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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

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

**PART 4**

Amendment of legislation made under the European Union (Withdrawal) Act 2018

**CHAPTER 1**

Amendment of Primary Legislation

**Amendment of the Banking Act 2009**

- 61.** The Banking Act 2009 is amended in accordance with regulations [62](#) to [72](#).
- 62.** In section 3—
- (a) in the definition of “resolution entity”—
    - (i) at the end of paragraph (a) insert “or”;
    - (ii) omit paragraph (b);
    - (iii) in the words after paragraph (c) omit the words ““EU resolution authority” has the meaning given by section 81AA(14),” and “, “EU resolution action” has the meaning given to “resolution action” in Article 2.1(40) of the recovery and resolution directive”;
  - (b) in the definition of “resolution group” for “third-country” substitute “country or territory other than the United Kingdom”.
- 63.** In section 48B (special bail-in provision), in subsection (8)(ea), omit “, an EEA central counterparty”.
- 64.** In section 48D (general interpretation of section 48B), in subsection (1), omit the definitions of “EEA central counterparty” and “normal insolvency proceedings”.
- 65.** In section 81ZZBA (sale to commercial purchaser and transfer to bridge bank: supplemental powers in relation to certain holding companies), in subsection (3), for “Article 1.1(c) or (d) of the recovery and resolution directive” substitute “subsection (2A) of section 81AA”.
- 66.** In section 81ZZBB (assessment of conditions for section 81ZZBA)—
- (a) in subsection (5)(a), for “central banks” substitute “the Bank of England”;
  - (b) in subsection (10)—
    - (i) in paragraph (b), at the end insert “including any retained EU law that was originally made under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms”;

- (ii) in paragraph (c), for the words “gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation” substitute “was relied on by the United Kingdom immediately before IP completion day to implement the capital requirements directive and its implementing measures or any retained EU law originally”.

**67.** In section 81ZBB (transfer to asset management vehicle: supplemental powers in relation to certain holding companies)—

- (a) in subsection (3) for “Article 1.1(c) or (d) of the recovery and resolution directive” substitute “subsection (2A) of section 81AA”;
- (b) in subsection (11)—
  - (i) omit the “and” at the end of the definition of “financial assistance case”;
  - (ii) omit the definition of “normal insolvency proceedings”.

**68.** In section 81ZBC (assessment of conditions for section 81ZBB)—

- (a) in subsection (5)(a), for “central banks” substitute “the Bank of England”;
- (b) in subsection (10)—
  - (i) in paragraph (b), at the end insert “including any retained EU law that was originally made under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms”;
  - (ii) in paragraph (c), for the words “gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation” substitute “was relied on by the United Kingdom immediately before IP completion day to implement the capital requirements directive and its implementing measures or any retained EU law originally”.

**69.** In section 81BB (bail-in option: supplemental powers in relation to certain holding companies), in subsection (3), for “Article 1.1(c) or (d) of the recovery and resolution directive” substitute “subsection (2A) of section 81AA”.

**70.** In section 81BC (assessment of conditions for section 81BB)—

- (a) in subsection (5)(a), for “central banks” substitute “the Bank of England”;
- (b) in subsection (10)—
  - (i) in paragraph (b), at the end insert “including any retained EU law that was originally made under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms”;
  - (ii) in paragraph (c), for the words “gives effect to the capital requirements directive or its implementing measures or any directly applicable regulation” substitute “was relied on by the United Kingdom immediately before IP completion day to implement the capital requirements directive and its implementing measures or any retained EU law originally”.

**71.** In section 89A (application to investment firms), in the Table of modifications in subsection (1), after the entry for section 1, insert—

“Section 3	In subsection (1), in the definition of “normal insolvency proceedings” ignore the reference to the bank insolvency procedure.”
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72. In section 89JA (resolution of UK branches of third-country institutions), in subsection (8), in substituted section 48B(10)(ea), omit “, an EEA central counterparty”.

## CHAPTER 2

### Amendment of Secondary Legislation

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

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

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

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

74.—(1) The Bank Recovery and Resolution (No.2) Order 2014 is amended in accordance with this regulation.

(2) In article 2(1), in the definition of “group resolution plan” in paragraph (a) for “taking resolution action” substitute “applying the resolution tools or exercising resolution powers”.

(3) In article 64, in paragraph (a) of the definition of “response period” for the words from “described” to “directive” substitute “where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act”;

(4) In article 68, in paragraph (a) of the definition of “response period” for the words from “described” to “directive” substitute “where the institution does not, as applicable, meet the requirements referred to in Articles 92a and 494 of the capital requirements regulation or the minimum requirement for own funds and eligible liabilities in accordance with section 3A(4B) of the Banking Act”.

