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

2016 No.

BANKS AND BANKING

FINANCIAL SERVICES AND MARKETS

The Bank Recovery and Resolution Order 2016

Made - - - - ***

Coming into force - - ***

CONTENTS

PART 1

Citation and commencement

1. Citation and commencement

PART 2

Amendments of the Banking Act 2009 and related provision

CHAPTER 1

Amendments of the Banking Act 2009

2. Introduction to amendments of the Banking Act 2009
3. Overview
4. Interpretation of Part 1 of the Banking Act 2009
5. Removal of impediments to the exercise of the stabilisation powers etc
6. Cases where mandatory write-down, conversion etc applies
7. General conditions
8. Private sector purchasers
9. Onward transfers
10. Reverse share transfers
11. Property transfer instruments: special bail-in provision
12. Property transfer instruments and bail-in: supplementary matters
13. Resolution company: asset and liability transfers from subsidiary banks
14. Recovery of expenses
15. Termination rights etc
16. Onward and reverse transfers
17. Independent valuation
18. Cases where mandatory write-down etc applies: banking group companies
19. Section 83ZW: renumbering

20. Building societies
21. Building societies: Bridge bank option
22. Building Societies: amendment of section 84D
23. Application to investment firms
24. Application to recognised central counterparties
25. Restrictions on disclosure of confidential information
26. Bank administration
27. Index of defined terms

CHAPTER 2
Building Societies: charges
28. Building Societies: charges

PART 3
Resolution of UK branches of third-country institutions
29. Resolution of UK branches of third-country institutions

PART 4
Amendments of the Financial Services and Markets Act 2000
30. Introduction to amendments of the Financial Services and Markets Act 2000
31. General meeting
32. Removal of directors and senior executives and appointment of temporary manager
33. Assessment and resolution
34. Restrictions on disclosure of confidential information
35. Supervisory notices

PART 5
Amendments of secondary legislation
36. Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009
37. Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014
38. Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009
39. Banking Act 2009 (Restriction of Special Bail-in Provision, etc) Order 2014
40. Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014
41. Bank Recovery and Resolution (No. 2) Order 2014

PART 6
Review
42. Review

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 and sections 28 and 30 of the Small Business, Enterprise and Employment Act 2015(**c**) make 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 the European Communities Act 1972.

PART 1

Citation and commencement

Citation and commencement

1.—(1) This Order may be cited as the Bank Recovery and Resolution Order 2016.

(2) This Order comes into force on the day after the day on which it is made.

PART 2

Amendments of the Banking Act 2009 and related provision

CHAPTER 1

Amendments of the Banking Act 2009

Introduction to amendments of the Banking Act 2009

2. The Banking Act 2009(**d**) is amended in accordance with this Part.

Overview

3. In the Table in section 1(6), in the first column of the entry for sections 48B to 48W, for "48W" substitute "48WA".

Interpretation of Part 1 of the Banking Act 2009

4. In section 3 (interpretation: other expressions)(**e**) after subsection (2) insert—

"(3) In this Part references to a director include, in relation to an undertaking which has no board of directors, a member of the equivalent management body responsible for the management of the undertaking concerned.".

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

(**b**) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), an order may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(**c**) 2015 c.26.

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

(**e**) Section 3 has been amended by section 96 of, and paragraphs 1 and 4 of Schedule 17 to, the Financial Services Act 2012 (c.21); and by S.I. 2014/3329.

Removal of impediments to the exercise of the stabilisation powers etc

5. In section 3A(8) (removal of impediments to the exercise of stabilisation powers etc)(**a**), in the definition of "institution", after "a bank" insert ", building society (within the meaning of section 119 of the Building Societies Act 1986(**b**))".

Cases where mandatory write-down, conversion etc applies

6. In section 6A(6)(b) (cases where mandatory write-down, conversion etc applies)(**c**) omit ", on the basis of the valuation carried out in accordance with section 6E,".

General conditions

7. In section 7(5C) (general conditions)(**d**)—

(a) in paragraph (b), for the words from "determined", in the first place it occurs, to the end substitute "is less than the amount of its liabilities,";

(b) in paragraph (d), for "one or more of paragraphs (a) to (c)" substitute "paragraph (b) or (c) (or both)".

Private sector purchasers

8. After section 11 (private sector purchaser), insert—

"**Private sector purchaser: marketing**

11A.—(1) Subject to subsection (4), the Bank of England must make arrangements for marketing—

(a) any securities issued by the bank which the Bank intends to transfer by a share transfer instrument under section 11(2)(a), or

(b) any property, rights or liabilities of the bank which the Bank intends to transfer by a property transfer instrument under section 11(2)(b).

(2) The arrangements under subsection (1) must—

(a) be as transparent as possible having regard to the circumstances and the need to maintain financial stability;

(b) ensure there is no conflict of interest;

(c) take account of the need for the Bank to act quickly to address the situation where a bank is failing or likely to fail;

(d) aim at maximising, as far as possible, the sale price for the securities or property, rights or liabilities involved.

(3) The arrangements under subsection (1) must not—

(a) materially misrepresent the securities or property, rights or liabilities which the Bank intends to transfer;

(b) favour or discriminate between potential purchasers or grant an unfair advantage to a potential purchaser.

(4) Subsection (1) does not apply if the Bank of England considers that complying with that subsection would undermine one or more of the special resolution objectives.

(5) In particular subsection (1) does not apply if the Bank considers that—

(**a**) Section 3A was inserted by S.I. 2014/3329.
(**b**) 1986 c 53.
(**c**) Section 6A was inserted by S.I. 2014/3329.
(**d**) Subsection (5C) was substituted, with subsections (1) to (5H), by S.I. 2014/3329.

(a) there is a material threat to financial stability in the United Kingdom or another EEA state arising from or aggravated by the failure or likely failure of the bank, and

(b) complying with subsection (1) would undermine the effectiveness of the first stabilisation option in addressing that threat or achieving the objective in section 4(4).

(7) Any public disclosure of the marketing which may be required under Article 17(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse(**a**) may be delayed in accordance with Article 17(4) or (5) of that Regulation.".

Onward transfers

9.—(1) After section 26 (supplemental instruments)(**b**), insert—

"**Onward share transfer instruments**

26ZA.—(1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a bank, in accordance with section 12(2) ("the original instrument").

(2) The Bank of England may make one or more onward share transfer instruments.

(3) An onward share transfer instrument is a share transfer instrument which—

(a) provides for the transfer of—

(i) securities which were issued by the bank before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or

(ii) securities which were issued by the bank after the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

(4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.

(5) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).

(6) Before making an onward share transfer instrument the Bank must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Section 26 applies where the Bank of England has made an onward share transfer instrument."

(2) In the table in section 83A (modifications of Part), after the entry for section 26, insert—

"Section 26ZA	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person."

(**a**) OJ L 173, p. 1.

(**b**) Section 26 was amended by paragraphs 1 and 14 of Schedule 17 to the Financial Services Act 2012 (c.21), and by S.I. 2014/3329.

Reverse share transfers

10.—(1) In section 26A (private sector purchaser: reverse share transfer)(**a**)—

(a) in subsection (1), after "11(2)" insert "or 12(2)",

(b) in subsections (2) to (7), omit the words "private sector" wherever they appear,

(c) after subsection (2) insert—

"(2A) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the bank and held by a transferee under the onward share transfer instrument ("the onward transferee").",

(d) in subsection (3)—

(i) at the end of paragraph (a) insert "(where subsection (2) applies)",

(ii) after paragraph (a) insert—

"(ab) provides for transfer to the original transferee (where subsection (2A) applies);",

(iii) in paragraph (b), after "paragraph (a)" insert "or (ab)",

(e) in subsection (4), after "instrument" insert "under subsection (2)",

(f) after subsection (4) insert—

"(4A) The Bank of England must not make a reverse share transfer instrument under subsection (2A) unless—

(a) the onward transferee is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Bank of England or the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the onward transferee.",

(g) in the heading—

(i) omit "Private sector purchaser:",

(ii) at the end, insert "instruments".

(2) In the heading to section 29, insert at the end "orders".

Property transfer instruments: special bail-in provision

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

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

"(1) A property transfer instrument within subsection (2) may make special bail-in provision with respect to the bank (see section 48B)(**c**).

(2) The instruments referred to in subsection (1) are—

(**a**) Section 26A was inserted by section 97 of the Financial Services Act 2012 (c.21)..

(**b**) Section 44B was inserted by paragraph 5 to Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.24), and amended by S.I. 2014/3329.

(**c**) Section 48B was inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by S.I. 2014/3329.

(a) a property transfer instrument under section 11(2), 12(2), 12ZA(3)(**a**) or 41A(2)(**b**),

(b) a supplemental property transfer instrument under section 42 in relation to which the original instrument is—

(i) a property transfer instrument under section 11(2), 12(2), 12ZA(3) or 41A(2),

(ii) an onward property transfer instrument under section 43(2), or

(iii) a bridge bank supplemental property transfer instrument under section 44D(2),

(c) an onward property transfer instrument under section 43(2), or

(d) a bridge bank supplemental property transfer instrument under section 44D(2)(**c**).

(3) In the case of—

(a) a property transfer instrument under section 12(2) or 12ZA(3),

(b) a supplemental property transfer instrument under section 42 in relation to which the original instrument is—

(i) a property transfer instrument under section 12(2) or 12ZA(3),

(ii) an onward property transfer instrument under section 43(2), or

(iii) a bridge bank supplemental property transfer instrument under section 44D(2),

(c) an onward property transfer instrument under section 43(2), or

(d) a bridge bank supplemental property transfer instrument under section 44D(2),

the power under subsection (1) to make the provision described in section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes power to make the provision referred to in subsection (3A).

(3A) The provision referred to in subsection (3) is provision replacing a liability (of any form)—

(a) of the bank, in the case of the instruments within subsection (3)(a) and (b)(i),

(b) of the resolution company mentioned in section 43(1), in the case of the instruments within subsections (3)(b)(ii) and (c), or

(c) of the bridge bank mentioned in section 44D(1), in the case of the instruments within subsections (3)(b)(iii) and (d),

with a relevant security (of any form or class).

(3B) The following are relevant securities for the purpose of subsection (3A)—

(a) in any case, a security of the bank,

(b) where the instrument within subsection (3)(a), or the original instrument, is made under section 12, a security of the bridge bank mentioned in section 12(1),

(c) where the instrument within subsection (3)(a), or the original instrument, is made under section 12ZA, a security of the asset management vehicle mentioned in section 12ZA(1).

(3C) In subsection (3B) references to the original instrument are—

(a) in relation to an instrument within subsection (3)(b), the original instrument referred to in that paragraph,

(b) in relation to an instrument within subsection (3)(c), the original instrument as defined in section 43(1),

---

(**a**) Section 12ZA was inserted by S.I. 2014/3329.
(**b**) Section 41A was inserted by paragraphs 1 and 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**c**) Section 44D is inserted by article 13 of this Order.

(c) in relation to an instrument with subsection (3)(d), the original instrument as defined in section 44D(1)."

(3) In subsection (4), after "bridge bank" insert "or asset management vehicle".

Property transfer instruments and bail-in: supplementary matters

12.—(1) After section 44B (property transfer instruments: special bail-in provision), insert—

"Property transfer instruments and special bail-in provision: supplementary matters

44BA.—(1) The following provisions apply in relation to a property transfer instrument which makes special bail-in provision under section 44B(1) as they apply in relation to a resolution instrument—

(a) section 48L (powers in relation to securities)(**a**);

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

(c) section 48Q (continuity);

(d) section 48R (execution and registration of instruments);

(e) section 48S (resolution instruments: general matters);

(f) section 48U (supplemental resolution instruments).

(2) In sections 6E(4)(a)(iii)(**b**), 48B, 48X(2)(b)(ii)(**c**) and 48Y(1)(a) and (2)(a) a reference to a resolution instrument includes a reference to a property transfer instrument which makes special bail-in provision under section 44B(1).

(3) Where special bail-in provision is being made in—

(a) a supplemental property transfer instrument under section 42 in relation to which the original instrument is an onward property transfer instrument under section 43(2), or

(b) an onward property transfer instrument under section 43(2),

references in sections 48B (except in subsection (9)), 48L, 48O and 48U to a bank include a resolution company (whether or not it is a bank).

(4) Where subsection (3) applies, the references in section 48B(3) and (9) to a banking group company, or to a banking group company in relation to a bank, are to a banking group company in relation to the bank in respect of which the Bank of England originally exercised a stabilisation power (and not to a banking group company in relation to the resolution company)."

Resolution company: asset and liability transfers from subsidiary banks

13.—(1) After section 44C (report on special bail-in provision)(**d**) insert—

"Bridge bank: supplemental property transfer powers

44D.—(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 12(2) ("the original instrument") providing for the transfer of securities issued by a bank ("the bank") to a bridge bank.

(2) The Bank of England may make one or more property transfer instruments in relation to the bank ("bridge bank supplemental property transfer instruments").

(**a**) Section 48L was inserted, with sections 48B to 48W, by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**b**) Section 6E was inserted by S.I. 2014/3329.
(**c**) Section 48X was inserted, with section 48Y by S.I. 2014/3329.
(**d**) Section 44C was inserted by paragraphs 1 and 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(3) A bridge bank supplemental property transfer instrument is an instrument which—

(a) provides for property, rights or liabilities of the bank to be transferred (whether accruing or arising before or after the original instrument);

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bank (whether the transfer has been or is to be effected by the instrument or otherwise).

