
DRAFT STATUTORY INSTRUMENTS

2020 No.

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

PART 3

**Amendment of Secondary legislation made
under the European Communities Act 1972**

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

26.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999(1) are amended in accordance with this regulation.

(2) In regulation 2(2B)(b) at the end insert “as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019”.

Amendment of the Credit Institutions (Reorganisation and Winding up) Regulations 2004

27.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004(2) are amended in accordance with this regulation.

(2) In regulation 2(1) in the definition of “recovery and resolution directive” at the end insert “as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019”.

Amendment of the Banking Act 2009 (Restriction of Special Bail-in Provisions, etc) Order 2014

28.—(1) The Banking Act 2009 (Restriction of Special Bail-in Provision, etc) Order 2014(3) is amended in accordance with this regulation.

(2) In article 2(1)—

(a) after the definition of “the Act” insert—

““bail-in liability has the meaning given in section 2(1) of the Banking Act 2009”;

(b) omit the definition of “eligible liabilities”.

(3) In article 4(2) for “an eligible liability” substitute “a bail-in liability”.

(1) [S.I. 1999/2979](#).

(2) [S.I. 2004/1045](#).

(3) [S.I. 2014/3350](#), amended by [S.I. 2016/1239](#) and [S.I. 2018/1394](#).

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

29. The Bank Recovery and Resolution (No.2) Order 2014(4) is amended in accordance with regulations 30 to 60.

30. In article 2(1)

- (a) in the definition of “the capital requirements regulation”, at the end insert, “as last amended by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20th May 2019”;
- (b) in the definition of “group resolution plan”—
 - (i) after “document which” insert, “identifies at least one resolution entity and at least one resolution group and which”;
 - (ii) for paragraph (a) substitute—
 - “(a) taking resolution action in respect of each resolution entity in the relevant group;”;
- (c) after the definition of “relevant group” insert—
 - ““resolution entity” means an entity that is identified in a resolution plan or a group resolution plan as an entity in respect of which resolution action might be taken;
 - “resolution group” means a resolution entity together with any subsidiary where the subsidiary—
 - (i) is not a resolution entity itself;
 - (ii) is not a subsidiary of another resolution entity; or
 - (iii) is established in a third country and is stated by the group resolution plan under Part 5 to be included in the resolution group;”;
- (d) in the definition of “the recovery and resolution directive” at the end insert, “as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019”.

31. In article 40, after paragraph (6) insert—

“(6A) In a relevant group, where a mixed-activity holding company has at least one subsidiary which is—

- (a) an institution; and
- (b) a subsidiary of a financial holding company,

the group resolution plan shall provide that the financial holding company is identified as a resolution entity. “Institution” in this subsection has the same meaning as in the capital requirements regulation.”.

32. In article 42(4), after “reasoned” insert “and substantiated”.

33. In article 48(2)—

- (a) in the opening words omit “For each group entity for which it is the resolution authority”;
- (b) in sub-paragraph (a), after “resolution plan” insert “or a group resolution plan covering any group entity for which it is the resolution authority;”;
- (c) in sub-paragraph (b)—
 - (i) after “reasoned” insert “and substantiated”; and
 - (ii) for “for adopting a group resolution plan” substitute “referred to in paragraph (1)(b)”.

