
DRAFT STATUTORY INSTRUMENTS

2016 No.

BANKS AND BANKING

FINANCIAL SERVICES AND MARKETS

The Bank Recovery and Resolution Order 2016

Made - - - - ***

Coming into force - - ***

The Treasury are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to financial services.

The Treasury in exercise of the powers conferred by section 2(2) of that Act make the following Order.

A draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act.

PART 1

Citation and commencement

Citation and commencement

1.—(1) This Order may be cited as the Bank Recovery and Resolution Order 2016.

(2) This Order comes into force on [].

(a) S.I. 2012/1759.

(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

PART 2

Amendments of the Banking Act 2009

Introduction to amendments of the Banking Act 2009

2. The Banking Act 2009(a) is amended in accordance with this Part.

Interpretation of Part 1 of the Banking Act 2009

3. In section 3 (interpretation: other expressions) after subsection (2) insert—

“(3) In this Part references to a director include, in relation to an undertaking which has no board of directors, a member of the equivalent management body responsible for the management of the undertaking concerned.”.

Removal of impediments to the exercise of the stabilisation powers etc

4. In section 3A (removal of impediments to the exercise of stabilisation powers etc)—

- (a) in subsections (1), (3)(j) and (6), for “an institution”, in each place it occurs, substitute “a bank”, and
- (b) in subsection (8)—
 - (i) omit the definition of “institution”, and
 - (ii) in the definition of “relevant MAHC”, for “an institution” substitute “a bank”.

Cases where mandatory write-down, conversion etc applies

5. In section 6A(6)(b) (cases where mandatory write-down, conversion etc applies) for “on the basis” substitute “taking account”.

General conditions

6. In section 7(5C) (general conditions)—

- (a) in paragraph (b), for the words from “determined”, in the first place it occurs, to the end substitute “is less than the amount of its liabilities,”;
- (b) in paragraph (d), for “one or more of paragraphs (a) to (c)” substitute “paragraph (b) or (c) (or both)”.

Resolution company: share transfers and reverse share transfer

7.—(1) In section 30(3)(a) and (b) (resolution company: share transfers) after “issued” insert “or held”.

(2) In section 31(2) (resolution company: reverse share transfer), for “issued by” to the end of that subsection substitute “held by a transferee under the original instrument by virtue of that instrument”.

Bridge bank: asset and liability transfers from subsidiary banks

8.—(1) After section 44C (report on special bail-in provision) insert—

“**Bridge bank: supplementary property transfer powers**

(a) 2009 c.1.

44D.—(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 12(2) (“the original instrument”) providing for the transfer of securities issued by a bank (“the bank”) to a bridge bank.

(2) The Bank of England may make one or more property transfer instruments in relation to the bank (“bridge bank supplementary property transfer instruments”).

(3) A bridge bank supplementary property transfer instrument is an instrument which—

- (a) provides for property, rights or liabilities of the bank to be transferred;
- (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bank (whether the transfer has been or is to be effected by the instrument or otherwise).

(4) Sections 7 and 8 do not apply to a bridge bank supplementary property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(5) Before making a bridge bank supplementary property transfer instrument the Bank of England must consult—

- (a) the PRA,
- (b) the FCA, and
- (c) the Treasury.

(6) The possibility of making a bridge bank supplementary property transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a property transfer instrument in accordance with section 12(2) (and not in reliance on subsection (2) above).

Bridge bank: supplementary reverse property transfer powers

44E.—(1) This section applies where the Bank of England has made a supplementary property transfer instrument in accordance with section 44D (“the original instrument”).

(2) The Bank of England may make one or more reverse property transfer instruments (“bridge bank supplementary reverse property transfer instruments”) in respect of property, rights or liabilities of the transferee under the original instrument.

(3) A bridge bank supplementary reverse property transfer instrument is an instrument which—

- (a) provides for transfer to the transferor under the original instrument;
- (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

(4) Sections 7 and 8 do not apply to a bridge bank supplementary reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(5) The Bank of England must not make a bridge bank supplementary reverse property transfer instrument unless—

- (a) the transferee under the original instrument is—
 - (i) a company wholly owned by the Bank of England,
 - (ii) a company wholly owned by the Treasury, or
 - (iii) a nominee of the Treasury, or
- (b) it is made with the consent of the transferee under the original instrument.

(6) Before making a bridge bank supplementary reverse property transfer instrument the Bank of England must consult—

- (a) the PRA,
- (b) the FCA, and
- (b) the Treasury.