(4) Sections 7 and 8 do not apply to a bridge bank supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(5) Before making a bridge bank supplemental property transfer instrument the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(6) The possibility of making a bridge bank supplemental property transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making a property transfer instrument in accordance with section 12(2) (and not in reliance on subsection (2) above).

(7) Section 42 applies where the Bank of England has made a bridge bank supplemental property transfer instrument.

Bridge bank: supplemental reverse property transfer powers

44E.—(1) This section applies where the Bank of England has made a bridge bank supplemental property transfer instrument in accordance with section 44D ("the original instrument").

(2) The Bank of England may make one or more reverse property transfer instruments ("bridge bank supplemental reverse property transfer instruments") in respect of property, rights or liabilities of the transferee under the original instrument.

(3) A bridge bank supplemental reverse property transfer instrument is an instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

(4) Sections 7 and 8 do not apply to a bridge bank supplemental reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(5) The Bank of England must not make a bridge bank supplemental reverse property transfer instrument unless—

(a) the transferee under the original instrument is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Treasury, or

(b) it is made with the written consent of the transferee under the original instrument.

(6) Before making a bridge bank supplemental reverse property transfer instrument the Bank of England must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Section 42 applies where the Bank of England has made a bridge bank supplemental reverse property transfer instrument.".

(2) In section 48A(1) (creation of liabilities)(**a**) after "44A(3)(b)," insert "44D(3)(b), 44E(3)(b),".

(3) In section 63(1) (general continuity obligation: property transfers), in paragraph (a), for "or 41A(2)" substitute ", 41A(2) or 44D(2)".

(4) In the table in section 83A (modifications of Part), after the entry for section 44A, insert—

"Section 44D	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 44E	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person."

Recovery of expenses

14. After section 48W (reverse transfer), insert—

"Bail-in option: recovery of expenses

48WA.—(1) The Bank of England may, in relation to the exercise of the bail-in option, direct a relevant bank to pay the Bank of England a fee to cover expenses reasonably incurred by the Bank in connection with exercising that option.

(2) The Treasury may direct a relevant bank to pay the Treasury a fee to cover expenses reasonably incurred by the Treasury in connection with the exercise by the Bank of England of the bail-in option in relation to the relevant bank.

(3) For the purposes of this section—

(a) a "relevant bank" is a bank in relation to which the Bank of England has made—

(i) a resolution instrument under section 12A(2),

(ii) a supplemental resolution instrument under section 48U(2), or

(iii) an instrument containing special bail-in provision under section 48B,

(b) the exercise of the bail-in option includes making any instrument containing special bail-in provision under section 48B.".

Termination rights etc

15.—(1) Section 48Z (termination rights etc)(**b**) is amended as follows.

(2) In subsection (1), in the definition of "crisis prevention measure"—

(a) omit the "or" at the end of paragraph (c);

(b) at the end of paragraph (d), insert—

", or

(e) the appointment by the PRA or the FCA of a person to act as a temporary manager under section 71C of the Financial Services and Markets Act 2000(**c**);".

(**a**) Section 48A was inserted by section 21 of the Financial Services Act 2010 (c.28), and amended by section 97 of the Financial Services Act 2012, and paragraph 1 and 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(**b**) Section 48Z was inserted by S.I. 2014/3329.

(**c**) Section 71C is inserted into the Financial Services and Markets Act 2000 (c.8) by article 31 of this Order.

(3) In subsection (5), for "Subsection" substitute "Subject to subsection (6A), subsection".

(4) After subsection (6) insert—

"(6A) A Part 1 instrument or share transfer order may provide for subsection (6)—

(a) not to apply in relation to a contract or other agreement, or

(b) to apply in relation to a contract or other agreement only to the extent specified by the Bank of England in the instrument or by the Treasury in the order.

(6B) Provision may be made under subsection (6A) only if the Bank of England (in the case of a Part 1 instrument) or the Treasury (in the case of a share transfer order) consider that such provision would advance one or more of the special resolution objectives.".

Onward and reverse transfers

16. In section 53(1) (onward and reverse transfers)(**a**)—

(a) after paragraph (zza) insert—

"(zzb)the Bank of England makes an onward share transfer instrument under section 26ZA,";

(b) in paragraph (za) omit the words "private sector";

(c) after paragraph (fa) insert—

"(fb) the Bank of England makes a bridge bank supplemental property transfer instrument under section 44D,

(fc) the Bank of England makes a bridge bank supplemental reverse property transfer instrument under section 44E,".

Independent valuation

17.—(1) Section 62A (independent valuer: valuation under section 6E or 48X)(**b**) is amended as follows.

(2) After subsection (1) insert—

"(1A) The Bank may require the bank to which the valuation relates to reimburse the Bank for costs it incurs in relation to the independent valuer (including remuneration and allowances paid to the valuer and the valuer's staff).".

(3) In subsection (6)—

(a) for "Sections" substitute "Section";

(b) omit ", and 56".

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

18. In section 81AA(8)(b) (cases where mandatory write-down, conversion etc applies: banking group companies)(**c**) omit ", on the basis of the valuation carried out in accordance with section 6E,".

Section 83ZW: renumbering

19. In section 83ZW, renumber subsection (3) as subsection (2).

(**a**) Section 53(1) has been amended by section 97 of the Financial Services Act 2012 (c.21), paragraphs 1 and 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and S.I. 2014/3329.

(**b**) Section 62A was inserted by S.I. 2014/3329.

(**c**) Section 81AA was inserted by S.I. 2014/3329.

Building societies

20. In section 84(b) (application of Part 1: general)(**a**)—

(a) for "84A" substitute "84ZA";

(b) for "fourth stabilisation option" substitute "second and fourth stabilisation options".

Building societies: Bridge bank option

21.—(1) After section 84 (application of Part 1 to building societies: general), insert—

"Bridge bank: share transfer instruments

84ZA.—(1) This section applies for the purpose of the exercise of the second stabilisation option (transfer to a bridge bank) in relation to a building society.

(2) A share transfer instrument made under section 12(2)(a) may—

(a) convert the building society into a company ("the successor company"), and

(b) make other provision for the purposes of, or in connection with the conversion of the building society.

(3) The provision which may be made under subsection (2)(b) includes—

(a) provision cancelling shares in the building society;

(b) provision cancelling membership rights in the building society;

(c) provision converting shares in the building society into deposits with the successor company;

(d) provision conferring rights and imposing liabilities in place of cancelled shares and membership rights;

(e) provision requiring the FCA to cancel the building society's registration under the Building Societies Act 1986 at a time specified in or determined in accordance with the instrument;

(f) provision that any person approved for the purposes of Part 5 of the Financial Services and Markets Act 2000 (performance of regulated activities) in relation to the building society immediately before the share transfer instrument is made continues to be approved for those purposes in relation to the successor company (but without affecting the power of the FCA or the PRA to vary or withdraw an approval);

(g) provision for the successor company on its incorporation to be wholly owned by a bridge bank specified in the instrument (the "parent undertaking");

(h) where provision is made under paragraph (g), provision—

(i) for the transfer of liabilities from the successor company to the parent undertaking, and for the creation of corresponding liabilities of the successor company to the parent undertaking;

(ii) replacing a liability (of any form) of the building society or the successor company with a liability or security (of any form or class) of the parent undertaking.

(4) Section 15 (share transfer instruments) is to be read as if the provision referred to in subsection (1) of that section included the provision referred to in subsections (2) and (3) of this section.".

(2) In section 84B (further provision: conversion of building society into company)(**b**)—

(a) in subsection (1), after "This section applies where", insert—

(**a**) Section 84 was amended by section 21 of the Financial Services Act 2010, S.I. 2014/3329 and S.I. 2014/3344.
(**b**) Section 84B was inserted, with sections 84A to 84D, by S.I. 2014/3344.

"—

(a) a share transfer instrument makes provision under section 84ZA(2)(a), or

(b) ";

(b) in subsections (2), (5) and (7), before "resolution instrument" insert "share transfer instrument or";

(c) in subsection (8), in the definition of "the successor company", before "84A(5)(a)" insert "84ZA(2)(a) or".

Building Societies: amendment of section 84D

22.—(1) Section 84D (modification of this Act and other legislation), is amended as follows.

(2) Before subsection (1) insert—

"(A1) Where a share transfer instrument makes provision under section 84ZA(2) with respect to a building society, the second stabilisation option is to be exercised by making (in that or a subsequent share transfer instrument) provision under section 12(2)(a)—

(a) with respect to the successor company, or

(b) where provision made under section 84ZA includes provision under subsection (3)(g) of that section, with respect to the successor company or its specified parent undertaking.".

(3) In subsection (2)—

(a) after "making of" insert "provision as mentioned in subsection (A1)(a) or (b) or";

(b) in paragraph (b)—

(i) after the first reference to "apply" insert "where relevant";

(ii) in sub-paragraph (ii) after "subsection" insert "(A1)(b) or".

(4) In the Table in subsection (2)—

(a) after the entry for section 12AA(**a**), insert—

"Section 15	Share transfer instruments	Treat references in subsection (1) to securities issued by a specified bank as references to securities issued by the building society, or by the successor company or its specified parent undertaking."

(b) after the entry for section 18, insert—

"Section 19	Conversion and delisting	
Section 20(**b**)	Directors and senior managers	Treat references to a director or senior manager of a specified bank as references to a director or senior manager of the building society or of the successor company or its specified parent undertaking. In subsection (1A)(**c**) treat the reference to a specified bank as a reference to the

(**a**) Section 12AA was inserted by S.I. 2014/3329.
(**b**) Section 20 was amended by the Financial Services Act 2012 (c. 21), section 100, and by S.I., 2014/3329.
(**c**) Subsection (1A) was inserted by the Financial Services Act 2012, section 100.

		building society or its successor company.
Section 21	Ancillary instruments: production, registration etc	
Section 23	Incidental provision	
Section 24(**a**)	Procedure: instruments	On the first occasion on which the power to make a share transfer instrument is exercised in relation to a building society, treat the references in this section to a bank as a reference to a building society.
Section 26(**b**)	Supplemental Instruments	Treat the reference in subsection (3) to securities issued by the bank as a reference to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 26ZA(**c**)	Onward share transfer instruments	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 30(**d**)	Resolution company: share transfers	
Section 31(**e**)	Resolution company: reverse share transfer";	

(c) after the entry for section 41A, insert—

"Section 44D and any other provision so far as relating to property transfer instruments under section 44D(**f**)	Transfer of property subsequent to share transfer instrument	Section 44D also applies where the Bank of England has made a share transfer instrument in accordance with section 12(2) which provides for the conversion of the building society under section 84ZA(2)."

(d) after the entry for section 49, insert—

"Section 52(**g**)	Transfer to resolution company";	

(e) in the entry for sections 63, 64 and 66 to 70, in the first column, after the first reference to "in relation to" insert "a share transfer instrument or";

(**a**) Section 24 was amended by the Financial Services Act 2012, Schedule 17, paragraph 13, and by S.I. 2014/3329.
(**b**) Section 26 was amended by the Financial Services Act 2012, Schedule 17, paragraph 14 and by S.I. 2014/3329.
(**c**) Section 26ZA is inserted by article 9 of this Order.
(**d**) Section 30 was amended by the Financial Services Act 2012, Schedule 17, paragraph 18 and by S.I. 2014/3329.
(**e**) Section 31 was amended by the Financial Services Act 2012, section 97 and Schedule 17, paragraph 19 and by S.I. 2014/3329.
(**f**) Section 44D is inserted by article 13 of this Order.
(**g**) Section 52 was amended by the Financial Services (Banking Reform) Act 2013 (c.33), Schedule 2, paragraph 6, and by S.I. 2014/3329.

(f) after the entry for section 75, insert—

"Section 78(**a**)	Public funds: general";	

(g) after the entry for section 78A, insert—

"Section 79(**b**)	Public funds: resolution company	Treat the reference in subsection (1) to a bank as a reference to a building society or its successor company.
Section 80(**c**)	Resolution company: report	Treat the reference in subsection (1) to a bank as a reference to a building society or its successor company."

(5) In subsection (3)(b), after "subsection", insert "(A1)(b) or".

(6) After subsection (5) insert—

"(5A) Where—

(a) the third stabilisation option is exercised in connection with the fourth stabilisation option in respect of a building society, and

(b) before the third stabilisation option is exercised—

(i) the building society is converted into a company pursuant to section 84A(5)(a), or

(ii) all the property, rights and liabilities of the building society are transferred to a company pursuant to section 84A(5)(b),

the references to the bank in section 12ZA(1)(a)(**d**) and any other provision so far as relating to property transfer instruments under section 12ZA include a reference to the successor company.".

(7) In subsection (6), after the words "do not apply where", insert—

"—

(a) a share transfer instrument makes provision under section 84ZA, or

(b) ".

(8) In subsection (7), after the words "does not apply where" insert—

"—

(a) a share transfer instrument makes provision under section 84ZA(3)(e), or

(b) ".

(9) In subsection (8)—

(a) in the definition of "specified parent undertaking" after "falling within" insert "paragraph (g) of section 84ZA(3) or";

(b) in the definition of "the successor company" after "under section" insert "84ZA(2) or".

(10) In the heading to section 84D, insert at the beginning "Transfer to a bridge bank or".

Application to investment firms

23. In section 89A (application to investment firms)(**e**), in the table in subsection (1) omit the entry for section 8.

