10)(a) (financial assistance through government stabilisation tools), or

(b) Article 44(5)(a) (contributions to institution from resolution financing arrangement where eligible liabilities have been excluded from bail-in),

of the recovery and resolution directive.

(3) If the Bank of England seeks the Treasury's consent to the making of a mandatory reduction instrument or the exercise of a stabilisation power in accordance with section 78, the Bank must notify the Treasury in writing—

(a) whether or not the proposals involve action in relation to which a condition for financial assistance applies, and

(b) if the proposals do involve such action, whether or not the condition in question has been met.".

Public funds: resolution company

86.—(1) In section 79 (public funds: bridge bank), for "bridge bank", in both places it occurs, substitute "resolution company".

(2) Accordingly, in the heading of that section for "**bridge bank**" substitute "**resolution company**".

Resolution company: report

87.—(1) In section 80 (bridge bank: report), for "bridge bank", in each place it occurs, substitute "resolution company".

(2) Accordingly, in the heading of that section for "**Bridge bank:**" substitute "**Resolution company:**".

Accounting information in reports

88. In section 81A (accounting information to be included in reports under section 80 etc)(**a**), for "bridge bank", in each place it occurs, substitute "resolution company".

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

89. Before section 81B (but after the heading "*Groups*") insert—

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

81AA.—(1) Section 6B (mandatory write-down, conversion, etc. of capital instruments) applies in relation to a banking group company in the cases set out in subsections (2), (4) and (8).

(2) Case 1 is where—

(a) the conditions imposed by section 81B or 81ZBA on the exercise of a stabilisation power in accordance with section 11(2), 12(2) or 12ZA(3) are met in respect of the banking group company,

(b) the Bank of England has decided to exercise the stabilisation power,

(c) if the banking group company—

(i) is a financial institution which is a subsidiary of an institution (within the meaning of article 2.1(23) of the recovery and resolution directive) ("the parent institution"), but

(ii) is not an entity within Article 1.1(c) or (d) of that directive,

the requirements of subsection (3) are met, and

(d) section 12AA (mandatory write-down etc in bail-in cases) does not apply in relation to the banking group company by virtue of the exercise of a power under section 81BA (bail-in: banking group company).

(3) For the purposes of subsection (2)(c)—

(a) the first requirement is that—

(i) the appropriate authority is satisfied that Condition 1 in section 7 is met in relation to the banking group company, and

(ii) the Bank of England is satisfied that Conditions 2, 3 and 4 of that section are met in relation to that company;

(b) the second requirement is that—

(i) where the parent institution is a bank, the PRA is satisfied that Condition 1 in section 7 is met, and the Bank of England is satisfied that Conditions 2, 3 and 4 in that section are met in relation to the parent institution,

(ii) where the parent institution is a EU institution, subsection (6) applies in relation to the banking group company by reason of the EU institution, and

(iii) where the parent institution is a third-country institution, subsection (7) applies in relation to the banking group company by reason of that third country institution.

(4) Case 2 is where—

(**a**) Section 81A was inserted by section 99 of the Financial Services Act 2012 (c.21) and amended by paragraph 26 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(a) the appropriate authority is satisfied that Condition 1 in section 7 is met in respect of the banking group company,

(b) the Bank of England is satisfied that—

(i) (ignoring section 6B) Condition 2 in section 7 is met, and

(ii) that Condition will continue to be met unless the action required by section 6B is taken in respect of the banking group company, and

(c) one of subsections (5), (6) or (7) apply in relation to the banking group company.

(5) This subsection applies in relation to the banking group company if—

(a) the PRA is satisfied that Condition 1 in section 7 is met in respect of a bank to which section 81D(1)(a) applies, and

(b) the Bank of England is satisfied that (ignoring section 6B) Condition 2 in section 7 is met in relation to that bank.

(6) This subsection applies in relation to the banking group company if the EU resolution authority or competent authority has determined that—

(a) the conditions for exercise of the power to write down or convert capital instruments set out in Article 59.3 of the recovery and resolution directive, or

(b) the conditions for resolution set out in Article 32.1(a) and (b) of the recovery and resolution directive,

are satisfied in relation to an EU institution to which section 81D(1)(a) applies.

(7) This subsection applies in relation to the banking group company if the relevant third-country authority has determined that any conditions required by the law of the third country to be met before—

(a) any power for the relevant third country authority to write down or convert capital instruments provided for under the law of that third country may be exercised, or

(b) third-country resolution action may be taken,

are met in relation to a third-country institution to which section 81D(1)(a) applies.

(8) Case 3 is where—

(a) extraordinary public financial support is required by the banking group company other than in circumstances where subsection (5E) of section 7 applies by virtue of paragraph (c) of that subsection, and

(b) the Bank of England is satisfied, on the basis of the valuation carried out in accordance with section 6E, that, in order for a bank or EU institution which is a member of the same group as the banking group company to fulfil its own funds requirements, relevant capital instruments of the banking group company need to be written down or converted into Common Equity Tier 1 instruments (or both).

(9) For the purposes of determining if the matters set out in subsections (3) to (7) are satisfied, the FCA, PRA, Bank of England, EU resolution authority, competent authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.

(10) For the purposes of subsections (3)(a) and (b), (4), (5) and (8)—

(a) references in section 7 to the bank are to be read—

(i) in the case of subsections (3)(a) and (b), (4) and (5), as references to the banking group company, and

(ii) in the case of subsection (8), as references to the banking group company or the parent institution (as the case may be), and

(b) section 7(5C)(a) is to be ignored in determining whether Condition 1 in that section is met in relation to the banking group company where that company is not a UK authorised person.

(11) For the purposes of subsections (3), (4) and (5), the "appropriate authority" means—

(a) in the case of a banking group company which is a PRA-authorised person, the PRA;

(b) in the case of a banking group company which is a UK authorised person but not a PRA-authorised person, the FCA;

(c) in the case of a banking group company which is not an UK authorised person—

(i) if the PRA is the consolidating supervisor of the group, the PRA;

(ii) if the FCA is the consolidating supervisor of the group, the FCA;

(iii) if neither paragraph (i) nor paragraph (ii) apply, but there is a PRA-authorised person in the group, the PRA; and

(iv) in all other cases, the Bank of England.

(12) Where the PRA is the "appropriate authority" under subsection (11) in relation to a banking group company in the same group as a UK authorised person which is not a PRA-authorised person, the PRA must consult the FCA before making any decision as to whether the conditions referred to in subsection (3)(a), (4)(a) or (5)(a) (the "relevant conditions") are satisfied.

(13) Where the FCA is the "appropriate authority" under subsection (11) in relation to a banking group company in the same group as a PRA-authorised person, the FCA must consult the PRA before making any decision as to whether the relevant conditions are satisfied.

(14) For the purposes of this section—

"competent authority" has the meaning given in Article 2.1(21) of the recovery and resolution directive;

"consolidating supervisor" means a consolidating supervisor as defined in Article 4.1(41) of the capital requirements regulation;

"EU institution" means an institution within the meaning of Article 2.1(23) of the recovery and resolution directive which is incorporated in, or formed under the law of any part of, an EEA state other than the United Kingdom;

"EU resolution authority" means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);

"financial institution" has the meaning given by Article 2.1(4) of the recovery and resolution directive;

"PRA-authorised person" has the meaning given in section 2B(5) of the Financial Services and Markets Act 2000(**a**);

"relevant third-country authority" has the meaning given by Article 2.1(90) of the recovery and resolution directive;

"third-country institution" has the meaning given in section 89H(7);

"third-country resolution action" has the meaning given in section 89H(7);

"UK authorised person" has the same meaning as in section 105(8) of the Financial Services and Markets Act 2000(**b**)."

Groups: transfer to bridge bank etc

90.—(1) Section 81B (groups: sale to commercial purchaser and transfer to bridge bank)(**c**) is amended as follows.

(2) For subsection (2) substitute—

(**a**) Section 2B was inserted by the Financial Services Act 2012 (c.21) section 6.
(**b**) 2000 c.8.
(**c**) Section 81B was inserted by section 100 of the Financial Services Act 2012 (c.21).

"(2) Condition 1 is that—

(a) the PRA is satisfied that Condition 1 of the general conditions is met in respect of a bank in the same group and the Bank of England is satisfied that Conditions 2, 3 and 4 of the general conditions are met in respect of that bank, or

(b) the EU resolution authority of an EU institution in the same group is satisfied that the conditions for resolution set out in Article 32.1 of the recovery and resolution directive are met in relation to that EU institution, or

(c) a relevant third-country authority of a third-country institution in the same group is satisfied that any conditions required by the law of the third country to be met before third-country resolution action may be taken are met in relation to that third-country institution.

(2A) For the purposes of determining if a requirement of Condition 1 is met, the PRA, Bank of England, EU resolution authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.".

(3) In subsection (3) for the words "public interest in" to the end substitute "public interest in the advancement of one or more of the special resolution objectives.".

(4) After subsection (8) insert—

"(9) In this section—

"EU institution" has the meaning given by section 81AA(14);

"EU resolution authority" means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);

"the general conditions" means the general conditions for the exercise of a stabilisation power set out in section 7;

"relevant third-country authority" has the meaning given by Article 2.1(90) of the recovery and resolution directive;

"third-country institution" has the meaning given by section 89H(7)(**a**);

"third-country resolution action" has the meaning given by section 89H(7)."

Groups: transfer to asset management vehicle

91. After section 81B insert—

"**Transfer to asset management vehicle**

81ZBA.—(1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12ZA(3) if the following conditions are met.

(2) Condition 1 is that—

(a) the PRA is satisfied that Condition 1 of the general conditions is met in respect of a bank in the same group and the Bank of England is satisfied that Conditions 2, 3 and 4 of the general conditions are met in respect of that bank, or

(b) the resolution authority of an EU institution in the same group is satisfied that the conditions for resolution set out in Article 32.1 of the recovery and resolution directive are met in relation to that EU institution, or

(c) a relevant third-country authority of a third-country institution in the same group is satisfied that any conditions required by the law of the third country to be met before third-country resolution action may be taken are met in relation to that third-country institution.

(**a**) Section 89H is inserted by article 102 of this Order.

(2A) For the purposes of determining if a requirement of Condition 1 is met, the PRA, Bank of England, EU resolution authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.

(3) Condition 2 is that the power is exercised in connection with the exercise of one or more stabilisation powers in respect of the banking group company otherwise than for the purposes of the third stabilisation option.

(4) Condition 3 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.

(5) Condition 4 (which applies only in a financial assistance case) is that—

(a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and

(b) in the Bank of England's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

(6) Condition 5 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(7) Condition 6 is that the Bank of England is satisfied that—

(a) the situation of the market for the assets which it is proposed to transfer by the exercise of the stabilisation power is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets,

(b) the transfer is necessary to ensure the proper functioning of the banking group company from which the transfer is to be made, or

(c) the transfer is necessary to maximise the proceeds available for distribution.