- 34.** In article 53, for paragraph (2)(a) substitute—
- “(a) review a resolution plan where—
 - (i) any material change has been made to the legal or organisational structure of the relevant entity or to its business or financial position; or
 - (ii) a change results from the application of the resolution tools or the exercise of the powers under section 6B of the Banking Act 2009 in relation to the relevant entity.”.
- 35.** In article 61(2), after “take resolution action” insert “in respect of resolution entities”.
- 36.** In article 62—
- (a) in paragraph (2), at the end insert “in respect of the relevant group and, where there is more than one resolution group in the relevant group, in respect of each resolution group”;
 - (b) in paragraph (3)(b), for “group entities” substitute “resolution entities”;
 - (c) in paragraph (5)—
 - (i) after “The relevant group” insert “or a resolution group”;
 - (ii) after “take resolution action” insert “in respect of resolution entities”.
- 37.** In article 64(2)—
- (a) in the definition of “relevant proposals”—
 - (i) in paragraph (b) after “impediments” insert “including a timetable for doing so”;
 - (ii) in paragraph (c), for the words from “four months” to the end substitute “the response period”;
 - (b) at the end insert—
 - ““response period” means—
 - (a) in a case described in point (b) of Article 17.3 of the recovery and resolution directive, two weeks beginning with the date on which the institution received the notice; and
 - (b) in any other case, four months beginning with that date.”.
- 38.** In article 66—
- (a) in paragraph (3)(a), for “four month” substitute “response”;
 - (b) at the beginning of paragraph (5) insert “Where the consent of the appropriate regulator is not required under section 3A(5) of the Banking Act 2009,”.
- 39.** In article 68(2), at the end insert—
- ““response period” means—
 - (a) in a case described in point (b) of Article 17.3 of the recovery and resolution directive, two weeks beginning with the date on which the institution received the notice; and
 - (b) in any other case, four months beginning with that date.”.
- 40.** In article 71(1), for “four months” substitute “the response period”.
- 41.** In article 72(1), for the words from “within four months” to the end substitute—
- “in accordance with the following time limits—
 - (a) if the EEA parent undertaking submits observations or an alternative proposal under article 71(1), within four months beginning with the date on which the observations or proposal are submitted;

- (b) if the EEA parent undertaking does not submit observations or an alternative proposal under article 71(1), within one month beginning with the end of the period referred to in that provision.”.

42. In article 75(2), at the end insert—

““response period” means—

- (a) in a case described in point (b) of Article 17.3 of the recovery and resolution directive, two weeks beginning with the date on which the institution received the notice; and
- (b) in any other case, four months beginning with that date.”.

43. After article 75, insert—

“Report on substantive impediments to the resolvability of group entities

75A. Following the receipt of a report on impediments and remedial measures the Bank must submit a copy to any group entity established in the United Kingdom.”.

44. In article 78(b), for “four months” substitute “the response period”.

45. In article 122(1)(a), omit “expressed as a percentage of the institution’s total liabilities and own funds”.

46. In article 123(6), for the words from “criteria” to the end substitute—

“following criteria—

- (a) the need to ensure that the relevant institution can be resolved by the application of the resolution tools including, where appropriate, by making special bail-in provision within the meaning of section 48B of the Banking Act 2009, in a way that meets the special resolution objectives;
- (b) the need to ensure, in appropriate cases, that the relevant institution has sufficient eligible liabilities to ensure that, if mandatory reduction provision within the meaning of section 6B of the Banking Act 2009 or special bail-in provision were made—
 - (i) losses could be absorbed; and
 - (ii) the capital ratio and, as applicable, the leverage ratio, of the relevant institution could be restored,

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

- (c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under section 48B(10) of the Banking Act 2009 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer—
 - (i) the relevant institution has sufficient other eligible liabilities or own funds to ensure that losses could be absorbed; and
 - (ii) the capital ratio and, as applicable, the leverage ratio, of the relevant institution could be restored,

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

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

- (e) the extent to which the failure of the relevant institution would have adverse effects on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities.”.

47. In article 125(2)—

- (a) in the definition of “minimum consolidated requirement”, omit “expressed as a percentage of the total liabilities and own funds of those institutions”;
- (b) in the definition of “minimum requirement” omit “expressed as a percentage of the institution’s total liabilities and own funds”.