(**a**) Section 78 was amended by S.I. 2014/3329.
(**b**) Section 79 was amended by S.I. 2014/3329,
(**c**) Section 80 was amended by S.I. 2014/3329.
(**d**) Section 12ZA was inserted by S.I. 2014/3329.
(**e**) Section 89A was inserted by section 101 of the Financial Services Act 2012 (c.21) and amended by S.I. 2014/3329.

Application to recognised central counterparties

24. In section 89B(1ZA) (application to recognised central counterparties)(**a**) after "2014" insert "or by the Bank Recovery and Resolution Order 2016"(**b**).

Restrictions on disclosure of confidential information

25. In section 89L(2) (restrictions on disclosure of confidential information)(**c**)—

(a) in paragraph (c)—

(i) in sub-paragraph (i), after inserted paragraph (cb) insert—

"(cc) a person appointed to make a report under section 83ZB(**d**) of that Act (reports by skilled persons);";

(ii) in sub-paragraph (ii), for "to (cb)" substitute "to (cc)";

(b) paragraph (c)(iii) becomes paragraph (d) of subsection (2).

Bank administration

26.—(1) Part 3 (bank administration) is amended as follows.

(2) In section 136(2) (overview)—

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

(b) in paragraph (a), after "section 12" insert "or 12ZA"(**e**).

(3) In section 137(1)(a) (objectives), for "bridge bank" substitute "resolution company".

(4) In section 138 (objective 1: supporting private sector purchaser or bridge bank)—

(a) in subsections (1) and (4), and in the heading to section 138, for "bridge bank", in each place it occurs, substitute "resolution company";

(b) in subsection (2)(a) after "transfer instrument" insert "(including a bridge bank supplemental property transfer instrument or bridge bank supplemental reverse property transfer instrument)."

(5) In section 139 (objective 1: duration), for "bridge bank", in both places, substitute "resolution company".

(6) In section 140(3) (Objective 2: "normal" administration), for "bridge bank" substitute "resolution company".

(7) In section 143(2) (grounds for applying), for "or 12(2)" substitute ", 12(2) or 12ZA(3)".

(8) In section 145 (general powers, duties and effect), in Table 1 and Table 2, in the following entries, for "bridge bank", in each place it occurs, substitute "resolution company"—

(a) in Table 1, in the entries for—

(i) paragraph 43,

(ii) paragraph 49,

(iii) paragraph 60 and Schedule 1,

(iv) paragraph 65, and

(v) paragraph 72;

(b) in Table 2, in the entries for—

(i) section 168(4) and paragraph 13 of Schedule 4,

(**a**) Section 89B was inserted by section 102 of the Financial Services Act 2012 and amended by paragraph 9 of schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33), S.I. 2013/504 and S.I. 2014/3329.
(**b**) Subsection (1ZA) was inserted into section 89B by S.I. 2014/3329.
(**c**) Section 89L was inserted by S.I. 2014/3329.
(**d**) Section 89ZB was inserted by S.I. 2014/3329.
(**e**) Section 12ZA was inserted by S.I. 2014/3329.

(ii) section 176A(**a**), and

(iii) section 178.

(9) In section 148 (sharing information), in subsections (1) to (4), for "bridge bank", in each place it occurs, substitute "resolution company".

(10) In section 149(2) (general application of this Part)—

(a) at the end of paragraph (b), omit "and",

(b) after paragraph (b) insert—

"(ba) bridge bank supplemental property transfer instruments under section 44D, and".

(11) In section 150 (bridge bank to private purchaser), in subsections (1) and (4), and in the heading to section 150, for "bridge bank", in each place it occurs, substitute "resolution company".

(12) Section 151 (property transfer from bridge bank) is amended as follows—

(a) in that section, and in the heading to that section, for "bridge bank", in each place it occurs, substitute "resolution company";

(b) in subsection (1)(a), after "section 12(2)" insert "or 12ZA(3)".

(13) In section 152A (property transfer from transferred institution)—

(a) after subsection (1), insert—

"(1A) This section also applies where the Bank of England—

(a) makes a share transfer instrument that transfers securities issued by a bank (or a bank's parent undertaking), in accordance with section 12(2), and

(b) later makes a property transfer instrument from the bank in accordance with section 44D.";

(b) in subsection (2) after "41A(2)" insert "or 44D(2)".

(14) In section 157(2)(a) (other processes)—

(a) for "bridge bank" substitute "resolution company";

(b) after "section 12" insert "or 12ZA".

Index of defined terms

27. In the table in section 261 (index of defined terms)—

(a) at the appropriate places insert—

"Bridge bank supplemental property transfer instrument	44D";

"Bridge bank supplemental reverse property transfer instrument	44E";

"Onward share transfer instrument	26ZA";

(b) in the entry for "Private sector reverse share transfer instrument"—

(i) omit the words "Private sector", and

(ii) move the resulting entry to follow the entry for "Reverse property transfer order".

(**a**) Section 176A was inserted into the Insolvency Act 1986 (c.45) by section 252 of the Enterprise Act 2002 (c.40) and amended by S.I. 2008/948.

CHAPTER 2

Building Societies: charges

Building Societies: charges

28.—(1) Where—

(a) a share transfer instrument makes provision under section 84ZA(2)(a) of the Banking Act 2009(**a**) for the conversion of a building society into a company ("the successor company");

(b) by virtue of that conversion the successor company acquires property or undertaking (within the meaning of section 1161(1) of the Companies Act 2006) which is subject to a charge; and

(c) the charge is of a kind which would, if it had been created by the company after the acquisition of the property or undertaking, have been capable of being registered under section 859A (charges created by a company)(**b**) of that Act,

section 859C(2) and (3) of the Companies Act 2006 (charges existing on property or undertaking acquired) applies in relation to that charge.

(2) Despite regulation 6 of the Companies Act 2006 (Amendment of Part 25) Regulations 2013(**c**), paragraph (1) applies regardless of the date of creation of the charge.

(3) In relation to a charge to which section 859C(2) and (3) of the Companies Act 2006 applies because of paragraph (1), Part 25 of the Companies Act 2006 has effect as if—

(a) for sub-paragraphs (i) and (ii) of section 859K(2)(b) there were substituted the words "the unique reference code allocated to the charge";

(b) for sub-paragraphs (i) and (ii) of section 859K(3)(b) there were substituted the words "the unique reference code allocated to the charge";

(c) section 859K(4) were omitted;

(d) for section 859L(4)(b) there were substituted—

"(b) the registered name and number of the successor company that acquired the property or undertaking subject to the charge;";

(e) section 859L(4)(c) were omitted;

(f) for section 859L(4)(d) there were substituted—

"(d) the unique reference code allocated to the charge.";

(g) in section 859O(2) the reference to the company that created the charge were a reference to the successor company that acquired the property or undertaking subject to the charge;

(h) section 859O(3)(b) were omitted;

(i) for section 859O(3)(c) there were substituted—

"(c) the unique reference code allocated to the charge.".

PART 3

Resolution of UK branches of third-country institutions

Resolution of UK branches of third-country institutions

29.—(1) The Banking Act 2009 is amended as follows.

(**a**) Section 84ZA is inserted by article 20 of this Order.
(**b**) Section 859A was inserted, with sections 859B to 859Q by S.I. 2013/600.
(**c**) S.I. 2013/600.

(2) In the Table in section 1(6) after the entry for sections 89H to 89J(**a**), insert—

"Section 89JA	Resolution of UK branches of third-country institutions"

(3) In section 2, after subsection (9) insert—

"(10) Section 89JA applies this Part to UK branches of third-country institutions with modifications.".

(4) Section 75(**b**) is amended as follows—

(a) in subsection (5)—

(i) at the end of paragraph (cb) omit "or";

(ii) after paragraph (cb) insert—

"(cc) to third-country institutions,

(cd) to UK branches, or";

(b) after subsection (8), insert—

"(9) For the purposes of this section—

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

"UK branch" means a branch located in the United Kingdom of a third-country institution authorised for the purposes of the Financial Services and Markets Act 2000 by the PRA or the FCA."

(5) In Part 1, after section 89J (third-country instruments: supplementary provision) insert—

"CHAPTER 6A

RESOLUTION OF UK BRANCHES OF THIRD-COUNTRY INSTITUTIONS

Resolution of UK branches of third-country institutions

89JA.—(1) The provisions of Chapters 1, 3 and 4 of this Part apply in relation to UK branches subject to the modifications specified in subsections (4) to (10) and in the Table in subsection (11).

(2) In this Chapter—

(a) "UK branch" means a branch located in the United Kingdom of a third-country institution authorised for the purpose of the Financial Services and Markets Act 2000 by the PRA or the FCA,

(b) references to the business of a UK branch are to—

(i) any rights and liabilities of the third-country institution arising as a result of the operations of the UK branch, and

(ii) any other property in the United Kingdom of the third-country institution,

(c) "third-country institution" has the meaning given by Article 2.1(86) of the recovery and resolution directive, and a third-country institution is "FCA-regulated" if it does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000,

(d) references to a third-country institution are to the third-country institution in respect of whose UK branch the Bank of England—

(i) is considering making a property transfer instrument, or

(ii) has made a property transfer instrument,

(**a**) Section 89J was inserted by S.I. 2014/3329, with sections 89H to 89M.
(**b**) Section 75(5) was amended by section 101 of the Financial Services Act 2012 and S.I. 2013/504.

(e) "immediate group" has the meaning given by section 421ZA(**a**) of the Financial Services and Markets Act 2000(**b**).

(3) For the purposes of subsection (2)(b) liabilities arising as a result of the operations of the UK branch include liabilities in respect of deposits—

(a) which are held at the UK branch, or

(b) in respect of which withdrawals may be made at the UK branch,

and "deposit" has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**c**), but ignoring the exclusions in article 6.

(4) For section 6E (pre-resolution valuation)(**d**), substitute—

"**6E.**—(1) Before the Bank of England makes a property transfer instrument in respect of a UK branch, it must ensure that the business of the UK branch is valued.

(2) Unless subsection (3) applies, the Bank of England must arrange for the appointment of an independent valuer in accordance with section 62A(**e**) 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 property transfer instrument 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 business of the UK branch 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) which stabilisation option should be employed,

(ii) what property, rights or liabilities (if any) are to be transferred by a property transfer instrument,

(iii) the value of any consideration to be paid to the third-country institution for any property, rights or liabilities so transferred, and

(iv) (where special bail-in provision is being made in the property transfer instrument) the extent to which any eligible liabilities should be modified or converted, and

(b) ensure that the full extent of any losses on the business of the UK branch is appreciated at the time the Bank of England makes a property transfer instrument.

(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 third-country institution;

(b) disregard potential financial assistance which may be provided by the relevant third-country authority (within the meaning of Article 2.1(90) of the recovery and resolution directive(**f**)), the Bank of England or the Treasury after the Bank has made a property transfer instrument (except for ordinary market assistance offered by the Bank on its usual terms),

(c) take account of the fact that—

(**a**) Section 421ZA was inserted by section 48(2) of the Financial Services Act 2012 (c. 21).
(**b**) 2000 c.8.
(**c**) S.I. 2001/544. Article 5(2) was amended by S.I. 2002/682.
(**d**) Section 6E was inserted by S.I. 2014/3329.
(**e**) Section 62A was inserted by S.I. 2014/3329.
(**f**) OJ L173, 12.6.2014, p.190.

(i) the Bank of England and the Treasury may recover expenses incurred in connection with the making of a property transfer instrument 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 third-country institution after the Bank has made a property transfer instrument in respect of its UK branch.

(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 business of the UK branch as at the date of the valuation,

(b) a report on the financial position of the UK branch,

(c) an analysis and an estimate of the accounting value of the property and rights of the third-country institution which form part of the business of the UK branch,

(d) a list of the outstanding liabilities of the third-country institution which form part of the business of the UK branch (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 third-country institution went into insolvency proceedings.

(8) For the purposes of subsection (7) "insolvency proceedings" means such insolvency proceedings (whether or not under the law of a third country) as the person carrying out the valuation, after consultation with the Bank of England and the Treasury, considers relevant.

(9) Where appropriate, the information in subsection (7)(c) may be supplemented by an analysis and estimate of the value of the business of the UK branch on a market value basis in order to inform the decision referred to in paragraph (a)(ii) or (iii) of subsection (4).

(10) Where a provisional valuation is carried out under subsection (3)—

(a) the Bank of England need only comply with subsection (7) as far as it is reasonable to do so in the circumstances, and

(b) the requirement in subsection (8) to consult the Bank of England does not apply.

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

(5) For section 7 (general conditions), substitute—

"**7.**—(1) The Bank of England may make a property transfer instrument in respect of a UK branch only if the Treasury has approved the making of the instrument, and one of the following applies—

(a) the PRA (or in the case of a third-country institution which is FCA-regulated, the FCA) is satisfied that Condition 1 is met, and the Bank of England is satisfied that Conditions 2, 4 and 5 are met, or

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

(c) the Bank of England is satisfied that Condition 4 is met and Condition 5 is met by virtue of subsection 6(a).

(2) Condition 1 is that the third-country institution 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 action will be taken by or in respect of the third-country institution that will result in Condition 1 ceasing to be met.

(4) Condition 3 is that—

(a) the third-country institution is unable or unwilling, or is likely in the near future to be unable or unwilling, to pay its debts or other liabilities owed to EEA creditors or otherwise arising from the business of the UK branch as they fall due, and

(b) no third-country resolution action has been taken, no normal insolvency proceedings have been initiated, and no such action or proceedings are likely in the near future to be taken or initiated, in relation to the institution.

(5) Condition 4 is that making a property transfer instrument is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.