(7) Section 42 applies where the Bank of England has made a bridge bank supplementary reverse property transfer instrument.”.

(2) In section 42 (supplemental instruments), in subsections (1) and (6), for “or 41A(2)” substitute “, 41A(2) or 44D(2)”.

(3) In section 44B (property transfer instruments: special bail-in provision) in subsections (1) and (2), for “or 41A(2)” substitute “, 41A(2), 43(2) or 44D(2)”.

(4) In section 48A(1) (creation of liabilities) after “44A(3)(b)” insert “44D(3)(b), 44E(3)(b),”.

(5) In section 53(1) (onward and reverse transfers etc) after sub-paragraph (fa) insert—

“(fb) the Bank of England makes a bridge bank supplementary property transfer instrument under section 44D ,

(fc) the Bank of England makes a bridge bank supplementary reverse property transfer instrument under section 44E.”.

(6) In section 63(1) (general continuity obligation: property transfers), in paragraph (a), for “or 41A(2)” substitute “, 41A(2) or 44D(2)”.

(7) In the table in section 83A (modifications of Part), insert in the appropriate place the following rows—

“Section 44D	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
Section 44E	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.”.

(8) In the table in section 261 (index of defined terms), insert in the appropriate place the following rows—

“Bridge bank supplementary property transfer instrument	44D
Bridge bank supplementary reverse property transfer instrument	44E”.

Termination rights etc

9.—(1) Section 48Z (termination rights etc) is amended as follows.

(2) In subsection (1), in the definition of “crisis prevention measure”—

- (a) omit the “or” at the end of paragraph (c);
- (b) at the end of paragraph (d), insert—

“, or

(e) the appointment by the PRA or the FCA of a person to act as a temporary manager under section 71C of the Financial Services and Markets Act 2000”.

(3) In subsection (5), for “Subsection” substitute “Subject to subsection (6A), subsection”.

(4) After subsection (6) insert—

“(6A) A Part 1 instrument or share transfer order may provide for subsection (6)—

- (a) not to apply in relation to a contract or other agreement where the Bank of England (in the case of a Part 1 instrument) or the Treasury (in the case of a share transfer order) considers it appropriate for the default event provision in that contract or agreement to take effect, or
- (b) to apply in relation to a contract or other agreement only to the extent specified by the Bank of England in the instrument or by the Treasury in the order.”.

Independent valuation

10.—(1) Section 62A (independent valuer: valuation under section 6E or 48X) is amended as follows.

(2) After subsection (1) insert—

“(1A) The Bank may require the bank to which the valuation relates to reimburse the Bank for costs it incurs in relation to the independent valuer (including remuneration and allowances paid to the valuer and the valuer’s staff).

(1B) A requirement under subsection (1A) may be enforced by the Bank as a debt.”.

(3) In subsection (6)—

- (a) for “Sections” substitute “Section”;
- (b) omit “, and 56”.

Restrictions on disclosure of confidential information

11. In section 89L(2)(c) (restrictions on disclosure of confidential information)—

(a) in sub-paragraph (i), at the end of inserted paragraph (cb) insert—

“(cc) a person appointed to make a report under section 83ZB of that Act (reports by skilled persons);”

(b) in sub-paragraph (ii), for “to (cb)” substitute “to (cc)”.

Bank administration

12.—(1) Part 3 (bank administration) is amended as follows.

(2) In section 136(2) (overview)—

- (a) for “bridge bank”, in both places, substitute “resolution company”, and
- (b) in paragraph (a), after “section 12” insert “or 12ZA”.

(3) In section 137(1)(a) (objectives), for “bridge bank” substitute “resolution company”.

(4) In section 138 (objective 1: supporting private sector purchaser or bridge bank) and in the heading to section 138, for “bridge bank”, in each place it occurs, substitute “resolution company”.

(5) In section 139 (objective 1: duration), for “bridge bank”, in both places, substitute “resolution company”.

(6) In section 140(3) (Objective 2: “normal” administration), for “bridge bank” substitute “resolution company”.

(7) In section 143(2) (grounds for applying), for “or 12(2)” substitute “, 12(2) or 12ZA(3)”.

(8) In section 145 (general powers, duties and effect), in Tables 1 and 2, for “bridge bank”, in each place it occurs, substitute “resolution company”.

(9) In section 148 (sharing information), for “bridge bank”, in each place it occurs, substitute “resolution company”.

(10) In section 150 (bridge bank to private purchaser) and in the heading to section 150, for “bridge bank”, in each place it occurs, substitute “resolution company”.