48. In article 126—

- (a) in paragraph (1) at the end insert “for each resolution group”;
- (b) in paragraph (2) after “entity” insert “in the resolution group”;
- (c) in paragraph (3)—
 - (i) in the opening words after “entity” insert “in the resolution group”; and
 - (ii) in paragraph (a) at the end insert “for the resolution group”;
- (d) in paragraph (8)(a), for “criteria set out in Article 45.6 of the recovery and resolution directive” substitute—

“following criteria—

- (i) the need to ensure that each group institution can be resolved by the application of the resolution tools including, where appropriate, by making special bail-in provision within the meaning of section 48B of the Banking Act 2009, in a way that meets the special resolution objectives;
- (ii) the need to ensure, in appropriate cases, that each group institution has sufficient eligible liabilities to ensure that, if mandatory reduction provision within the meaning of section 6B of the Banking Act 2009 or special bail-in provision were made—
 - (aa) losses could be absorbed; and
 - (ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored,to a level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;
- (iii) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in under section 48B(10) of the Banking Act 2009 or that certain classes of eligible liabilities might be transferred to a recipient in full under a partial transfer—
 - (aa) each group institution has sufficient other eligible liabilities or own funds to ensure that losses could be absorbed; and
 - (ab) the capital ratio and, if applicable, the leverage ratio, of the group institution could be restored,to the level necessary to enable it to continue to comply with the conditions for authorisation under Part 4A of FSMA and to continue to carry out the activities for which it is authorised;
- (iv) the size, the business model, the funding model and the risk profile of each group institution; and

- (v) the extent to which the failure of each group institution would have an adverse effect on financial stability, including, due to its interconnectedness with other institutions or entities or with the rest of the financial system, through contagion to other institutions or entities.”.
- 49.** In article 127(1), after “requirement” insert “for a resolution group”.
- 50.** In article 128(1), in the opening words after “requirement” insert “for a resolution group”.
- 51.** In article 129(1), after “requirement” insert “for each resolution group”.
- 52.** In article 131(1), after “requirement” insert “for each resolution group”.
- 53.** In article 135(6)(a), for “Article 45.6 of the recovery and resolution directive” substitute “article 126(8)(a)”.
- 54.** In articles 139(1) and 146(1), omit “expressed as a percentage of the entity’s total liabilities and own funds”.
- 55.** In article 142(6)(a), after “recovery and resolution directive” insert “as it had originally had legal effect”.
- 56.** In article 195(a), after “Union subsidiary” insert “or a Union parent undertaking”.
- 57.** In article 196—
- (a) in paragraph (1)(a), after “Union subsidiary” insert “or a Union parent undertaking”;
 - (b) in paragraph (2), after “Union subsidiaries” insert “and the Union parent undertaking”;
 - (c) for paragraph (3) substitute—
 - “(3) Paragraph (4) applies where—
 - (a) there is only one Union parent undertaking and it—
 - (i) is established in the United Kingdom; and
 - (ii) holds all of the Union subsidiaries of a third-country institution or third-country parent undertaking; or
 - (b) a Union parent undertaking or a Union subsidiary—
 - (i) is established in the United Kingdom; and
 - (ii) holds the highest value of total balance sheet assets in the relevant group.”.
- 58.** In Schedule 1, in paragraph 4(2), in paragraphs (q) and (r), at the end, in both cases insert “that is set having regard to the deadline set to ensure compliance with the rules relied upon by the United Kingdom for transposition of Article 104b of [Directive 2013/36/EU](#)”.
- 59.** In Schedule 2, in paragraph 2—
- (a) in sub-paragraph (a), for “group entities” substitute “each resolution entity in the relevant group”;
 - (b) for sub-paragraph (b) substitute—
 - “(b) set out the implications of sub-paragraph (a) for—
 - (i) the other group entities in the same resolution group as the resolution entity; and
 - (ii) any other resolution group in the relevant group;”;
 - (c) in sub-paragraph (c), at the end insert “or any resolution group”;
 - (d) in sub-paragraph (f), for “group entities” substitute “resolution entities”;
 - (e) in sub-paragraph (g), after “respect of” insert “each resolution group in”.

60. In Schedule 4, for paragraph 23 substitute—

“**23.** Part 13 has effect as if the following sections were omitted—

- (a) section 360AA (traded companies: confirmation of receipt of electronic voting);
- (b) section 360B (traded companies: requirements for participating in and voting at general meetings); and
- (c) section 360BA (traded companies: right to confirmation of vote after a general meeting).”.