(6) Condition 5 is that—

(a) third-country resolution action has been taken, or the Bank of England has been notified that such action will be taken, in relation to the third-country institution and the Bank has refused or proposes to refuse to recognise such action for one or more of the reasons specified in section 89H(4), or

(b) third-country resolution action has not been, and is not likely to be, taken in relation to the third-country institution.

(7) For the purposes of Condition 1, a third-country institution is failing or likely to fail if 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 (or in the case of an FCA-regulated third-country institution, the FCA) under section 55J of the Financial Services and Markets Act 2000(**a**) of the institution's permission under Part 4A of that Act to carry on one or more regulated activities in the United Kingdom.

(8) "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 (or in the case of an FCA-regulated third-country institution, the FCA) is treated as responsible under subsection (2) of that section.

(9) For the purposes of Condition 3—

"EEA creditor", in relation to a third-country institution, means a creditor of a third-country institution who—

(a) in the case of an individual, is ordinarily resident in an EEA State; and

(b) in the case of a body corporate or unincorporated association, has its head office in an EEA State;

"normal insolvency proceedings" has the meaning given in Article 2.1(47) of the recovery and resolution directive.

(10) For the purposes of Conditions 3 and 5, "third-country resolution action" has the meaning given in section 89H(7)(**b**).

(11) Before determining that Condition 1 is met, the PRA (or in the case of an FCA-regulated third-country institution, the FCA) must consult the Bank of England.

(12) Before determining whether or not Condition 2 or 4 is met the Bank of England must, subject to subsection (13), consult—

(**a**) 2000 c.8. Sections 55A to 55Z4 were inserted by section 11 of the Financial Services Act 2012 (c.21).
(**b**) Section 89H was inserted, with sections 89I to 89M by S.I. 2014/3329.

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(13) In the case of an FCA-regulated third-country institution, the Bank of England need only consult the PRA before determining whether or not Condition 2 or 4 is met if the third-country institution has as a member of its immediate group a PRA-authorised person.".

(6) For section 7A (effect on other group members, financial stability in EU etc)(**a**) substitute—

"**7A.** Where the Bank of England is considering making a property transfer instrument in respect of a UK branch of a third-country institution which is a member of a group, the Bank must have regard to—

(a) the need to minimise the effect of making the property transfer instrument 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 making the property transfer instrument on the financial stability of the third country in which the head office of the third-country institution is established, and any other third country (as defined in section 89H(7)) in which any member of the group is operating.".

(7) For section 44B (property transfer instruments: special bail-in provision)(**b**), substitute—

"**44B.**—(1) A property transfer instrument within subsection (2) may make special bail-in provision (see section 48B) with respect to the liabilities of the third-country institution or the resolution company which are being transferred by that instrument ("transferred liabilities").

(2) The instruments referred to in subsection (1) are—

(a) a property transfer instrument under section 11(2), 12(2) or 12ZA(3)(**c**),

(b) a supplemental property transfer instrument under section 42 in relation to which the original instrument is—

(i) a property transfer instrument under section 11(2), 12(2) or 12ZA(3), or

(ii) an onward property transfer instrument under section 43(2), or

(c) an onward property transfer instrument under section 43(2).

(3) In the case of—

(a) a property transfer instrument under section 12(2) or 12ZA(3),

(b) a supplemental property transfer instrument under section 42 in relation to which the original instrument is—

(i) a property transfer instrument under section 12(2) or 12ZA(3), or

(ii) an onward property transfer instrument under section 43(2), or

(c) an onward property transfer instrument under section 43(2),

the power under subsection (1) to make the provision described in section 48B(1)(a) (see also rule 2(a) and (b) of section 48B(5)) includes power to make the provision referred to in subsection (4).

(**a**) Section 7A was inserted by S.I. 2014/3329.

(**b**) Section 44B was inserted, with sections 44A and 44C, by paragraph 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(**c**) Section 12ZA was inserted by S.I. 2014/3329.

(4) The provision referred to in subsection (3) is provision replacing a transferred liability (of any form)—

(a) of the third-country institution mentioned in subsection (1), in the case of instruments within subsection (3)(a) and (b)(i),

(b) of the resolution company mentioned in section 43(1), in the case of instruments within subsection (3)(b)(ii) and (c),

with a relevant security (of any form or class).

(5) The following are relevant securities for the purpose of subsection (4)—

(a) where the instrument within subsection (3)(a), or the original instrument, is made under section 12, a security of the bridge bank mentioned in section 12(1),

(b) where the instrument within subsection (3)(a), or the original instrument, is made under section 12ZA, a security of the asset management vehicle mentioned in section 12ZA(1).

(6) In subsection (5), references to the original instrument are—

(a) in relation to an instrument within subsection (3)(b), the original instrument referred to in that paragraph,

(b) in relation to an instrument within subsection (3)(c), the original instrument as defined in section 43(1).

(7) Where securities of the bridge bank or asset management vehicle ("B") are, as a result of subsection (3), held by a person other than the Bank of England, that does not prevent B from being regarded for the purposes of this Part (see particularly section 12(1A) and 12ZA(2)) as being wholly owned by the Bank of England, as long as the Bank of England is entitled to exercise, or control the exercise of, voting rights in respect of all the ordinary shares issued by B.".

(8) For section 48B (special bail-in provision)(**a**), substitute—

"**48B.**—(1) "Special bail-in provision", for the purposes of section 44B(1), means any of the following (or any combination of the following)—

(a) provision modifying, or changing the form of, a relevant liability;

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

(2) "Special bail-in provision", for the purposes of section 44B, also includes any associated provision (see subsection (3)) that the Bank of England may think it appropriate to make in consequence of any provision under subsection (1) that—

(a) is made in the same property transfer instrument, or

(b) has been made in another property transfer instrument in respect of the UK branch, or (where the institution in relation to which special bail-in provision is made is a resolution company) in respect of the resolution company.

(3) "Associated provision" means provision modifying a contract under which a company which is a banking group company in relation to the third-country institution has a liability (whether or not the institution in relation to which special bail-in provision is made is the third-country institution).

(4) A power to make special bail-in provision—

(a) may be exercised only for the purpose of, or in connection with, reducing or deferring a relevant liability of the relevant institution;

(b) may not be exercised so as to affect any excluded liability.

(**a**) Section 48B was inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(5) The following rules apply to the interpretation of subsection (1).

1 The reference to modifying a relevant liability includes a reference to modifying the terms (or the effect of the terms) of a contract under which the relevant institution has a liability.

2 The reference to changing the form of a relevant liability, includes, for example—

(a) converting an instrument under which the relevant institution owes a relevant liability from one form or class to another,

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

(c) converting those liabilities into securities issued by a bridge bank or a UK parent undertaking.

(6) For the purposes of rule 2 in subsection (5)—

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

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

(7) Examples of special bail-in provision include—

(a) provision that transactions or events of any specified kind have or do not have (directly or indirectly) specified consequences or are to be treated in a specified manner for specified purposes;

(b) provision discharging persons from further performance of obligations under a contract and dealing with the consequences of persons being so discharged.

(8) The form and class of the instrument ("the resulting instrument") into which an instrument is converted, or with which it is replaced, do not matter for the purposes of paragraphs (a) and (b) of rule 2 in subsection (5); for instance, the resulting instrument may (if it is a security) fall within Class 1 or any other Class in section 14.

(9) Liabilities of the relevant institution are "excluded liabilities" if they are—

(a) liabilities listed in subsection (10), or

(b) liabilities which the Bank of England has excluded under subsection (12) from the application of special bail-in provision.

(10) The following liabilities of the relevant institution are the excluded liabilities referred to in subsection (9)(a)—

(a) liabilities representing protected deposits;

(b) any liability, so far as it is secured;

(c) liabilities that the relevant institution has by virtue of holding client assets;

(d) liabilities with an original maturity of less than 7 days owed by the relevant institution to a credit institution or investment firm;

(e) liabilities with a remaining maturity of less than 7 days arising from participation in designated settlement systems and owed to such systems or to operators of, or participants in, such systems;

(f) liabilities owed to an employee or former employee in relation to salary or other remuneration, except—

(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(**a**);

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

(h) liabilities owed to creditors arising from the provision to the relevant institution of goods or services (other than financial services) that are critical to the daily functioning of the operations of the third-country institution or of its UK branch (or in the case of an instrument made in relation to a resolution company, of the resolution company);

(i) liabilities owed by the relevant institution 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(**b**).

(11) The following special rules apply in cases involving banking group companies (whether or not the institution in relation to which special bail-in provision is made is the third-country institution)—

(a) a liability is not within subsection (10)(d) if the credit institution or investment firm to which the liability is owed is a banking group company in relation to the third-country institution (see section 81D);

(b) in subsection (10)(h) the reference to creditors does not include companies which are banking group companies in relation to the third-country institution.

(12) The Bank of England may, in a property transfer instrument, exclude any eligible liability or class of eligible liabilities from the application of any special bail-in provision in relation to a relevant institution under section 44B 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 (14), and

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

(13) The power conferred by subsection (12) 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.

(14) 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 third-country institution or its UK branch (or in the case of an instrument made in relation to a resolution company, of the resolution company) 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

(**a**) OJ L176, 27.6.2013, p.338.
(**b**) OJ L 173, 12.6.2014, p.149.

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.

(15) When deciding whether to exclude liabilities under subsection (12) or (13), the Bank of England must give due consideration to—

(a) the principle that all the relevant liabilities of the relevant institution ought to be treated in accordance with the priority they would enjoy if the relevant institution went into insolvency proceedings, and

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

and for the purposes of this subsection "insolvency proceedings" means such insolvency proceedings (whether or not under the law of a third country) as the Bank of England, after consultation with the Treasury, considers relevant.

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

"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.

(18) For the purposes of this section—

(a) "relevant liability" means a liability of a third-country institution or resolution company which is transferred in the property transfer instrument which makes special bail-in provision,

(b) "relevant institution" means the third-country institution or resolution company whose liabilities are so transferred.".

(9) For section 48X (replacement of Bank's provisional valuation)(**a**), substitute—

"**48X.**—(1) Where the Bank of England has carried out a provisional valuation under section 6E(3) before making a property transfer instrument in relation to a UK branch, 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 property and rights of the third-country institution which formed part of the business of the UK branch is recognised in the accounting records of the third-country institution, 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 the property transfer instrument, or

(ii) the Bank should exercise the power under section 48Y(1) to increase a liability which has been reduced by the property transfer 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.".

(10) For section 48Y (consequences of a replacement valuation)—

(**a**) Section 48X was inserted, with section 48Y, by S.I. 2014/3329.

"**48Y.**—(1) Where the independent valuation carried out under section 48X(1) produces a higher valuation of the net asset value of the business of the UK branch transferred by the property transfer instrument than the provisional valuation carried out under section 6E(3), the Bank of England may—

(a) modify any liability of the third-country institution which has been reduced or deferred by the property transfer instrument so as to increase or reinstate that liability; or

(b) instruct a resolution company to pay additional consideration to the third-country institution for any property, rights or liabilities transferred to the resolution company by a property 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 property transfer instrument which reduced or deferred it had not been made, and

(b) must be exercised by a supplemental property transfer instrument (whether or not that instrument contains any other provision authorised by this Part)."

(11) The Table mentioned in subsection (1) is as follows—

Table of Modifications

Provision	*Modification*
Sections 6A (cases where mandatory write-down, conversion, etc applies) to 6D (mandatory reduction instruments: supplementary matters)(**a**)	Ignore sections 6A to 6D.
Section 8 (specific condition: private sector purchaser, bridge bank or asset management vehicle)	Ignore section 8.
Section 8ZA (specific conditions: asset management vehicle)(**b**)	In subsection (1) treat the reference to a bank as a reference to a UK branch. In subsection (2), treat the first reference to the bank as a reference to the UK branch, and the second reference to the bank as a reference to the third-country institution. In subsection (3)(b) treat the first reference to the bank as a reference to the third-country institution. If the third-country institution is FCA-regulated, ignore subsection (4) (a) unless the third-country institution has as a member of its immediate group a PRA-authorised person. In subsection (6), ignore the reference to section 8.
Section 9 (specific conditions: temporary public ownership)	Ignore section 9.
Section 11 (private sector purchaser)	In subsection (1), treat the reference to the bank as a reference to the UK branch. Ignore subsection (2)(a).

(**a**) Sections 6A to 6E were inserted by S.I. 2014/3329.
(**b**) Section 8ZA was inserted by S.I. 2014/3329.

Section 11A (private sector purchaser: marketing)(**a**)	In subsections (1), (2)(c) and (5), treat the reference to the bank as a reference to the third-country institution. In subsection (1), ignore paragraph (a). In subsections (2)(d) and (3)(a), ignore the reference to securities.
Section 12 (bridge bank)	In subsection (1), treat the reference to the bank as a reference to the UK branch. In subsection (1A)(c)(**b**), treat the reference to the bank or its business as a reference to the business of the UK branch. Ignore subsection (2)(a).
Section 12ZA (asset management vehicle)(**c**)	In subsection (1)(a), treat the reference to the bank as a reference to the UK branch. In subsection (1)(b)— (a) ignore the reference to shares, (b) treat the reference to property, rights or liabilities of the bank as a reference to property, rights or liabilities of the third-country institution which form part of the business of the UK branch. In subsection (2)(c) treat the first reference to banks as including a reference to third-country institutions.
Sections 12A (bail-in option)(**d**), 12AA (bail-in: sequence of write down and conversion of capital instruments and liabilities)(**e**) and 13 (temporary public ownership)	Ignore sections 12A, 12AA and 13.
Sections 15 (share transfer instrument) to 29 (reverse share transfer orders)	Ignore sections 15 to 29.
Sections 30 (resolution company: share transfers) and 31 (resolution company: reverse transfer)	Ignore sections 30 and 31.
Section 33 (property transfer instrument)	In subsections (1) and (2), treat references to property, rights or liabilities of a specified bank as references to property, rights or liabilities of the third-country institution which form part of the business of a specified UK branch, or to property, rights or liabilities of a resolution company. Ignore subsection (3).
Section 36A (directors and senior managers)(**f**)	In subsections (1) and (2), ignore each reference to a director. In subsections (1) and (4) treat each reference to a specified bank as a reference to a specified UK branch. In subsection (2) treat the reference to a specified bank as a reference to the third-country institution. In subsection (5), treat the first reference to a bank as a reference to a UK branch or a third-country institution, and ignore the words "(whether or not it is a bank)".