(8) Before determining whether Conditions 2 and 5 and Condition 3 or 4 (as appropriate) are met, and if so how to react, the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(9) For the purposes of this section—

"financial assistance case" has the meaning given by section 81B(8);

"normal insolvency proceedings" has the meaning given in Article 2.1(47) of the recovery and resolution directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure);

and the definitions in section 81B(9) apply.".

Groups: bail-in option

92.—(1) Section 81BA (groups: bail-in option)(**a**) is amended as follows.

(2) For subsection (2) substitute—

"(2) Condition 1 is that either—

(a) the PRA is satisfied that Condition 1 of the general conditions is met in respect of a bank in the same group and the Bank of England is satisfied that Conditions 2, 3 and 4 of the general conditions are met in respect of that bank, or

(**a**) Section 81BA was inserted by paragraph 7 of Schedule to the Financial Services (Banking Reform) Act 2013 (c.33).

(b) the resolution authority of an EU institution in the same group is satisfied that the conditions for resolution set out in Article 32.1 of the recovery and resolution directive are met in relation to that EU institution, or

(c) a relevant third-country authority of a third-country institution in the same group is satisfied that any conditions required by the law of the third country to be met before third-country resolution action may be taken are met in relation to that third-country institution.

(2A) For the purposes of determining if a requirement of Condition 1 is met, the PRA, Bank of England, EU resolution authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.".

(3) In subsection (3) for the words "public interest in" to the end substitute "public interest in the advancement of one or more of the special resolution objectives.".

(4) After subsection (6) insert—

"(7) The definitions in section 81B(9) apply for the purposes of this section.".

Sections 81B and 81ZBA: supplemental

93.—(1) Section 81C (section 81B: supplemental)(**a**) is amended as follows.

(2) In subsection (1)—

(a) omit the "and" at the end of paragraph (a);

(b) after paragraph (a) insert—

"(aa) section 48Z, and".

(3) After subsection (1) insert—

"(1A) Where section 6B applies to a banking group company by virtue of section 81AA, sections 6B to 6D apply with the following modifications—

(a) references to the bank are to be read as references to the banking group company,

(b) in section 6B, in subsection (8) the reference to section 6A is to be read as a reference to section 81AA and subsection (9) is to be ignored,

(c) in sections 6B and 6C references, which (by virtue of paragraph (a)) are read as references to a UK parent undertaking of a banking group company, include, where the banking group company satisfied section 81D(1)(a) by reference to a bank which is not a UK parent undertaking of the banking group company, a reference to that bank,

(d) for the purposes of section 6D, references to a bank in sections 48L(3), 48O and 48T are to be read as references to the banking group company, and, where the banking group company satisfied section 81D(1)(a) by reference to a bank ("the failing bank"), those references to a bank (except the first reference in section 48T(1)) are also to be read as including a reference to the failing bank.

(1B) Where the Bank of England makes a mandatory reduction instrument in respect of a banking group company, section 6E applies (with any necessary modifications) as if the banking group company were a bank.".

(4) In subsection (2)—

(a) after "81B" insert "or 81ZBA", and

(b) for "and 8" substitute ", 8 and 8ZA".

(5) Accordingly, in the heading for that section after "**81B**" insert "**or 81ZBA**".

(**a**) Section 81C was inserted by section 100 of the Financial Services Act 2012 (c.21).

Section 81BA: supplemental

94.—(1) Section 81CA (section 81BA: supplemental)(**a**) is amended as follows.

(2) In subsection (2) for "sections 7 and 8A" substitute "section 7".

(3) In subsection (5)—

(a) for "mentioned in section 81BA(2) ("the bank")" substitute ", EU institution or third-country institution mentioned in section 81BA(2) ("the group entity")",

(b) in paragraph (b)(i) for "included the bank," substitute "included the group entity,", and

(c) in paragraph (c) for "included the bank," substitute "included the group entity,".

Interpretation: "banking group company" etc

95.—(1) Section 81D (interpretation: "banking group company" etc) is amended as follows.

(2) In subsection (1)(a), after "bank" insert "EU institution or third-country institution (within the meaning of section 81B(9))".

(3) In subsection (6), for "81B to 81CA" substitute "81AA to 81CA".

Holding companies

96.—(1) In section 83 (banking group companies: supplemental), in subsection (1), after paragraph (a) insert—

"(aa) section 12ZA(2)(c),".

Information and enforcement

97. After section 83 insert—

"Chapter 4

Information, investigation and enforcement

Powers to gather information

Information

83ZA.—(1) This section applies only to information and documents reasonably required in connection with the exercise by the Bank of England of functions conferred by or under—

(a) this Part, or

(b) any other enactment giving effect to the resolution and recovery directive.

(2) The Bank of England may, by notice in writing given to a bank or banking group company, require the bank or banking group company—

(a) to provide specified information or information of a specified description, or

(b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified, and

(b) at such place as may be specified.

(4) An officer who has written authorisation from the Bank of England to do so may require a bank or banking group company without delay—

(**a**) Section 81CA was inserted by paragraph 7 of Schedule to the Financial Services (Banking Reform) Act 2013 (c.33).

(a) to provide the officer with specified information or information of a specified description, or

(b) to produce to the officer specified documents or documents of a specified description.

(5) The Bank of England may require any information provided under this section to be provided in such form as it may reasonably require.

(6) The Bank of England may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

(b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) The powers conferred by subsections (2) and (4) may also be exercised by the Bank to impose requirements on a person who is connected with a bank.

(8) "Officer" means an officer of the Bank of England, and includes a member of the Bank's staff or an agent of the Bank.

(9) "Specified" means—

(a) in subsections (2) and (3), specified in the notice, and

(b) in subsection (4), specified in the authorisation.

(10) For the purposes of this section, a person is connected with a bank if that person is or has at any relevant time been—

(a) a member of that bank's group,

(b) a controller of that bank (within the meaning of section 422 of the Financial Services and Markets Act 2000(**a**)),

(c) any other member of a partnership of which that bank is a member, or

(d) in relation to that bank, a person mentioned in Part 1 of Schedule 15 to the Financial Services and Markets Act 2000 (reading references in that Part to the authorised person as references to the bank).

(11) In subsection (10)(a) "group" has the meaning given by section 3(2)(b).

Reports by skilled persons

83ZB.—(1) This section applies where the Bank of England has required or could require a person to whom subsection (2) applies ("the person concerned") to provide information or produce documents with respect to any matter ("the matter concerned") under section 83ZA.

(2) This subsection applies to—

(a) a bank ("B"),

(b) a member of B's group,

(c) a partnership of which B is a member, or

(d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

(3) The Bank of England may either—

(a) by notice in writing given to the person concerned, require that person to provide the Bank with a report on the matter concerned, or

(b) itself appoint a person to provide the Bank with a report on the matter concerned.

(**a**) 2000 c.8. Section 422 was amended by SI 2009/534, 2013/3115.

(4) When acting under subsection (3)(a), the Bank may require the report to be in such form as may be specified in the notice.

(5) The Bank must give notice of an appointment under subsection (3)(b) to the person concerned.

(6) The person appointed to make a report—

(a) must be a person appearing to the Bank to have the skills necessary to make a report on the matter concerned, and

(b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the Bank.

(7) It is the duty of—

(a) the person concerned, and

(b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,

to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(8) The obligation imposed by subsection (7) is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988(**a**).

(9) The Bank may, in relation to an appointment under subsection (3)(b), require B to pay to the Bank a fee to cover the expenses incurred by the Bank in relation to the appointment.

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

Appointment of investigators

Appointment of persons to carry out general investigations

83ZC.—(1) This section applies only for the purposes of the functions of the Bank of England mentioned in section 83ZA(1).

(2) If it appears to the Bank of England that there is good reason for doing so, the Bank may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of a bank,

(b) a particular aspect of that business, or

(c) the ownership or control of a bank.

(3) If a person appointed under subsection (2) thinks it necessary for the purposes of the investigation, that person may also investigate the business of a person who is or has at any relevant time been—

(a) a member of a group of which the bank under investigation is part, or

(b) a partnership of which the bank is a member.

(4) A person appointed under subsection (2) who decides to investigate the business of any person under subsection (3) must give that person written notice of that decision.

(5) In this section—

"business" includes any part of a business, and

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

(**a**) 1988 c.36.

Appointment of person to carry out investigations in particular cases

83ZD.—(1) This section applies if it appears to the Bank of England that there are circumstances suggesting that a person may have failed to comply with any relevant requirement.

(2) The Bank may appoint one or more competent persons to conduct an investigation on its behalf.

(3) In this section "relevant requirement" means—

(a) a requirement imposed by the Bank of England under this Part (other than section 83ZN (regulatory sanctions)), or

(b) a requirement imposed by or under—

(i) any other provision of this Act, or

(ii) any other Act or subordinate legislation,

which gives effect to the recovery and resolution directive.

Investigations etc in support of foreign resolution authorities

83ZE.—(1) On receiving a request to which subsection (3) applies from a foreign resolution authority, the Bank of England may—

(a) exercise the power conferred by section 83ZA, or

(b) appoint one or more competent persons to investigate any matter.

(2) Accordingly, for the purposes of subsection (1)(a), section 83ZA(1) has effect as if it also referred to information and documents reasonably required by the Bank of England to meet such a request.

(3) This subsection applies to a request if the request is made by a foreign resolution authority in connection with the exercise by that authority of—

(a) functions under the recovery and resolution directive, or

(b) functions in relation to third-country resolution action (within the meaning of section 89H) corresponding to those exercisable by an EU resolution authority pursuant to the recovery and resolution directive.

(4) An investigator appointed under subsection (1)(b) has the same powers as an investigator appointed under section 83ZD.

(5) If the request has been made by an EU resolution authority in pursuance of any EU obligation, the Bank must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.

(6) In deciding whether or not to exercise its investigative power, the Bank may take into account in particular—

(a) whether, in the territory of the foreign resolution authority concerned, corresponding assistance would be given to the Bank,

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom,

(c) the seriousness of the case and its importance to persons in the United Kingdom,

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(7) The Bank may decide that it will not exercise its investigative power unless the foreign resolution authority undertakes to make such contribution towards the cost of its exercise as the Bank considers appropriate.

(8) Subsections (6) and (7) do not apply if the Bank considers that the exercise of its investigative power is necessary to comply with an EU obligation.

(9) "EU resolution authority" means an authority designated by an EEA state other than the United Kingdom in accordance with Article 3 of the recovery and resolution directive.