## CHAPTER 3

### Amendment of EU Exit Legislation

#### **Amendment of the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018**

75. The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018(2) are amended in accordance with this Chapter.

#### **Amendment of Schedule 1**

76.—(1) Schedule 1 (amendments of the Banking Act 2009) is amended in accordance with this regulation.

(2) In paragraph 10 (mandatory write-down, conversion etc of capital instruments)—

(a) in sub-paragraph (4), after “instrument” insert “or liability”;

(b) in sub-paragraph (5), in the inserted subsection (4A), after “instrument” insert “or liability”.

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(1) [S.I. 2004/1045](#). There are other amendments but none is relevant.

(2) [S.I. 2018/1394](#), amended by [S.I. 2019/710](#).

- (3) In paragraph 23 (termination rights etc), in sub-paragraph (2), omit paragraph (a).
- (4) In paragraph 42 (third-country resolution actions), after sub-paragraph (3) insert—
  - “(4) In subsection (9A)—
    - (a) in the modified subsection (5), after “United Kingdom and the”, for “third country” substitute “country or territory”;
    - (b) in the modified subsection (6), for ““third-country group company” and “third country”” substitute “and “third-country group company””.”.

### **Amendment of Schedule 3**

77.—(1) Schedule 3 (amendments of the Bank Recovery and Resolution (No.2) Order 2014) is amended in accordance with this regulation.

- (2) In paragraph 36 (assessment of resolvability of groups), for sub-paragraph (3)(a), substitute—
  - “(a) for “take resolution action in respect of resolution entities or”, substitute “apply the resolution tools or exercise resolution powers in respect of resolution entities, or take”;
- (3) In paragraph 37 (assessment of resolvability of groups), for sub-paragraph (4)(a), substitute—
  - “(a) for “take resolution action in respect of resolution entities or”, substitute “apply the resolution tools or exercise resolution powers in respect of resolution entities, or take”;
- (4) In paragraph 68 (minimum requirement for own funds and eligible liabilities: determination of minimum requirement for an institution)—
  - (a) for sub-paragraph (2) substitute—
    - “(2) In paragraph (6)—
      - (a) in sub-paragraph (d), omit the final “and”;
      - (b) at the end of sub-paragraph (e) insert—
        - “and
        - (f) relevant assessment criteria specified in any Commission Regulation containing regulatory technical standards adopted by the European Commission under Article 45.2 of the recovery and resolution directive, so far as they are retained EU law.”.
  - (5) In paragraph 70 (determination of minimum consolidated requirement where the PRA or FCA is the consolidating supervisor)—
    - (a) for sub-paragraph (4) substitute—
      - “(4) In paragraph (8)(a)—
        - (a) in sub-paragraph (iv) omit the final “and”;
        - (b) at the end of sub-paragraph (v) insert—
          - “and
          - (iv) relevant assessment criteria specified in any Commission Regulation containing regulatory technical standards adopted by the European Commission under Article 45.2 of the recovery and resolution directive, so far as they are retained EU law.”.
    - (6) In paragraph 76 (determination of minimum requirements for group institutions where the PRA or FCA is the consolidating supervisor), omit sub-paragraph (2).
    - (7) In paragraph 118 (information to be contained in a group resolution plan), in sub-paragraph (5), in inserted paragraph 4, for “group entities”, substitute “resolution entities”.

#### **Amendment of Schedule 4**

**78.**—(1) Schedule 4 (amendments of other secondary legislation) is amended in accordance with this regulation.

(2) In paragraph 7 (the Banking Act 2009 (Restriction of Special Bail-in Provision etc.) Order 2014), in sub-paragraph (2)(a), omit sub-paragraph (i).

#### **Amendment of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019**

**79.**—(1) The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(3) are amended in accordance with this regulation.

(2) In regulation 38 (Section 137R (financial promotion rules))—

(a) in paragraph (2), for ““insurance distribution directive,””, substitute ““(as defined in section 71I(5)),””; and

(b) in paragraph (4) in inserted subsection (5A)—

(i) in paragraph (a)—

(aa) in sub-paragraph (iv), omit “or”;

(bb) in sub-paragraph (v), for “and”, substitute “or”; and

(cc) after sub-paragraph (v), insert—

“(vi) Article 44a of the recovery and resolution directive (as defined in paragraph (c)), and”

(ii) after paragraph (b), insert—

“(c) In paragraph (a)(vi), “recovery and resolution directive” means [Directive 2014/59/EU](#) of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, as it had effect immediately before IP completion day.”

#### **CHAPTER 4**

##### **Revocation of technical standards under the Recovery and Resolution Directive**

#### **Revocation of technical standards under the Recovery and Resolution Directive**

**80.** Any technical standards which have been adopted by the European Commission under Articles 45c(4), 45f(6), 45i(5), 45i(6), 45j(2), 55(6), 55(8) and 71a(5) of [Directive 2014/59/EU](#) of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and are in force immediately before IP completion day are revoked.