

Financial Services (Banking Reform) Bill

Government annotated amendments: Bail-in

After Clause 12

LORD DEIGHTON

35 Insert the following new Clause –

“PART 3

BAIL-IN STABILISATION OPTION

Bail-in stabilisation option

- (1) Schedule (*Bail-in stabilisation option*) (which contains amendments relating to a new stabilisation option in Part 1 of the Banking Act 2009) has effect.
- (2) The Treasury may by order make any provision they consider appropriate in consequence of the application to building societies of the amendments made by this Part.
- (3) An order may, in particular, amend section 84 of the Banking Act 2009, or amend or modify the effect of any other enactment to which this subsection applies.
- (4) Subsection (3) applies to any enactment (including a fiscal enactment) passed or made –
 - (a) before the passing of this Act, or
 - (b) on or before the last day of the Session in which this Act is passed.
- (5) In this section “building society” has the same meaning as in section 84 of the Banking Act 2009.

This clause introduces a new Schedule to the Bill, which sets out a number of amendments to the Banking Act 2009 (the “Act”). The purpose of these amendments is to introduce a new stabilisation option (the “bail-in option”) into Part 1 of the Act (the Special Resolution Regime) and to make other minor amendments to the Act.

Part 1 of the Act makes provision for the stabilisation options under the Special Resolution Regime (see section 1 of the Act (overview)) which confer on the Bank of England and the Treasury powers to deal with failing banks (section 2 of the Act (interpretation: “bank”), building societies (see sections 84 to 88 of the Act), investment firms (section 89A of the Act (application to investment firms)) and central counterparty clearing houses (section 89B to 89G of the Act (application to recognised central counterparties)). Power is also conferred on the Treasury to provide for the application of the Part 1 to credit unions (section 89 of the Act).

Currently, Part 1 of the Act includes three stabilisation options: (i) transfer to a private sector purchaser (section 11 of the Act), (ii) transfer to a bridge bank (section 12 of the Act) and (iii) transfer to temporary public ownership (section 13 of the Act, see also section 82 in relation to the power to transfer into public ownership the parent undertaking of a failing bank). The private sector purchaser and the bridge bank stabilisation options can be deployed by the Bank of England. The temporary public ownership option, as a last resort option, can be deployed by the Treasury.

To complete the resolution toolkit, the amendments confer on the Bank of England the power to deploy a new stabilisation option called the “bail-in option” (see *new section 12A*) in relation to banks and investment firms (referred to together below as “bank” or “banks”), power is also conferred on the Treasury to make modifications in the application of the bail-in option to building societies (and power already exists enabling the bail-in option to be applied to credit unions) with such modifications as may be considered appropriate. The effect is to ensure that all appropriate forms of action can be taken to address a failing bank whilst minimising recourse to public funds.

The bail-in option enables the Bank of England to take a range of options for the purposes of stabilising a failing bank. Following an application of the bail-in option, the Treasury are required to make provision in relation to compensation. These arrangements are envisaged to operate on the basis of the “no creditor worse off” principle (that is that no creditor should be left worse off as a result of the deployment of the bail-in option than had the option not been deployed and the bank had gone into insolvency).

These amendments are consistent with the range of tools that Member States will be required to make available to their resolution authorities under the European Commission’s proposals for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (the “BRRD”) (under negotiation, a General Approach text of which was agreed by the Council in June 2013¹),

Before Schedule 2

LORD DEIGHTON

Insert the following new Schedule –

“BAIL-IN STABILISATION OPTION

AMENDMENTS OF BANKING ACT 2009

PART 1

1 The Banking Act 2009 is amended as follows.

¹ The General Approach text is available using the following address:
<http://register.consilium.europa.eu/pdf/en/13/st11/st11148-re01.en13.pdf>.

New stabilisation option: bail-in

2 After section 12 insert –

“12A Bail-in option

- (1) The third stabilisation option is exercised by the use of the power in subsection (2).
- (2) The Bank of England may make one or more resolution instruments (which may contain provision or proposals of any kind mentioned in subsections (3) to (6)).
- (3) A resolution instrument may –
 - (a) make special bail-in provision with respect to a specified bank;
 - (b) make other provision for the purposes of, or in connection with, any special bail-in provision made by that or another instrument.
- (4) A resolution instrument may –
 - (a) provide for securities issued by a specified bank to be transferred to a bail-in administrator (see section 12B) or another person;
 - (b) make other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that instrument, by another resolution instrument or otherwise).
- (5) A resolution instrument may set out proposals with regard to the future ownership of a specified bank or of the business of a specified bank, and any other proposals (for example, proposals about making special bail-in provision) that the Bank of England may think appropriate.
- (6) A resolution instrument may make any other provision the Bank of England may think it appropriate to make in exercise of specific powers under this Part.
- (7) Provision made in accordance with subsection (4) may relate to –
 - (a) specified securities, or
 - (b) securities of a specified description.
- (8) Where the Bank of England has exercised the power in subsection (4) to transfer securities to a bail-in administrator, the Bank of England must exercise its functions under this Part (see, in particular, section 48V) with a view to ensuring that any securities held by a person in the capacity of a bail-in administrator are so held only for so long as is, in the Bank of England’s opinion, appropriate having regard to the special resolution objectives.
- (9) References in this Part to “special bail-in provision” are to provision made in reliance on section 48B.

New section 12A describes the bail-in option which is to be the third stabilisation option in Part 1 of the Act. The bail-in option is to make one or more resolution instruments. Subsections (3) to (6) describe the provision and proposals that may be made in a resolution instrument. For example, the Bank of England may make special bail-in provision (see *new section 48B*) for the purposes of reducing or deferring liabilities of the bank that are not excluded liabilities (as defined in *new section 48B(6)*) and may transfer some or all of the securities of the bank to a bail-in administrator (see *new section 12B*) or some other person until such time as the bank has been stabilised and the Bank has identified acquirers of the securities (for example, creditors affected by an application of the power to make special bail-in provision or private sector purchasers), following which an onward transfer resolution instrument may be made (see *new section 48V*).

Resolution instruments may include any provision that may be made in a share transfer instrument (see sections 17 to 23 of the Act) and any provision that may be made in relation to the bail-in option (see *new section 12B* and *new sections 48B to 48S*).

12B Bail-in administrators

- (1) The Bank of England may, in a resolution instrument, appoint an individual or body corporate as a bail-in administrator.
- (2) A bail-in administrator is appointed –
 - (a) to hold any securities that may be transferred or issued to that person in the capacity of bail-in administrator;
 - (b) to perform any other functions that may be conferred under any provision of this Part.

New section 12B makes provision in relation to bail-in administrators. Subsection (1) makes clear that an individual or body corporate may be appointed as a bail-in administrator. A person appointed in this capacity shall be appointed:

(a) to hold securities of the bank that may be (but need not be) transferred or issued to that person in the capacity of bail-in administrator; and/or

(b) to perform any functions that may be conferred on the bail-in administrator under any provision of Part 1 of the Act (subsection (2)).

- (3) The Bank of England may appoint more than one bail-in administrator to perform functions in relation to a bank (but no more than one of them may at any time be authorised to hold securities as mentioned in subsection (2)(a)).

It is possible for the Bank to appoint one or more person as a bail-in administrator. For example, one person could be appointed to hold securities and another may be appointed to prepare a business reorganisation plan under *new section 48H*. Alternatively, the Bank may choose not to transfer any securities of the bank to a bail-in administrator but may appoint a person to act as bail-in administrator for other purposes under Part 1 of the Act (for

example, for the purposes of preparing a business reorganisation plan under *new section 48H*).

