SCHEDULE 1 Article 37(2)

Information to be contained in a resolution plan

Impediments to the effectiveness of resolution action

1. A resolution plan must—

(a) identify and assess any material impediments to the effectiveness of resolution action(**1**) or the achievement of the resolution objectives; and

(b) unless the Bank determines that it is unnecessary or disproportionate, outline action that could be taken to address the impediments in accordance with Chapter II (resolvability) of Title II of the recovery and resolution directive (preparation).

The context for resolution action

2.—(1) In drawing up a resolution plan the Bank must have regard to the different circumstances under which the relevant institution may fail or be likely to fail.

(2) The circumstances to which the Bank must have regard include the following—

(a) that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and

(b) that there is no such a situation or occurrence.

(3) In drawing up a resolution plan the Bank must not assume that the relevant institution will be in receipt of—

(a) extraordinary public financial support other than financing arrangements made in accordance with Article 100 of the recovery and resolution directive;

(b) emergency liquidity assistance(**2**); or

(c) any other liquidity assistance provided by the Bank under non-standard collateralisation, tenor and interest rate terms.

Application for the use of the Bank's facilities

3.—(1) A resolution plan must contain an analysis of the conditions under which the relevant institution may apply for the use of the Bank's facilities.

(2) The analysis must—

(a) take account of the different circumstances set out in the plan under which the institution may fail or be likely to fail; and

(b) identify the assets of the institution which would be expected to qualify as collateral for the use of the Bank's facilities.

Options for applying the resolution tools and exercising the resolution powers

4.—(1) A resolution plan must set out (in addition to the analysis made under paragraph 3) options for applying the resolution tools and exercising the resolution powers or taking insolvency proceedings in respect of the relevant institution.

(2) The plan must include—

(**1**) For the meaning of "resolution action" see the recovery and resolution directive, Article 2.1, point (40).
(**2**) For the meaning of "extraordinary public financial support" and "emergency liquidity assistance" see the recovery and resolution directive, Article 2.1, points (28 and (29).

(a) a summary of its key elements;

(b) a summary of any material changes to the institution, including any change to its legal or organisational structure or its business or financial position, which has occurred since the preparation of the plan or the date on which the plan was last revised;

(c) a demonstration of how the institution's core business lines and critical functions could be separated, legally or economically, in order to secure continuity in the event of the failure of the institution;

(d) an estimation of the time required for the execution of each material element of the plan;

(e) a detailed description of the assessment of resolvability made by the Bank in accordance with Chapter 1 of Part 6;

(f) a description of any measures required by the Bank for addressing or removing impediments to resolvability in accordance with Chapter 3 of Part 6;

(g) a description of the process for determining the value and marketability of the institution's assets, core business lines and critical functions;

(h) a detailed description of the arrangements made for ensuring that information required by the Bank for drawing up and implementing the plan is kept up to date and can be provided by the institution at any time;

(i) an explanation of how options for applying the resolution tools and exercising the resolution powers could be financed (without the assumption that the institution would be in receipt of the support or assistance referred to in paragraph 2(3));

(j) a detailed description of the different strategies that could be adopted for applying the resolution tools and exercising the resolution powers according to the different circumstances under which the institution may fail or be likely to fail and any time constraints that may be applicable;

(k) a description of factors which are critically inter-related;

(l) an description of the available options for maintaining access to payments and clearing services and other relevant infrastructure;

(m) an assessment of the portability of clients' positions;

(n) an analysis of the impact that the implementation of the plan would have on the employees of the institution, including an assessment of costs associated with such impact;

(o) a description of procedures envisaged for consulting employees when applying the resolution tools and exercising the resolution powers, taking account of applicable arrangements for dialogue, including dialogue with trade unions and workers' representatives;

(p) a plan for media and public communication;

(q) the minimum requirement for own funds and eligible liabilities determined in accordance with Chapter 1 of Part 9 and, where applicable, a deadline for meeting that requirement;

(r) where applicable, the minimum requirement for own funds and contractual bail-in instruments (within the meaning given in article 148(3)) and a deadline for meeting that requirement;

(s) a description of the institution's operations and systems which are essential for the maintaining in working order its infrastructure, information technology and other operational processes; and

(t) any opinion expressed by the institution about any of these elements or any other matter included in the plan.

(3) Where appropriate and reasonably practicable, the elements of the plan set out in sub-paragraph (2) are to be quantified.

SCHEDULE 2

Article 40(3)

Information to be contained in a group resolution plan

The context for resolution action

1.—(1) In drawing up a group resolution plan the Bank must have regard to the different circumstances under which group entities may meet the conditions for resolution.

(2) The circumstances to which the Bank must have regard include the following—

(a) that there is a situation of widespread financial instability or an occurrence of events which pose systemic risk; and

(b) that there is no such a situation or occurrence.

(3) In drawing up a group resolution plan the Bank must not assume that any group entity will be in receipt of—

(a) extraordinary public financial support other than financing arrangements made in accordance with Article 100 of the recovery and resolution directive;

(b) emergency liquidity assistance(**3**); or

(c) any other liquidity assistance provided by the Bank or any other central bank under non-standard collateralisation, tenor and interest rate terms.

Contents of group resolution plan

2. A group resolution plan must—

(a) set out the resolution action or insolvency proceedings that would be taken in respect of group entities;

(b) analyse the scope for applying the resolution tools and exercising the resolution powers in a co-ordinated manner in respect of group entities;

(c) include a consideration of measures for facilitating the purchase by a third party of the relevant group as a whole or of separate business lines or activities delivered by any group entity;

(d) identify and assess potential impediments in relation to the relevant group as a whole to—

(i) the co-ordination of resolution action;

(ii) the effectiveness of resolution action or the achievement of the resolution objectives;

(e) where any subsidiary within the relevant group is set up in a third country, set out—

(i) arrangements for co-ordinating resolution action, and co-operating, with the authorities which, in the country concerned, exercise any function equivalent to a function of a resolution authority or competent authority; and

(ii) the implications of such co-ordination for the resolution(**4**) of that subsidiary and group entities;

(**3**) For the meaning of "emergency liquidity assistance" see the recovery and resolution directive, Article 2.1, point (29).
(**4**) For the meaning of "resolution" see the recovery and resolution directive, Article 2.1, point (1).