(**a**) Section 11A is inserted into the Banking Act 2009 by article 8 of this Order.
(**b**) Subsection (1A) was inserted S.I. 2014/3329.
(**c**) Section 12ZA was inserted by S.I. 2014/3329.
(**d**) Section 12A was inserted by paragraph 2 of the Financial Services (Banking Reform) Act 2013.
(**e**) Section 12AA was inserted by S.I. 2014/3329.
(**f**) Section 36A was inserted by section 100 of the Financial Services Act 2012 (c.21) and amended by S.I. 2014/3329.

Section 39A (banks which are clearing houses)(**a**)	Ignore section 39A.
Section 41 (procedure)	In subsection (1)— (a) treat the first reference to a bank as a reference to a UK branch, (b) in paragraph (a), treat the reference to the bank as a reference to the third-country institution, (c) if the third-country institution is FCA-regulated, ignore paragraph (c). In subsection (2) treat the references to the bank as references to the third-country institution. In subsection (4), treat the first reference to a bank as a reference to a UK branch or a third-country institution, and ignore the words "even if it is not a bank".
Section 41A (transfer of property subsequent to resolution instrument)(**b**)	Ignore section 41A.
Section 42 (supplemental instruments)	In subsections (1) and (6), ignore the reference to section 41A(2). In subsection (4), ignore the reference to section 8. If the third-country institution is FCA-regulated, ignore subsection (5)(a) unless the third-country institution has as a member of its immediate group a PRA-authorised person.
Section 42A (private sector purchaser: reverse property transfer)(**c**)	In subsection (1), treat the reference to property, rights or liabilities of a bank as a reference to property, rights or liabilities of a third-country institution which form part of the business of a UK branch. In subsection (5), ignore the reference to section 8. If the third-country institution is FCA-regulated, ignore subsection (6)(a) unless the third-country institution has as a member of its immediate group a PRA-authorised person.
Section 43 (onward transfer)	In subsection (6), ignore the reference to section 8. If the third-country institution is FCA-regulated, ignore subsection (7)(a) unless the third-country institution has as a member of its immediate group a PRA-authorised person.
Section 44 (resolution company: reverse property transfer)	In subsection (5), ignore the reference to section 8. If the third-country institution is FCA-regulated, ignore subsection (6)(a) unless the third-country institution has as a member of its immediate group a PRA-authorised person.
Section 44A (bail-in: reverse property transfer)(**d**)	Ignore section 44A.
Section 44BA (property transfer instruments and bail-in: supplementary matters)(**e**)	Ignore section 44BA.

(**a**) Section 39A was inserted by section 102 of the Financial Services Act 2012, and amended by S.I. 2013/504.
(**b**) Section 41A was inserted by paragraph 5(1) of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33), and amended by S.I. 2014/3329.
(**c**) Section 42A was inserted by section 97 of the Financial Services Act 2012 (c.21).
(**d**) Section 44A was inserted, together with sections 44B and 44C, by paragraph 5(3) of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**e**) Section 44BA is inserted by article 12 of this Order.

Section 44C (report on special bail-in provision)	In subsection (4), treat each reference to "on a liquidation" as a reference to "in insolvency proceedings". In subsection (4)(a), treat the reference to "the liabilities of the bank" as a reference to "the relevant liabilities of the third-country institution" (and for this purpose, "relevant liability" has the meaning given in section 48B(17)). In subsection (4), after paragraph (b), insert "and for the purposes of this subsection "insolvency proceedings" means such insolvency proceedings (whether or not under the law of a third country) as the Bank of England, after consultation with the Treasury, considers relevant."
Sections 44D (bridge bank: supplemental property transfer powers)(**a**) to 46 (temporary public ownership: reverse property transfer)	Ignore sections 44D to 46.
Section 47 (restriction of partial transfers)	In subsection (1), treat the reference to a bank as a reference to a third-country institution. In subsection (1A)(**b**), treat the first reference to a bank as a reference to a third-country institution, and ignore the words "(even if it is not a bank)".
Section 48A (creation of liabilities)(**c**)	In subsection (1) ignore the reference to sections 44A(3)(b), 44D(3)(b), 44E(3)(b), 45(3)(b) and 46(3)(b).
Section 48C (meaning of "protected deposit")(**d**)	In subsection (4), treat the reference to section 48B(8)(a) as a reference to section 48B(10)(a).
Section 48D (general interpretation of section 48B)	In the definition of client assets, treat the reference to the bank as a reference to the third-country institution.
Section 48E (report on special bail-in provision)	Ignore section 48E.
Section 48F (power to amend definition of "excluded liabilities")	In subsection (1) treat the reference to section 48B(8) as including a reference to section 48B(10).
Section 48H (business reorganisation plan)	Ignore section 48H.
Sections 48L (powers in relation to securities) to 48O (directions in or under resolution instruments)	Ignore sections 48L to 48O.
Section 48Q (continuity)	Treat references to a resolution instrument as references to a property transfer instrument within section 44B(2) that makes special bail-in provision under section 48B(1).
Section 48R (execution and registration of instruments, etc.)	Treat references to a resolution instrument as references to a property transfer instrument within section 44B(2) that makes special bail-in provision under section 48B(1).

(**a**) Section 44D is inserted, with section 44E, by article 13 of this Order.
(**b**) Subsection (1A) was inserted by S.I. 2014/3329.
(**c**) Section 48A was inserted by section 21 of the Financial Services Act 2010 (c. 28).
(**d**) Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

Section 48S (resolution instruments: general matters)	Treat references to a resolution instrument as references to a property transfer instrument within section 44B(2) that makes special bail-in provision under section 48B(1).
Sections 48T (procedure) to 48WA (bail-in option: recovery of expenses)(**a**)	Ignore sections 48T to 48WA.
Section 48Z (termination rights etc)(**b**)	In subsection (1), in paragraph (a) of the definition of "crisis management measure", treat the reference to the bank as including a reference to a UK branch. In subsection (6)(a), treat the first reference to the third-country institution as including a reference to the UK branch.
Section 57 (valuation principles)	In subsection (4) treat the reference to the bank as a reference to the third-country institution.
Section 60 (third party compensation)	In subsection (3)— (a) in paragraph (a) treat the second reference to a bank as including a reference to a third-country institution; (b) in paragraph (c) treat the reference to insolvency as including any proceedings under the law of the third country in which the third-country institution is incorporated which are equivalent to the proceedings listed in paragraph (c).
Section 60B (principle of no less favourable treatment)(**c**)	In subsection (1), treat the references to a bank as including references to a third-country institution. In subsection (2)(a) treat the reference to the bank as a reference to the UK branch. Ignore subsection (2)(b). In subsection (3), treat the references to a bank as references to a third-country institution. In subsection (4) treat the reference to insolvency as including any proceedings under the law of the third country in which the third-country institution is incorporated which are equivalent to the proceedings listed in subsection (4).
Section 62A(**d**) (independent valuer: sections 6E and 48X)	In subsection (1A)(**e**), treat the reference to the bank as including a reference to the third-country institution.
Sections 62B (resolution administrator) to 62E (resolution administrator: money)(**f**)	Ignore sections 62B to 62E.

(**a**) Section 48WA is inserted by article 14 of this Order.
(**b**) Section 48Z was inserted by S.I. 29014/3329.
(**c**) Section 60B was inserted by S.I.2014/3329.
(**d**) Section 62A was inserted by S.I. 2014/3329.
(**e**) Subsection (1A) is inserted by article 17 of this Order.
(**f**) Sections 62B to 62E were inserted by S.I. 2014/3329.

Section 63 (general continuity obligations: property transfers)	In subsection (1)(a)— (a) treat the second reference to a bank as a reference to a third-country institution; (b) treat the reference to "whose business" as a reference to the business of whose UK branch; (c) ignore the references to sections 41A(2) and 44D(2). In subsection (1)(d) treat the reference to the bank as a reference to the UK branch. In subsection (1A)(**a**) treat the reference to insolvency as including any proceedings under the law of the third country in which the third-country institution is incorporated which are equivalent to proceedings listed in subsection (1A). In subsection (4A)— (a) treat each reference to the bank as a reference to the third-country institution; (b) treat the reference to "whose business" as a reference to "the business of whose UK branch".
Section 64 (special continuity obligations: property transfers)(**b**)	Treat the references to contracts or other arrangements, in each place where they appear, as limited to contracts or other arrangements which were entered into by the third-country institution in relation to the business of its UK branch.
Section 65 (continuity obligations: onward property transfers)	In subsection (1), ignore paragraph (a)(ii)(**c**). In subsection (3), ignore paragraph (b). In subsection (4), ignore paragraph (c), and in paragraph (d) treat the reference to "(a) to (c)" as a reference to "(a) or (b)".
Sections 66 (share transfers) to 68 (continuity obligations: onward share transfers)	Ignore sections 66 to 68.

(**a**) Subsections (1A) and (4A) were inserted by S.I. 2014/3329.
(**b**) Section 64 was amended by S.I. 2014/3329.
(**c**) Subsection (1)(a) was amended by S.I. 2014/3329.

Section 70A (suspension of obligations)(**a**)	For subsection (1), substitute— "(1) The Bank of England may suspend obligations to make a payment, or delivery, under a contract where— (a) one of the parties to the contract is a third-country institution, (b) the contract was entered into by the third-country institution in relation to the business of its UK branch, and (c) the Bank is making a property transfer instrument in relation to the business of the UK branch.". In subsection (3)(c) treat the reference to the bank under resolution as a reference to the third-country institution. In subsection (5), ignore the references to share transfer instruments, resolution instruments and third-country instruments.
Section 70B (restriction of security interests)	In subsection (1)— (a) treat the first reference to the bank as a reference to the UK branch and the second as a reference to the third-country institution; (b) treat the reference to assets of the bank as a reference to any property or rights of the third-country institution which form part of the business of the UK branch. In subsection (3), treat the reference to any asset of the bank under resolution as a reference to any property or rights of the third-country institution which form part of the business of the UK branch. In subsection (4), ignore the references to share transfer instruments, resolution instruments and third-country instruments.

(**a**) Section 70A was inserted, with sections 70B to 70D by S.I. 2014/3329.

Section 70C (suspension of termination rights)	For subsection (2), substitute— "(2) A contract is a "qualifying contract" for the purpose of this section if— (a) one of the parties to the contract is a third-country institution, and the contract was entered into by the third-country institution in relation to the business of its UK branch, (b) the Bank is making a property transfer instrument in relation to the business of the UK branch, and (c) all the obligations under the contract to make a payment, make delivery or provide collateral continue to be performed.". Ignore subsection (3). In subsection (5), ignore the references to share transfer instruments, resolution instruments and third-country instruments. In subsection (6), ignore the words after paragraph (b). In subsection (7)— (a) treat the reference to the bank under resolution as a reference to the third-country institution; (b) ignore paragraph (b). In subsection (9)— (a) treat the reference to the bank under resolution as a reference to the third-country institution; (b) ignore the words "or the subsidiary undertaking".
Section 71 (pensions)	Ignore section 71.
Section 76 (international obligation notice: general)(**a**)	In subsections (1) and (3) treat the reference to exercising the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or a stabilisation power as a reference to making a property transfer instrument. In subsections (1) and (4) treat the reference to a bank as a reference to a UK branch. Ignore subsection (5).
Section 77 (international obligation notice: resolution company)(**b**)	In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch.
Section 78 (public funds: general)(**c**)	In subsections (1) and (4) treat the reference to exercising the power to make a mandatory reduction instrument or a stabilisation power as a reference to making a property transfer instrument. In subsections (1) and (5), treat the reference to a bank as a reference to a UK branch.
Section 78A (pre-conditions for financial assistance)(**d**)	Ignore section 78A.

(**a**) Section 76 was amended by S.I. 2014/3329.
(**b**) Section 77 was amended by S.I. 2014/3329.
(**c**) Section 78 was amended by S.I. 2014/3329.
(**d**) Section 78A was inserted by S.I. 2014/3329.