(10) "Foreign resolution authority" means—

(a) an EU resolution authority, or

(b) an authority, in a territory which is not and does not form part of an EEA state, which exercises functions referred to in subsection (2)(b).

(11) "Investigative power" means one of the powers mentioned in subsection (1).

Conduct of investigations

Investigations: general

83ZF.—(1) This section applies if the Bank of England appoints one or more competent persons ("investigators") under section 83ZC or 83ZD to conduct an investigation on its behalf.

(2) The Bank must give written notice of the appointment of an investigator to the person who is the subject of the investigation ("the person under investigation").

(3) A notice under subsection (2) must—

(a) specify the provisions under which, and as a result of which, the investigator was appointed, and

(b) state the reason for the investigator's appointment.

(4) Nothing prevents the Bank from appointing a person who is a member of its staff as an investigator.

(5) An investigator must make a report of the investigation to the Bank.

(6) The Bank may, by a direction to an investigator, control—

(a) the scope of the investigation,

(b) the period during which the investigation is to be conducted,

(c) the conduct of the investigation, and

(d) the reporting of the investigation.

(7) A direction may, in particular—

(a) confine the investigation to particular matters;

(b) extend the investigation to additional matters;

(c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;

(d) require the investigator to make such interim reports as are so specified.

(8) If there is a change in the scope or conduct of the investigation and, in the opinion of the Bank, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(9) If the appointment is under section 83ZD, subsections (2) and (8) do not apply if the Bank believes that the notice required by the subsection in question would be likely to result in the investigation being frustrated.

Powers of persons appointed under section 83ZC

83ZG.—(1) This section applies to an investigator appointed under section 83ZC to conduct an investigation on behalf of the Bank of England.

(2) The investigator may require the person who is the subject of the investigation ("the person under investigation") or any person connected with the person under investigation—

(a) to attend before the investigator at a specified time and place and answer questions, or

(b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(3) The investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.

(4) A requirement under subsection (2) or (3) may be imposed only so far as the investigator reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.

(5) For the purposes of this section, a person ("B") is connected with the person under investigation ("A") if B is or has at any relevant time been—

(a) a member of A's group;

(b) a controller of A;

(c) a partnership of which A is a member; or

(d) in relation to A, a person mentioned in Part 1 or 2 of Schedule 15 to the Financial Services and Markets Act 2000 (reading references in those Parts to the authorised person or the person under investigation as references to A).

(6) In this section—

"controller" has the same meaning as in the Financial Services and Markets Act 2000 (see section 422),

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

"specified" means specified in a notice in writing.

Powers of persons appointed as a result of section 83ZD

83ZH.—(1) This section applies to an investigator appointed under section 83ZD to conduct an investigation on behalf of the Bank of England.

(2) The investigator has—

(a) the powers conferred by section 83ZG on an investigator appointed under section 83ZC, and

(b) the powers conferred by subsections (3) and (4).

(3) The investigator may require the person who is the subject of the investigation ("the person under investigation") to give the investigator all assistance in connection with the investigation which that person is reasonably able to give.

(4) The investigator may require a person who is neither the person under investigation nor a person connected with the person under investigation—

(a) to attend before the investigator at a specified time and place and answer questions, or

(b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(5) A requirement may only be imposed under subsection (4) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.

(6) Section 83ZG(5) and (6) applies for the purposes of this section.

Admissibility of statements made to investigators

83ZI.—(1) A statement made to an investigator appointed under section 83ZC or 83ZD by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, the PRA or the FCA (as the case may be), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than one under—

(a) section 83ZN(4),

(b) section 398 of the Financial Services and Markets Act 2000 (misleading FCA or PRA: residual cases)(**a**),

(c) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath)(**b**),

(d) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath)(**c**), or

(e) Article 10 of the Perjury (Northern Ireland) Order 1979(**d**).

(4) "Information requirement" means a requirement imposed by an investigator under section 83ZG, 83ZH or 83ZJ.

Information and documents: supplemental provision

Information and documents: supplemental provision

83ZJ.—(1) If the Bank of England has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—

(a) take copies or extracts from the document, or

(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.

(4) If the person to whom a document is so produced has reasonable grounds for believing—

(a) that the document may have to be produced for the purposes of any legal proceedings, and

(b) that it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(5) If a person who is required under this Part to produce a document fails to do so, the Bank or an investigator may require that person to state, to the best of that person's knowledge and belief, where the document is.

(6) A lawyer may be required under this Part to furnish the name and address of the lawyer's client.

(**a**) 2000 c.8. Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services and Markets Act 2000 (c.8), SI 2013/1773.
(**b**) 1911 c.6.
(**c**) 1995 c.39.
(**d**) SI 1979/1714 (N.I. 19).

(7) No person may be required under this Part to disclose information or produce a document in respect of which the person ("A") owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) A is the person under investigation or a member of that person's group,

(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group,

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(d) the imposing on A of a requirement with respect to such information or document has been specifically authorised by the Bank.

(8) If a person claims a lien on a document, its production under this Part does not affect the lien.

(9) In this section—

"controller" has the same meaning as in the Financial Services and Markets Act 2000 (see section 422)(**a**),

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

"investigator" means a person appointed under section 83ZC or 83ZD,

"relevant person", in relation to a person who is required to produce a document, means a person who—

(a) has been or is or is proposed to be a director or controller of that person,

(b) has been or is an auditor of that person,

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or

(d) has been or is an employee of that person.

Protected items

83ZK.—(1) A person may not be required under this Part to produce, disclose or permit the inspection of protected items.

(2) "Protected items" means—

(a) communications between a professional legal adviser and that adviser's client or any person representing such a client which fall within subsection (3),

(b) communications between a professional legal adviser, that adviser's client or any person representing such a client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection), and

(c) items which—

(i) are enclosed with, or referred to in, such communications,

(ii) fall within subsection (3), and

(iii) are in the possession of a person entitled to possession of them.

(3) A communication or item falls within this subsection if it is made—

(a) in connection with the giving of legal advice to the client, or

(b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

(4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

(**a**) 2000 c.8. Section 422 was amended by SI 2009/534, 2013/3115.

Entry of premises under warrant

83ZL.—(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, the Bank of England or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and

(b) that on the premises specified in the warrant—

(i) there are documents which have been required, or

(ii) there is information which has been required.

(3) The second set of conditions is—

(a) that the premises specified in the warrant are premises of a bank or a member of the same group (within the meaning of section 3(2)(b)) as a bank,

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and

(c) that if such a requirement were to be imposed—

(i) it would not be complied with, or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(4) The third set of conditions is—

(a) that an offence mentioned in section 83ZN(4) or (5) has been (or is being) committed by any person,

(b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed,

(c) that an information requirement could be imposed in relation to those documents or that information, and

(d) that if such a requirement were to be imposed—

(i) it would not be complied with, or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(5) A warrant under this section authorises a constable—

(a) to enter the premises specified in the warrant,

(b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued ("the relevant kind") or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,

(d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and

(e) to use such force as may be reasonably necessary.

(6) A warrant under this section may be executed by any constable.

(7) The warrant may authorise persons to accompany any constable who is executing it.

(8) The powers in subsection (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.

(9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards)(**a**) apply to warrants issued under this section.

(10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989(**b**) apply to warrants issued under this section.

(11) In the application of this section to Scotland—

(a) for the reference to a justice of the peace substitute references to a justice of the peace or a sheriff; and

(b) for the references to information on oath substitute references to evidence on oath.

(12) "Investigator" means an investigator appointed under section 83ZC or 83ZD.

(13) "Information requirement" means a requirement imposed—

(a) by the Bank of England under section 83ZA or 83ZJ, or

(b) by an investigator under section 83ZG, 83ZH or 83ZJ.

Retention of documents obtained under section 83ZL

83ZM.—(1) Any document of which possession is taken under section 83ZL ("a seized document") may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

Offences etc

83ZN.—(1) If a person other than the investigator ("the defaulter") fails to comply with a requirement imposed on the defaulter under section 83ZG, 83ZH or 83ZJ, the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if that person were in contempt.

(3) "Officer", in relation to a limited liability partnership, means a member of the limited liability partnership.

(4) A person who knows or suspects that an investigation is being or is likely to be conducted under section 83ZC, 83ZD or 83ZE is guilty of an offence if—

(**a**) 1984 c.60, section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15), and SI 2005/3496; section 16 was amended by section 109 of the Courts Act 2003 (c.39), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15) and SI 2005/3496.

(**b**) SI 1989/1341 (N.I. 12), amended by SI 2007/288 (N.I. 2).

(a) that person falsifies, conceals, destroys or otherwise disposes of a document which that person knows or suspects is or would be relevant to such an investigation, or

(b) that person causes or permits the falsification, concealment, destruction or disposal of such a document,

unless that person shows that that person had no intention of concealing facts disclosed by the document from the investigator.

(5) A person who, in purported compliance with a requirement imposed on that person by any relevant requirement—

(a) provides information which that person knows to be false or misleading in a material particular, or

(b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 83ZL is guilty of an offence.

(7) Subsection (8) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**) is in force on the relevant day.

(8) A person guilty of an offence under subsection (4), (5) or (6) is liable, on summary conviction—

(a) in England and Wales, to imprisonment for a term not exceeding 3 months or a fine, or both;

(b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(9) Subsection (10) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not in force on the relevant day.

(10) A person guilty of an offence under subsection (4), (5) or (6) is liable, on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(11) In this section—

"court" means—

(a) the High Court;

(b) in Scotland, the Court of Session;

"relevant day" means the day on which the Bank Recovery and Resolution Order 2014 (which inserted this section into this Act) was made;

"relevant requirement" has the meaning given in section 83ZD.

Prosecution of offences under section 83ZN

83ZO.—(1) Proceedings for an offence under section 83ZN may be instituted—

(a) in England and Wales, only by the Bank of England or by or with the consent of the Director of Public Prosecutions, and

(b) in Northern Ireland, only by the Bank of England or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) In exercising its power to institute proceedings for an offence under section 83ZN, the Bank must comply with any conditions or restrictions imposed in writing by the Treasury.

(**a**) 2012 c.10.

(3) Conditions or restrictions may be imposed under subsection (2) in relation to proceedings generally, or such proceedings or categories of proceedings as the Treasury may direct.

Offences under section 83ZN by bodies corporate etc

83ZP.—(1) If an offence under section 83ZN committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.

(3) If an offence under section 83ZN committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In subsection (3) "partner" includes a person purporting to act as partner.

(5) "Officer" in relation to a body corporate means—

(a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, and

(b) an individual who is a controller of the body (and for these purposes, "controller" has the meaning given in section 422 of the Financial Services and Markets Act 2000).