(f) set out measures which the Bank considers it would be necessary to take to facilitate group resolution(**5**), including by the legal or economic separation of specified functions or business lines of group entities;

(g) set out any other measures which the Bank would take or considers it would be necessary to take to facilitate group resolution in respect of the relevant group;

(h) a detailed description of the assessment of resolvability made in respect of the relevant group in accordance with Chapter 2 of Part 6;

(i) explain how the resolution action set out in the plan could be financed (without the assumption that any group entity would be in receipt of the support or assistance referred to in paragraph 1(3)); and

(j) where financing arrangements made in accordance with Article 100 of the recovery and resolution directive would be required, set out principles for determining how responsibility for that financing would be shared among the EEA States in which group entities were set up.

3. The Bank must ensure that the principles set out in accordance with paragraph 2(j) are based on equitable and balanced criteria which, in particular, take account of—

(a) the factors referred to in Article 107.5 of the recovery and resolution directive (mutualisation of national financing arrangements in the case of a group resolution); and

(b) the impact of group resolution, and of a failure to take resolution action, on the financial stability of each State concerned.

SCHEDULE 3

Article 226

Amendments

PART 1

Amendments of FSMA

Amendments of FSMA

1. FSMA is amended as follows.

Recovery plans

2.—(1) Section 137J(**6**) (rules about recovery plans: duty to consult) is amended as follows.

(2) In subsection (1) for "each", in both places where it appears, substitute "a".

(3) For subsections (2) to (5) substitute—

"(2) "Relevant person" means—

(a) an institution authorised in the UK; or

(b) a qualifying parent undertaking within the meaning given by section 192B(**7**).

(**5**) For the meaning of "group resolution" see the recovery and resolution directive, Article 2.1, point (42).
(**6**) Section 137J was substituted by the Financial Services Act 2012, section 24(1).
(**7**) Section 192B was inserted by the Financial Services Act 2012, section 27. For Condition C (a parent undertaking must be a financial institution of a prescribed kind (section 192B(4)) see S.I. 2013/165.

(3) A "recovery plan" is a document which provides for measures to be taken—

(a) by an institution authorised in the UK which is not part of a group, following a significant deterioration of the financial position of the institution, in order to restore its financial position; or

(b) in relation to a group, to achieve the stabilisation of the group as a whole, or of any institution within the group, where the group or institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or institution.

(4) For the purposes of subsection (3)(a) the definition of "group" in section 421 applies with the omission of subsection (1)(e) and (f) of that section.".

(4) In subsection (6), after the definition of "authorised person", insert—

""institution" means—

(a) a credit institution within the meaning given by Article 2.1(2) 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(**8**); or

(b) an investment firm within the meaning given by Article 2.1(3) of that directive;

"institution authorised in the UK" means an institution which is an authorised person and—

(a) a bank within the meaning given by section 2 of the Banking Act 2009(**9**);

(b) a building society within the meaning given in section 119 of the Building Societies Act 1986(**10**); or

(c) an investment firm within the meaning given by section 258A(**11**) of the Banking Act 2009;".

Rules about resolution packs: duty to consult

3.—(1) Section 137K(**12**) (PRA rules about resolution plans: duty to consult) is amended as follows.

(2) In subsection (1)—

(a) for the words "the PRA"—

(i) where they first appear, substitute "either regulator";

(ii) where they appear after "resolution plan,", substitute "the regulator"; and

(b) for the word "each", in both places where it appears, substitute "a".

(3) In subsections (1) and (3) for "resolution plan" substitute "resolution pack".

(4) For subsection (2) substitute—

"(2) "Relevant person" has the same meaning as in section 137J(2).".

(5) After subsection (6) insert—

"(7) In this section "authorised person", in relation to the PRA, means PRA-authorised person.".

(6) Accordingly, for the heading substitute "Rules about resolution packs: duty to consult".

(**8**) OJ No. L 173, 12.6.2014, p. 190.

(**9**) Section 2 was amended by the Financial Services Act 2012, sections 101(1) and (3) and 102(1) and (3) and Schedule 17, paragraph 3, and by S.I. 2011/2832.

(**10**) 1986 c. 53.

(**11**) Section 258A was inserted by the Financial Services Act 2012, section 101(1) and (7). See S.I. 2014/1832, which was made under subsection (2)(b). No other order has been made under that subsection.

(**12**) Section 137K was substituted by the Financial Services Act 2012, section 24(1).

Special provision relating to adequacy of resolution plans

4. Section 137M(**13**) (special provision relating to adequacy of resolution plans) is repealed.

Recovery plans and resolution packs: restriction on duty of confidence

5.—(1) Section 137N(**14**) (recovery plans and resolution plans: restriction on duty of confidence) is amended as follows.

(2) For the words "resolution plan", wherever they appear, substitute "resolution pack".

(3) In subsection (2) after "authorised person" insert "or a qualifying parent undertaking".

(4) In subsection (3)(a) and (b) for "that plan" substitute "that plan or pack".

(5) In subsection (5) after the definition of "authorised person" insert—

""qualifying parent undertaking" means—

(a) a qualifying parent undertaking within the meaning given by section 192B; or

(b) an undertaking which—

(i) is a parent undertaking of an institution (within the meaning given in section 137J(6)(**15**)) authorised in another EEA State; and

(ii) would be a qualifying parent undertaking within the meaning given by section 192B if the institution were a qualifying authorised person within the meaning given by section 192A(1)(**16**).".

(6) Accordingly, in the heading for "resolution plans" substitute "resolution packs".

