

TRANSPOSITION TABLE

Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (“the Directive”) updates the EU’s resolution policy and Minimum Requirement for Own Funds and Eligible Liabilities framework.

The UK Government is required to adopt and publish the measures necessary to comply with the Directive by 28 December 2020 and to apply those measures from the same date.

The Directive is transposed by the Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”), and rules made by the Prudential Regulation Authority and the Financial Conduct Authority.

This Directive is primarily transposed by amendments made to the Banking Act 2009 (the “Act”), and the Bank Recovery and Resolution (No.2) Order 2014/3348 (the “No.2 Order”).

| Articles in BRRD amended by BRRDII | Subject Matter | Implementation | Relevant provision in implementing SI |
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| Article 2(1) | Updated definitions | Amendments and additions to sections 3 3A(4A), and 261 of the Act, article 2(1) of the No.2 Order, regulation 91(2) of the 2020 Regulations and article 2 of SI 2014/3350. | Regulations 4, 25, 28, 30, 48-52 and 91 |
| Article 10(6) | Updates the requirements for resolution plans | Substituted article 53(2)(a) of the No.2 Order | Regulation 34 |
| Article 10(7) | Updates the requirements for resolution plans | Amendment to paragraph 4(2)(q) and (r) of Schedule 1 to the No 2 Order, | Regulation 58 |
| Article 12 | Updates the requirements for group resolution plans | Amendment to paragraph 2 of Schedule 2 to the No.2 Order | Regulation 59 |
| Article 13 | Updates the requirements and procedures for group resolution plans | Amendments to article 42(4) and 48(2) of the No.2 Order | Regulations 32 and 33 |

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| Article 16 | Updates the criteria for assessment of resolvability for groups | Amendments to article 61(2) and 62 of the No.2 Order | Regulations 35 and 36 |
| Article 16a (new article) | Power to prohibit certain distributions. | Regulation 91 of the 2020 Regulations | Regulation 91 |
| Article 17(1) | Updates the rules governing substantive impediments to resolvability of an entity | No implementation needed; the requirements are already covered by article 65 of the No.2 Order | N/A |
| Article 17(3), (4) | Updates the rules governing substantive impediments to resolvability of an entity | Amendments to articles 64, 66, 68(2), 71(1), 72(1), 75(2), and 78(b) of the No.2 Order | Regulations 37 – 41 |
| Article 17(5) | Updates the rules governing substantive impediments to resolvability of an entity | Amendments to section 3A(4) and (5) | Regulation 5 |
| Article 17(7) | Updates the rules governing substantive impediments to resolvability of an entity | No implementation needed; the requirements are already covered by article 66(6)(b) of the No.2 Order | N/A |
| Article 18(1), (3) – (7) | Updates to group-level resolvability | Amendment to articles 75(2) (definition of “response period”) and 78(b) of the No.2 Order | Regulations 42 and 44 |
| Article 18(2) | Updates to group-level resolvability | Inserting article 75A into the No.2 Order | Regulation 43 |
| Article 32 | Updates the conditions for resolution to include eligible liabilities | Amending the definition of “recovery and resolution directive” in section 3(1) of the Act. No amendment needed to section 7(3) of the Act or s81AA, 81B, 81ZBA, or 81BA except definition. | Regulation 4(d) |
| Article 32a (new article) | Conditions for resolution of a central body | No implementation needed – Article does not apply in the UK | N/A |

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| Article 32b (new article) | Insolvency proceedings where resolution action not taken | No implementation needed ; the requirements are covered by the existing Bank Insolvency Procedure in Part 2 of the Act | N/A |
| Article 33 | Imposes duty to take resolution action where conditions in Article 32 are met | Insert sections 81ZZBA, 81ZZBB, 81ZBB, 81ZBC, 81BB, 81BC into of the Act, and amend section 81 and 83A of the Act. Insert article 40(6A) into the No.2 Order | Regulations 14-21, 31 |
| Article 33a (new article) | Power to suspend certain obligations (pre-resolution moratorium) | Regulations 81 – 88, and 90 of the 2020 Regulations. | Regulations 81 – 88, and 90. |
| Article 36 | Updating the valuation requirements to include eligible liabilities | Inserting section 3A(4A) into the Act. | Regulation 5(a) |
| Article 37 | Including eligible liabilities within the scope of the resolution tools | No implementation needed. But see note below on amendment of Article 59. | N/A |
| Article 44 | Updating scope of bail-in tool by which certain types of liabilities may not be written down or converted. | Sections 48B(8), (10), and (11), 48D(1) and 89JA(8) of the Act | Regulations 10, 11 and 24. |
| Article 44a (new article) | Selling of subordinated eligible liabilities to retail clients | Extending the FCA's rule-making power in section 137R of the Financial Services and Markets Act 2000, and through the FCA's Conduct of Business rules | Regulation 2 |
| Article 45 | Minimum requirement for own funds and eligible liabilities | Amendment of article 122(1), 125(2), 139(1) and 146(1) of the No 2 Order. Articles 45 to 45l are directly or indirectly effected by transitional arrangements under Article 45m that continue until after the end of the UK's EU Exit transition period | Regulations 45, 47 and 54 |