(6) If an offence under section 83ZN committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Enforcement of relevant requirements

Injunctions: prevent failure to comply with relevant requirement

83ZQ.—(1) If, on the application of the Bank of England, the court is satisfied that there is a reasonable likelihood that any person will contravene a relevant requirement, the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) The jurisdiction conferred by this section is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

(3) In this section "relevant requirement" has the meaning given in section 83ZD.

Regulatory sanctions

83ZR.—(1) If the Bank of England considers that a person has failed to comply with a relevant requirement imposed on the person, it may do one or more of the following—

(a) publish a statement to that effect;

(b) impose on that person a penalty, in respect of the failure, of such amount as it considers appropriate;

(c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct;

(d) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of—

(i) a named bank,

(ii) a bank of a specified description, or

(iii) any bank.

(2) A prohibition under subsection (1)(d) may apply—

(a) for a specified period,

(b) until further notice, or

(c) permanently.

(3) If the Bank of England considers that a failure by a person to comply with a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, an officer of that person, it may do one or more of the following—

(a) publish a statement to that effect;

(b) impose on that officer a penalty, in respect of the failure, of such amount as it considers appropriate;

(c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct specified in the order.

(4) A penalty under this section—

(a) must be paid to the Bank of England, and

(b) may be enforced by the Bank as a debt.

(5) In this section "relevant requirement" has the meaning given in section 83ZD.

Determination of sanctions

83ZS. When determining the type of sanction, and level of any penalty, to be imposed on a person under section 83ZR, the Bank of England must take into account all relevant circumstances, including where appropriate—

(a) the gravity and the duration of the failure,

(b) the degree of responsibility of the person,

(c) the financial strength of the person,

(d) the amount of profits gained or losses avoided by the person,

(e) the losses for third parties caused by the failure,

(f) the level of co-operation of the person with the Bank,

(g) previous failures by the person, and

(h) any potential systemic consequences of the failure.

Procedure: warning notice

83ZT.—(1) If the Bank of England proposes to impose a sanction on a person under section 83ZR(1) or (3) it must give that person a warning notice.

(2) Section 387 of the Financial Services and Markets Act 2000(**a**) applies in relation to a warning notice given under subsection (1) and to the Bank as it applies in relation to a warning notice given under that Act and to the regulator which gave that notice, subject to subsections (3) and (4).

(3) In complying with section 387(1)(a) of that Act, a warning notice must in particular—

(a) if it is about a proposal to publish a statement, set out the terms of the statement,

(b) if it is about a proposal to impose a penalty, specify the amount of the penalty,

(c) if it is about a proposal to direct a person to refrain from certain conduct, specify the conduct, and

(d) if it is about a proposal to impose a prohibition on holding an office or other position, specify the extent of the prohibition.

(4) For the purposes of subsection (2), section 387 of that Act has effect as if subsections (1A) and (3A) were omitted.

Procedure: decision notice

83ZU.—(1) If the Bank of England decides to impose a sanction on a person under section 83ZR(1) or (3) it must without delay give that person a decision notice.

(2) If the decision is to publish a statement, the decision notice must set out the terms of the statement.

(3) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.

(4) If the decision is to refrain from certain conduct, the decision notice must specify the conduct.

(5) If the decision is to impose a prohibition on holding an office or other position, the decision notice must specify the extent of the prohibition.

(6) Section 388 of the Financial Services and Markets Act 2000(**b**) applies in relation to a decision notice given under subsection (1) and the Bank as it applies in relation to a decision notice given under that Act and the regulator which gave that notice, subject to subsection (7).

(7) Section 388 of that Act has effect for the purposes of subsection (6) as if—

(a) in subsection (1)(e)(i) for "this Act" there were substituted "section 83ZW of the Banking Act 2009", and

(b) subsections (1A) and (2) were omitted.

Procedure: general

83ZV.—(1) Sections 389(**c**), 390(**d**) and 392 to 394(**e**) of the Financial Services and Markets Act 2000 apply in relation to a warning notice given under section 83ZT, a decision notice given under section 83ZU and the Bank as they apply in relation to a

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(**a**) 2000 c.8. Section 387 was amended by paragraph 26 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(**b**) Section 388 was amended by paragraph 27 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(**c**) Section 389 was amended by paragraph 28 of Schedule 9 to the Financial Services Act 2012 (c.21).

(**d**) Section 390 was amended by paragraph 29 of Schedule 9 to the Financial Services Act 2012 (c.21), SI 2010/2012.

(**e**) Section 392 was amended by paragraph 29 of Schedule 2 to the Financial Services Act 2010 (c.28); section 18 and paragraph 37 of Schedule 8, paragraph 31 of Schedule 9 and paragraph 8 of schedule 13 to the Financial Services Act 2012 (c.21), section 4 of the Financial Services (Banking Reform) Act 2013 (c.33), SI 2007/126 and 2013/1388; section 393 was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012 (c.21); section 394 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23) and paragraph 33 of Schedule 9 to the Financial Services Act 2012 (c.21).

warning notice or decision notice given under that Act and the regulator which gave that notice, subject to subsections (2) to (4).

(2) Section 389 of that Act has effect as if subsection (2) were omitted,

(3) Section 390 of that Act has effect as if—

(a) in subsection (2A), in paragraph (a), for "133(6)(b)" there were substituted "133(5)(b)",

(b) in that paragraph, for "133(6)" there were substituted "133(5)",

(c) for subsection (4) there were substituted—

"(4) A final notice about a direction under section 83ZR(1)(c) or (3)(c) of the Banking Act 2009 or a prohibition under section 83ZR(1)(d) of that Act must—

(a) specify the conduct to which the direction relates or the extent of the prohibition, and

(b) give details of the date on which the direction or prohibition has effect.".

(4) Section 392 has effect as if for paragraphs (a) and (b) there were substituted—

"(a) warning notice given under section 83ZT(1) of the Banking Act 2009;

(b) a decision notice given under section 83ZU(1) of the Banking Act 2009.".

Appeal

83ZW.—(1) If the Bank of England decides to impose a sanction on a person under section 83ZR, the person may appeal to the Upper Tribunal.

(3) The Bank of England may not impose a sanction while an appeal under this section could be brought or is pending.

Injunctions: failure to comply with certain section 83ZR sanctions

83ZX.—(1) If, on the application of the Bank of England, the court is satisfied—

(a) that there is a reasonable likelihood that there will be a compliance failure, or

(b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Bank, the court is satisfied—

(a) that there has been a compliance failure, and

(b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring anyone who appears to have been knowingly concerned in the failure to take such steps as the court may direct to remedy it.

(3) If, on the application of the Bank of England, the court is satisfied—

(a) that there may have been a compliance failure by any person, or

(b) that a person may have been knowingly concerned in a compliance failure,

the court may make an order restraining that person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.

(4) "Compliance failure" means—

(a) a failure to comply with a direction under section 83ZR(1)(c) or (3)(c), or

(b) a breach of a prohibition imposed under section 83ZR(1)(d).

(5) The jurisdiction conferred by this section is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

(6) In this section—

(a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,

(b) references to remedying a failure include mitigating its effect, and

(c) references to dealing with assets include disposing of them.

Publication

83ZY.—(1) In the case of a warning notice under section 83ZT(1)—

(a) neither the Bank of England nor a person to whom it is given or copied may publish the notice,

(b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the Bank has published those details, and

(c) after consulting the persons to whom the notice is given or copied, the Bank may publish such information about the matter to which the notice relates as it considers appropriate.

(2) A person to whom a decision notice under section 83ZU(1) is given or copied may not publish the notice or any details concerning it unless the Bank has published the notice or those details.

(3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.

(4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

(5) Subject to subsection (8), where the Bank gives a decision notice it may publish such information about the matter to which the notice relates as it considers appropriate.

(6) Where the Bank publishes information under subsection (5) and the person to whom the decision notice is given refers the matter to the Upper Tribunal, the Bank must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(7) Subject to subsection (8), where the Bank gives a final notice—

(a) it must, without undue delay, publish details of any sanction to which the notice relates on its internet website, and

(b) it may publish such other information about the matter to which the notice relates as it considers appropriate.

(8) Information about a matter to which a decision notice or a final notice relates must be published anonymously where—

(a) the sanction is imposed (or proposed to be imposed) on an individual and following an obligatory prior assessment publication of personal data is found to be disproportionate, or

(b) were it not published anonymously, publication would—

(i) jeopardise the stability of financial markets or an ongoing criminal investigation, or

(ii) cause, insofar as it can be determined, disproportionate damage to the persons involved.

(9) Where subsection (8) applies, the person publishing the information may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction is imposed.

(10) Where the Bank publishes information in accordance with subsections (6) to (9), it must—

(a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998(**a**) requires the information to be retained for a different period, and

(b) disclose to the European Banking Authority any penalty imposed, any appeal against such a penalty and the outcome of the appeal, unless such a disclosure is not permitted by section 348 of the Financial Services and Markets Act 2000.

(11) In this section "notice of discontinuance" and "final notice" have the same meaning as in sections 389 and 390 of the Financial Services and Markets Act 2000 (which are applied (with modifications) by section 83ZV).

Co-operation

83ZZ. In connection with the exercise of its powers to impose sanctions under section 83ZR, the Bank of England must take such steps as it considers appropriate to co-operate with—

(a) the FCA,

(b) the PRA, and

(c) any person who exercises functions outside the United Kingdom equivalent to those exercisable by the Bank under this Part or any other enactment giving effect to the recovery and resolution directive.

Delegation of enforcement functions

83Z1.—(1) The Bank of England may, by agreement made with the appropriate regulator, delegate to that regulator its enforcement functions, subject to such restrictions and conditions, and for such period, as may be specified in the agreement.

(2) For the purposes of this section—

(a) "enforcement functions" of the Bank of England are its functions under, or by virtue of—

(i) section 83ZD;

(ii) section 83ZF;

(iii) section 83ZJ;

(iv) section 83ZL;

(v) section 83ZO;

(vi) sections 83ZQ to 83ZZ;

(b) "the appropriate regulator" means—

(i) the FCA or the PRA, where the requirement concerned was imposed on a UK authorised person which is not a PRA-authorised person, and

(ii) in any other case, the PRA.

(3) The Bank of England must make provision for the reimbursement of any expenses incurred by the appropriate regulator in the performance, in accordance with the terms of any agreement, of any functions delegated under this section.

(**a**) 1998 c.29.

Enforcement: share transfer orders

83Z2.—(1) The Treasury may by regulations make provision for the enforcement of obligations imposed by or under a share transfer order.

(2) Regulations—

(a) may confer jurisdiction on a court or tribunal,

(b) may not impose a penalty or create a criminal offence,

(c) may make provision which has effect in respect of an order only if applied by the order.

(3) Regulations are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament.".