PART 2

Amendments of other primary legislation

Amendment of the Financial Services (Banking Reform) Act 2013

6. In section 17 of the Financial Services (Banking Reform) Act 2013(**17**) (bail-in stabilisation option)—

(a) in subsection (3)(e) for "bail-in administrator" substitute "resolution administrator";

(b) in subsection (5)—

(i) omit the definition of "bail-in administrator";

(ii) after the definition of "company" insert—

""resolution administrator" is to be read in accordance with sections 62B to 62E of the Banking Act 2009.".

(**13**) Section 137M was substituted by the Financial Services Act 2012, section 24(1).
(**14**) Section 137N was substituted by the Financial Services Act 2012, section 24(1).
(**15**) Subsection (6) of section 137J is amended by paragraph 2(4) of this Schedule.
(**16**) Section 192A was inserted by the Financial Services Act 2012, section 27.
(**17**) 2013 c.33.

PART 3

Amendments of secondary legislation

Financial Markets and Insolvency (Settlement Finality) Regulations 1999

7. In the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**18**), in regulation 2(2), after sub-paragraph (b) insert—

"(2A) For the purposes of these regulations, references to insolvency proceedings do not include crisis prevention measures or crisis management measures taken in relation to an undertaking under the recovery and resolution directive unless—

(a) express provision is made in a contract to which that undertaking is a party that crisis prevention measures or crisis management measures taken in relation to the undertaking are to be treated as insolvency proceedings; and

(b) the substantive obligations provided for in the contract containing that provision (including payment and delivery obligations and provision of collateral) are no longer being performed.

(2B) For the purposes of paragraph (2A)—

(a) "crisis prevention measure" and "crisis management measure" have the meaning given in section 48Z of the Banking Act 2009(**19**); and

(b) "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.".

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

8.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**20**) are amended as follows.

(2) In regulation 2(**21**)—

(a) in the definition of "single market restrictions" after paragraph (l) add—

"(m) articles 84 and 98 of the recovery and resolution directive;"; and

(b) in the appropriate place insert—

""EEA resolution authority" means an authority designated by another EEA state in accordance with Article 3 of the recovery and resolution directive;";

""foreign resolution authority" means an authority in a territory which is not, and does not form part of, an EEA state which exercises functions in relation to third-country resolution action (within the meaning of section 89H of the Banking Act 2009), including planning for such action, corresponding to one or more functions exercisable by an EU resolution authority pursuant to the recovery and resolution directive;";

(**18**) S.I. 1999/2979. There are amendments, but none is relevant.
(**19**) Section 48Z was inserted by S.I. 2014/3329.
(**20**) S.I. 2001/2188.
(**21**) Amended by S.I. 2003/693, 2003/2066, 2004/1862, 2004/3379, 2006/3413, 2010/2628, 2012/916, 2012/917, 2012/2554, 2013/472 and 2013/1773.

""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;(**22**)

""recovery and resolution directive information" means confidential information received by—

(a) the Bank of England in the course of discharging its functions as a resolution authority under the recovery and resolution directive;

(b) the FCA or PRA in the course of discharging their functions as competent authorities under the recovery and resolution directive;

(c) a person appointed by the Bank of England under section 62B (resolution administrator) of the Banking Act 2009(**23**) to act as resolution administrator in the course of discharging that person's functions as such;".

(3) In regulation 8(**24**)—

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

(b) at the end of paragraph (c) insert—

"; and

(d) recovery and resolution directive information.".

(4) In regulation 9(**25**)—

(a) in paragraph (1), for "and (4)" substitute "(4) and (5)";

(b) in paragraph (2) for "the condition in paragraph (2ZA) is met or the conditions in (2B) are met" substitute "the conditions in paragraphs (2ZA), (2B) or in paragraph (2C) are met"; and

(c) after paragraph (2B) insert—

"(2C) The condition in this paragraph is that the conditions in Article 98 of the recovery and resolution directive for the exchange of information with authorities in a third country are met."; and

(d) after paragraph (4), insert—

"(5) Paragraph (1) does not permit the disclosure of recovery and resolution directive information to any person unless the assessment required in regulation 10B has been carried out.".

(5) After regulation 10, insert—

"**Disclosure of recovery and resolution directive information**

10A.—(1) The Bank of England may disclose recovery and resolution directive information to any person for the purpose of enabling the Bank to prepare for and carry out the functions given to it under—

(a) Parts 1, 2 and 3 of the Banking Act 2009, or

(b) the Investment Bank Special Administration Regulations 2011(**26**),

(**22**) OJ No. L 173, 12.6.2014, p. 190.
(**23**) Section 62B was inserted by S.I. 2014/3329.
(**24**) Regulation 8 was amended by S.I. 2003/504, 2006/3413 and 2012/916.
(**25**) Regulation 9 was amended by S.I. 2003/693, 2004/3379, 2006/3221, 2006/3413, 2010/2628, 2011/1613, 2012/916, 2013/472, 2013/1773 and S.I. 2013/3115.
(**26**) S.I. No. 2011/245.

provided that any such disclosure is made subject to the conditions in paragraph (2), and following the assessment required in regulation 10B.

(2) A disclosure made by the Bank of England under paragraph (1) must be made subject to—

(a) a requirement that the information disclosed is kept confidential and not disclosed to any other person without the consent of the Bank; and

(b) restrictions imposed by the Bank as to the way in which the information may be used.

(3) A resolution administrator appointed under section 62B of the Banking Act 2009 may disclose recovery and resolution directive information to a regulator.

Assessment of effects of disclosure

10B.—(1) Before any disclosure is made of recovery and resolution directive information the person disclosing that information must—

(a) assess the possible effects of disclosing the information in question on—

(i) the public interest in relation to financial, monetary or economic policy;

(ii) the commercial interests of natural and legal persons;

(iii) the purpose of any investigation, inspection or audit to which the information is relevant; and

(b) where the information in question relates to the recovery plan or resolution plan of any undertaking, assess the effects of the disclosure of any part of that recovery plan or resolution plan.