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| Article 45a (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45b (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45c (new article) | Minimum requirement for own funds and eligible liabilities | Amendment of article 123(6) and 126(8)(a) of the No 2 Order. See also note on Article 45 above. | Regulations 46 and 48(d) |
| Article 45d (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45e (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45f (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45g (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45h (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45i (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45j (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45k (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45l (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |
| Article 45m (new article) | Minimum requirement for own funds and eligible liabilities | No implementation needed See note on Article 45 above. | N/A |

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| Article 46 | Assessment of bail-in | Amending sections 6B and 12AA of the Act | Regulations 7 and 9 |
| Article 47 | Treatment of shareholders in write-down/conversion | Amending sections 6B and 12AA of the Act | Regulations 7 and 9 |
| Article 48(1), (2) | Sequence of write-down and conversion | Section 12AA of the Act | Regulation 9 |
| Article 48(7) | Amendment to the priority of debts in insolvency | <p>Modification of Sections 4, 176AZA, 328, 387A of, and paragraph 73(1)(e) of Schedule B1 to, the Insolvency Act 1986.</p> <p>Articles 17, 150ZZA, 300, 347A of, and Schedule B1 to, the Insolvency (Northern Ireland) Order 1989.</p> <p>Further modifications are to the Insolvent Partnerships Order 1994, the Insolvent Partnerships Order (Northern Ireland) 1995, the Housing Act 1996, the Housing and Regeneration Act 2008, the Housing (Scotland) act 2010, and the Bankruptcy (Scotland) Act 2016</p> | Part 5 Chapter 5 Regulations 108 - 128 |
| Article 55 | Contractual recognition of bail-in | Chapter 4 of Part 5 of the 2020 Regulations | Regulations 93 – 107 |
| Article 59 | Mandatory write-down/conversion of capital instruments and eligible liabilities | Amendments to sections 6B, 6C and 81AA of the Act | Regulations 6 – 8 and 13 |
| Article 60 | Write-down/conversion of eligible liabilities | Amendment to the heading of section 6B of the Act | Regulation 6 |
| Article 60(1) | Write-down/conversion of eligible liabilities (extent of write-down/conversion) | Inserted section 6B(2)(d) of the Act | Regulation 7(a)(iii) |

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| Article 60(2) | Write-down/conversion of eligible liabilities (consequences of write-down/conversion) | Amendments to section 6C(1) of the Act | Regulation 8(a), (b), and (c) |
| Article 60(3) | Write-down/conversion of eligible liabilities (issuance of CET1 instruments) | Amendments to section 6C(2), (3), and (4) of the Act | Regulations 8(d) – (g) |
| Article 61(3) | Designation of authorities responsible for making determinations | Amendment to article 2(1) of the No.2 Order (definition of “recovery and resolution directive”) | Regulation 30(d) |
| Article 62 | Determinations under Article 59(3) | No implementation needed Articles 149 and 150 of the No 2 Order and see note on Article 45 of the BRRD above. | N/A |
| Article 63(1) | Resolution powers | No implementation needed; the amendment is already covered by sections 6B and 48B of the Act. | N/A |
| Article 66(4) | Power to enforce crisis management measure by other Member States | Amendment to regulation 2(1) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (definition of “recovery and resolution directive”) | Regulation 73 |
| Article 68(3) and (5) | Extending excluded terms in early intervention and resolution | Regulation 82 of the 2020 Regulations | Regulation 82 |
| Article 69(4) | Power to suspend certain obligations (in-resolution moratorium power) | No implementation needed; the definition of CCP is already covered by the definition of “excluded person” in section 70D(1) and (2) of the Act | N/A |
| Article 69(5) | Power to suspend certain obligations (in-resolution moratorium power); extension to eligible deposits | Regulations 89 of the 2020 Regulations | Regulations 89 |

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| Article 70 | Power to restrict enforcement of security against an institution under resolution | No implementation needed ; the definition of CCP is already covered by the definition of “excluded person” in section 70D(1) and (2) of the Act | N/A |
| Article 71 | Power to restrict termination of contracts with an institution under resolution | No implementation needed ; the definition of CCP is already covered by the definition of “excluded person” in section 70D(1) and (2) of the Act | N/A |
| Article 71a (new article) | Contractual recognition of resolution stay powers | Regulation 82 of the 2020 Regulations | Regulation 82 |
| Article 88 | Resolution colleges | No implementation needed See note on Article 45 above. | N/A |
| Article 89 | European resolution colleges | No implementation needed See note on Article 45 above. | N/A |