Section 79 (public funds: resolution company)(**a**)	In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch.
Section 79A (private sector purchaser: report)(**b**)	In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch. In subsection (2) ignore the reference to share transfer instruments.
Section 80 (resolution company: report)(**c**)	In subsection (1), treat the reference to a bank's business as a reference to the business of a UK branch.
Sections 80A (transfer for bail-in purposes)(**d**) and 81 (temporary public ownership)	Ignore sections 80A and 81.
Section 81A (accounting information to be included in reports under section 80)(**e**)	In subsection (1), ignore the references to sections 80A(2)(b) and 81. Ignore the references to the bank.
Sections 81AA to 81CA (groups)(**f**)	Ignore sections 81AA to 81CA.
Section 81D (interpretation: "banking group company")	In subsection (1)(a)— (a) ignore the reference to a bank and EU institution, (b) treat the reference to section 81B(9) as a reference to section 89JA(2)(c).
Sections 82 (temporary public ownership) and 83 (supplemental)	Ignore sections 82 and 83.
Section 83ZA (information)(**g**)	For subsection (1), substitute— "(1) This section only applies to information and documents reasonably required in connection with the making by the Bank of England of a property transfer instrument in relation to the UK branch of a third-country institution.". In subsections (2) and (4) treat references to a bank or banking group company as references to a third-country institution. In subsections (7) and (10) treat references to a bank as references to a third-country institution.
Section 83ZB (reports by skilled persons)	In subsection (2) treat the references to a bank as a reference to a third-country institution.
Section 83ZC (appointment by persons to carry out general investigations)	In subsection (2)(a) treat the reference to the business of a bank as a reference to the business conducted by a UK branch. Ignore subsections (2)(c), (3) and (4).
Section 83ZE (investigations etc. in support of foreign resolution authorities)	Ignore section 83ZE.
Section 83ZL (entry of premises under warrant)	In subsection (3), treat each reference to a bank as a reference to a third-country institution.

(**a**) Section 79 was amended by S.I. 2014/3329.
(**b**) Section 79A was inserted by section 99 of the Financial Services Act 2012.
(**c**) Section 80 was amended by S.I. 2014/3329.
(**d**) Section 80A was inserted by paragraph 25 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(**e**) Section 81A was inserted by section 99 of the Financial services Act 2012 and amended by S.I. 2014/3329.
(**f**) Section 81AA was inserted by S.I. 2014/3329.
(**g**) Section 83ZA was inserted, with sections 83ZB to 83Z2, by S.I.2014/3329.

Section 83ZR (regulatory sanctions)	In subsection (1)(d), where the third-country institution is an investment firm, treat the references to banks as references to investment firms.”

PART 4

Amendments of the Financial Services and Markets Act 2000

Introduction to amendments of the Financial Services and Markets Act 2000

30. The Financial Services and Markets Act 2000(**a**) is amended in accordance with this Part.

General meeting

31. After section 55PA (assets requirements imposed on insurance undertakings or reinsurance undertakings)(**b**), insert—

“**Requirements relating to general meetings**

55PB.—(1) This section applies where—

(a) either regulator has imposed a general meeting requirement on an authorised person who is a bank, building society or investment firm,

(b) the authorised person has not complied with the general meeting requirement, and

(c) the appropriate regulator considers that the authorised person has infringed, or is likely in the near future to infringe—

(i) a relevant requirement within the meaning of section 204A; or

(ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments(**c**).

(2) A general meeting requirement is a requirement under section 55L(**d**) or 55M that the authorised person call a general meeting of its shareholders or members.

(3) The appropriate regulator may call a general meeting of the shareholders or members of the authorised person.

(4) The appropriate regulator may propose business for consideration and decision at the general meeting.

(5) The meeting must be called in the same manner, as far as practicable, as that in which meetings are required to be called by the board of directors (or the equivalent management body) of the authorised person.

(6) For the purposes of this section—

“bank” has the meaning given in section 2 of the Banking Act 2009;

“building society” has the meaning given in the Building Societies Act 1986;

“investment firm” has the meaning given in section 258A of the Banking Act 2009(**e**);

“the appropriate regulator” means the regulator who imposed the general meeting requirement.”.

(**a**) 2000 c. 8.
(**b**) Section 55PA was inserted by S.I. 2015/575.
(**c**) OJ L173, 12.06.2014, p.84.
(**d**) Section 55L was substituted (with sections 55A to 55Z4) for Part IV of the Financial Services and Markets Act 2000 by section 11 of the Financial Services Act 2012.
(**e**) Section 258A of the Banking Act 2009 was inserted by section 101 of the Financial Services Act 2012.

Removal of directors and senior executives and appointment of temporary manager

32. In Part 5 (performance of regulated activities), after section 71A(**a**) insert—

"Removal of directors and senior executives and appointment of temporary manager

Removal of directors and senior executives

71B.—(1) If the appropriate regulator is satisfied that the conditions in section 71D(1) and (2) are met in relation to a relevant firm, the appropriate regulator may require the firm to remove—

(a) any person who is a director of the firm;

(b) any person who is a senior executive of the firm.

(2) If the appropriate regulator imposes a requirement under subsection (1), the regulator may also require the relevant firm—

(a) to replace a director or senior executive who has been removed, and

(b) to take any step needed to give effect to the replacement, including, where necessary, calling a general meeting of the firm's shareholders or members.

Temporary manager

71C.—(1) If the appropriate regulator is satisfied—

(a) in the case of a relevant firm, that the conditions in section 71D(1), (2) and (4) are met in relation to that firm, or

(b) in the case of a parent undertaking which is not a relevant firm, that the conditions in section 71D(1) and (4) are met in relation to that parent undertaking,

the appropriate regulator may appoint a person to act (or one or more persons to act jointly) as a temporary manager of that firm or that parent undertaking.

(2) Where the appropriate regulator makes an appointment under subsection (1) in relation to a parent undertaking which is not a relevant firm, the regulator may also require the undertaking to remove—

(a) all of its directors;

(b) all of its senior executives.

(3) A temporary manager may be appointed under subsection (1)—

(a) to replace the directors of a relevant firm or a parent undertaking where they have been removed in compliance with a requirement imposed under section 71B or subsection (2), or

(b) to work with the directors of a relevant firm or a parent undertaking.

(4) A temporary manager has the functions specified in the instrument of appointment (see section 71F).

(5) The functions which may be specified include (amongst other things)—

(a) ascertaining the financial position of the relevant firm or the parent undertaking;

(b) managing the business or part of the business of the relevant firm or the parent undertaking in order to preserve or restore the financial position of the firm or the parent undertaking;

(c) taking measures to restore the prudent management of the relevant firm or the parent undertaking;

(d) any function of the directors.

(**a**) Section 71A was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 33.

(6) The temporary manager may, with the consent of the appropriate regulator—

(a) require the directors to call a general meeting of the shareholders or members of the relevant firm or the parent undertaking, or

(b) in the case where all of the directors have been removed in compliance with a requirement imposed under section 71B or subsection (2), call a general meeting of the shareholders or members of the relevant firm or the parent undertaking.

(7) The temporary manager may propose business for consideration at the general meeting.

(8) If the temporary manager is being appointed to work with the directors, the appropriate regulator—

(a) may require the directors not to exercise specified functions during the period of appointment;

(b) may require the directors to consult the temporary manager, or obtain the consent of the temporary manager, before taking specified decisions or specified action.

"Specified" means specified in the requirement.

Sections 71B and 71C: conditions

71D.—(1) The condition in this subsection is met in relation to a relevant firm or a parent undertaking if—

(a) there is a deterioration in the financial situation of the relevant firm or the parent undertaking which is a significant deterioration, or

(b) there is a serious infringement by the relevant firm or the parent undertaking of—

(i) a relevant requirement, or

(ii) its memorandum or articles of association or other constituent instrument.

(2) The condition in this subsection is met in relation to a relevant firm if it is not reasonably likely that the deterioration would be reversed or the infringement would be brought to an end by any measure of a kind described in Article 27(1) of the recovery and resolution directive which could be taken by the appropriate regulator under the provisions listed in subsection (3).

(3) The provisions mentioned in subsection (2) are—

(a) section 55J (variation or cancellation on initiative of regulator),

(b) section 55L (imposition of requirements by FCA),

(c) section 55M (imposition of requirements by PRA),

(d) section 55PB (requirements relating to general meetings),

(e) section 56 (prohibition orders),

(f) section 63 (withdrawal of approval),

(g) section 63ZA (variation of senior manager's approval at request of authorised person)(**a**),

(h) section 63ZB (variation of senior manager's approval on initiative of regulator),

(i) section 63A (power to impose penalties)(**b**),

(j) section 66 (disciplinary powers)(**c**),

(**a**) Section 63ZA was inserted, with sections 63ZB and 63ZC, by section 26 of the Financial Services (Banking Reform) Act 2013.

(**b**) Section 63A was inserted by section 11 of the Financial Services Act 2010.

(**c**) Section 66 was amended by sections 12 and 24 of, and paragraphs 1 and 8 of Schedule 2 to, the Financial Services Act 2010, paragraph 14 of Schedule 5 to the Financial Services Act 2012, sections 28 and 32 of, and paragraph 5 of Schedule 3 to, the Financial Services (Banking Reform) Act 2013 and by S.I. 2013/1773.

(k) Part 12A (powers exercisable in relation to parent undertakings)(**a**), or

(l) Part 14 (disciplinary measures).

(4) The condition in this subsection is met if the following action would not be sufficient to reverse the deterioration or bring the infringement to an end—

(a) in the case of a relevant firm, the imposition of one or more requirements under section 71B (removal and replacement of directors and senior executives); or

(b) in the case of a parent undertaking which is not a relevant firm, the exercise of any of the appropriate regulator's powers under Part 12A.

(5) For the purposes of this section—

(a) "relevant requirement" has the meaning given in section 204A;

(b) a deterioration in the financial situation of the relevant firm or the parent undertaking is significant if—

(i) in the case of a relevant firm, or a parent undertaking which is an authorised person, it no longer satisfies, or is likely to fail to satisfy, the threshold conditions relating to its financial resources which apply to it under Schedule 6;

(ii) in the case of a parent undertaking which is not an authorised person, the deterioration threatens the viability of the parent undertaking.

Temporary manager: further provisions in relation to the appointment

71E.—(1) Before appointing a person to act as a temporary manager, the appropriate regulator must be satisfied that the person—

(a) has the qualifications, ability and knowledge to carry out the functions to be given to the temporary manager, and

(b) would not be subject to any conflict of interest as a result of the appointment.

(2) A person may not be appointed to act as a temporary manager for a period longer than one year, but is eligible for re-appointment (or further re-appointment) if subsection 71C(1) continues to apply in relation to the relevant firm or parent undertaking.

(3) The appropriate regulator may vary the terms of the appointment of a temporary manager, or remove the temporary manager, at any time.

(4) A temporary manager 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 appointment (subject to section 8 of the Human Rights Act 1998).

Temporary manager: instrument of appointment

71F.—(1) The power in section 71C(1) is to be exercised by an instrument of appointment.

(2) The instrument of appointment must—

(a) specify the functions of the temporary manager,

(b) specify the date on which the appointment of the temporary manager has effect,

(c) specify the period for which the temporary manager is appointed, and

(d) make provision for the resignation and replacement of the person who is appointed as the temporary manager.

(3) The instrument of appointment may—

(**a**) Part 12A was inserted by section 27 of the Financial Services Act 2012.

(a) require the temporary manager to consult the appropriate regulator or other specified person before exercising specified functions,

(b) specify particular matters on which the appropriate regulator or other specified person must be consulted, and

(c) provide that the temporary manager is not to exercise specified functions without the consent of the appropriate regulator or other specified person.

(4) The instrument of appointment may require the temporary manager to make reports to the appropriate regulator, at specified times or intervals, on—

(a) the financial position of the relevant firm or the parent undertaking,

(b) the actions taken by the temporary manager during the course of the temporary manager's appointment,

(c) any other specified matters.

(5) In subsections (3) and (4), "specified" means specified in the instrument of appointment.

(6) The instrument of appointment may provide for the payment of remuneration and allowances to a temporary manager.

(7) Provision under subsection (6) may provide that the amounts are—

(a) to be paid by the appropriate regulator, or

(b) to be determined by the appropriate regulator and paid by the relevant firm or the parent undertaking.

(8) If a temporary manager—

(a) is appointed to replace the directors of the relevant firm or the parent undertaking, or

(b) is appointed to work with the directors of the relevant firm or the parent undertaking and has the power to represent that firm or parent undertaking,

the appropriate regulator must publish the instrument of appointment on its website.

Right to refer matters to the Tribunal

71G.—(1) A relevant firm which is aggrieved by—

(a) the imposition of a requirement on that firm under section 71B, or

(b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that firm under section 71C(1),

may refer the matter to the Tribunal.

(2) A parent undertaking which is aggrieved by—

(a) the imposition of a requirement on that parent undertaking under section 71C(2), or

(b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that parent undertaking under section 71C(1),

may refer the matter to the Tribunal.

(3) A director (or a former director) of a relevant firm or a parent undertaking who is aggrieved by the imposition of a requirement on that director under section 71C(8) may refer the matter to the Tribunal.

(4) A director or senior executive (or a former director or senior executive) of a relevant firm or a parent undertaking who is aggrieved by the imposition of a requirement on that firm or parent undertaking under section 71B or 71C(2) may refer the matter to the Tribunal.

Removal of directors and senior executives and appointment of temporary manager: procedure

71H.—(1) A requirement under section 71B or 71C(2) or (8) or the appointment of a temporary manager under section 71C(1) may be expressed to take effect immediately or on a specified date only if the appropriate regulator, having regard to the grounds for imposing the requirement or making the appointment, reasonably considers that it is necessary for the requirement or the appointment to take effect immediately or on that date.

(2) If either regulator proposes to impose a requirement on a relevant firm under section 71B or a parent undertaking under section 71C(2), or imposes such a requirement with immediate effect, it must give written notice—

(a) to that firm or parent undertaking, and

(b) to each of the directors or senior executives to whom the requirement relates ("the interested parties").