(2) In this regulation—

"recovery plan" means a recovery plan drawn up and maintained in accordance with Article 5 of the recovery and resolution directive or a group recovery plan drawn up and maintained in accordance with Article 7 of that directive; and

"resolution plan" means a resolution plan drawn up in accordance with Article 10 of the recovery and resolution directive or a group recovery plan drawn up in accordance with Articles 12 and 13 of that directive.".

(6) In regulation 11(**27**) after paragraph (f) insert—

"(g) recovery and resolution directive information.".

(7) In Schedule 1(**28**)—

(a) in Part 1—

(i) after the entry beginning "The Bank of England" in the first column insert "The Bank of England", and in the second column insert "Its functions under Parts 1, 2 and 3 of the Banking Act 2009 and under the Investment Bank Special Administration Regulations 2011(**29**)";

(ii) in the entry beginning "An official receiver appointed under section 399 of the Insolvency Act 1986", in the second column after paragraph (ii) insert "or (iii) banking group companies (as defined in section 81D of the Banking Act 2009)(**30**)";

(iii) after the entry beginning "An official receiver appointed under section 399 of the Insolvency Act 1986" in the first column insert "A person appointed in judicial or

(**27**) Regulation 11 was amended by S.I. 2003/2066, 2006/3413, 2011/1613, 2012/916 and 2013/504.
(**28**) Schedule 1 was amended by S.I. 2001/3437, 2001/3624, 2003/2174, 2003/2817, 2005/3071, 2006/3413, 2011/1265, 2012/916, 2013/472, 2013/3115, 2014/549, 2014/883 and 2014/2879.
(**29**) S.I. 2011/245.
(**30**) 2009 c. 1. Section 81D was inserted by the Financial Services Act 2012 (c. 21), s.100.

administrative proceedings in an EEA State or a State which is not an EEA State, pursuant to a law relating to insolvency, to administer the reorganisation or the liquidation of a debtor's assets or affairs", and in the second column insert "That person's functions as such";

(iv) in the entry beginning "An auditor of an authorised person", in the first column after "authorised person" insert "or banking group company (as defined in section 81D of the Banking Act 2009)";

(v) after the entry beginning "An auditor of an authorised person" in the first column insert "A person appointed to carry out a statutory audit of a company within the meaning of Article 2.1 of Directive 2006/43/EC of the European Parliament and of the Council of 17th May 2006 on statutory audits and consolidated accounts(**31**)", and in the second column insert "That person's functions as such";

(b) in Part 2—

(i) after the entry for "An EEA regulatory authority" in the first column insert "An EEA resolution authority", and in the second column insert "Its functions under the recovery and resolution directive";

(ii) after the entry for "An EEA resolution authority" (inserted by sub-paragraph (i)) in the first column) insert "An authority responsible for maintaining the stability of the financial system in an EEA State through macro-prudential regulation", and in the second column insert "Its functions as such"; and

(c) in Part 3 after the entry for "A non-EEA regulatory authority" in the first column insert "A foreign resolution authority", and in the second column insert "Its functions as such".

Financial Collateral Arrangements (No 2) Regulations 2003

9.—(1) The Financial Collateral Arrangements (No 2) Regulations 2003(**32**) are amended as follows.

(2) In regulation 3(**33**)—

(a) in paragraph (1)—

(i) omit the definition of "enforcement event";

(ii) after the definition of "non-natural person" insert—

""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."; and

(b) after paragraph (1) insert—

"(1A) For the purpose of these Regulations—

(a) "enforcement event" means an event of default, or (subject to sub-paragraph (b)) any similar event as agreed between the parties, on the occurrence of which, under the terms of a financial collateral agreement or by operation of law, the collateral taker is entitled to realise or appropriate financial collateral or a close-out netting provision comes into effect;

(b) a crisis management measure or crisis prevention measure taken in relation to an entity under the recovery and resolution directive shall not be considered to be an enforcement event pursuant to an agreement between the parties if the

(**31**) OJ No. L 157, 9.6.2006, p. 87.
(**32**) S.I. 2003/3226.
(**33**) Regulation 3 was amended by S.I. 2010/2993.

substantive obligations provided for in that agreement (including payment and delivery obligations and provision of collateral) continue to be performed; and

(c) for the purposes of sub-paragraph (b) "crisis prevention measure" and "crisis management measure" have the meaning given in section 48Z of the Banking Act 2009.".

(3) In regulation 12, after paragraph (4) insert—

"(5) Nothing in this regulation prevents the Bank of England imposing a restriction on the effect of a close out netting provision in the exercise of its powers under Part 1 of the Banking Act 2009."

(4) After regulation 18 insert—

"**Restrictions on enforcement of financial collateral arrangements, etc.**

18A.—(1) Nothing in regulations 16 and 17(**34**) prevents the Bank of England imposing a restriction—

(a) on the enforcement of financial collateral arrangements, or

(b) on the effect of a security financial collateral arrangement, close out netting provision or set-off arrangement,

in the exercise of its powers under Part 1 of the Banking Act 2009.

(2) For the purpose of paragraph (1) "set-off arrangement" has the meaning given in Article 2.1(99) of the recovery and resolution directive.".

Credit Institutions (Reorganisation and Winding up) Regulations 2004

10.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004(**35**) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the appropriate place insert—

""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;";

""stabilisation instrument" means any of the following—

(a) a "mandatory reduction instrument" made under section 6B of the Banking Act 2009(**36**);

(b) a "resolution instrument" made under section 12A of the Banking Act 2009(**37**);

(c) a "share transfer instrument" as defined in section 15 of the Banking Act 2009;

(d) a "share transfer order" as defined in section 16 of the Banking Act 2009;

(e) a "property transfer instrument" as defined in section 33 of the Banking Act 2009(**38**); or

(**34**) Regulations 12, 16 and 17 were amended by S.I. 2010/2993.
(**35**) S.I. 2004/1045, as amended by S.I. 2007/108, 2007/126, 2007/830, 2011/1043, 2011/1265, 2013/472 and 2013/3115.
(**36**) Section 6B was inserted by S.I. 2014/3329.
(**37**) Section 12A was inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1 and 2; and was amended by S.I. 2014/3329.
(**38**) Section 33 was amended by S.I. 2014/3329.