(11) Section 151 (property transfer from bridge bank) is amended as follows—

- (a) in that section, and in the heading to that section, for “bridge bank”, in each place it occurs, substitute “resolution company”;
- (b) in subsection (1)(a), after “section 12(2)” insert “or 12ZA(3)”.

(12) In section 157(2)(a) (other processes)—

- (a) for “bridge bank” substitute “resolution company”;
- (b) after “section 12” insert “or 12ZA”.

PART 3

Amendments of the Financial Services and Markets Act 2000

Introduction to amendments of the Financial Services and Markets Act 2000

13. The Financial Services and Markets Act 2000(a) is amended in accordance with this Part.

General meeting

14.—(1) After section 55PA (assets requirements imposed on insurance undertakings or reinsurance undertakings), insert—

“Requirements relating to general meetings

55PB.—(1) This section applies where—

- (a) either regulator has imposed a general meeting requirement on an authorised person who is a bank, building society or investment firm,
- (b) the authorised person has not complied with the general meeting requirement, and
- (c) the appropriate regulator considers that the authorised person no longer satisfies, or is likely in the near future to fail to satisfy, any of the threshold conditions applicable to it under Schedule 6.

(2) A general meeting requirement is a requirement under section 55L or 55M that the authorised person call a general meeting of its shareholders or members.

(3) The appropriate regulator may call a general meeting of the shareholders or members of the authorised person.

(4) The appropriate regulator may propose business for discussion at the general meeting.

(5) The meeting must be called in the same manner, as far as practicable, as that in which meetings are required to be called by the board of directors (or the equivalent management body) of the authorised person.

(6) For the purposes of this section—

“bank” has the meaning given in section 2 of the Banking Act 2009;

“building society” has the meaning given in the Building Societies Act 1986;

“investment firm” has the meaning given in section 258A of the Banking Act 2009;

“the appropriate regulator” means the regulator who imposed the general meeting requirement.”.

(a) 2000 c. 8.

Removal of directors and senior management and appointment of temporary manager

15. In Part 5 (performance of regulated activities), after section 71A(a) insert—

“Removal of directors and senior management and appointment of temporary manager

Removal of directors and senior management

71B.—(1) If the appropriate regulator is satisfied that the conditions in section 71C(1) and (2) are met in relation to a relevant firm, the appropriate regulator may require the firm to remove—

- (a) any person who is a director of the firm;
- (b) any person who is a senior manager of the firm.

(2) If the appropriate regulator imposes a requirement under subsection (1), the regulator may also require the relevant firm—

- (a) to replace a director or senior manager who has been removed, and
- (b) to take any step needed to give effect to the replacement, including, where necessary, calling a general meeting of the firm’s shareholders or members.

Sections 71B and 71D: conditions

71C.—(1) The condition in this subsection is met if—

- (a) there is a deterioration in the financial situation of the relevant firm or the parent undertaking which is a significant deterioration, or
- (b) there is a serious infringement by the relevant firm or the parent undertaking of—
 - (i) a relevant requirement, or
 - (ii) its memorandum or articles of association or other constituent instrument.

(2) The condition in this subsection is met if it is not reasonably likely that the deterioration would be reversed or the infringement would be brought to an end by any measure of a kind described in Article 27(1) of the recovery and resolution directive which could be taken by the appropriate regulator under—

- (a) section 55J (variation or cancellation on initiative of regulator),
- (b) section 55L (imposition of requirements by FCA) (in the case of the FCA),
- (c) section 55M (imposition of requirements by PRA) (in the case of the PRA),
- (d) section 55PB (requirements relating to general meetings),
- (e) section 56 (prohibition orders),
- (f) section 63 (withdrawal of approval),
- (g) section 63ZA (variation of senior manager’s approval at request of authorised person),
- (h) section 63ZB (variation of senior manager’s approval on initiative of regulator),
- (i) section 63A (power to impose penalties),
- (j) section 66 (disciplinary powers),
- (k) Part 12A (powers exercisable in relation to parent undertakings), or
- (l) Part 14 (disciplinary measures).

(3) For the purposes of this section—

- (a) “relevant requirement” has the meaning given in section 204A;

(a) Section 71A was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 33.

- (b) a deterioration in the financial situation of the relevant firm or the parent undertaking is significant if—
 - (i) in the case of a relevant firm, or a parent undertaking which is an authorised person, it no longer satisfies, or is likely to fail to satisfy, any of the threshold conditions applicable to it under Schedule 6;
 - (ii) in the case of a parent undertaking which is not an authorised person, the deterioration threatens the viability of the parent undertaking.