- (4) Securities held by a bail-in administrator (in that capacity, and whether as a result of a resolution instrument or otherwise) are to be held in accordance with the terms of a resolution instrument that transfers those, or other, securities to the bail-in administrator.

Securities held by a bail-in administrator (whether as a result of a resolution instrument or otherwise, for example, as a result of an issuance of new securities to the administrator during the course of the period in which the securities are held by the administrator) are to be held by the administrator as legal and beneficial owner. However, the securities are to be held solely in accordance with the terms of a resolution instrument (subsection (4)) and the securities are to be held by the administrator only as long as the Bank of England considers is appropriate having regard to the special resolution objectives (*new section 12A(8)*) following which the Bank may transfer (using the onward securities transfer power conferred by *new section 48V*), or otherwise authorise the disposal of, the securities held by the administrator to another person.

- (5) For example, the following provision may be made by virtue of subsection (4) –
 - (a) provision that specified rights of a bail-in administrator with respect to all or any of the securities are to be exercisable only as directed by the Bank of England;
 - (b) provision specifying rights or obligations that the bail-in administrator is, or is not, to have in relation to some or all of the securities.

Subsection (5) makes clear that provision that may be made in a resolution instrument may include provision about the specified rights and obligations of the bail-in administrator with respect to all or any of the securities held by the administrator. For example, the Bank of England may choose to specify in the resolution instrument that the administrator is to exercise shareholder rights only in accordance with directions of the Bank.

- (6) A bail-in administrator must have regard, in performing any functions of the office, to any objectives that may be specified in a resolution instrument.

Subsection (6) imposes a requirement on the bail-in administrator to have regard, when performing the functions conferred in this capacity, to such objectives as may be specified by the Bank of England in a resolution instrument. Subsection (7) makes clear that should the Bank specify more than one objective for the administrator, the objectives are to be taken to have equal status unless otherwise specified by the Bank.

- (7) Where one or more objectives are specified in accordance with subsection (6), the objectives are to be taken to have equal status with each other, unless the contrary is stated in the resolution instrument.
- (8) See sections 48I to 48K for further provision about bail-in administrators.”

Subsection (8) refers to *new sections 48I to 48K* which make further provision about bail-in administrators.

3 After section 8 of the Act insert –

“8A Specific condition: bail-in

New section 8A sets out the specific condition to be satisfied before the bail-in option may be deployed by the Bank of England. This is in addition to the conditions set out in section 7 of the Act (general conditions) (subsection (4)) in relation to failure, or likely failure, of the threshold conditions for authorisation.

- (1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 12A(2) only if satisfied that the condition in subsection (2) is met.
- (2) The condition is that the exercise of the power is necessary, having regard to the public interest in –
 - (a) the stability of the financial systems of the United Kingdom,
 - (b) the maintenance of public confidence in the stability of those systems,
 - (c) the protection of depositors, or
 - (d) the protection of any client assets that may be affected.

Subsection (2) describes the condition to be satisfied: namely that the exercise of power is necessary in the assessment of the Bank of England having regard to one or more of the public interests listed in paragraphs (a) to (d).

- (3) Before determining whether that condition is met, and if so how to react, the Bank of England must consult –
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.

Subsection (3) requires the Bank of England, before determining whether the condition is satisfied (and, if so, what action to take) to consult with the Prudential Regulation Authority (the “PRA”), the Financial Conduct Authority (the “FCA”) and the Treasury consistent with the arrangements in relation to the other stabilisation options available to the Bank (see section 8(3) of the Act (specific conditions: private sector purchaser and bridge bank).

- (4) The condition in this section is in addition to the conditions in section 7.”

Further provision about the bail-in option

4 After section 48A of the Act insert –

“Bail-in option

48B Special bail-in provision

- (1) “Special bail-in provision”, in relation to a bank, means any of the following (or any combination of the following) –
 - (a) provision cancelling a liability owed by the bank;
 - (b) provision modifying, or changing the form of, a liability owed by the bank;
 - (c) provision that a contract under which the bank has a liability is to have effect as if a specified right had been exercised under it.
- (2) A power to make special bail-in provision –
 - (a) may be exercised only for the purpose of, or in connection with, reducing, deferring or cancelling a liability of the bank.
 - (b) may not be exercised so as to affect any excluded liability.
- (3) The following rules apply to the interpretation of subsection (1) –
 1. The reference to cancelling a liability owed by the bank includes a reference to cancelling a contract under which the bank has a liability.
 2. The reference to modifying a liability owed by the bank includes a reference to modifying the terms (or the effect of the terms) of a contract under which the bank has a liability.
 3. The reference to changing the form of a liability owed by the bank, includes, for example-
 - (a) converting an instrument under which the bank has a liability from one form or class to another,
 - (b) replacing such an instrument with another instrument of a different class or form, or
 - (c) creating a new security (of any class or form) in connection with the modification of such an instrument.
- (4) Examples of special bail-in provision include –
 - (a) provision that transactions or events of any specified kind have or do not have (directly or indirectly) specified consequences or are to be treated in a specified manner for specified purposes;
 - (b) provision discharging persons from further performance of obligations under a contract and dealing with the consequences of persons being so discharged.
- (5) The form and class of the instrument (“the resulting instrument”) into which an instrument is converted or with which it is replaced do not matter for the purposes of paragraphs (a) and (b) of rule 3 in subsection (3); for instance, the resulting instrument may (if it is a security) fall within Class 1 or any other Class in section 14.

New section 48B enables the Bank of England to make special bail-in provision in a resolution instrument. In particular, the Bank may make provision: (a) cancelling a liability owed by the bank; (b) reducing or deferring a liability owed by the bank; (c) specifying that a contract under which the bank has a liability is to have effect as if a specified right had been exercised under it (such as a right to close out); and (d) changing the form of liability into another form of liability (for example, converting a debt instrument into an equity security) (subsection (1)). The purpose of this new power is to ensure that the Bank can take actions (for example, of a kind referred to in subsection (4)), for the purposes of stabilising the financial position of the bank under resolution (subsection (2)).

- (6) The following liabilities of the bank are “excluded liabilities” –
 - (a) liabilities representing protected deposits;
 - (b) any liability, so far as it is secured;
 - (c) liabilities that the bank has by virtue of holding client assets;
 - (d) liabilities with an original maturity of less than 7 days owed by the bank to a credit institution or investment firm;
 - (e) liabilities arising from participation in designated settlement systems and owed to such systems or to operators of, or participants in, such systems;
 - (f) liabilities owed to central counterparties recognised by the European Securities and Markets Authority in accordance with Article 25 of Regulation (EU) 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade depositaries;
 - (g) liabilities owed to an employee or former employee in relation to salary or other remuneration, except variable remuneration;
 - (h) liabilities owed to an employee or former employee in relation to rights under a pension scheme, except rights to discretionary benefits;
 - (i) liabilities owed to creditors arising from the provision to the bank of goods or services (other than financial services) that are critical to the daily functioning of its operations.
- (7) The following special rules apply in cases involving banking group companies –
 - (a) liability mentioned in subsection (6)(d) is not an excluded liability if the credit institution or investment firm to which the liability is owed is a banking group company in relation to the bank (see section 81D);
 - (b) in subsection (6)(i) the reference to creditors does not include companies which are banking group companies in relation to the bank.