(f) a "third country instrument" made under section 89H of the Banking Act 2009(**39**);";

(b) for the definition of "EEA regulator" substitute—

""EEA regulator" means—

(a) a competent authority (within the meaning given by point (40) of Article 4(1) of the capital requirements regulation) established in an EEA State; or

(b) the resolution authority (within the meaning given by point (18) of Article 2(1) of the recovery and resolution directive) established in an EEA State;";

(c) for the definition of "directive reorganisation measure" substitute—

""directive reorganisation measure" means a reorganisation measure as defined in Article 2 of the reorganisation and winding up directive which was adopted or imposed on or after the 5th May 2004, or any other measure to be given effect in or under the law of the United Kingdom pursuant to Article 66 of the recovery and resolution directive;"; and

(d) for the definition of "the reorganisation and winding up directive" substitute—

""the reorganisation and winding up directive" means Directive 2001/24/EC of the European Parliament and of the Council of 4th April 2001 on the reorganisation and winding up of credit institutions(**40**) as amended by Article 117 of the recovery and resolution directive;".

(3) In regulation 3 (prohibition against winding up etc EEA credit institutions in the United Kingdom) after paragraph (7) insert—

"(7A) A stabilisation instrument shall not be made in respect of an EEA credit institution.".

(4) In regulation 10 (notification to EEA regulators), in paragraph (3) after "it appears to" insert "the Bank of England,".

(5) In regulation 18 (disclosure of confidential information received from an EEA regulator)—

(a) in paragraph (2) for "(3) and (4)" substitute "(3), (4) and (5)";

(b) in paragraph (4) omit "directive"; and

(c) after paragraph (4) insert—

"(5) The sections of the 2000 Act specified in paragraph (2) apply with the modifications set out in section 89L of the Banking Act 2009(**41**) where that section applies.".

(6) In regulation 19 (application of Part 4), in paragraph (1)—

(a) after sub-paragraph (c) delete "or"; and

(b) after sub-paragraph (d) add—

"or

(e) where a stabilisation instrument is made in respect of a UK credit institution.".

(7) In regulation 21 (interpretation of Part 4)—

(a) in paragraph (1)(b) after "administration, winding up," insert "making of a stabilisation instrument";

(b) after paragraph (2)(c) delete "and"; and

(**39**) Section 89H was inserted by S.I. 2014/3329.
(**40**) OJ No. L 125, 5.5.2001, p. 15.
(**41**) Section 89L was inserted by S.I. 2014/3329.

(c) after paragraph (2)(d) add—

"and

(e) in a case where a stabilisation instrument is made, the date on which that instrument is made,".

(8) In regulation 29 (regulated markets) for paragraph (2) substitute—

"(2) For the purposes of this regulation "regulated market" has the meaning given by point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments(**42**).".

(9) For regulation 34 (netting agreements) substitute—

"**Netting agreements**

34.—(1) The effects of a relevant reorganisation or a relevant winding up on a netting agreement shall be determined in accordance with the law applicable to that agreement.

(2) Nothing in paragraph (1) affects the application of—

(a) section 48Z of the Banking Act 2009(**43**);

(b) section 70C of the Banking Act 2009(**44**);

(c) Articles 68 and 71 of the recovery and resolution directive or the law of any EEA State (other than the United Kingdom) transposing these provisions; or

(d) any instrument made under the provisions referred to in sub-paragraph (a) or (b).".

(10) For regulation 35 (repurchase agreements) substitute—

"**Repurchase agreements**

35.—(1) Subject to regulation 33, the effects of a relevant reorganisation or a relevant winding up on a repurchase agreement shall be determined in accordance with the law applicable to that agreement.

(2) Nothing in paragraph (1) affects the application of—

(a) section 48Z of the Banking Act 2009(**45**);

(b) section 70C of the Banking Act 2009(**46**);

(c) Articles 68 and 71 of the recovery and resolution directive or the law of any EEA State (other than the United Kingdom) transposing these provisions; or

(d) any instrument made under the provisions referred to in sub-paragraph (a) or (b).".

(11) In regulation 36 (interpretation of Part 5), in paragraph (1)(a)—

(a) after paragraph (ii) delete "or"; and

(b) at the end add—

"or

(iv) the making of a stabilisation instrument.".

(12) In regulation 38 (disclosure of confidential information: third country credit institution)—

(a) in paragraph (3), for "(4), (5) and (6)" substitute "(4), (5), (6) and (8)";

(**42**) OJ No. L 173, 12.6.2014, p. 349.
(**43**) Section 48Z is inserted by S.I. 2014/3329.
(**44**) Section 70C is inserted by S.I. 2014/3329.
(**45**) Section 48Z is inserted by S.I. 2014/3329.
(**46**) Section 70C is inserted by S.I. 2014/3329.

(b) in paragraph (6) omit "directive"; and

(c) after paragraph (7), add—

"(8) The sections of the 2000 Act specified in paragraph (3) apply with the additional modifications set out in section 89L of the Banking Act 2009(**47**) where that section applies.".

(13) After regulation 38 (disclosure of confidential information: third country credit institution) insert—

"PART 6

Application to Investment Firms

Interpretation of this Part

39. In this Part—

(a) "EEA investment firm" means an investment firm as defined in point (2) of Article 4(1) of the capital requirements regulation whose head office is in an EEA State other than the United Kingdom; and

(b) "UK investment firm" means an investment firm as defined in subsections (1) and (2)(a) of section 258A of the Banking Act 2009.