(3) If either regulator—

(a) proposes to appoint a person to act as a temporary manager under section 71C or to vary the terms on which such a person is appointed, or

(b) makes such an appointment or variation with immediate effect,

the regulator must give written notice to the relevant firm or the parent undertaking concerned.

(4) If either regulator proposes to impose a requirement on the directors under section 71C(8), or imposes such a requirement with immediate effect, the regulator must give written notice to each director.

(5) A notice given under subsection (2) must—

(a) give details of the requirement,

(b) identify each of the directors or senior executives to whom the requirement relates,

(c) give the regulator's reasons for imposing the requirement—

(i) in the case of a notice given to the relevant firm or the parent undertaking, in relation to each interested party;

(ii) in the case of a notice given to an interested party, in relation to that interested party,

(d) inform the relevant firm or the parent undertaking and the interested parties that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),

(e) state when the requirement takes effect, and

(f) inform the relevant firm or the parent undertaking and each of the interested parties of their right to refer the matter to the Tribunal.

(6) A notice given under subsection (3) must—

(a) state when the appointment or variation takes effect, and be accompanied by the instrument, or revised instrument, of appointment,

(b) give the regulator's reasons for making the appointment or variation,

(c) inform the relevant firm or the parent undertaking that it may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and

(d) inform the relevant firm or the parent undertaking of its right to refer the matter to the Tribunal.

(7) A notice given under subsection (4) must—

(a) give details of the requirement,

(b) give the regulator's reasons for imposing the requirement,

(c) state when the requirement takes effect,

(d) inform the director that the director may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and

(e) inform the director of the director's right to refer the matter to the Tribunal.

(8) The regulator may extend the period allowed by the notice given under subsection (2), (3) or (4) for making representations.

(9) If, having considered any representations made by a person to whom notice (the "original notice") has been given under subsection (2), (3) or (4), the regulator decides—

(a) to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or

(b) not to rescind the imposition of any such requirement or the making of any such appointment or variation which has already taken effect,

the regulator must give written notice to each person to whom the original notice was given.

(10) A notice under subsection (9) must inform the person to whom it is given of the right of that person to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(11) If, having considered any representations made by a person to whom notice (the "original notice") has been given under subsection (2), (3) or (4), the regulator decides—

(a) to impose a requirement, make an appointment or a vary the terms of an appointment in a way that is different from the requirement, appointment or variation described in the original notice,

(b) not to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or

(c) to rescind the imposition of any such requirement, or the making of any such appointment or variation that has already taken effect,

the regulator must give written notice to each person to whom the original notice was given.

(12) A notice under subsection (11)(a) about the imposition of a requirement under section 71B or 71C(2) must comply with subsection (5).

(13) A notice under subsection (11)(a) about the appointment of a person as a temporary manager or the variation of the terms of the appointment of a person as a temporary manager must comply with subsection (6).

(14) A notice under subsection (11)(a) about the imposition of a requirement under section 71C(8) must comply with subsection (7).

(15) In this section, any reference to "appointment" includes "re-appointment".

Sections 71B to 71H: interpretation

71I.—(1) For the purposes of sections 71B to 71H "relevant firm" means—

(a) a bank as defined in section 2 of the Banking Act 2009,

(b) a building society as defined in section 119 of the Building Societies Act 1986, or

(c) an investment firm as defined in section 258A of the Banking Act 2009(**a**).

(2) For the purposes of sections 71C to 71H, "parent undertaking" means an institution, financial holding company or mixed financial holding company which—

(a) is incorporated in, or formed under the law of, any part of the United Kingdom,

---

(**a**) Section 258A was inserted by section 101 of the Financial Services Act 2012, and amended by S.I. 2013/3115.

(b) is an EEA parent, and

(c) either—

(i) has a subsidiary which is an institution, or

(ii) holds a participation (within the meaning given by Article 4.1(35) of the capital requirements regulation) in an institution.

(3) For the purposes of subsection (2), an institution, financial holding company or mixed financial holding company is an EEA parent if it is not itself the subsidiary of an institution, financial holding company or mixed financial holding company set up in any EEA state.

(4) In subsections (2) and (3)—

"institution" means a credit institution or an investment firm as defined in Article 2.1(2) and 2.1(3) of the recovery and resolution directive;

"financial holding company" and "mixed financial holding company" have the meanings given in Article 4.1(20) and 4.1(21) of the capital requirements regulation.

(5) For the purposes of sections 71B to 71H—

"appropriate regulator" means—

(a) in relation to a PRA-authorised person, the PRA,

(b) in relation to any other authorised person, the FCA,

(c) in relation to a parent undertaking that is not an authorised person—

(i) the PRA, where the PRA is the consolidating supervisor in relation to that undertaking;

(ii) the FCA, where the FCA is the consolidating supervisor in relation to that undertaking;

"consolidating supervisor" means the competent authority responsible for the exercise of supervision on the basis of the consolidated situation (within the meaning of Article 4.1(47) of the capital requirements regulation) of an institution which is an EEA parent;

"director" includes, in relation to an undertaking which has no board of directors, a member of the equivalent management body responsible for the management of the undertaking concerned;

"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(**a**);

"senior executive", in relation to a relevant firm or a parent undertaking, means a person who—

(a) exercises executive functions within that firm or that undertaking; and

(b) is responsible, and directly accountable to the directors, for the day to day management of that firm or that undertaking.".

Assessment and resolution

33.—(1) In section 189 (assessment: procedure), in subsection (6) insert at the beginning "Unless section 190A applies".

(2) After section 190, insert—

"Assessment and resolution

190A.—(1) This section applies if—

(**a**) OJ L173, 1.6.2014, p.190.

(a) the appropriate regulator receives a section 178 notice in relation to a credit institution, investment firm or banking group company,

(b) as a result of a direction under section 189(1A)(**a**) or the application of section 189(1ZB)(**b**), the appropriate regulator is required to act under this Part in a timely manner in relation to that notice, and

(c) the appropriate regulator does not complete the assessment required by section 185 before a relevant transfer instrument has been made by the Bank of England which transfers shares issued by, or voting power in, that credit institution, investment firm or banking group company.

(2) The transfer of shares or voting takes effect in accordance with the terms of the relevant transfer instrument, but the right of the person who acquires shares under that instrument ("the acquirer") to exercise the voting power represented by those shares is suspended.

(3) During the suspension, the voting power represented by the shares in question may be exercised by the Bank (and only by the Bank).

(4) If the appropriate regulator issues a decision notice under section 189(7) objecting to the acquisition, the Bank may direct the acquirer to sell the shares within a period specified by the Bank in the direction ("the sale period").

(5) In determining the sale period, the Bank must take account of prevailing market conditions.

(6) The suspension provided for in subsection (2) ends—

(a) if the appropriate regulator gives notice under section 189(4)(a) or (b)(i) that it approves the acquisition, on the date of that notice, or

(b) if the Bank gives a direction under subsection (4), on the earlier of the day on which the sale period ends and the day on which the shares are sold.

(7) In this section a "relevant transfer instrument" means an instrument made by the Bank 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, which transfers, or has the effect of transferring, shares issued by, or voting power in, the credit institution, investment firm or banking group company.".

(3) In section 191B (restriction notices), after subsection (3) insert—

"(3A) Subsection (3)(a) and (b) does not apply where the voting power represented by the shares in question is suspended under section 190A(2).".

(4) In section 191C (orders for sale of shares), after subsection (6), insert—

"(7) The appropriate regulator must obtain the consent of the Bank of England before making an application under this section in relation to shares if the Bank has the power to direct the sale of those shares under section 190A(4).

(8) The appropriate regulator may not make an application under this section in relation to shares if the Bank of England has given a direction for the sale of those shares under section 190A(4).".

(5) In section 191F (offences under this Part)(**c**)—

(a) in subsection (2) at the end insert "or section 190A applies";

(b) after subsection (4) insert—

"(4A) A person who fails to comply with a direction given by the Bank of England under section 190A(4) is guilty of an offence.";

(**a**) Subsection (1A) was inserted into section 189 by S.I. 2014/3329.

(**b**) Subsection (1ZB) was inserted by paragraph 39 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14).

(**c**) Section 191F was substituted, with sections 178 to 191G, for the original sections 178 to 191 by S.I. 2009/534, and amended by section 26 of the Financial Services Act 2012.

(c) in subsection (9), after "(4)" insert "or (4A)".

(6) In section 401—

(a) in subsection (3A)(g)(**a**), after "191F(2) to" insert "(4) and (5) to";

(b) after subsection (3A) insert—

"(3AB) For the purposes of subsections (2)(a) and (3)(a), the Bank of England is the "appropriate regulator" in respect of an offence under section 191F(4A).".

Restrictions on disclosure of confidential information

34. In section 348(5) (restrictions on disclosure of confidential information by FCA, PRA etc)(**b**), after paragraph (c) insert—

"(zd) a person appointed to act as a temporary manager by the FCA or the PRA under section 71C;".

Supervisory notices

35. In section 395 (supervisory notices)(**c**), in subsection (13), after paragraph (aa) insert—

"(ab) 71H(2), (3), (4), (9) or (11)(a);".

PART 5

Amendments of secondary legislation

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

36.—(1) The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(**d**) is amended as follows.

(2) In article 1(3)—

(a) in the definition of "banking institution"—

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

(ii) after sub-paragraph (e), insert—

"or

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

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

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

(i) for "or 5" substitute ", 5 or 6";

(ii) for "and (4B)" substitute ", (4B) and (4C)";

(d) after paragraph (4), insert—

"(5) References in this Order to sections of the Banking Act 2009 include, as the context requires, references to those provisions as applied with or without modifications by that

---

(**a**) Subsection (3A) was inserted into section 401 by paragraph 38 of Schedule 9 to the Financial Services Act 2012.
(**b**) Section 348(5) was amended by paragraphs 1 and 26 of Schedule 2 to Financial Services Act 2010.
(**c**) Section 395(13) has been amended by S.I. 2005/381; 2005/1433; 2009/534; 2007/1973; sections 17, 18, 19 and 24 of, and paragraphs 1 and 34 of Schedule 9 to, the Financial Services Act 2012; paragraph 14 of Schedule 3 to the Financial Services (Banking Reform) Act 2013; S.I. 2013/1388.
(**d**) S.I. 2009/322. Article 1 was amended by S.I. 2009/1826; 2013/472; 2013/3115; 2014/1831; 2014/3329.
(**e**) Section 89JA is inserted by article 28 of this Order.

Act, as that Act has effect on the day on which the Bank Recovery and Resolution Order 2016 comes into force."

(3) In article 2—

(a) in paragraph (4)—

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

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

(b) after paragraph (4B), insert—

"(4C) Case 6 is where—

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

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

(4) After article 5(**b**), insert—

"Secured liabilities: eligible deposits

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

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

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

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

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

(5) In article 8(**c**)—

(a) in paragraph (1)(a), for "or 44A(**d**)" substitute ", 44A or 44E";

(b) in paragraph (4)(a) for "or 44A" substitute ", 44A or 44E".

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

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

37. In the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014(**e**), for article 2(1) (description of institution not included within the meaning of "investment firm") substitute—

"(1) An institution which is not required under provisions implementing the Capital Requirements Directive to have initial capital of €730,000 is specified for the purposes of section 258A(2)(b) of the Banking Act 2009(**f**).".

(**a**) Sections 44D and 44E are inserted by article 13 of this Order.
(**b**) Article 5 has been amended by S.I. 2009/1826 and S.I. 2013/472.
(**c**) Article 8 has been amended by S.I. 2009/1826 and S.I. 2014/3329.
(**d**) Section 44A was inserted by paragraph 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).
(**e**) S.I. 2014/1832.
(**f**) Section 258A was inserted by section 101 of the Financial Services Act 2012.

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

38.—(1) The Banking Act 2009 (Third Party Compensation for Partial Property Transfers) Regulations 2009(**a**) are amended as follows.

(2) In regulation 1—

(a) in paragraph (3)(**b**), in the definition of "banking institution"—

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

(ii) after subparagraph (c), insert—

"or

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

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

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

(ii) after paragraph (e) insert—

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

(c) after paragraph (3), insert—

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

(3) In regulation 2(**c**)—

(a) in paragraph (4)—

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

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

(b) after paragraph (4B), insert—

"(4C) Case 6 is where—

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

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

(4) In regulation 6(**e**), in paragraph (b)—

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

(b) after sub-paragraph (v), insert—

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

(**a**) S.I. 2009/319.
(**b**) Regulation 1(3) was amended by S.I. 2014/1830 and 2014/3329.
(**c**) Regulation 2 was amended by S.I. 2014/3329.
(**d**) Sections 44D and 44E are inserted by article 13 of this Order.
(**e**) Regulation 6 was amended by S.I. 2014/3329.

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

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

(2) In article 2—

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

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

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

(3) In article 6, in paragraph (10)—

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

(b) after sub-paragraph (b), insert—

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

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

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

40.—(1) The Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014(**c**) are amended as follows.

(2) In regulation 2—

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

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

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

(3) In regulation 3—

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

(b) in paragraph (4)(b)—

(i) for "an associated" substitute "a",

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

(**a**) S.I. 2014/3350.
(**b**) Section 89A was inserted by section 101 of the Financial Services Act 2012 (c.21).
(**c**) S.I. 2014/3330.

Bank Recovery and Resolution (No. 2) Order 2014

41.—(1) The Bank Recovery and Resolution (No. 2) Order 2014(**a**) is amended as follows.