Subsections (6) and (7) make provision in relation to the liabilities of the bank that are “excluded liabilities” and may not be affected by an exercise of powers under subsection (1). It reflects the list of excluded liabilities in the BRRD (see Article 38 of the Council General Approach text²), albeit this remains the subject of negotiation. For example, deposits insured by the Financial Services Compensation Scheme may not be affected by an exercise of these powers. Relevant terms are defined in *new sections 48C and 48D*. Should any of the excluded liabilities need to be amended in light of the final agreed position in the BRRD (or

² See footnote 1 for a link to the General Approach text.

for any other reason), power is conferred on the Treasury to amend in specified respects the list of excluded liabilities under *new section 48F*.

48C Meaning of “protected deposit”

- (1) A deposit is “protected” so far as it is covered by the Financial Services Compensation Scheme.
- (2) A deposit is “protected” so far as it is covered by a scheme which –
 - (a) operates outside the United Kingdom, and
 - (b) is comparable to the Financial Services Compensation Scheme.
- (3) If one or both of subsections (1) and (2) apply to a deposit, the amount of the deposit “protected” is the highest amount which results from either of those subsections.
- (4) In subsections (1) and (2) and section 48B(6)(a), “deposit” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/ 544), but ignoring the exclusions in article 6.

New section 48C makes provision in relation to the interpretation of the term “protected deposit”. The effect is to ensure that all FSCS insured deposits and any deposits with the bank that are protected by similar overseas scheme are outside the scope of the power to make special bail-in provision.

48D General interpretation of section 48B

- (1) In section 48B –
 - “client assets” means assets which the bank has undertaken to hold on trust for, or on behalf of, a client;
 - “contract” includes any instrument;
 - “credit institution” means any credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, other than an entity mentioned in Article 2.5(2) to (23) of Directive 2013/36/EU of the European Parliament and of the Council;
 - “designated settlement system” means a system designated in accordance with Directive 98/26/EC of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems (as amended by Directives 2009/44/EC and 2010/78/EU);
 - “employee” includes the holder of an office;
 - “investment firm” means an investment firm as defined in Article 4.1(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council that is subject to the initial capital requirement specified in

Article 28(2) of Directive 2013/36/EU of the European Parliament and of the Council;

“pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities;

“secured” means secured against property or rights, or otherwise covered by collateral arrangements.

(2) In subsection (1) –

“assets” has the same meaning as in section 232(4) (ignoring for these purposes section 232(5A)(b));

“collateral arrangements” includes arrangements which are title transfer collateral arrangements for the purposes of section 48.

(3) For the purposes of section 48B(6)(h), a benefit under a pension scheme is discretionary so far as the employee’s right to the benefit was a result of the exercise of a discretion.

New section 48D makes provision in relation to the interpretation of specified other terms.

48E Report on special bail-in provision

(1) This section applies where the Bank of England makes a resolution instrument containing special bail-in provision (see section 48B(1)).

(2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision has been made in the case of the liabilities concerned.

(3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.

(4) The insolvency treatment principles are that where an instrument includes special bail-in provision –

- (a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and
- (b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.

(5) A report must comply with any other requirements as to content that may be specified by the Treasury.

(6) A report must be made as soon as reasonably practicable after the making of the resolution instrument to which it relates.

(7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.

New section 48E imposes a requirement on the Bank of England to produce a report where it makes a resolution instrument containing provision made in reliance on *new section 48B*. The report must be provided to the Chancellor of the Exchequer (subsection (2)) who must lay in Parliament a copy of each report received from the Bank (subsection (7)). Each report shall be made as soon as reasonably practicable after the making of the resolution instrument to which the report relates. The report must, in particular, explain why the Bank has made any provision which departs from the insolvency treatment principles referred to in subsection (4) (e.g. in the event the Bank has cancelled some but not all of the liabilities of the bank which would have ranked on a *pari passu* basis in the event the bank under resolution had gone into insolvency instead of being subject to an application of the bail-in option) (subsection (3)). The Treasury also have the power to specify other requirements as to the content of the report in question (subsection (5)). This ensure that there is full transparency and accountability as regards the application of the power to make special bail-in provision and is in addition to the general reporting requirement under *new section 80A*.

48F Power to amend list of “excluded liabilities”

- (1) The Treasury may by order amend section 48B(6) by –
 - (a) adding to the list of excluded liabilities;
 - (b) amending or omitting any paragraph of that subsection, other than paragraphs (a) to (c).
- (2) The Treasury may by order amend section 48C or 48D.
- (3) The powers conferred by subsections (1) and (2) include power to make consequential and transitional provision.
- (4) An order under this section –
 - (a) must be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) The Treasury must consult before laying a draft order under this section before Parliament.

This section confers on the Treasury the power to make an order, subject to the draft affirmative procedure, amending the list of “excluded liabilities” which are outside the scope of the power to make special bail-in provision in accordance with *new section 48B*. This power could be used, for example, to add a new category of excluded liability to the list, to amend the definition used for the purposes of an excluded liability (e.g. the definition of “designated settlement system”, noting in particular some terms are defined by reference to European law which may change from time to time) or to omit a specific category of excluded liability. However, in order to provide a high degree of comfort to retail depositors and secured creditors and those with assets held on trust for, or on behalf of, the client concerned (“client assets”) certain categories of excluded liability may not be omitted using this power (those referred to in paragraphs (a) to (c) of *new section 48B(6)*).

48G Priority between creditors

- (1) The Treasury may, for the purpose of ensuring that the treatment of liabilities in any instrument that contains special bail-in provision is aligned to an appropriate degree with the treatment of liabilities on an insolvency, by order specify matters or principles to which the Bank of England is to be required to have regard in making any such instrument.
- (2) An order may, for example, specify the insolvency treatment principles (as defined in section 48E(4)) or alternative principles.
- (3) An order may specify the meaning of “insolvency” for one or more purposes of the order.
- (4) An order may amend sections 44C(4) and 48E(4).
- (5) An order –
 - (a) shall be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

New section 48G confers on the Treasury a power to make an order, subject to the draft affirmative procedure, to specify principles to which the Bank of England is to be required to have regard in making a resolution instrument which includes special bail-in provision under new section 48B. This power could be exercised, for example, to specify principles as to when the Bank may depart from the insolvency treatment principles (e.g. on the grounds that it is simply impossible to exercise the power to make special bail-in provision in relation to a specified liability within a reasonable timeframe). The power may also be exercised to make provision in relation to the insolvency treatment principles for the purposes of the reporting requirement in new section 48E(4).

48H Business reorganisation plans

- (1) A resolution instrument may require a bail-in administrator, or one or more directors of the bank, to –
 - (a) draw up a business reorganisation plan with respect to the bank, and
 - (b) submit it to the Bank of England within the period allowed by (or under) the instrument.
- (2) “Business reorganisation plan” means a plan that includes –
 - (a) an assessment of the factors that caused Condition 1 in section 7 to be met in the case of the bank,
 - (b) a description of the measures to be adopted with a view to restoring the viability of the bank, and
 - (c) a timetable for the implementation of those measures.
- (3) Where a person has submitted a business reorganisation plan to the Bank of England under subsection (1) (or has re-submitted a plan under subsection (4)), the Bank of England –
 - (a) must approve the plan if satisfied that the plan is appropriately designed for meeting the objective mentioned in subsection (2)(b);

- (b) must otherwise require the person to amend the plan in a specified manner.
- (4) Where the Bank of England has required a person to amend a business reorganisation plan, the person must re-submit the amended plan within the period allowed by (or under) the resolution instrument.
- (5) Before deciding what action to take under subsection (3) the Bank of England must (for each submission or re-submission of a plan) consult –
 - (a) the PRA, and
 - (b) the FCA.
- (6) A business reorganisation plan may include recommendations by the person submitting the plan as to the exercise by the Bank of England of any of its powers under this Part in relation to the bank.
- (7) Where a resolution instrument contains provision under subsection (1), the instrument may –
 - (a) specify further matters (in addition to those mentioned in subsection (2)) that must be dealt with in the business reorganisation plan;
 - (b) make provision about the timing of actions to be taken in connection with the making and approval of the plan;
 - (c) enable any provision that the Bank of England has power under paragraph (a) or (b) to make in the instrument to be made instead in an agreement between the Bank of England and the bail-in administrator.
- (8) For the purposes of subsection (2)(b) the viability of a bank is to be assessed by reference to whether the bank satisfies, and (if so) for how long it may be expected to continue to satisfy, the threshold conditions (as defined in section 55B of the Financial Services and Markets Act 2000)."