Application to UK investment firms

40. These Regulations apply to UK investment firms as if such firms were UK credit institutions, subject to the modifications set out in this Part.

Application to EEA investment firms

41. These Regulations apply to EEA investment firms as if such firms were EEA credit institutions, subject to the modifications set out in this Part.

Withdrawal of authorisation

42. Paragraph (3) of regulation 11 (withdrawal of authorisation) applies to UK investment firms as if the reference in that paragraph to section 55J of the 2000 Act(**48**) included a reference to any other power of the FCA or PRA under that Act to vary or cancel any permission of a body or firm.

Reorganisation measures and winding-up proceedings in respect of EEA investment firms effective in the United Kingdom

43. Regulation 5 (reorganisation measures and winding-up proceedings in respect of EEA credit institutions effective in the United Kingdom) applies to EEA investment firms as if, in paragraph (6), the phrase "relevant EEA State" meant the EEA State under the law of which the reorganisation is adopted or imposed, or the winding-up proceedings are opened, as the case may be.

(**47**) Section 89L was inserted by S.I. 2014/3329.

(**48**) Section 55A to 55Z4 were inserted by the Financial Services Act 2012, section 11; and was amended by S.I. 2013/1773 and 2013/3115.

PART 7

Application to Group Companies

Interpretation of this Part

44. In this Part—

(a) "EEA group company" means—

(i) a financial institution as defined in point (26) of Article 4(1) of the capital requirements regulation,

(ii) a parent undertaking as defined in point (15)(a) of Article 4(1) of the capital requirements regulation, or

(iii) any other firm within the scope of Article 1(1) of the recovery and resolution directive,

the head office of which is in an EEA State other than the United Kingdom and which is not otherwise subject to these Regulations; and

(b) "UK group company" means—

(i) a financial institution as defined in point (26) of Article 4(1) of the capital requirements regulation that is authorised by the PRA or FCA,

(ii) a parent undertaking as defined in Article 4(1)(15)(a) of the capital requirements regulation, or

(iii) any other firm within the scope of Article 1(1) of the recovery and resolution directive,

the head office of which is in the United Kingdom and which is not otherwise subject to these Regulations.

Application to UK group companies

45. These Regulations apply to UK group companies with respect to which a stabilisation instrument has been made, as if they were UK credit institutions.

Application to EEA group companies

46. These Regulations apply to EEA group companies with respect to which one or more of the resolution tools or resolution powers provided for in the recovery and resolution directive have been applied, as if they were EEA credit institutions, subject to the modifications set out in this Part.

Reorganisation measures and winding-up proceedings in respect of EEA group companies effective in the United Kingdom

47. Regulation 5 (reorganisation measures and winding-up proceedings in respect of EEA group companies effective in the United Kingdom) applies to EEA group companies as if, in paragraph (6), the phrase "relevant EEA State" meant the EEA State under the law of which the reorganisation is adopted or imposed, or the winding-up proceedings are opened, as the case may be.

PART 8

Application to Third Country Investment Firms

Interpretation of this Part

48. In this Part "third country investment firm" means an investment firm as defined in point (2) of Article 4(1) of the capital requirements regulation whose head office is not in an EEA State.

Application to third country investment firms

49. Part 5 of these Regulations applies to third country investment firms as if such firms were third country credit institutions (within the meaning given by regulation 36(1)(b) (interpretation of Part 5)).".

Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013

11.—(1) The Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013(**49**) is amended as follows.

(2) In article 1(2) (interpretation)—

(a) for the definition of "financial holding company" substitute—

""financial holding company" has the meaning given by Article 4(1)(20) of the capital requirements regulation;";

(b) for the definition of "financial institution" substitute—

""financial institution" has the meaning given by Article 4(1)(26) of the capital requirements regulation;";

(c) after the definition of "insurance undertaking" insert—

""investment firm" has the meaning given by Article 4(1)(2) of the capital requirements regulation;

"mixed activity holding company" means a parent undertaking which—

(a) is not a credit institution, an investment firm, a financial holding company or a mixed financial holding company; and

(b) has at least one subsidiary which is a credit institution or an investment firm;"; and

(d) after the definition of "reinsurance undertaking" insert—

""relevant MAHC" means a mixed activity holding company which has at least one subsidiary which—

(a) is an institution; and

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

(3) In article 2 (prescribed financial institutions)—

(a) in paragraph (2) at the end insert—

"(d) a mixed activity holding company for the purposes set out in paragraph (3) and (4);

(**49**) S.I. 2013/165, as amended by S.I. 2013/3115.

(e) a relevant MAHC for the purpose set out in paragraph (5).".

(b) after paragraph (2) insert—

"(3) The first purpose is enabling the FCA or PRA to make rules under section 192JB(**50**) of FSMA in relation to the provision of financial support to other members of the group of a mixed activity holding company which encounter or are likely to encounter financial difficulties.

(4) The second purpose is enabling the FCA or PRA to make rules which require a mixed activity holding company to notify it that the company is failing or likely to fail (within the meaning given in Article 32.4 of the recovery and resolution directive).

(5) The third purpose is enabling the FCA or PRA to make rules which require a relevant MAHC, in any agreement which creates a liability, to include a contractual term by which a party to the agreement to whom the liability is owed—

(a) recognises that the liability may be subject to the exercise by the Bank of England of power to make—

(i) a mandatory reduction instrument (within the meaning given in section 6B of the Banking Act 2009); or

(ii) a resolution instrument under section 12A, 48U, 48V or 48W of that Act(**51**); and

(b) agrees to be bound by any reduction of the principal or outstanding amount due or by any conversion or cancellation effected by the exercise of that power.

(6) Rules made for the purpose set out in paragraph (5) may not be brought into force before 1st January 2016.".

Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

12.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(**52**) is amended as follows.

(2) In article 1 after the definition of "EuVECA Regulation" insert—

"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;".