Creation of Chapter 5 of Part 1

98. Sections 83A to 89G become Chapter 5 of Part 1, entitled "Special cases".

Banks not regulated by PRA

99.—(1) In section 83A (modification of Part 1 for banks not regulated by PRA)(**a**), the table of modifications in subsection (2) is amended as follows.

(2) At the beginning insert—

"Section 6A(**b**)	Treat the reference to the PRA in subsections (3)(a) and (7) as references to the FCA.
Section 6C	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person."

(3) In the entry for section 7, in the second column—

(a) for "(1), (4), (4A) and (5)" substitute "(1), (5A), (5C), (5D) and (5F)(**c**)",

(b) omit paragraph (b), and

(c) after paragraph (c) insert—

"(d) Subsections (5G)(a) and (5H)(a) do not apply unless the bank has as a member of its immediate group a PRA-authorised person.".

(4) After the entry for section 7, insert—

"Section 7A	In subsection (1), the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorised person."

(5) Omit the entries for sections 8 and 8A.

(**a**) Section 83A was inserted by paragraph 28 of Schedule 17 to the Financial Services Act 2012 (c.21), amended by paragraph 8 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**b**) Sections 6A to 6C are inserted by article 10 of this Order.
(**c**) Subsections (5A) to (5H) are inserted by article 12 of this Order.

(6) Before the entry for section 9 insert—

"Section 8ZA(**a**)	(a) Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person. (b) Treat the definition of "normal insolvency proceedings" in subsection (5) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011(**b**)"

(7) After the entry for section 9 insert—

"Section 12AA(**c**)	Treat the definition of "normal insolvency proceedings" in subsection (2) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011(**d**)
Section 63	Treat the reference to insolvency in subsection (1A)(**e**), as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011
Section 66	Treat the reference to insolvency in subsection (1ZA)(**f**), as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011
Section 81AA(**g**)	Treat the references to the PRA in subsections (3)(b) and (5)(a) as references to the FCA."

(8) In the entry for section 81B, for the entry in the second column substitute—

	"(a) Treat the references to the PRA in subsections (2) and (2A) as references to the FCA. (b) Ignore subsection (6)(b) unless the bank has as a member of its immediate group a PRA-authorised person."

(9) After the entry for section 81B insert—

"Section 81ZBA	(a) Treat the references to the PRA in subsections (2)(a) and (2A) as references to the FCA. (b) Ignore subsection (8)(a) unless the bank has as a member of its immediate group a PRA-authorised person. (c) Treat the definition of "normal insolvency proceedings" in subsection (9) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011"

(10) In the entry for section 81BA, in the second column, at the beginning insert—

	"(a) Treat the references to the PRA in subsections (2)(a) and (2A) as references to the

(**a**) Section 8ZA is inserted by article 15 of this Order.
(**b**) SI 2011/245.
(**c**) Section 12AA is inserted by article 21 of this Order.
(**d**) SI 2011/245.
(**e**) Subsection (1A) is inserted by article 71 of this Order.
(**f**) Subsection (1A) is inserted by article 74 of this Order.
(**g**) Section 81AA is inserted by article 89 of this Order.

	FCA. (b)"
(11) After the entry for section 82, insert—	
"Section 89H	Treat the definition of "normal insolvency proceedings" in subsection (7) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011(**a**)"

Building societies

100.—(1) In section 84 (application of Part 1: general), in the Table omit the entry for section 11.

(2) Section 85 (temporary public ownership) is amended as follows.

(3) In subsection (1) for "fourth" substitute "fifth".

(4) In subsection (8)—

(a) omit "22",

(b) after "25" insert ", 48Z", and

(c) for "72 and 73" substitute "73 and 83Z2".

Investment firms

101.—(1) Section 89A (application to investment firms)(**b**) is amended as follows.

(2) In subsection (1), for "subsection (2)" substitute—

"the following Table—

Provision	*Modification*
Section 1	Ignore subsection (2)(b).
Section 4	Ignore subsections (2)(b), (6) and (7)(b).
Section 5	Ignore subsection (1)(b).
Section 7	Ignore subsection (7).
Section 8	Ignore subsection (2)(c).
Section 8ZA	In subsection (5), ignore the reference to the bank insolvency procedure.
Section 12AA	In subsection (2), in the definition of "normal insolvency proceedings" ignore the reference to the bank insolvency procedure.
Section 14	Ignore subsection (5).
Section 60	In subsection (3)(c), ignore the reference to bank insolvency.
Section 60B(**c**)	In subsection (4), ignore the reference to bank insolvency.
Section 63	In subsection (1A)(**d**), ignore the reference to bank insolvency.
Section 66	In subsection (1ZA)(**e**), ignore the reference to bank insolvency.".

(3) For subsection (2) substitute—

(**a**) SI 2011/245.
(**b**) Section 89A was inserted by section 101 of the Financial Services Act 2012 (c.21).
(**c**) Section 60B is inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**d**) Subsection (1A) is inserted into section 63 by article 71(3) of this Order.
(**e**) Subsection (1ZA) is inserted into section 66 by article 74(3) of this Order.

"(2) In the case of investment firms which are FCA-regulated investment firms, in subsection (1) the reference to this Part is a reference to this Part as it applies to FCA-regulated banks by virtue of section 83A.

(3) In this section—

"FCA-regulated bank" has the meaning given by section 83A(2);

"FCA-regulated investment firm" means an investment firm which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000.".

Recognised central counterparties

102.—(1) Section 89B (application to recognised central counterparties)(**a**) is amended as follows.

(2) In subsection (1), for "This Part" substitute "Subject to subsection (1ZA), this Part".

(3) After subsection (1) insert—

"(1ZA) For the purposes of this section and sections 89C to 89G, this Act has effect disregarding any amendments made by the Bank Recovery and Resolution Order 2014."

Third-country resolution proceedings

103. After section 89G(**b**) insert—

"Chapter 6

Third-country resolution actions

Third-country resolution actions

Recognition of third-country resolution actions

89H.—(1) This section applies where the Bank of England is notified of third-country resolution action in respect of a third-country institution or third-country parent undertaking.

(2) The Bank must make an instrument which—

(a) recognises the action, or

(b) refuses to recognise the action, or

(c) recognises part of the action and refuses to recognise the remainder.

An instrument within paragraph (a), (b) or (c) is a "third-country instrument" (as is an instrument under section 89I(4)(b)).

(3) The Bank may only make a decision under subsection (2) with the approval of the Treasury.

(4) Recognition of the action (or a part of it) may be refused only if the Bank and the Treasury are satisfied that one or more of the following conditions are satisfied—

(a) recognition would have an adverse effect on financial stability in the United Kingdom or another EEA state;

(b) the taking of action in relation to a branch located in the United Kingdom of a third-country institution is necessary to achieve one or more of the special resolution objectives;

(**a**) Section 89B was inserted by section 102 of the Financial Services Act 2012 (c.21), amended by paragraph 9 of Schedule 2 and paragraph 7 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 (c.33), SI 2013/504.

(**b**) Section 89G was inserted by section 102 of the Financial Services Act 2012 (c.21), amended by SI 2013/504.

(c) under the third-country resolution action creditors (including in particular depositors) located or payable in an EEA state would not, by reason of being located or payable in the EEA state, receive the same treatment as creditors (including depositors) who are located or payable in the third country concerned and have similar legal rights;

(d) recognition of, and taking action in support of, the third-country resolution action (or the part) would have material fiscal implications for the United Kingdom;

(e) recognition would be unlawful under section 6 of the Human Rights Act 1998(**a**) (public authority not to act contrary to Human Rights Convention) or contrary to a provision of EU law.

(5) The recognition of third-country resolution action (or any part of it) is without prejudice to any normal insolvency proceedings.

(6) When exercising any function under or by virtue of this section or section 89I, the Bank and the Treasury must give due consideration to the interests of any EEA state where the third-country institution or third-country parent undertaking operates, and (in particular) to the potential effect of the exercise of any of those functions on—

(a) where the institution or undertaking is a member of a group, any member of the group in such an EEA state, and

(b) the financial stability in such an EEA state.

(7) In this section—

"EU institution" has the meaning given by Article 2.1(23) of the recovery and resolution directive,

"group" has the meaning given by section 474 of the Companies Act 2006(**b**),

"normal insolvency proceedings" has the meaning given in Article 2.1(47) of the recovery and resolution directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure),

"third-country group company" means an undertaking—

(a) which is (or, but for third-country resolution action or the exercise of a stabilisation power, would be) in the same group as a third-country institution or a third-country parent undertaking, and

(b) in respect of which any conditions specified in an order made by the Treasury under section 81D(**c**) are met (applying that order as if references to the bank were references to the third-country institution or third-country parent undertaking),

"third-country institution" has the meaning given by Article 2.1(86) of the recovery and resolution directive;

"third-country parent undertaking" has the meaning given by Article 2.1(87) of the recovery and resolution directive;

"third-country resolution action" means action under the law of a third country to manage the failure or likely failure of a third-country institution, third country parent undertaking or an EU institution—

(a) the anticipated results of which are, in relation to a third-country institution or third-country parent undertaking or EU institution, broadly comparable to results which could have been anticipated from the exercise of a stabilisation option in relation to an entity in the United Kingdom corresponding to the institution or undertaking, and

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(**a**) 1998 c.42. Section 6(4) was repealed by Part 5 of Schedule 18 to the Constitutional Reform Act 2005 (c.4).
(**b**) 2006 c.46.
(**c**) Section 81D was inserted by section 100 of the Financial Services Act 2012 (c.21), and amended by paragraphs 1 and 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(b) the objectives of which are broadly comparable, in relation to the third country, to the objectives in section 4 as they apply in relation to the United Kingdom;

"third country" means a state other than an EEA state.

Effect of recognition of third-country resolution action by Bank of England

89I.—(1) This section applies where an instrument under section 89H recognises any third-country resolution action (or a part of it).

(2) The third-country resolution action (or part) produces the same legal effects in any part of the United Kingdom as it would have produced had it been made (with due authority) under the law of that part of the United Kingdom.

(3) For the purposes of supporting, or giving full effect to, the third-county resolution action (or the part), the Bank of England may exercise, in relation to a third-country institution, a third-country parent undertaking or another third-country group company, one or more of the stabilisation options, or one or more of the stabilisation powers, available to the Bank in relation to a similar entity in the United Kingdom.

(4) But, for the purposes of exercising a power by virtue of subsection (3), provision which could otherwise be made under this Part in a mandatory reduction instrument, share transfer instrument, property transfer instrument or resolution instrument may instead be made in—

(a) the instrument made under section 89H recognising the third-country resolution action (or part), or

(b) a further instrument made by the Bank of England under this section.

An instrument under paragraph (b) is a "third-country instrument" (as is an instrument under section 89H(2)(a), (b) or (c)).

(5) This Part (other than this section) applies in relation to the exercise of any power by virtue of subsection (3), subject to subsections (6) to (8) and any other necessary modifications.