New section 48H makes provision in relation to business reorganisation plans.

Subsection (1) specifies that a resolution instrument may require a bail-in administrator, or one or more directors of the bank under resolution, to draw up a business reorganisation plan with respect of the bank, and to submit it to the Bank of England within the period allowed by or under the resolution instrument.

Subsection (2) describes a business reorganisation plan. Such a plan must include specified matters, including an assessment of the factors that caused Condition 1 in section 7 of the Act (general conditions) to be satisfied in relation to the bank under resolution and a description of the measures to be adopted with a view to restoring the viability of the bank. "Viability" is to be assessed by reference to the matters referred to in subsection (8).

Each business reorganisation plan must be considered by the Bank of England. Before deciding whether to approve the plan, or to require the person who has submitted the plan to amend the plan, the Bank must consult with the PRA and the FCA (subsection (5)). This is appropriate as the regulators are best placed to consider the suitability of the plan having

regard to the threshold conditions for authorisation to carry on regulated activities as referred to in subsection (8).

A business reorganisation plan may include recommendations on the exercise by the Bank of England of its powers under Part 1 of the Act in relation to the bank under resolution (subsection (6)). For example, should a bail-in administrator have identified a potential purchaser for some of the business on the bank under resolution, the administrator may recommend to the Bank that it make a property transfer order under *new section 41A* to effect the sale and transfer of that business. The Bank is under no obligation follow the recommendations of the person who has prepared the plan. However, the Bank may take into account these recommendations in determining what further steps to take in relation to the bank.

48I Bail-in administrator: further functions

- (1) A resolution instrument may –
 - (a) authorise a bail-in administrator to manage the bank's business (or confer on a bail-in administrator any other power with respect to the management of the bank's business);
 - (b) authorise a bail-in administrator to exercise any other powers of the bank;
 - (c) confer on a bail-in administrator any other power the Bank of England may consider appropriate;
 - (d) provide that the exercise of any power conferred by the instrument in accordance with this section is to be subject to conditions specified in the instrument.
- (2) A resolution instrument may require a bail-in administrator to make reports to the Bank of England –
 - (a) on any matter specified in the instrument, and
 - (b) at the times or intervals specified in the instrument.
- (3) If a resolution instrument specifies a matter in accordance with subsection (2)(a), it may provide for further requirements as to the contents of the report on that matter to be specified in an agreement between the Bank of England and the bail-in administrator.
- (4) A resolution instrument may –
 - (a) require a bail-in administrator to consult specified persons before exercising specified functions (and may specify particular matters on which the specified person must be consulted);
 - (b) provide that a bail-in administrator is not to exercise specified functions without the consent of a specified person.

New section 48I makes clear that further functions can be conferred on a bail-in administrator by virtue of provision in a resolution instrument. Subsection (1) provides that a resolution instrument may, for example, authorise an administrator to manage the bank's business and to exercise any powers of the bank. Subsection (2) provides that a resolution instrument may require a bail-in administrator to make reports to the Bank on such matters as may be

specified in the instrument. Subsection (3) concerns reporting requirements. And subsection (4) specifies that a resolution instrument may require a bail-in administrator to consult specified persons (such as the Bank of England or the body creditors of the bank under resolution) or to first seek the consent of a specified person before taking specified actions, such as exercising voting rights in relation to any securities held by the bail-in administrator in the bank under resolution.

48J Bail-in administrator: supplementary

- (1) A bail-in administrator may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.
- (2) A bail-in administrator is not a servant or agent of the Crown (and, in particular, is not a civil servant).
- (3) Where a bail-in administrator is appointed under this Part, the Bank of England –
 - (a) must make provision in a resolution instrument for resignation and replacement of the bail-in administrator;
 - (b) may remove the bail-in administrator from office only (i) on the ground of incapacity or misconduct, or (ii) on the ground that there is no further need for a person to perform the functions conferred on the bail-in administrator.

New section 48J makes supplementary provision about bail-in administrators. Subsection (1) specifies that a bail-in administrator may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of office. Subsection (2) makes clear that a bail-in administrator is not to be regarded as a servant or agent of the Crown. Subsection (3) requires the Bank of England to make provisions for the resignation, replacement and removal from office of bail-in administrator.

48K Bail-in administrator: money

- (1) A resolution instrument may provide for the payment of remuneration and allowances to a bail-in administrator.
- (2) Provision made under subsection (1) may provide that the amounts are –
 - (a) to be paid by the Bank of England, or
 - (b) to be determined by the Bank of England and paid by the bank.
- (3) A bail-in administrator 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 office (subject to section 8 of the Human Rights Act 1998).

New section 48K makes provision about the remuneration and allowances of a bail-in administrator. In particular, subsection (2) specifies that the Bank of England may provide that remuneration and allowances are to be paid by the Bank or by the bank under resolution.

48L Powers in relation to securities

- (1) A resolution instrument may-
 - (a) cancel or modify any securities to which this subsection applies;
 - (b) convert any such securities from one form or class into another.
- (2) Subsection (1) applies to securities issued by the bank that fall within Class 1 in section 14.
- (3) A resolution instrument may-
 - (a) make provision with respect to rights attaching to securities issued by the bank;
 - (b) provide for the listing of securities issued by the bank to be discontinued.
- (4) The reference in subsection (1)(b) to converting securities from one form or class to another includes creating a new security in connection with the modification of an existing security..
- (5) The provision that may be made under subsection (3)(a) includes, for instance –
 - (a) provision that specified rights attaching to securities are to be treated as having been exercised;
 - (b) provision that the Bank of England, or a bail-in administrator, is to be treated as authorised to exercise specified rights attaching to securities;
 - (c) provision that specified rights attaching to securities may not be exercised for a period specified in the instrument.
- (6) In subsection (3)(b) the reference to “listing” is to listing under section 74 of the Financial Services and Markets Act 2000.
- (7) The provision that may be made under this section in relation to any securities is in addition to any provision that the Bank of England may have power to make in relation to them under section 48B.

New section 48L makes provision describing further things that can be done in a resolution instrument in relation to securities (this is without prejudice to the things that can be done pursuant to new section 48B). For example, provision may be made in a resolution instrument for the purposes of delisting securities.

For completeness it is to be noted that where a resolution instrument makes provision in relation to securities transfers, the powers available under sections 17 to 23 of the Act are available. New sections 48M to 48S simply enable the Bank to make similar provision in a resolution instrument which does not have the effect of transferring securities where appropriate in connection with a resolution.

48M Termination rights, etc

- (1) In this section “default event provision” has the same meaning as in section 22.