Temporary manager

71D.—(1) Where subsection (2) applies, the appropriate regulator may appoint a person to act (or one or more persons to act jointly) as a temporary manager of a relevant firm or a parent undertaking.

(2) This subsection applies if the appropriate regulator is satisfied in relation to the relevant firm or the parent undertaking—

- (a) that the conditions set out in section 71C(1) and (2) are met, and
- (b) that the following action would not be sufficient to reverse the deterioration or bring the infringement to an end—
 - (i) the imposition of one or more requirements under section 71B (removal and replacement of directors and senior management);
 - (ii) the exercise of any of the appropriate regulator’s powers under Part 12A.

(3) Where the appropriate regulator makes an appointment under subsection (1) in relation to a parent undertaking, the regulator may also require the undertaking to remove—

- (a) all of its directors;
- (b) all of its senior managers.

(4) A temporary manager may be appointed under subsection (1)—

- (a) to replace the directors of a relevant firm or a parent undertaking where they have been removed in compliance with a requirement imposed under section 71B or subsection (3), or
- (b) to work with the directors of a relevant firm or a parent undertaking.

(5) A temporary manager has the functions specified in the instrument appointing the manager.

(6) The functions which may be specified include (amongst other things)—

- (a) ascertaining the financial position of the relevant firm or the parent undertaking;
- (b) managing the business or part of the business of the relevant firm or the parent undertaking in order to preserve or restore the financial position of the firm or, as the case may be, the parent undertaking;
- (c) taking measures to restore the prudent management of the relevant firm or the parent undertaking;
- (d) any function of the directors.

(7) The temporary manager may, with the consent of the appropriate regulator—

- (a) require the directors to call a general meeting of the shareholders or members of the relevant firm or the parent undertaking, or
- (b) in the case where all of the directors have been removed in compliance with a requirement imposed under section 71B or subsection (3), call a general meeting of the shareholders or members of the relevant firm or the parent undertaking.

(8) The temporary manager may propose business for discussion at the general meeting.

(9) If the temporary manager is being appointed to work with the directors, the appropriate regulator—

- (a) may require the directors not to exercise specified functions during the period of appointment;
- (b) may require the directors to consult the temporary manager, or obtain the consent of the temporary manager, before taking specified decisions or specified action.

“Specified” means specified in the requirement.

Temporary manager: further provisions in relation to the appointment

71E.—(1) Before appointing a person to act as a temporary manager, the appropriate regulator must be satisfied that the person—

- (a) has the qualifications, ability and knowledge to carry out the functions to be given to the temporary manager, and
- (b) would not be subject to any conflict of interest as a result of the appointment.

(2) A person may not be appointed to act as a temporary manager for a period longer than one year, but is eligible for re-appointment (or further re-appointment).

(3) The appropriate regulator may vary the terms of the appointment of a temporary manager, or remove the temporary manager, at any time.

(4) A temporary manager is not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the appointment (subject to section 8 of the Human Rights Act 1998).

Temporary manager: instrument of appointment

71F.—(1) The power under section 71D(1) is to be exercised by an instrument of appointment.

(2) The instrument of appointment must—

- (a) specify the functions given to the temporary manager,
- (b) specify the date on which the appointment of the temporary manager has effect,
- (c) specify the period for which the temporary manager is appointed, and
- (d) make provision for the resignation and replacement of a person who is appointed as the temporary manager.

(3) The instrument of appointment may—

- (a) require the temporary manager to consult the appropriate regulator or other specified person before exercising specified functions (and may specify particular matters on which the regulator or other specified person must be consulted),
- (b) provide that the temporary manager is not to exercise specified functions without the consent of the appropriate regulator or other specified person.

(4) The instrument of appointment may require the temporary manager to make reports to the appropriate regulator, at specified times or intervals, on—

- (a) the financial position of the relevant firm or the parent undertaking,
- (b) the acts performed by the temporary manager during the course of the temporary manager’s appointment,
- (c) any other specified matters.

(5) In subsections (3) and (4), “specified” means specified in the instrument of appointment.

(6) The instrument of appointment may provide for the payment of remuneration and allowances to a temporary manager.

(7) Provision under subsection (6) may provide that the amounts are—

- (a) to be paid by the appropriate regulator, or

- (b) to be determined by the appropriate regulator and paid by the relevant firm or, as the case may be, the parent undertaking.