(6) Section 4 (special resolution objectives) has effect as if after subsection (9) there were inserted—

"(9A) Objective 8 is to support third-country resolution action with a view to promoting objectives which, in relation to the third country concerned, correspond to Objectives 1 to 7 in relation to the United Kingdom.".

(7) Sections 7 to 8ZA(**a**) do not apply.

(8) Section 60B(**b**) (principle of no less favourable treatment) applies in relation to compensation arrangements in the case of third-country instruments in relation to any third-country resolution action (or a part of it) as if—

(a) references to the initial instrument were to the first third-country instrument under section 89H(**c**) recognising that action (or part), and

(b) in subsection (3) the reference to the coming into effect of the initial instrument were a reference to the taking of the third-country resolution action recognised (or recognised in part) by that instrument.

(9) Section 81B, 81ZBA and 81BA(**d**) have effect in relation to the exercise of a stabilisation power in respect of a third-country group company as if for subsections (2) and (3) (in each case) there were substituted—

(**a**) Section 8ZA is inserted by article 15 of this Order.
(**b**) Section 60B was inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**c**) Section 89H is inserted by article 102 of this Order.
(**d**) Sections 81B was inserted by section 100 of the Financial Services Act 2012 (c.21); section 81ZBA is inserted by article 91 of this Order; section 81BA was inserted by paragraph 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

"(2) Condition 1 is that third-country resolution action has been taken in respect of a third-country institution, a third-country parent undertaking or another third-country group company, in the same group.

(3) Condition 2 is that the Bank of England is satisfied that the exercise of the power in respect of the third-country group company is necessary, having regard to the public interest in the stability of the financial systems of the United Kingdom and the third-country concerned.

(3A) In subsections (2) and (3) "third-country resolution action", "third-country institution", "third-country parent undertaking", "third-country group company" and "third country" have the meaning given by section 89H(7).".

(10) Section 89H(7) applies for the purposes of this section.

Third-country instruments: supplementary provision

89J.—(1) Section 23 (incidental provision) applies to a third-country instrument as it applies to a share transfer instrument.

(2) Section 24 (procedure: instruments)(**a**) applies to a third-country instrument as it applies to a share transfer instrument, except that references in that section to the bank are to be read as references to the third-country institution, third-country parent undertaking or other third-country group company, to which the third-country instrument relates.

(3) Section 76 (international obligation notice: general) applies in relation to the making of a third-country instrument under section 89H or 89I as it applies in relation to the exercise of a stabilisation power, except that—

(a) for the purposes of section 76(3), section 4 is to be read subject to the modification in section 89I(6), and

(b) in subsection (4), the reference to a bank is to be read as a reference to a third-country institution, a third-country parent undertaking or another third-country group company, in respect of which a third-country instrument is made.

(4) Section 77 (international obligation notice: bridge bank) applies where the Bank of England has, by virtue of section 89I(**b**), transferred all or part of the business of a third-country institution, a third-country parent undertaking or another third-country group company, to a bridge bank as it applies where the Bank of England has transferred all or part of the business of a bank or banking group company to a bridge bank.

(5) Section 89I(7) applies for the purposes of this section.

Chapter 7

General provisions

Insolvency Proceedings

89K.—(1) If —

(a) a stabilisation power has been exercised in respect of a relevant firm, or

(b) the conditions in section 7 are met in relation to a relevant firm,

insolvency proceedings may not be commenced in relation to that firm except by, or with the consent of, the Bank of England.

(2) For the purposes of subsection (1), the commencement of insolvency proceedings means—

(**a**) Section 24 was amended by paragraph 12 of Schedule 17 to the Financial Services Act 2012 (c.21).
(**b**) Section 89J is inserted by article 102 of this Order.

(a) making an application for an administration order;

(b) presenting a petition for winding up;

(c) proposing a resolution for voluntary winding up;

(d) appointing an administrator.

(3) In this section—

(a) "relevant firm" means—

(i) a bank, building society, investment firm, financial holding company, mixed financial holding company or a mixed activity holding company, or

(ii) a financial institution which is a subsidiary undertaking of an entity within sub-paragraph (i);

(b) "building society" has the meaning given in the Building Societies Act 1986(**a**);

(c) "financial holding company" has the meaning given in Article 4.1(2) of the capital requirements regulation;

(d) "financial institution" has the meaning given in Article 4.1(26) of the capital requirements regulation;

(e) "mixed activity holding company" has the meaning given in Article 4.1(22) of the capital requirements regulation;

(f) "mixed financial holding company" has the meaning given in Article 2.15 of Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002(**b**) on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

Restrictions on disclosure of confidential information

89L.—(1) Sections 348(**c**), 349(**d**), 352(**e**) and 353(**f**) of the Financial Services and Markets Act 2000 (disclosure of information) apply for the purposes of this Part with the following modifications.

(2) Section 348 of that Act has effect as if—

(a) in subsection (2)(b), after "Act" there were inserted "or of the Bank of England under Part 1 of the Banking Act 2009 or the Bank Recovery and Resolution (No 2) Order 2014",

(b) in subsection (3)(a), at the end there were inserted "or the Banking Act 2009", and

(c) in subsection (5)—

(i) after paragraph (c) there were inserted—

"(ca) the Bank of England;

(cb) a resolution administrator appointed under Part 1 of the Banking Act 2009;"

,

(ii) in paragraph (e) for "to (c)" there were substituted "to (cb)", and

(iii) after subsection (6)(b) there were inserted—

(**a**) 1986 c. 53.

(**b**) OJ L 35, 11.02.2003, p1.

(**c**) Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 (c.21) and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33).

(**d**) Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012 (c.21), SI 2006/1183, SI 2007/1093 and SI 2011/1043.

(**e**) Section 352 was amended by section 336 of the Criminal Justice Act 2003 (c.44).

(**f**) Section 353 was amended by section 61 of the Consumer Credit Act 2006 (c.14), paragraph 23 of Schedule 12 to the Financial Services Act 2012 (c.21) and SI 2013/1881.

"(c) a competent person appointed by the Bank of England under Chapter 4 of Part 1 of the Banking Act 2009."

(3) Section 349 of that Act has effect as if, in subsection (2)(c), for "or the PRA" substitute "the PRA, the Bank of England or a resolution administrator appointed by virtue of section 62B of the Banking Act 2009".

(4) Section 353 of that Act has effect as if in subsection (1)—

(a) in paragraph (a), after "under this Act" there were inserted "or the Banking Act 2009", and

(b) in paragraph (b) after "to the" there were inserted "Bank of England, the".

Giving of notices, documents etc under Part 1

89M. Regulations under section 414 of the Financial Services and Markets Act 2000 (service of notices), and subsection (4) of that section, apply in relation to any notice, direction or document of any kind required to be given under any provision of this Part (however that requirement is expressed) as if those provisions were provisions of that Act."

Grounds for applying

104.—(1) Section 96 (grounds for applying) is amended as follows.

(2) In subsection (2)—

(i) in paragraph (a) for "Conditions 1 and 2 in section 7 are met" substitute "Condition 1 in section 7 is met",

(ii) in paragraph (b), before subparagraph (i) insert—

"(ai) that Condition 2 in section 7 is met,";

(3) In subsection (3)—

(a) for paragraph (a), substitute—

"(a) the Bank of England has—

(i) informed the PRA that it is satisfied that Condition 2 in section 7 is met, and

(ii) has consented to the application,", and

(b) in paragraph (b)(i) for "Conditions 1 and 2 in section 7 are met" substitute "Condition 1 in section 7 is met".

Notice to PRA of preliminary steps

105.—(1) Section 120 (notice to PRA of preliminary steps)(**a**) is amended as follows.

(2) In subsection (5), for "PRA has" substitute "the PRA and the Bank of England have".

(3) In subsection (7)—

(a) in paragraph (a), for "2 weeks" substitute "7 days", and

(b) for paragraph (b) substitute—

"(b) both—

(i) the Bank of England has informed the person who gave the notice that it does not intend to exercise a stabilisation power under Part 1 in relation to the firm (and Condition 5 has been met, if applicable), and

(ii) each of the PRA and the Bank of England has informed the person who gave the notice that it does not intend to apply for a bank insolvency order."

(**a**) Section 120 was amended by paragraphs 29, 44 of Schedule 17 to the Financial Services Act 2012 (c.21) and paragraph 10 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(4) In subsection (10)—

(a) for "Where the PRA receives notice under Condition 1" substitute "Where notice has been given under Condition 1", and

(b) omit paragraph (a).

Notice to regulators and the Bank of England of preliminary steps

106. After section 120 insert—

"**Notice to the regulators and the Bank of England of preliminary steps**

120A.—(1) Section 120 shall apply to relevant firms as it applies to banks, except that for this purpose—

(a) subsections (5) and (10) of that section have effect as if any reference to the PRA were a reference to the appropriate regulator, and

(b) subsection (7) has effect as if for paragraph (b) there were substituted—

"(b) the Bank of England has informed the person who gave the notice that it does not intend to exercise a stabilisation power under Part 1 in relation to the firm (and Condition 5 has been met, if applicable)."

(2) In this section—

(a) "relevant firm" means—

(i) a financial holding company, investment firm, mixed financial holding company or a mixed activity holding company, or

(ii) a financial institution which is a subsidiary undertaking of a bank or an entity within paragraph (a)(i);

(b) "financial holding company" has the meaning given in Article 4.1(2) of the capital requirements regulation (within the meaning of section 3);

(c) "financial institution" has the meaning given in Article 4.1(26) of the capital requirements regulation (within the meaning of section 3);

(d) "mixed activity holding company" has the meaning given in Article 4.1(22) of the capital requirements regulation (within the meaning of section 3);

(e) "mixed financial holding company" has the meaning given in Article 2.15 of Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002(**a**) on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

(3) In this section, references to "the appropriate regulator" are—

(a) to the PRA, in relation to a PRA-authorised person; and

(b) to the FCA in relation to any other authorised person."

Power to direct bank administrator

107. In section 145A (power to direct bank administrator)(**b**), in subsection (1)(b), after "connection with" insert "the making of a mandatory reduction instrument or".

(**a**) OJ L 35, 11.02.2003, p1.

(**b**) Section 145A was inserted by section 103 of the Financial Services Act 2012 (c.21).

Immunity

108. In section 244 (immunity), in subsection (2)(c), after "2000" insert ", of its functions under or in connection with this Act or as a resolution authority for the purposes of the recovery and resolution directive".

State aid

109. In section 256A(**a**) (state aid)—

(a) In subsection (1)(a), after "in connection with" insert "the making of a mandatory reduction instrument or",

(b) in subsection (2) for "bail-in administrator" substitute "resolution administrator".