- (2) A resolution instrument may provide for subsection (3) or (4) to apply (but need not apply either).
- (3) If this subsection applies, the resolution instrument is to be disregarded in determining whether a default event provision applies.
- (4) If this subsection applies, the resolution instrument is to be disregarded in determining whether a default event provision applies except so far as the instrument provides otherwise.
- (5) In subsections (3) and (4) a reference to the resolution instrument is a reference to –
 - (a) the making of the instrument,
 - (b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, and
 - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument or order.
- (6) Provision under subsection (2) may apply subsection (3) or (4) –
 - (a) generally or only for specified purposes, cases or circumstances, or
 - (b) differently for different purposes, cases or circumstances.
- (7) A thing is not done by virtue of a resolution instrument for the purposes of subsection (5)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument.

New section 48M replicates sections 22 and 38 of the Act (termination rights, &c) so as to enable the Bank of England to make provision in resolution instrument will the effect of turning off default event rights that may otherwise arise as a result of provision in the instrument (for example, provision result in the change of control of a bank under resolution).

48N Directors

- (1) A resolution instrument may enable the Bank of England –
 - (a) to remove a director of a specified bank;
 - (b) to vary the service contract of a director of a specified bank;
 - (c) to terminate the service contract of a director of a specified bank;
 - (d) to appoint a director of a specified bank.
- (2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.

New section 48N replicates the provision made by sections 20 and 36A of the Act (directors) so as to enable the Bank of England to remove a director of the bank under resolution or to vary or terminate the service contract of a director by virtue of provision in a resolution instrument.

48O Directions in or under resolution instrument

- (1) A resolution instrument may –
 - (a) require one or more directors of the bank to comply with any general or specific directions that may be set out in the instrument;
 - (b) enable the Bank of England to give written directions (whether general or specific) to one or more directors of the bank.
- (2) A director –
 - (a) is not to be regarded as failing to comply with any duty owed to any person (for instance, a shareholder, creditor or employee of the bank) by virtue of any action or inaction in compliance with a direction given under subsection (1)(a) or (b);
 - (b) is to be immune from liability in damages in respect of action or inaction in accordance with a direction.
- (3) A director must comply with a direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.
- (4) A direction under subsection (1)(a) or (b) is enforceable on an application made by the Bank of England, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

New section 48O enables the Bank of England to issue directions to the management of the bank under resolution. Subsection (2) ensures that a director is not to be regarded as failing to act in accordance with his duties in complying with a direction, and is to be immune from liability in damages in respect of action or inaction in accordance with a direction. This is to ensure that any person subject to a direction of the Bank in accordance with this section in connection with the stabilisation of the bank can take such steps as are necessary in accordance with the direction without concern as to whether actions will be taken against them for compliance with a direction given in pursuance of wider public policy interest. Subsection (4) makes provision in relation to enforcement of directions given in accordance with this section.

48P Orders for safeguarding certain financial arrangements

- (1) In this section “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.
- (2) In subsection (1) –

“netting arrangements” means arrangements under which a number of claims or obligations can be converted into a net claim or obligation, and includes, in particular, “close-out” netting arrangements, under which actual or theoretical debts are calculated during the course of a

contract for the purpose of enabling them to be set off against each other or to be converted into a net debt;

“security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another;

“set-off arrangements” means arrangements under which two or more debts, claims or obligations can be set off against each other;

“title transfer collateral arrangements” means arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged.

(3) The Treasury may by order –

- (a) restrict the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;
- (b) impose conditions on the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;
- (c) require any instrument that makes special bail-in provision to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
- (d) provide for an instrument to be void or voidable, or for other consequences to arise, if or in so far as the instrument is made or purported to be made in contravention of a provision of the order (or of another order under this section);
- (e) specify principles to which the Bank of England is to be required to have regard in exercising specified powers –
 - (i) that involve protected arrangements, or
 - (ii) where the exercise of the powers might affect protected arrangements.

(4) References to exercising a power within the scope of paragraph (a) or (b) of subsection (3) are to making an instrument containing provision made in reliance on section 12A(3)(a) or 44B (special bail-in provision).

(5) An order may apply to protected arrangements generally or only to arrangements –

- (a) of a specified kind, or
- (b) made or applying in specified circumstances.

(6) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.

(7) In this section arrangements includes arrangements which –

- (a) are formed wholly or partly by one or more contracts or trusts;

- (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;
 - (b) wholly or partly arise automatically as a matter of law;
 - (c) involve any number of parties;
 - (d) operate partly by reference to other arrangements between parties.
- (8) An order –
- (a) shall be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

New section 48P confers on the Treasury a power, by order subject to the draft affirmative procedure, to make provision for safeguards applicable in relation to circumstances in which the bail-in option is deployed. This is modelled on section 48 of the Act (which confers a power on the Treasury to make an order setting out the safeguards in relation to exercises of the power to transfer some, and not all, of the business of a bank to another person) and will enable the Treasury to make detailed provision, for example, ensuring that the power to make special bail-in provision cannot be exercised in a way that disrupts set-off and netting arrangements. Bearing in mind the importance of the safeguards arrangements to counterparts of banks, the Treasury will consult extensively with industry in formulating the order to be made in accordance with this section.

48Q Continuity

- (1) A resolution instrument may provide for anything (including legal proceedings) that relates to anything affected by the instrument and is in the process of being done immediately before the instrument takes effect to be continued from the time the instrument takes effect.
- (2) A resolution instrument may modify references (express or implied) in an instrument or document.
- (3) A resolution instrument may require or permit any person to provide information and assistance to the Bank of England or another person, for the purposes of or in connection with provision made or to be made in that or another resolution instrument.

New section 48Q enables the Bank of England to provide in a resolution instrument for certain provision in relation to continuity arrangements. This is modelled on a similar power available to the Bank in relation to securities transfer instruments (see section 18 of the Act (continuity)).

48R Execution and registration of instruments etc

- (1) A resolution instrument (other than an instrument that provides for securities to be transferred) may permit or require the execution, issue or delivery of an instrument.
- (2) A resolution instrument may provide for any provision in the instrument to have effect irrespective of –

- (a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;
 - (b) registration.
- (3) A resolution instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the instrument.
- (4) A resolution instrument may –
 - (a) entitle a person to be registered in respect of a security;
 - (b) require a person to effect registration.

New section 48R makes provision in relation to the execution and registration of instruments, for example instruments created and or converted by way of an exercise of the power under new section 48A. It is modelled on a similar power set out in section 21 of the Act (ancillary instruments: production, registration, &c) in relation to securities transfers.

48S Resolution instruments: general matters

- (1) Provision made in a resolution instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (2) A resolution instrument may include incidental, consequential or transitional provision.
- (3) In relying on subsection (2) a resolution instrument –
 - (a) may make provision generally or only for specified purposes, cases or circumstances, and
 - (b) may make different provision for different purposes, cases or circumstances.

New section 48S makes clear that a resolution instrument is to have effect despite and restriction by virtue of contract or legislation or in any other way. It also ensures that the Bank of England can include incidental, consequential or transitional provision in a resolution instrument. This is consistent with the powers available under the Act in relation to share and property transfers (see sections 17 (effect), 23 (incidental provision), 34 (effect) and 40 (incidental provision) of the Act).

48T Procedure

- (1) As soon as is reasonably practicable after making a resolution instrument in respect of a bank the Bank of England shall send a copy to –
 - (a) the bank,
 - (b) the Treasury,
 - (c) the PRA,
 - (d) the FCA, and
 - (e) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a resolution instrument the Bank of England shall publish a copy –
 - (a) on the Bank's internet website, and

- (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.
- (3) Where the Treasury receive a copy of a resolution instrument under subsection (1) they shall lay a copy before Parliament.

New section 48T makes provision for the procedural requirements which apply in relation to resolution instruments. These align with the requirements in relation to other forms of Bank instrument under the Act (see sections 24 (procedure: instruments) and 41 (procedure) of the Act).