(8) If a temporary manager is appointed—

- (a) to replace the directors of the relevant firm or the parent undertaking, or
- (b) to work with the directors of the relevant firm or the parent undertaking and has the power to represent that firm or parent undertaking,

the regulator must publish the instrument of appointment on its website.

Right to refer matters to the Tribunal

71G.—(1) A relevant firm which is aggrieved by—

- (a) the imposition of a requirement on that firm under section 71B, or
- (b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that firm under section 71D,

may refer the matter to the Tribunal.

(2) A parent undertaking which is aggrieved by—

- (a) the imposition of a requirement on that parent undertaking under section 71D, or
- (b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that parent undertaking under section 71D,

may refer the matter to the Tribunal.

(3) A director or senior manager (or a former director or senior manager) of a relevant firm or a parent undertaking who is aggrieved by the imposition of a requirement—

- (a) on that director under section 71D(9), or
- (b) on that firm or parent undertaking under section 71B or 71D,

may refer the matter to the Tribunal.

Removal of directors and senior management and appointment of temporary manager: procedure

71H.—(1) A requirement under section 71B or 71D or the appointment of a temporary manager under section 71D may be expressed to come into effect immediately (or on a specified date) only if the regulator concerned, having regard to the grounds for imposing the requirement or making the appointment, reasonably considers that it is necessary for the requirement or the appointment to take effect immediately or on that date.

(2) If either regulator proposes to impose a requirement on a relevant firm under section 71B or a parent undertaking under section 71D, or imposes such a requirement with immediate effect, it must give written notice—

- (a) to that firm or parent undertaking, and
- (b) to each of the directors or senior managers who the firm or the parent undertaking is to be required to remove (“the interested parties”).

(3) If either regulator—

- (a) proposes to appoint a person to act as a temporary manager under section 71D or to vary the terms on which such a person is appointed, or
- (b) makes such an appointment or variation with immediate effect,

the regulator must give written notice to the relevant firm or the parent undertaking concerned.

(4) If either regulator proposes to impose a requirement on a director under section 71D(9), or imposes such a requirement with immediate effect, the regulator must give written notice to the director.

(5) A notice given under subsection (2) must—

- (a) give details of the requirement,
 - (b) identify each of the directors or senior managers the relevant firm or the parent undertaking is to be required to remove,
 - (c) give the regulator's reasons for imposing the requirement—
 - (i) in the case of a notice given to the relevant firm or the parent undertaking, in relation to each interested party;
 - (ii) in the case of a notice given to an interested party, in relation to that interested party,
 - (d) inform the firm or the parent undertaking and the interested parties that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not the firm or any of the interested parties has referred the matter to the Tribunal),
 - (e) state when the requirement is to take effect, and
 - (f) inform the firm or the parent undertaking and each of the interested parties of their right to refer the matter to the Tribunal.
- (6) A notice given under subsection (3) must—
- (a) state when the appointment or variation is to take effect, and be accompanied by the instrument, or revised instrument, of appointment,
 - (b) give the regulator's reasons for making the appointment or variation,
 - (c) inform the firm or the parent undertaking that it may make representations to the regulator within such period as may be specified in the notice (whether or not the firm or the parent undertaking has referred the matter to the Tribunal), and
 - (d) inform the firm or the parent undertaking of its right to refer the matter to the Tribunal.
- (7) A notice given under subsection (4) must—
- (a) give details of the requirement,
 - (b) give the regulator's reasons for imposing the requirement,
 - (c) state when the requirement is to take effect,
 - (d) inform the director that he or she may make representations to the regulator within such period as may be specified in the notice (whether or not the director has referred the matter to the Tribunal), and
 - (e) inform the director of his or her right to refer the matter to the Tribunal.
- (8) The regulator may extend the period allowed by the notice for making representations.
- (9) If, having considered any representations made by the relevant firm, the parent undertaking, any of the interested parties or a director in relation to a notice given under subsection (2), (3) or (4) (the original notice), the regulator decides—
- (a) to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice or not to rescind the imposition of any such requirement or the making of any such appointment or variation which has already taken effect,
 - (b) to impose a requirement, make an appointment or vary the terms of an appointment in a way that is different from the requirement, appointment or variation described in the original notice,
 - (c) not to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or to rescind the imposition of any such requirement, or the making of any such appointment or variation that has already taken effect,

the regulator must give written notice to the relevant firm, the parent undertaking, the interested parties or the director to whom the original notice was given.