(3) In article 2—

(a) in paragraph (4) after sub-paragraph (b) insert—

"(c) any directly applicable regulation made under the recovery and resolution directive.";

(b) in paragraph (6) after sub-paragraph (d) insert—

"(e) any directly applicable regulation made under the recovery and resolution directive."; and

(c) after paragraph (8) insert—

(**50**) Section 192JB was inserted by the Financial Services (Banking Reform) Act 2013, section 133; and was amended by S.I. 2014/3329.

(**51**) Sections 12A, 48U, 48V and 48W were inserted of the Financial Services (Banking Reform) Act 2013, Schedule 2, paragraphs 1, 2 and 4; and were amended by S.I. 2014/3329.

(**52**) S.I. 2013/419, as amended by SI 2013/1773.

"(9) Directly applicable regulations made under the recovery and resolution directive are specified qualifying EU provisions for the purpose of sections 66(2A) and 192K(1)(c) of the Act(**53**).".

(4) In article 3—

(a) in paragraph (2) after sub-paragraph (h) insert—

"(i) any directly applicable regulation made under the recovery and resolution directive."; and

(b) in paragraph (3) after sub-paragraph (f) insert—

"(g) in relation to a contravention of a requirement imposed by any directly applicable regulation made under the recovery and resolution directive—

(i) if the authorised person concerned is a PRA-authorised person, either the PRA or the FCA;

(ii) in any other case, the FCA.".

(5) In article 5—

(a) in paragraph (2) after sub-paragraph (h) insert—

"(i) any directly applicable regulation made under the recovery and resolution directive."; and

(b) in paragraph (5) after sub-paragraph (g) insert—

"(h) in relation to a contravention of a requirement imposed by any directly applicable regulation made under the recovery and resolution directive—

(i) if the person concerned is a PRA-authorised person, or a parent undertaking of a PRA-authorised person, either the PRA or the FCA;

(ii) in any other case, the FCA.".

(6) In article 6—

(a) in paragraph (2) after sub-paragraph (j) insert—

"(k) any directly applicable regulation made under the recovery and resolution directive."; and

(b) in paragraph (4) after sub-paragraph (d) insert—

"(e) any directly applicable regulation made under the recovery and resolution directive.".

Capital Requirements Regulations 2013

13. In the Capital Requirements Regulations 2013(**54**), in regulation 7 (co-operation with EBA) omit paragraph (2).

(**53**) Section 192K(1)(c) was inserted by S.I. 2014/3329.
(**54**) S.I. 2013/3115.

SCHEDULE 4 Article 220(4)

Modified application of the Companies Act 2006 to banks etc in resolution

PART 1

Provisions concerning the exercise of certain rights of shareholders in listed companies

1. In relation to a company under resolution, this Part modifies the application of provisions of the Companies Act 2006(**55**) which concern the exercise of certain rights of shareholders in listed companies(**56**).

2. Section 145 (effect of provisions of articles as to enjoyment or exercise of members' rights) has effect as if, in subsection (3), paragraphs (ea) and (ga) were omitted.

3. Section 153 (exercise of rights where shares held on behalf of others: members' requests) has effect as if, in subsection (1), paragraph (ba) were omitted.

4. Section 282 (ordinary resolutions) has effect as if, in subsection (4), for ", by proxy or in advance (see section 322A)" there were substituted "or by proxy".

5. Section 283 (special resolutions) has effect as if, in subsection (5), for ", by proxy or in advance (see section 322A)" there were substituted "or by proxy".

6. Section 284 (votes: general rules) has effect as if, in subsection (5), the entry for section 322A were omitted.

7. Section 303 (members' power to require directors to call general meeting) has effect as if—

(a) in subsection (2)(a) and (b) for "5%" there were substituted "the required percentage"; and

(b) after subsection (2) there were inserted—

"(3A) The required percentage is 10%, except that in the case of a private company it is 5% if more than twelve months have elapsed since the end of the last general meeting—

(a) which was called in pursuance of a requirement under this section, or

(b) in relation to which any members of the company had (by virtue of an enactment, the company's articles or otherwise) rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been so called at their request.".

8. Section 307 (notice required of general meeting) has effect as if subsections (A1) and (A2) were omitted.

9. Part 13 (resolutions and meetings) has effect as if section 307A (notice required of general meeting: certain meetings of traded companies) were omitted.

10. Section 311 (contents of notices of meetings) has effect as if—

(a) in subsection (2) the words "In relation to a company other than a traded company," were omitted; and

(b) subsection (3) were omitted.

11. Part 13 has effect as if the following sections were omitted—

(**55**) 2006 c. 46.
(**56**) The modifications have effect in relation to provisions of the Act inserted, substituted or amended by S.I. 2009/1632.

(a) section 311A (traded companies: publication of information in advance of general meeting); and

(b) section 319A (traded companies: questions at meetings).

12. Section 327 (notice required of appointment of proxy etc) has effect as if—

(a) subsection (A1) were omitted; and

(b) in subsection (1) for "The following provisions apply in the case of traded companies and other companies as regards" there were substituted "This section applies to".

13. Section 330 (notice required of termination of proxy's authority) has effect as if—

(a) subsection (A1) were omitted; and

(b) in subsection (1) for "The following provisions apply in the case of traded companies and other companies as regards" there were substituted "This section applies to".

14. Part 13 has effect as if section 333A (traded company: duty to provide electronic address for receipt of proxies etc) were omitted.

15. Section 334 (application to class meetings) has effect as if—

(a) in subsection (1) for "subsections (2) to (3)" there were substituted "subsections (2) and (3)";

(b) in subsection (2)—

(i) after paragraph (a) there were inserted "and"; and

(ii) after paragraph (b) the word "and" and paragraph (c) were omitted; and

(c) subsection (2A) were omitted.

16. Section 336 (public companies and traded companies: annual general meeting) has effect as if—

(a) subsection (1A) were omitted;

(b) in subsections (2) and (3), in each place where they appear, the words "or (1A)" were omitted; and

(c) in the heading the words "and traded companies" were omitted.