48U Supplemental resolution instruments

- (1) This section applies where the Bank of England has made a resolution instrument ("the original instrument") with respect to a bank.
- (2) The Bank of England may make, with respect to the bank, one or more resolution instruments designated by the Bank of England as supplemental resolution instruments.
- (3) Sections 7 and 8A do not apply to a supplemental resolution instrument (but it is to be treated in the same way as a resolution instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (4) Before making a supplemental resolution instrument the Bank of England must consult –
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (5) The possibility of making a supplemental resolution instrument in reliance on subsection (2) is without prejudice to the possibility of making a new instrument in accordance with section 12A(2) (and not in reliance on subsection (2) above).

New section 48U enables the Bank of England to make one or more supplemental resolution instruments following the making of a resolution instrument under new section 12A(2). This is consistent with the approach under the Act in relation to the Bank's other stabilisation options (see sections 26 (supplemental instruments) and 42 (supplemental instruments)).

A supplemental resolution instrument may make any provision of a kind that can be made in a resolution instrument (and is to be treated as such save in relation to the application of section 7 and new section 8A of the Act which do not need to be satisfied in order for the Bank to make a supplemental resolution instrument- specifically, because by the stage this bank will be in the course of stabilisation following the making of the first instrument under new section 12A).

48V Onward transfer

- (1) This section applies where the Bank of England has made a resolution instrument ("the original instrument") providing for securities issued by a specified bank to be transferred to any person.
- (2) The Bank of England may make one or more onward transfer resolution instruments.
- (3) An onward transfer resolution instrument is a resolution instrument which –
 - (a) provides for the transfer of –
 - (i) securities which were issued by the bank before the original instrument and have been transferred by the original instrument or a supplemental resolution instrument, or
 - (ii) securities which were issued by the bank after the original instrument;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that instrument, by another instrument or otherwise).
- (4) An onward transfer resolution instrument may not transfer securities to the transferor under the original instrument.
- (5) Sections 7 and 8A do not apply to an onward transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (6) Before making an onward transfer resolution instrument the Bank of England must consult –
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (7) Section 48U applies where the Bank of England has made an onward transfer resolution instrument.

New section 48V confers on the Bank of England a power to transfer the securities of the bank held by the bail-in administrator (or some other person who holds the securities of the bank on a temporary basis on the instruction of the Bank) from the administrator to another person (such as a private sector purchaser or relevant third parties who have been affected by the application of powers under new section 48B by way of a proxy for compensation).

48W Reverse transfer

- (1) This section applies where the Bank of England has made an instrument ("the original instrument") that is either –
 - (a) a resolution instrument providing for the transfer of securities issued by a bank to a person ("the transferee"), or

- (b) an onward transfer resolution instrument (see section 48V) providing for the transfer of securities issued by a bank to a person (“the onward transferee”).
- (2) In a case falling within subsection (1)(a) the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the transferee (whether or not they were transferred by the original instrument).
- (3) In a case falling within subsection (1)(b), the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the onward transferee.
- (4) A reverse transfer resolution instrument is a resolution 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 securities which are, or could be or could have been, transferred under paragraph (a).
- (5) Except where subsection (6) applies, the Bank of England may make a reverse transfer resolution instrument under subsection (2) only with the written consent of the transferee.
- (6) This subsection applies where the transferee is –
 - (a) a bail-in administrator, or
 - (b) a person who is not to be authorised to exercise any rights attaching to the securities except on the Bank of England’s instructions.
- (7) The Bank of England may make a reverse transfer resolution instrument under subsection (3) only with the written consent of the onward transferee.
- (8) Sections 7 and 8A do not apply to a reverse transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes including for the purposes of an application of a power under this Part).
- (9) Before making a reverse transfer resolution instrument the Bank of England must consult –
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (10) Section 48U applies where the Bank of England has made a reverse transfer resolution instrument.”

New section 48W confers on the Bank of England a reverse securities transfer power, for example, to enable the Bank to transfer from a bail-in administrator to the original holders securities transferred by way of provision in a resolution instrument under new section 12A(2).

Transfers of property

5 (1) After section 41 insert –

“41A Transfer of property subsequent to resolution instrument

- (1) This section applies where the Bank of England has made a resolution instrument.
 - (2) The Bank of England may make one or more property transfer instruments in respect of property, rights or liabilities of the bank.
 - (3) Sections 7 and 8A do not apply to a property transfer instrument under subsection (2).
 - (4) Before making a property transfer instrument under subsection (2) the Bank of England must consult –
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.”
- (2) In section 42 (supplemental property transfer instruments) –
- (a) in subsection (1) for “12(2)” substitute “12(2) or 41A(2)”;
 - (b) in subsection (4) for “and 8” substitute “, 8 and 8A”;
 - (c) in subsection (6) for “or 12(2)” substitute “12(2) or 41A(2)”.

New section 41A enables the Bank of England to make one or more property transfer instruments (as defined in section 33 of the Act) following the making of a resolution instrument under new section 12A(2), for example, in order to enable the transfer of business to a private sector purchaser.

Paragraph 5(2) of the Schedule makes a number of consequential amendments to section 42 of the Act (supplemental instruments) so as to ensure that the Bank of England may make a supplemental property transfer instrument following the making of a property transfer instrument under new section 41A. This is consistent with the approach in relation to the Bank’s property transfer powers under section 11(2) (private sector purchaser) and 12(2) (bridge bank) of the Act (see section 42(1)).

(3) After section 44 insert –

“44A Bail in: reverse property transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 41A(2) (“the original instrument”).
- (2) The Bank of England may make one or more bail-in reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.

- (3) A bail-in reverse property transfer instrument is a property transfer instrument which –
 - (a) provides for a 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.
- (4) The Bank of England may make a bail-in reverse property transfer instrument only with the written consent of the transferee under the original instrument.
- (5) Sections 7 and 8A do not apply to a bail-in 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).
- (6) Before making a bail-in reverse property transfer instrument the Bank of England must consult –
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (7) Section 42 (supplemental instruments) applies where the Bank of England has made a bail-in reverse property transfer instrument.

New section 44A enables the Bank of England to transfer back to the bank under resolution property, rights or liabilities which have been transferred by virtue of a property transfer instrument in accordance with new section 41A. Property, rights and liabilities may only be transferred in this case where the transferee has given their consent (subsection (4)) consistent with the arrangements in relation to the reverse property transfer power in section 44 of the Act (reverse property transfer).

44B Property transfer instruments: special bail-in provision

- (1) A property transfer instrument under section 12(2) or 41A(2) may make special bail-in provision with respect to the bank (see section 48B).
- (2) In the case of a property transfer instrument under section 12(2), the power under subsection (1) to make the provision described in section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(3)) includes power to make provision replacing a liability (of any form) of the bank mentioned in subsection (1) with a security (of any class or form) of the bridge bank mentioned in section 12(1).
- (3) Where securities of the bridge bank (“B”) are, as a result of subsection (2), held by a person other than the Bank of England, that does not prevent B from being regarded for the purposes of this Part (see particularly section 12(1)) as being wholly owned by the Bank of England, as long as the Bank of England continues to hold all the ordinary shares issued by B.

New section 44B enables the Bank of England to make special bail-in provision (new section 48B) in a property transfer instrument (see new section 41A) in relation to a bank which has been subject to an exercise of the bail-in stabilisation option. This is to provide flexibility for the Bank to take any further appropriate steps in the context of the stabilisation of the bank or part of its business.

