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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Bank Recovery and Resolution Order 2014**

**Liabilities excluded from scope of special bail-in provision**

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

(2) After subsection (7) insert—

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

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

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

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

“, or

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

(4) In subsection (8)—

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

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

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

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

“—

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

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

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

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

and

(f) after paragraph (i) insert—

“(j) liabilities owed by the bank to the “scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and

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

(2) OJ No L 176, 27.6.2013, p.338.

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(3).”

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

(6) After that subsection insert—

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

- (a) thinks the exclusion is justified on one or more of the grounds set out in subsection (12), and
- (b) notifies the European Commission of its intention to exclude the liabilities before making the instrument that gives effect to the exclusion.

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

(12) The grounds are—

- (a) that it is not reasonably possible to give effect to special bail-in provision in relation to the liability or class within a reasonable time;
- (b) that the exclusion is necessary and proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the bank to continue key operations, services and transactions;
- (c) that the exclusion is necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards protected deposits held by natural persons or micro-enterprises, small enterprises or medium-sized enterprises, which would severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause a serious disturbance to the economy of an EEA state;
- (d) that the making of special bail-in provision in relation to the liability would cause a reduction in value such that the losses borne by other creditors would be higher than if the liability were excluded.

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

- (a) the principle that all the liabilities of the bank ought to be treated in accordance with the priority they would enjoy on a liquidation,
- (b) the principle that any creditors who would have equal priority on a liquidation ought to bear losses on an equal footing with each other,
- (c) the level of loss absorbing capacity that would remain in the bank if the liability or liabilities of a class were wholly or partly excluded, and
- (d) the need to maintain adequate resources to deal with the implications for public funds of anything done, in future, in connection with the exercise of one or more of the stabilisation powers.

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

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(3) OJ L 173, 12.6.2014, p.149.

“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.”.