(10) A notice under subsection (9)(a) must inform the person to whom it is sent of the right of each such person to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(11) A notice under subsection (9)(b) about the imposition of a requirement under section 71B or 71D(3) must comply with subsection (5).

(12) A notice under subsection (9)(b) about the appointment of a person as a temporary manager or the variation of the terms of the appointment of a person as a temporary manager must comply with subsection (6).

(13) A notice under subsection (9)(b) about the imposition of a requirement under section 71D(9) must comply with subsection (7).

(14) In this section, any reference to “appointment” includes “re-appointment”.

Sections 71B to 71H: interpretation

71I.—(1) For the purposes of sections 71B to 71H—

“appropriate regulator” means—

- (a) in relation to a PRA-authorized person, the PRA,
- (b) in relation to any other authorised person, the FCA,
- (c) in relation to a parent undertaking that is not an authorised person—
 - (i) the PRA, where the PRA is the consolidating supervisor in relation to that undertaking;
 - (ii) the FCA, where the FCA is the consolidating supervisor in relation to that undertaking;

“consolidating supervisor” means a consolidating supervisor as defined in Article 4.1(41) of the capital requirements regulation;

“director” includes, in relation to an undertaking which has no board of directors, a member of the equivalent management body responsible for the management of the undertaking concerned;

“the 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;

“senior manager”, in relation to a relevant firm or a parent undertaking, means a person who—

- (a) exercises executive functions within that firm or that undertaking; and
- (b) is responsible, and directly accountable to the directors, for the day to day management of that firm or that undertaking.

(2) For the purposes of sections 71B to 71H “relevant firm” means a bank, building society or investment firm, and for the purposes of this definition—

“bank” has the meaning given in section 2 of the Banking Act 2009;

“building society” has the meaning given in the Building Societies Act 1986;

“investment firm” has the meaning given in section 258A of the Banking Act 2009.

(3) For the purposes of sections 71C to 71H, “parent undertaking” means an institution, financial holding company or mixed financial holding company which—

- (a) is incorporated in, or formed under, the law of any part of the United Kingdom,
- (b) is an EEA parent, and
- (c) either—
 - (i) has a subsidiary which is an institution, or
 - (ii) holds a participation (within the meaning given by Article 4.1(35) of the capital requirements regulation) in an institution.

(4) For the purposes of subsection (3), an institution, financial holding company or mixed financial holding company is an EEA parent if it is not itself the subsidiary of an institution, financial holding company or mixed financial holding company set up in any EEA state.

(5) In subsections (3) and (4)—

“institution” means a credit institution or an investment firm as defined in Articles 2.1(2) and 2.1(3) of the recovery and resolution directive;

“financial holding company” and “mixed financial holding company” have the meanings given in Article 4.1(20) and 4.1(21) of the capital requirements regulation.”.

Contribution costs of special administration regime

16. In section 214B (contribution to costs of the special resolution regime) —

(a) in subsection (2), omit “(by the Treasury or that person)”;

(b) in subsection (4), in paragraph (b), omit from “, by—” to the end of the paragraph.

Restrictions on disclosure of confidential information

17. In section 348(5) (restrictions on disclosure of confidential information by FCA, PRA etc), after paragraph (c) insert—

“(zd) a person appointed to act as a temporary manager by the FCA or the PRA under section 71D;”.

Supervisory notices

18. In section 395 (supervisory notices), in subsection (13), after paragraph (aa) insert—

“(ab) 71H;”.

PART 4

Amendments of secondary legislation

Meaning of Investment Firm

19. In the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014(a), for article 2(1) (description of institution not included within the meaning of “investment firm”) substitute—

“(1) An institution which is not required under provisions implementing the Capital Requirements Directive to have initial capital of €730,000 is specified for the purposes of section 258A(2)(b) of the Banking Act 2009.”.

Determination of minimum requirement

20. In article 123(4) (determination of minimum requirement) of the Bank Recovery and Resolution (No. 2) Order 2014(b), for “A liability must be excluded” substitute “An eligible liability must be excluded”.

Shadow directorship

21. In article 217(2) (shadow directorship) of the Bank Recovery and Resolution (No. 2) Order 2014—

(a) S.I. 2014/1832.

(b) S.I. 2014/3348.

- (a) at the end of sub-paragraph (a), omit “and”;
- (b) after sub-paragraph (b) insert—
 - “(c) a resolution administrator appointed under section 62B of the Banking Act 2009;
and
 - (d) a temporary manager appointed under section 71D of the Financial Services and Markets Act 2000.”.

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

Name

Name

DRAFT