44C Report on special bail-in provision

- (1) This section applies where the Bank of England makes a property transfer instrument containing provision made in reliance on section 44B.
- (2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision was made in the case of the liabilities concerned.
- (3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.
- (4) The insolvency treatment principles are that where an instrument includes special bail-in provision –
 - (a) The provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and
 - (b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.
- (5) A report must comply with any other requirements as to content that may be specified by the Treasury.
- (6) A report must be made as soon as reasonably practicable after the making of the property transfer instrument to which it relates.
- (7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.”

New section 44C replicates the reporting requirements that apply where special bail-in provision is made in resolution instruments (new section 48E) with regard to cases in which the Bank of England makes special bail-in provision in a property transfer instrument.

- (4) In section 48A of the Act (creation of liabilities), in subsection (1), after “44(4)(c)” insert “, 44A(3)(b)”.

Paragraph 5(4) of the Schedule makes a consequential amendment to section 48A of the Act, so as to include in the list of provisions to which it applies a reference to the new power to make property transfer instruments (new section 44A).

Compensation

- 6 (1) In section 49 (orders) –

- (a) in subsection (1), for “three” substitute “four” and for “and property transfer instruments” substitute “, property transfer instruments and orders and resolution instruments”;
- (b) after subsection (2) insert –

“(2A) A “bail-in compensation order” is an order establishing a scheme for determining, in accordance with section 52A, whether any transferors or others should be paid compensation.”

Paragraph 6(1) makes consequential amendments to section 49 of the Act (compensation orders) so as to make provision for the arrangements in relation to the bail-in option.

- (2) After section 52 insert –

“52A Bail-in option

- (1) Subsection (2) applies if the Bank of England makes –
 - (a) a resolution instrument under section 12A(2),
 - (b) a property transfer instrument under section 41A(2), or
 - (c) a supplemental resolution instrument under section 48U(2).
- (2) The Treasury shall make a bail-in compensation order (see section 49(2A)).
- (3) A bail-in compensation order may include provision for –
 - (a) an independent valuer (in which case sections 54 to 56 shall apply);
 - (b) valuation principles (in which case section 57(2) to (5) shall apply).”

New section 52A provides that the Treasury must make a bail-in compensation scheme order where the Bank of England make a resolution instrument in accordance with new section 12A(2), a property transfer instrument under new section 41A or a supplemental resolution instrument under new section 48Q. This ensures that the Treasury can make appropriate compensation arrangements following such transfers.

Paragraph 6(3) to (6) below make consequential to sections 53 (onward and reverse transfers) to 57 (valuation principles) in relation to other forms of instrument that may be made by the Bank of England following the making of a resolution instrument under *new section 12A(2)*.

- (3) In section 53 (onward and reverse transfers), in subsection (1) –
 - (a) after paragraph (f) insert –
 - “(fa) the Bank of England makes a reverse property transfer instrument under section 44A(2),
 - (fb) the Bank of England makes a supplemental property instrument by virtue of section 44A(7),”;
 - (b) omit the “or” after paragraph (g);
 - (c) after paragraph (h) insert –

- “(i) the Bank of England makes an onward transfer resolution instrument under section 48V(2),
- (j) the Bank of England makes a reverse transfer resolution instrument under section 48W(3) or (4), or
- (k) the Bank of England makes a supplemental resolution instrument by virtue of section 48V(7) or 48W(9).”

(4) In section 54 (independent valuer) –

- (a) in subsection (1), after “compensation scheme order” insert “or bail-in compensation order”;
- (b) in subsection (4)(b), after “order” insert “or bail-in compensation order”.

(5) In section 56 (independent valuer: money), in subsection (2)(b) for “or third party compensation order” substitute “, third party compensation order or bail-in compensation order”.

(6) In section 57 (valuation principles), in subsection (1), after “order” insert “or bail-in compensation order”.

(7) After section 60 insert –

“60A Further mandatory provision: bail-in provision

(1) The Treasury may make regulations about compensation arrangements in the case of –

- (a) resolution instruments under section 12A(2) and supplemental resolution instruments under section 48U(2), and
- (b) instruments (made under any provision) that include provision made in reliance on section 44B or 48B (special bail-in provision).

(2) Regulations may –

- (a) require a compensation scheme order, a third party compensation order, or a bail-in compensation order to include provision of a specified kind or to specified effect;
- (b) make provision that is to be treated as forming part of any such order (whether (i) generally, (ii) only if applied, (iii) unless disapplied, or (iv) subject to express modification).

(3) Regulations may provide for whether compensation is to be paid, and if so what amount is to be paid, to be determined by reference to any factors or combination of factors; in particular, the regulations may provide for entitlement –

- (a) to be contingent upon the occurrence or non-occurrence of specified events;
- (b) to be determined wholly or partly by an independent valuer (within the meaning of sections 54 to 56) appointed in accordance with a compensation scheme order or bail-in compensation order.

(4) Regulations may make provision about payment including, in particular, provision for payments –

- (a) on account subject to terms and conditions;
- (b) by instalment.

(5) Regulations –

- (a) shall be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

New section 60A confers on the Treasury a power to make regulations concerning compensation arrangements in relation to resolution instruments that include provision made in reliance on new section 48B and instruments that include provision made in reliance on that section as a result of section 44B. In making the regulations, the Treasury must, in particular, have regard to the desirability of ensuring that pre-transfer shareholders and creditors do not receive less favourable treatment than they would have done had the bank entered into insolvency immediately before the first exercise of the relevant powers (see new section 60B). Subsection (5)(b) provides that regulations may not be made unless a draft has been laid and approved by resolution of each House of Parliament.

60B Principle of no less favourable treatment

- (1) In making regulations under section 60A the Treasury shall, in particular, have regard to the desirability of ensuring that pre-resolution shareholders and creditors of a bank do not receive less favourable treatment than they would have received had the bank entered insolvency immediately before the coming into effect of the initial instrument.
- (2) References in this section to the initial instrument or order are –
 - (a) in relation to compensation arrangements in the case of property transfer instruments under section 12(2), the first instrument to be made under that provision with respect to the bank;
 - (b) in relation to compensation arrangements in other cases, the first resolution instrument to be made under section 12A with respect to the bank.
- (3) The “pre-resolution shareholders and creditors” of a bank are the persons who held securities issued by the bank, or were creditors of the bank, immediately before the coming into effect of the initial instrument.
- (4) References in this section to insolvency include a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors, and (vii) a scheme of arrangement.”

New section 60B sets out the principle of no less favourable treatment (the “no shareholder and creditor worse off principle”) as articulated in subsection (1).

- (8) In section 61(1) (sources of compensation), –
 - (a) omit the “and” at the end of paragraph (c);
 - (b) after paragraph (c) insert –
 - “(ca) bail-in compensation orders,”;
 - (c) after paragraph (d) insert, “, and

(e) regulations under section 60A.”

Paragraph 6(8) makes consequential amendments to section 61 of the Act (sources of compensation) to take account of bail-in compensation orders (*new section 52A*) and regulations under *new section 60A*.

- (9) In section 62(1) (procedure), omit the “and” at the end of paragraph (b), and after that paragraph insert –
 “(ba) bail-in compensation orders, and”.

Paragraph 6(9) makes a consequential amendment to section 62 of the Act (procedure) such that the procedure applying to bail-in compensation orders is the same for other forms of compensation order under the Act.