Statutory instruments

110.—(1) The Table in section 259(3) (procedure for statutory instruments) is amended as follows.

(2) Omit the entry for section 72.

(3) At the appropriate place insert—

"83ZY	Enforcement of share transfer orders	Negative resolution"

Index of defined terms in the Banking Act

111. In the Table in section 261, at the appropriate places insert—

"Additional Tier 1 instruments (in Part 1)	3"
"the capital requirements regulation (in Part 1)	3"
"Common Equity Tier 1 instruments (in Part 1)	3"
"critical functions (in Part 1)	3"
"eligible liabilities	3"
"extraordinary public financial support (in Part 1)	3"
"mandatory reduction instrument	6B"
"own funds (in Part 1)	3"
"own funds requirements (in Part 1)	3"
"the recovery and resolution directive (in Part 1)	3"
"relevant capital instruments (in Part 1)	3"

(**a**) Section 256A was inserted by paragraph 11 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

"the recovery and resolution directive (in Part 1)	3"
"third-country instrument	89I"
"resolution company	29A(**a**)"
"Tier 2 instruments (in Part 1)	3"

Introduction to amendments of the Financial Services and Markets Act 2000

112. The Financial Services and Markets Act 2000 is amended in accordance with Articles 113 to 122.

Consolidated supervision

113. In section 3M (directions relating to consolidated supervision of group)(**b**), in subsection (3), after paragraph (d) insert—

"(e) Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.(**c**)".

Discontinuance and suspension of listing

114. In section 77 (discontinuance and suspension of listing)(**d**), after subsection (3) insert—

"(3A) If securities have been suspended by the Bank of England under section 19, 39B or 48L of the Banking Act 2009(**e**), the FCA may, following consultation with the Bank of England, cancel the suspension.".

Discontinuance of suspension: procedure

115.—(1) Section 78 (discontinuance of suspension: procedure)(**f**) is amended as follows.

(2) For subsection (10) substitute—

"(10) If—

(a) the FCA has suspended the listing of securities on its own initiative, or securities have been suspended by the Bank of England under section 19, 39B or 48L of the Banking Act 2009, and

(b) the FCA proposes to refuse an application by the issuer of the securities for the cancellation of the suspension,

the FCA must give the issuer a warning notice.".

(3) In subsection (14), at the end insert "and in subsections (10) and (12), includes a suspension of listing under section 19, 39B or 48L of the Banking Act 2009".

(**a**) Article 29A is inserted by article 32 of this Order.
(**b**) Section 3M inserted by section 6 of the Financial Services Act 2012 (c.12), amended by SI 2013/3115.
(**c**) OJ L 173, 12.06.2014, p90.
(**d**) Section 77 was amended by section 16 of the Financial Services Act 2012 (c.21), and SI 2007/1973.
(**e**) 2009 c.1. Section 39B is inserted by article 39 of this Order and section 48L was inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**f**) Section 78 was amended by section 16 of the Financial Services Act 2012 (c.21) and SI 2007/1973.

Proceedings before Upper Tribunal

116. In section 133 (proceedings before Tribunal: general provision), in subsection (7A)(**a**), at the end insert—

"(o) a decision to take action under section 83ZR of the Banking Act 2009.".

Assessment: consultation by PRA with FCA

117. In section 187A (assessment: consultation by PRA with FCA)(**b**), after subsection (5) insert—

"(5A) Where the PRA notifies the FCA that it has been directed by the Bank of England under section 189(1A) to act in a timely manner, the FCA may take action under subsection (2), (3) or (4) after the time it receives that notification only if that action is taken as soon as reasonably practicable after that time."

Assessment procedure

118. In section 189 (assessment: procedure)(**c**), after subsection (1) insert—

"(1A) But where the section 178 notice relates to an acquisition or increase of control over a credit institution, investment firm or banking group company, the Bank of England, acting in the exercise of its functions under sections 6A to 6C of the Banking Act 2009 or under the special resolution regime under Part 1 of that Act, may direct the appropriate regulator to act under this Part in a timely manner, and to shorten the assessment period so far as reasonably practicable.

(1B) In subsection (1A)—

"bank" has the meaning given in section 2 of the Banking Act 2009;

"banking group company" has the meaning given in section 81D(**d**) of that Act.".

Requests for further information

119. In section 190 (requests for further information)(**e**), after subsection (1) insert—

"(1A) But where a direction has been given by the Bank of England under section 189(1A), the appropriate regulator must, as soon as reasonably practicable, ask the section 178 notice-giver to provide any further information necessary to complete its assessment.".

Rules requiring parent undertakings to facilitate resolution

120.—(1) Section 192JB(**f**) is amended as follows.

(2) For subsection (1) substitute—

"(1) The appropriate regulator may make rules requiring a qualifying parent undertaking to make arrangements that in the opinion of the regulator—

(a) would facilitate the preparation, maintenance, implementation and review of a recovery plan in relation to the group of the qualifying parent undertaking,

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(**a**) Subsection (7A) was inserted into section 133 by section 23 of the Financial Services Act 2012 (c.21).
(**b**) Section 187A was inserted by section 6 of the Financial Services Act 2012.
(**c**) Section 189 was substituted (with sections 178 to 191G) for the original by SI 2009/534 and amended by section 26 of the Financial Services At 2012.
(**d**) Section 81D was inserted by section 100 of the Financial Services Act 2012.
(**e**) Section 190 was amended by section 26 of the Financial Services Act 2012.
(**f**) Section 192JB was inserted by section 133 of the Financial Services (Banking Reform) Act 2013 (c.33).

(b) are required in relation to the provision of financial support to other members of the group of the qualifying parent undertaking which encounter or are likely to encounter financial difficulties, or

(c) would allow or facilitate the exercise of the resolution powers in relation to the qualifying parent undertaking or any of its subsidiary undertakings in the event of a situation arising where all or part of the business of the parent undertaking or the subsidiary undertaking encounters or is likely to encounter financial difficulties.".

(3) After subsection (1) insert—

"(1A) A "recovery plan" in relation to a group, is a document which provides for measures to be taken to achieve the stabilisation of the group as a whole, or any institution within the group, where the group or institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or the institution.".

(4) In subsection (3), after paragraph (b) insert—

"(c) the review of a recovery plan by the consolidating supervisor of the qualifying parent undertaking;

(d) the entry by the parent undertaking into a group financial support agreement and provision of financial support by the parent undertaking in accordance with that agreement.".

(5) For subsection (4) substitute—

"(4) In subsection (3)—

(a) "consolidating supervisor" has the meaning given in Article 4.1(41) 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 and amending Regulation (EU) No 648/2012(**a**);

(b) "group financial support agreement" means an agreement for the provision of financial support from one member of a group to another which satisfies the conditions set out in Article 19 of Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms(**b**).

(c) "transferee" means a person to whom all or part of the business of the parent undertaking or the subsidiary undertaking could be transferred as a result of the exercise of the resolution powers.".

Power to impose penalty or issue censure

121.—(1) Section 192K (power to impose penalty or issue censure)(**c**) is amended as follows.

(2) In subsection (1)—

(a) at the end of paragraph (a) omit "or",

(b) at the end of paragraph (b) insert "or", and

(c) after paragraph (b) insert—

"(c) a requirement imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.".

(3) After subsection (3) insert—

"(3A) The regulator may impose, for such period as it considers appropriate, restrictions (including a temporary ban) on the exercise by any member of the management body or senior management of, or other person who works for, a qualifying parent undertaking of

(**a**) OJ L176, 27.6.2013 p.1, corrigenda OJ L321, 30.11.2013, p.6.
(**b**) OJ L173, 12.6.2014, p.190.
(**c**) Section 192K was inserted (with sections 192A to 192N) by section 27 of the Financial Services Act 2012 (c.21).

any functions in a PRA-authorised person, an investment firm or a qualifying parent undertaking.

(3B) The regulator may only impose restrictions under subsection (3A) on a person who was, at any time, knowingly concerned in the contravention.".

(4) After subsection (6) insert—

"(7) In this section—

"management body" means the board of directors, or if there is no such board, the equivalent body responsible for the management of the undertaking concerned;

"member of the senior management" means a person who—

(a) exercises executive functions within a qualifying parent undertaking, and

(b) is responsible, and directly accountable to the management body, for the day to day management of that qualifying parent undertaking.

(8) A regulator which imposes a restriction on any person under subsection (3A) may—

(a) vary the restriction so as to reduce the period for which it has effect or otherwise to limit its effect, or

(b) cancel the restriction.".

Sanctions: procedure

122.—(1) Section 192L (procedure and right to refer to Tribunal) is amended as follows.

(2) After subsection (3) insert—

"(3A) A warning notice about a proposal to impose a restriction under section 192K(3A) must state—

(a) the terms of the restriction, and

(b) the period for which the restriction is to have effect."

(3) After subsection (6A) insert—

"(6B) A decision notice about the imposition of a restriction under section 192K(3A) must state—

(a) the terms of the restriction, and

(b) the period for which the restriction is to have effect.".

Corporation Tax Act 2009

123. In section 322 of the Corporation Tax Act 2009(**a**) (release of debts: cases where credits are not required to be brought into account), in subsection (5A)(**b**), after "consequence of" insert "the making of a mandatory reduction instrument or a third country instrument or".

Financial Services Act 2012

124. In section 61 of the Financial Services Act 2012(**c**) (Treasury power of direction), in subsection (2)(b), after "2009" insert "or the making by the Bank of a mandatory reduction instrument within the meaning of section 6B of that Act".

(**a**) 2009 c.4.
(**b**) Subsection (5A) was inserted into the Corporation Tax Act 2009 by the Finance Act 2014 (c.26).
(**c**) 2012 c.21.

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

125.—(1) The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(**a**) is amended as follows.

(2) In article 1(3) (interpretation)—

(a) in the definition of "banking institution" for paragraph (e), substitute—

"(e) a banking group company;";

(b) in the definition of "relevant authority", for "Case 1 or 2 (as specified in article 2(2) and (3))" substitute "Case 1, 2, 4 or 5 (as specified in article 2(2), (3), (4A) and (4B))".

(3) In article 2 (application of this order)—

(a) in paragraph (2), for "or 12(2)" substitute ", 12(2) or 12ZA(3)",

(b) in paragraph (3)(a), for "or 12(2)" substitute ", 12(2) or 12ZA(3)",

(c) after paragraph (4) insert—

"(4A) Case 4 is where—

(a) the Bank has made a resolution instrument in accordance with section 12A(2) of the Act (bail-in option), and

(b) a property transfer instrument has been made under section 41A(2) (transfer of property subsequent to resolution instrument), 42 (supplemental instruments) or 44A (bail in: reverse property transfer) of the Act which is a partial property transfer.