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

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

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

", and

"temporary manager" means a temporary manager appointed by the appropriate regulator under section 71C(**b**) of FSMA;".

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

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

"temporary manager" means—

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

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

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

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

(b) in paragraph (3)—

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

(ii) in subparagraph (b) for "measure" substitute "proposal";

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

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

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

(b) in paragraph (2) for "measure" substitute "proposal".

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

(a) after paragraph (1) insert—

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

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

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

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

(a) a measure for early intervention which is also—

(i) a measure of the kind specified in sub-paragraph (a) of Article 27.1 of the recovery and resolution directive relating to information included in a recovery plan or group recovery plan by virtue of points (4), (10), (11) and (19) of Section A of the Annex to that directive (information to be included in recovery plans); or

---

(**a**) S.I. 2014/3348.

(**b**) Section 71C is inserted into the Financial Services and Markets Act 2000 by article 31 of this Order.

(ii) a measure of the kind specified in sub-paragraph (e) or (g) of Article 27.1 of that directive, or

(b) the appointment of a temporary manager.".

(9) In article 115 (requesting the assistance of EBA), after "113(1)" insert "or (1A)".

(10) In article 116 (application and interpretation of Chapter 3), after "early intervention"" insert ", "temporary manager"".

(11) In article 117 (procedure for early intervention in respect of a UK group entity)—

(a) in paragraphs (1), (3) and (5), after "early intervention" insert "or appoint a temporary manager";

(b) in paragraph (4) and (6), after "early intervention" insert "or to appoint a temporary manager";

(c) in paragraph (3)(b) for "measure" both times it appears, substitute "proposal".

(12) In article 118 (joint decisions about early intervention)—

(a) after paragraph (1) insert—

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

(b) in paragraph (2) at the end insert "or to appoint a temporary manager".

(13) In article 120 (requesting the assistance of EBA), after "118(1)" insert "or (1A)".

(14) In articles 123(4), 126(6), 135(4) and 142(4) (determination of minimum requirement)—

(a) for "A liability must be excluded" substitute "An eligible liability must be excluded"; and

(b) for "own funds or eligible liabilities" substitute "own funds and eligible liabilities".

(15) In article 217(2) (shadow directorship)—

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

(b) after sub-paragraph (b) insert—

"(c) a resolution administrator appointed under section 62B of the Banking Act 2009(**a**); and

(d) a temporary manager appointed under section 71C of the Financial Services and Markets Act 2000.".

(16) After article 220, insert—

"Modified application of the Companies Act 2006 (shareholders' rights)

220A.—(1) The provisions of the Companies Act 2006 concerning the rights of shareholders to call general meetings and to amend the articles of association of the company apply to traded companies to which Part 1 of the Banking Act 2009 applies with the following modifications.

(2) "Traded company" has the meaning given in section 360C of the Companies Act 2006.

(3) Section 21 (amendment of articles) has effect as if, after subsection (3) there were inserted—

"(4) A traded company (within the meaning of section 360C) to which Part 1 of the Banking Act 2009 applies may also amend its articles in accordance with section 307B."

(**a**) Section 62B was inserted by S.I. 2014/3329.

(4) Section 307A (notice required of general meeting: certain meetings of traded companies), has effect as if, at the beginning of subsection (1), there were inserted "Subject to section 307B,".

(5) Part 13 (resolutions and meetings) has effect as if after section 307A there were inserted—

"Notice required of general meeting: traded companies meeting the conditions for early intervention

307B.—(1) Where the conditions in subsections (2) and (3) are satisfied, the members of a traded company to which Part 1 of the Banking Act 2009 applies may, by a resolution passed at a general meeting by a majority of two-thirds of those voting in person or by proxy—

(a) require the company to call a general meeting to pass a resolution to increase the company's share capital, provided that the meeting is to be called by notice of at least 10 days;

(b) amend the company's articles of association to permit a general meeting to be called to consider a proposal to increase the company's share capital by notice of at least 10 days.

(2) The condition in this subsection is satisfied if—

(a) the company has infringed, or is likely in the near future to infringe—

(i) a relevant requirement within the meaning of section 204A of the Financial Services and Markets Act 2000; or

(ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments(**a**); or

(b) the conditions for appointment of a temporary manager under section 71C(1) of the Financial Services and Markets Act 2000 (temporary manager) are met in relation to the company.

(3) The condition in this subsection is satisfied if an increase in the share capital of the company is necessary to prevent the conditions in section 7 of the Banking Act 2009 for the exercise of the stabilisation powers provided for in Part 1 of that Act being met in relation to the company.""

PART 6

Review

Review

42.—(1) The Treasury must from time to time—

(a) carry out a review of the regulatory provisions amended by articles 2 to 41;

(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 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

(**a**) OJ L173, 12.4.2014, p.84.

firms(**a**) (which is partly implemented by means of articles 2 to 40) 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 amended by articles 2 to 41;

(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
Two of the Lords Commissioners of Her Majesty's Treasury

Date

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 institutions and investment firms (OJ L173, 12.6.2014, p.190) ("recovery and resolution directive"). The recovery and resolution directive requires EEA states to have powers to manage the failure of credit institutions and investment firms and their group companies as an alternative to insolvency, in order to ensure that critical functions continue to be performed.

Part 2 of the Order amends the Banking Act 2009 (c.1) ("the Act") to complete the implementation of the recovery and resolution directive.

Articles 3 to 4 make minor amendments to the overview and interpretation provisions in the Act. Article 5 amends the definition of "institution" in section 3A. Articles 6 and 7 remove references to the valuation carried out under section 6E from the conditions for mandatory reduction instruments and the general conditions for exercise of a stabilisation power.

Article 8 sets out the requirements for marketing property of a bank, or securities issued by a bank which are to be transferred by the Bank of England ("the Bank") to a private sector purchaser using its powers under Part 1 of the Act.

Article 9 extends the Bank's powers to make onward share transfer instruments in relation to securities issued by a bank in relation to which the Bank has already made a share transfer instrument, to deal with those shares which were transferred by the original share transfer instrument, or which have been issued by the bank after the date on which that instrument was made.

Article 10 extends the Bank's existing power to make reverse share transfer instruments so that it also applies where the Bank has made an onward share transfer instrument.

Article 11 extends the category of property transfer instruments which are able to make special bail-in provision under section 44B to include onward property transfer instruments and bridge bank supplemental transfer instruments.

(**a**) OJ L173, 12.6.2014, p.190.

Article 12 ensures that the specified provisions apply to property transfer instruments which make special bail-in provision as well as to resolution instruments.

Article 13 gives the Bank power to make a property transfer instrument in relation to a bank after the Bank has made a share transfer instrument in relation to securities issued by that bank (see new section 44D), and then a supplemental reverse property transfer instrument in relation to the property, rights and liabilities which have been transferred under that initial property transfer instrument (see new section 44E), and makes consequential amendments.

Article 14 gives the Bank and the Treasury power to recover the expenses which they have incurred where the Bank has exercised the bail-in option in relation to a bank from that bank.

Article 15 amends the definition of "crisis prevention measure" for the purposes of section 48Z to ensure that the appointment by the Prudential Regulation Authority ("PRA") or the Financial Conduct Authority ("FCA") of a temporary manager under 71C of the Financial Services and Markets Act 2000 (c.8) ("FSMA") does not trigger contractual termination rights. It also gives the Bank power to provide that certain contractual termination rights may take effect in accordance with the terms of the contract notwithstanding section 48Z(6).

Article 16 adds onward share transfer instruments, bridge bank supplemental property transfer instruments and bridge bank supplemental reverse property transfer instruments to the list of instruments in relation to which the Treasury may make a compensation scheme order and a third party compensation scheme order.

Article 17 amends section 62A to ensure that the Bank may recover the costs of conducting an independent valuation from the bank which is being valued.

Article 18 amends section 81AA(8)(b) to remove any reference to the valuation carried out under section 6E of the Act.

Articles 20 and 21 give the Bank power to make share transfer instruments in relation to building societies, by converting the building society into a company. New section 84ZA identifies some of the provision which may be made by the Bank in a share transfer instrument which relates to a building society. Article 21 amends section 84D to modify provisions in Part 1 of the Act related to share transfer instruments so far as they apply to building societies.

Article 23 makes a minor amendment to section 89A.

Article 24 ensures that the amendments made by this Order do not apply in relation to recognised central counterparties.

Article 25 ensures that someone who is appointed by the Bank to make a report under section 83ZB of the Act is treated as a "primary recipient" in relation to section 348 of FSMA, and so subject to the prohibition on disclosure of confidential information provided for in that section.

Article 26 amends Part 3 of the Act to replace references to bridge banks by references to resolution companies (which include both bridge banks and asset management vehicles).

Article 27 amends the index of defined terms in section 261 of the Act.

Article 28 ensures charges over property which is acquired by the successor company of a building society when the building society is converted to a company under section 84ZA will be registered under the Companies Act 2006 (c.46), and makes consequential amendments.

Part 3 of the Order amends the Act to provide for the resolution of UK branches of third-country institutions. Article 29 inserts a new Chapter 6A into Part 1 of the Act, comprising new section 89JA.

Subsection (1) applies Part 1 of the Act to UK branches subject to the modifications made in the rest of new section 89JA.

Subsection (4) modifies section 6E to set out how the rules on valuation will apply in relation to UK branches.

Subsection (5) modifies section 7 to set out the conditions which must be satisfied before the Bank may make a property transfer instrument in relation to a UK branch.

Subsection (6) modifies section 7A to set out the factors to which the Bank must have regard before making a property transfer instrument in relation to a UK branch.

Subsection (7) modifies section 44B, to ensure that property transfer instruments made by the Bank in relation to a UK branch can make special bail-in provision in relation to any liabilities which are being transferred by the instrument.

Subsection (8) modifies section 48B, which defines "special bail-in provision" for the purposes of section 44B.

Subsection (9) modifies section 48X, which requires the Bank to obtain an independent valuation where the Bank has made a property transfer instrument in relation to a UK branch in reliance on a provisional valuation, and subsection (10) modifies section 48Y, which provides for the consequences where the independent valuation differs from the provisional valuation.

Subsection (11) contains a table of further modifications of Part 1 of the Act as it applies to UK branches of third-country institutions.

Part 4 of the Order amends FSMA. Article 31 gives the PRA and the FCA power to summon a general meeting of a company in their own right where the company has, inter alia, failed to comply with a requirement that it should do so.

Article 32 provides for removal of directors and senior executives of a relevant firm, and for the appointment of a temporary manager to run the firm, inserting new sections 71B to 71I into FSMA.

New section 71B gives the PRA and the FCA power to remove directors and senior executives, and new section 71C gives the PRA and the FCA power to appoint a temporary manager and sets out what the functions of the temporary manager are.

New section 71D sets out the conditions which must be satisfied before the powers in sections 71B and 71C may be exercised.

New section 71E makes further provision in relation to the qualifications and term of the temporary manager, and new section 71F makes provision in relation to the instrument appointing the temporary manager.

New section 71G provides rights for the relevant firm, the parent undertaking, and any directors or senior executives affected by requirements imposed under sections 71B or 71C to refer the matter to the Tribunal, new section 71H sets out the procedure which is to apply on the removal of directors or senior managers or the appointment of a temporary manager, and new section 71I makes contains the interpretation provisions for these new sections.

Article 33 inserts new section 190A into FSMA, which sets out what happens when the regulators receive a notice under section 178 of FSMA in connection with a transfer made by the Bank using its powers under Part 1 of the Act, which leads to an acquisition or increase of control over a company in the financial services sector, where the regulator concerned was unable to complete its assessment of the proposed acquisition before the transfer proceeded under the Act.

Article 34 amends section 348(5) of FSMA to ensure that temporary managers are subject to the prohibition on the disclosure of confidential information in section 348.

Article 35 amends section 395 of FSMA to ensure that notices issued by the regulators under section 71H are treated as supervisory notices.

Part 5 of the Order amends a number of statutory instruments.

Article 36 amends the Banking Act (Restriction of Partial Property Transfers) Order 2009 (S.I. 2009/322), so that third-country institutions come within the definition of "banking institutions"

for the purposes of that Order, and ensures that eligible deposits may, if necessary, be transferred separately from any liability which they are securing.

Article 37 amends the description of those firms which are excluded from the "investment firm" for the purposes of the Act.

Articles 38, 39 and 40 ensure that a third-country institution comes within the definition of "banking institution" for the purposes of the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 (S.I. 2009/319), the Banking Act 2009 (Restriction of Special Bail-in Provision, etc) Order 2014 (S.I. 2014/3350) and the Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014 (2014/3330) respectively.

Article 41 amends the Bank Recovery and Resolution (No 2) Order 2014 (2014/3348), making consequential amendments in relation to the power for the regulators to appoint a temporary manager, and in paragraph (16) inserting further modifications of the Companies Act 2006 (c.46) to ensure that shareholders of a relevant company have the power to call a general meeting to increase the company's share capital on at least 10 days notice or to change the Articles of Association of the company to permit such general meetings to be called notices to be called on at least 10 days notice.

Article 42 makes provision for the review of articles 2 to 41 of this Order every five years.

A Transposition Note setting out how the recovery and resolution directive is transposed into UK law, and a Supplementary Transposition Note setting out how the provisions of that directive are further implemented by this Order are available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

© Crown copyright 2016

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

UK201611032 11/2016 19585

http://www.legislation.gov.uk/id/ukdsi/2016/9780111151099