17. Section 337 (public companies and traded companies: notice of AGM) has effect as if—

(a) in subsection (1) the words "or a private company that is a traded company" were omitted;

(b) in subsection (2) the words "of a public company that is not a traded company" were omitted;

(c) subsection (3) were omitted; and

(d) in the heading the words "and traded companies" were omitted.

18. Part 13 has effect as if the following sections were omitted—

(a) section 338 (public companies: members' power to require circulation of resolutions for AGMs); and

(b) section 338A (traded companies: members' power to include other matters in business dealt with at AGM).

19. Section 341 (results of poll to be made available on website) has effect as if—

(a) in subsection (1) the words "that is not a traded company" were omitted; and

(b) subsections (1A) and (1B) were omitted.

20. Section 352 (application of provisions to class meetings) has effect as if for subsections (1) and (1A) there were substituted—

"(1) The provisions of—

(a) section 341 (results of poll to be made available on website), and

(b) sections 342 to 351 (independent report on poll),

apply (with any necessary modifications) in relation to a meeting of holders of a class of shares of a quoted company in connection with the variation of the rights attached to such shares as they apply in relation to a general meeting of the company.".

21. Section 360 (computation of periods of notice etc: clear day rule) has effect as if, in subsection (1)—

(a) the entry for section 307A(1), (4), (5) and (7)(b) were omitted

(b) after the entry for section 314(4)(d) there were inserted "and"; and

(c) the entries for sections 337(3), 338(4)(d)(i) and 338A(5) were omitted.

22. Section 360A (electronic meetings and voting) has effect as if subsections (2) and (3) were omitted.

23. Part 13 has effect as if section 360B (traded companies: requirements for participating in and voting at general meetings) were omitted.

PART 2

Provisions concerning mergers and divisions of public limited liability companies

24. In relation to a company under resolution, Part 27 of the Companies Act 2006 (mergers and divisions of public companies) has effect as if, in section 902 (application of this Part), for subsection (3) there were substituted—

"(3) This Part does not apply where the company in respect of which the compromise or arrangement is proposed—

(a) is being wound up; or

(b) is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014(**57**).".

PART 3

Provisions concerning the maintenance and alteration of a company's share capital

25. In relation to a company under resolution, this Part modifies the application of provisions of the Companies Act 2006 made—

(a) for the co-ordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital; or

(b) for equivalent purposes in relation to companies to which the Safeguards Directive does not apply.

26. Section 550 (power of directors to allot shares etc: private company with only one class of shares) has effect as if—

(**57**) See article 216(3) of this Order.

(a) the existing provision were subsection (1); and

(b) after that provision there were inserted—

"(2) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, any provision in the company's articles which prohibits the directors from exercising the power referred to in subsection (1) is to be disregarded.".

27. Section 551 (power of directors to allot shares etc: authorisation by company) has effect as if after subsection (9) there were inserted—

"(10) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014—

(a) the maximum amount of shares that may be allotted under the authorisation may be exceeded where necessary for the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order) in relation to the company;

(b) if the maximum amount is exceeded, the statement of that amount made in the authorisation is deemed to have been increased under subsection (4) by the amount of the excess;

(c) the authorisation does not expire until it is renewed or revoked after the company has ceased to be a company under resolution; and

(d) the authorisation may not be revoked or varied while the company is a company under resolution.".

28. Part 17 (a company's share capital) has effect as if the following sections were omitted—

(a) section 561 (existing shareholders' right of pre-emption); and

(b) section 568 (exclusion of pre-emption right: articles conferring corresponding right).

29. Section 569 (disapplication of pre-emption rights: private company with only one class of shares) has effect as if it provided that a determination made under subsection (1)(b) does not have effect.

30. Section 570 (disapplication of pre-emption rights: directors acting under general authorisation) has effect as if it provided that a determination made under subsection (1)(b) does not have effect.

31. Section 571 (disapplication of pre-emption rights by special resolution) has effect as if, in subsection (1)—

(a) after paragraph (a) ", or" were omitted; and

(b) paragraph (b) were omitted.

32. Section 586 (public companies: shares must be at least one-quarter paid-up) has effect as if for subsection (2) there were substituted—

"(2) This does not apply to shares allotted—

(a) in pursuance of an employers' share scheme; or

(b) by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Bank Recovery and Resolution (No. 2) Order 2014) in relation to a company which is a company under resolution for the purposes of Part 17 of that Order.".

33. Section 593 (public company: valuation of non-cash consideration for shares) has effect as if after subsection (2) there were inserted—

"(2A) In relation to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, subsection (1) does not prevent the allotment of shares by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order), and for the purposes of the Companies Acts such a share is deemed to be fully paid up.".

34. Section 617 (alteration of share capital of limited company) has effect as if, in subsection (5), at the end there were inserted—

"(f) the alteration of the share capital of a company, which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014, by the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of that Order)".

35. Section 618 (sub-division or consolidation of shares) has effect—

(a) as if subsection (3) were omitted; and

(b) where the articles of a company under resolution would otherwise exclude or restrict the exercise of any power conferred by that section, as if that section provided that the exclusion or restriction does not have effect.

36. Section 656 (public companies: duty of directors to call meeting on serious loss of capital) has effect as if at the end there were inserted—

"(7) This section does not apply to a company which is a company under resolution for the purposes of Part 17 of the Bank Recovery and Resolution (No. 2) Order 2014 ("the Order").

(8) Where the net assets of such a company became half or less of its called-up share capital before the date on which the company became a company under resolution—

(a) the duty of the directors to call a general meeting of the company under subsection (1) ceases to have effect on that date;

(b) a general meeting which has been called under subsection (1) but has not yet taken place is deemed to have been cancelled on that date; and

(c) any resolution passed at such a meeting which has taken place is subject to the use of resolution tools, powers and mechanisms (within the meaning given in article 216 of the Order) in relation to the company.".