(4B) Case 5 is where—

(a) the Bank has made a third-country instrument in accordance with section 89H of the Act (recognition of third-country resolution actions), and

(b) either—

(i) that third-country instrument or

(ii) any further third-country instrument made under section 89I(4)(b),

makes provision which would otherwise be made in a property transfer instrument and which, if made in a property transfer instrument, would be a partial property transfer.".

(4) In article 8—

(a) in paragraph (1)(a) after "section 44" insert "or 44A";

(b) in paragraph (4)(a) after "section 44" insert "or 44A (as the case may be)".

(5) Omit article 9 (termination rights).

(6) In article 10(1) omit "or 9".

(7) In article 12(6) after "section 44" insert "or 44A".

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

126.—(1) The Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009(**b**) are amended as follows.

(2) In regulation 1(3) (interpretation)—

(a) in the definition of "banking institution", for paragraph (c) substitute—

"(c) a banking group company;";

(**a**) SI 2009/322, amended by SI 2009/1826; 2011/1043; 2013/472; 2013/3115.
(**b**) SI 2009/319.

(b) in the definition of "relevant time" insert after paragraph (c)—

"(d) in relation to Case 4 (as specified in regulation 2(4A)), the time at which the resolution instrument made in accordance with section 12A(2) of the Act took effect;

(e) in relation to Case 5 (as specified in regulation 2(4B)), the time at which the third-country instrument made in section 89H(2)(a) or (c) of the Act took effect.".

(3) In regulation 2 (application of these Regulations)—

(a) in paragraph (2), for "or 12(2)" substitute ", 12(2) or 12ZA(3)",

(b) in paragraph (3)(a), for "or 12(2)" substitute ", 12(2) or 12ZA(3)",

(c) after paragraph (4) insert—

"(4A) Case 4 is where—

(a) the Bank has made a resolution instrument (or, where more than one resolution instrument has been made, the first resolution instrument) in accordance with section 12A(2) of the Act (bail-in option), and

(b) a property transfer instrument has been made under section 41A(2) (transfer of property subsequent to resolution instrument), 42 (supplemental instruments) or 44A (bail in: reverse property transfer) of the Act which is a partial property transfer.

(4B) Case 5 is where—

(a) the Bank has made a third-country instrument in accordance with section 89H of the Act (recognition of third-country resolution actions),

(b) either—

(i) that third-country instrument or

(ii) any further third-country instrument made under section 89I(4)(b),

makes provision which would otherwise be made in a property transfer instrument and which, if made in a property transfer instrument, would be a partial property transfer.".

(4) In regulation 4—

(a) the existing text becomes paragraph (1) and, in that paragraph, for subparagraph (a), substitute—

"(a) whether all relevant persons, a class of relevant persons or a particular relevant person should be paid compensation; and";

(b) after that paragraph, insert—

"(2) In these Regulations, "relevant persons" means the pre-resolution shareholders and creditors (within the meaning of section 60B(3) of the Act(**a**)).".

(5) In regulation 5—

(a) in paragraphs (2) and (3), for "pre-transfer creditors" substitute "relevant persons";

(b) in paragraph (4) for "pre-transfer creditor", each time it appears, substitute "relevant person".

(6) In regulation 6(b) (mandatory provisions – choice of insolvency process)—

(a) in subparagraph (ii), for "or 12(2)" substitute ", 12(2) or 12ZA(3)";

(b) insert after subparagraph (iii)—

"(iv) in the case of Case 4 (as specified in regulation 2(4A)), the resolution instrument made in accordance with section 12A(2) of the Act (or if more

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(**a**) 2009 c.1; section 60B was inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

than one instrument has been made, the first resolution instrument made in accordance with that section);

(v) in the case of Case 5 (as specified in regulation 2(4B)), the third-country instrument made in accordance with 89H(2)(a) or (c).".

(7) In regulation 8—

(a) for "pre-transfer creditor" wherever it occurs substitute "relevant person";

(b) for "pre-transfer creditors" wherever it occurs substitute "relevant persons".

(8) In regulation 9, for "pre-transfer creditor" substitute "relevant person".

Amendment of the Banking Act 2009 (Banking Group Companies) Order 2014

127. In article 2(1) of the Banking Act 2009 (Banking Group Companies) Order 2014(**a**), for the definition of "the bank" substitute—

""the bank", in relation to any undertaking, means the bank, EU institution(**b**) or third country institution(**c**) in the same group as the undertaking,".

Review

128.—(1) The Treasury must from time to time—

(a) carry out a review of the effectiveness of articles 2 to 127,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the recovery and resolution directive (which is partially implemented by means of articles 2 to 127) is implemented in other EEA states.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by articles 2 to 127,

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published before the end of the period of five years beginning with the day on which this Order comes into force.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

Name
Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements in part Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit

(**a**) SI 2014/1831.
(**b**) Defined in section 81AA of the Act (inserted by article 89 of this Order).
(**c**) Defined in section 89H(7) of the Act (inserted by article 102 of this Order).

institutions and investment firms ("RRD") (OJ L173, 12.6.2014, p.190). The RRD requires EEA states to have powers to manage the failure of credit institutions and investment firms and their group companies ("banks") as an alternative to insolvency, in order to ensure that critical functions continue to be performed.

The amendments to the Banking 2009 (c.1) ("the Act") align existing provisions with the requirements of the RRD and create the new powers for the Bank of England required by the RRD.

Article 6 creates a new Chapter 2 to give the Bank of England powers which it may use before a firm reaches the point where it is necessary for the Bank to use its stabilisation powers under the Act to require firms to remove impediments to the use of those powers. The pre-resolution powers are subject to safeguards similar to those for the use of comparable powers when exercised by the Prudential Regulation Authority ("PRA") or the Financial Conduct Authority ("FCA") under the Financial Services and Markets Act 2000 (c. 8) ("FSMA").

Articles 10 imposes a duty on the Bank of England to write down or convert capital instruments (Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments) before it may use one of the stabilisation options provided for in Part 1 of the Act on a failing bank. Appropriate compensation arrangements are provided through the power of the Bank to provide common equity to holders of the relevant capital instruments where necessary.

Article 11 require the Bank of England to ensure a valuation is conducted of the assets and liabilities of the failing bank before it exercises a stabilisation option. It permits a provisional valuation to be carried out by the Bank of England in an urgent case, after which an independent valuation is required by new section 48X (inserted by article 61).

Articles 12 – 23 amend the stabilisation options in the Act. Article 12 amends the general conditions for the exercise of these options. Articles 15 and 19 add a new stabilisation option of transferring liabilities of the failing bank to an 'asset management vehicle', which previously could only be done using a bridge bank. Article 18 imposes further requirements on the use of the bridge bank option. Articles 20 – 22 make changes to the bail in option; the list of liabilities exempt from bail, set out in section 48B, is amended in article 48.

Articles 24 – 98 amend the procedural rules for the use of the stabilisation options to implement RRD requirements and make consequential amendments chiefly to reflect the addition of the asset management vehicle and the requirement to write down or convert capital instruments before using the options. They include the following provisions of note:

(a) Articles 27, 36 and 55 extend the Bank of England's existing powers to remove or vary the contracts of directors of the failing bank to senior managers.

(b) Articles 52 omit sections relating to the 'bail in administrator' and Article 70 replaces it with a 'resolution administrator', who may be appointed to hold securities in the context of bail in or perform other functions required by the Bank of England in the context of resolution.

(c) Article 53 extends the Bank of England's powers in relation to securities when exercising the bail in option to include a power to provide for their relisting without a prospectus.

(d) Articles 28, 37 and 54 repeal sections 22, 38 and 48M (termination rights, etc). These provisions are replaced and extended by provisions in Article 62, which inserts section 48Z. This section ensures that a wider range of contractual termination rights do not arise merely where a crisis prevention measure or a crisis management measure (including the use of a stabilisation option), as long as the substantive obligations in the contract continue to be performed.

(e) Article 77 inserts new powers for the Bank of England to impose, until midnight on the business day following the use of a stabilisation option, a stay on contractual obligations to which a bank subject to a stabilisation option is a party, a suspension of the rights of a secured creditor of that bank and a suspension of termination rights of certain persons.

(f) Article 85 permits the Treasury to require the Bank of England to provide information about whether a condition for financial assistance has been met. This will enable the Treasury to comply with its obligation under the RRD not to provide financing for resolution unless 8% of the liabilities of the failing bank or of the entity on which resolution action will be taken have been bailed in.

(g) Articles 89 – 96 extend the Bank of England's powers to act on banking group companies. They may act for example on a UK parent company of a bank elsewhere in the EU or in a third country. The asset management vehicle is added to their powers in respect of a banking group company.

(h) Article 97 inserts new powers for the Bank of England to gather information and to investigate in support of their exercise of their resolution functions, and enforce their requirements through regulatory or in some cases criminal sanctions.

Article 99 applies the amendments in this Order with modifications to banks not regulated by the PRA, article 100 makes consequential amendments to section 85 of the Act and article 101 applies these amendments to investment firms. Article 102 ensures that the amendments made in this Order to not apply to central counterparties.

Article 103 inserts new provisions to require the Bank of England either to recognise or to refuse to recognise a resolution action of a third country. If the action is recognised, it becomes effective as a matter of United Kingdom law. It also inserts powers for the Bank of England to take action to support a third-country resolution action.

The Order also amends FSMA. Article 113 adds the RRD to the list of 'relevant directives' for the purpose of consolidated supervision of banking groups which are active in more than one EEA state.

Articles 114 and 115 amend the listing rules in Part VI of FSMA to permit the FCA to cancel a suspension of listing imposed by the Bank of England in an instrument that applies a stabilisation option through the use of powers inserted by Article 27, 39 and 54.

Articles 117 – 119 amend the rules in Part 12 of FSMA to enable the Bank to require the regulators to speed up analysis of any change of control that arises when creditors' instruments are converted into shares in the context of a conversion of relevant capital instruments or bail in.

Article 120 extends the powers of the PRA and the FCA to make rules over qualifying parent undertakings in the context of recovery planning, provision of intra-group financial support and the exercise of powers to facilitate the use of resolution powers. Articles 121 and 122 make consequential amendments to the provisions on penalties.

Articles 123 and 124 make consequential amendments to the Corporation Tax Act 2009 and the Financial Services Act 2012. Articles 125 and 126 make consequential amendments to the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 and the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 respectively. Article 127 amends the definition of "bank" for the purposes of the Banking Act 2009 (Banking Group Companies) Order 2014.

Article 128 imposes a duty on the Treasury to review the regulatory system established by this Order at least once every five years.

A Transposition Table setting out how the recovery and resolution directive is transposed into UK law is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on http://www.hm-treasury.gov.uk/ and is published alongside the Order on http://www.legislation.gov.uk/.

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UK2014112063 11/2014 19585

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