Groups

- 7 (1) After section 81B insert –

“81BA Bail-in option

- (1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12A(2) if the following conditions are met.
- (2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.
- (3) Condition 2 is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in –
 - (a) the stability of the financial systems of the United Kingdom,
 - (b) the maintenance of public confidence in the stability of those systems,
 - (c) the protection of depositors, or
 - (d) the protection of any client assets that may be affected.
- (4) Condition 3 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (5) Before determining whether Condition 2 is met, and if so how to react, the Bank of England must consult –
 - (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (6) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.”

New section 81BA enables the Bank to exercise the bail-in option in relation to a banking group company where certain conditions are met. In particular, in addition to the conditions being satisfied in relation to the bank it must, in the opinion of the Bank, be necessary to take action at the level of the banking group company having regard to various public interests (see Condition 2). This is consistent with approach to the application of the Bank's other stabilisation options in relation to banking group companies (see section 81B of the Act (sale to a commercial purchaser and bridge bank)).

(2) After section 81C insert –

“81CA Section 81BA: supplemental

- (1) This section applies where the Bank of England has power under section 81BA to exercise a stabilisation power in respect of a banking group company.
- (2) The provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8A) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.
- (3) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2) (“the bank”) –
 - (a) the provisions in this Act relating to resolution instruments are to be read in accordance with the general rule in subsection (4), but
 - (b) that is subject to the modifications in subsection (5);

and provisions in this Act and any other enactment are to be read with any modifications that may be necessary as a result of paragraphs (a) and (b).”
- (4) The general rule is that the provisions in this Act relating to resolution instruments (including supplemental resolution instruments) are to be read (so far as the context permits) –
 - (a) as applying in relation to the bank as they apply in relation to the parent undertaking, and
 - (b) so, in particular, as allowing any provision that may be made in a resolution instrument in relation to the parent undertaking to be made (also or instead) in relation to the bank.
- (5) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2) (“the bank”) –
 - (a) section 41A (transfer of property subsequent to resolution instrument) applies as if the reference in subsection (2) to the bank were to the parent undertaking, the bank and any other bank which is or was in the same group;

- (b) section 48V (onward transfer) –
 - (i) applies as if the references in subsection (3) to “the bank” included the bank, the parent undertaking and any other bank which is or was in the same group, and with the omission of subsection (4) of that section, and
 - (ii) is to be read as permitting the transfer of securities only if they are held by (or for the benefit of) the parent undertaking or a subsidiary company of the parent undertaking;
 - (c) section 48W (reverse transfer) applies as if the references in subsections (3) and (4) to “the bank” included the bank, the parent undertaking and any other bank which is or was in the same group.
- (6) Where 48B (special bail-in provision) applies in accordance with subsection (4) (so that section 48B applies in relation to the bank mentioned in section 81BA(2) as it applies in relation to the parent undertaking mentioned in subsection (3)), the provision that may be made in accordance with section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(3)) includes provision replacing a liability (of any form) of that bank with a security (of any class or form) of the parent undertaking.
- (7) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2) –
 - (a) section 214B of the Financial Services and Markets Act 2000 (contribution to costs of special resolution regime) applies, and
 - (b) the reference in subsection (1)(b) of that section to the bank, and later references in that section, are treated as including references to any other bank which is a subsidiary undertaking of the parent undertaking (but not the parent undertaking itself)."

Paragraph 7(2) inserts a new section 81CA which specifies how the provisions relating to bail-in are to be interpreted where the Bank of England deploys the bail-in option at the level of the parent undertaking of the failing bank. In most cases the provisions are to be interpreted as applying to both the bank and the parent undertaking (see the “general rule” in subsection (4)). However, in certain cases, the powers are also exercisable in relation to any other banks in the group, for example, so as to permit the Bank to transfer the shares of any bank in the group to a commercial purchaser (see subsection (5)(b)). This is consistent with the approach in relation to the application of powers where the Treasury transfer the shares of a holding company of a failing bank into public ownership (see section 82 (temporary public ownership) and section 83 (supplemental) of the Act.

- (3) In section 81D (interpretation: “banking group company” etc) –
 - (a) in subsection (6), for “, 81C” substitute “to 81CA”;

- (b) in subsection (7) for “section 81B” substitute “sections 81B to 81CA”.

Paragraph 7(3) makes consequential amendments to section 81D (interpretation “banking group company” &c) in order to take account of the new sections inserted above.

Banks regulated by the Financial Conduct Authority

- 8 In section 83A (modifications of Part 1 as it applies to banks not regulated by the Prudential Regulation Authority), in the table in subsection (2) insert the following entries at the appropriate places –

“Section 8A	Subsection (3)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.”
“Section 41A	Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 44A	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.”
“Section 48H	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.”
Section 48U	Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 48V	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 48W	Subsection (9)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.”
“Section 81BA	Subsection (5)(b) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.”

Paragraph 8 makes consequential amendments to section 83A of the Act (modifications of Part) in order to take account of the new provisions which require the Bank of England to consult with the PRA and the FCA. The table ensures that, in certain cases, the Bank need only consult with the FCA (i.e. where the firm concerned is regulated only by the FCA and is not in a group with a PRA-authorised person) consistent with the other modifications in section 83A of the Act.

Recognised central counterparties

- 9 In section 89B (application of Part 1 of the Act to recognised central counterparties) –
- (a) in subsection (1), before paragraph (a) insert –
“(za) subsection (1A),”;
 - (a) after subsection (1) insert –
“(1A) The provisions relating to the third stabilisation option (bail-in) are to be disregarded in the application of this Part to recognised central counterparties.”

Paragraph 9 of the Schedule makes amendments in relation to section 89B of the Act (application to recognised central counterparties). Section 89B makes provision for the application of Part 1 of the Act to recognised central counterparties subject to specified modifications. This provision makes clear that the bail-in option is not available in relation to these institutions. New EU rules provide for extensive provision to enhance the financial resilience of central counterparties (see Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade depositaries). In the unlikely event of their failure, provision has already been put in place to ensure the Banks has, by virtue of sections 89B to 89G of the Act, powers in relation to central counterparties.

Insolvency proceedings

- 10 In section 120 (notice to Prudential Regulation Authority of preliminary steps to certain insolvency proceedings) –
- (a) in subsection (7)(b)(ii), after “Part 1” insert “(and Condition 5 has been met, if applicable)”;
 - (b) after subsection (8) insert –
“(8A) Condition 5 –
(a) applies only if a resolution instrument has been made under section 12A with respect to the bank in the 3 months ending with the date on which the PRA receives the notification under Condition 1, and

- (b) is that the Bank of England has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates going ahead.”
- (c) in subsection (10), omit the “and” at the end of paragraph (b), and after paragraph (c) insert “, and
 - (d) if Condition 5 applies, the Bank of England shall, within the period in Condition 3(a), inform the person who gave the notice whether or not it consents to the insolvency procedure to which the notice relates going ahead.”;
- (d) After subsection (10) insert –
 - “(11) References in this section to the insolvency procedure to which the notice relates are to the procedure for the determination, resolution or appointment in question (see subsections (1) to (4)).”

Paragraph 10 makes amendments to section 120 of the Act (notice to Prudential Regulation Authority of preliminary steps to certain insolvency proceedings). This ensures that an order placing a bank into an insolvency proceeding may not be made unless the Bank of England has provided its consent in the case specified in Condition 5. This is where, in the three months preceding the date on which the PRA receives a notice concerning the application for the insolvency proceeding, the Bank has made a resolution instrument in relation to the bank concerned under *new section 12A*. The effect is to ensure that actions can be taken to stabilise the bank under resolution without risk that they may be undermined by insolvency proceedings.

State aid

11 After section 256 insert –

“256A State aid

- (1) This section applies where –
 - (a) the Treasury are of the opinion that anything done, or proposed to be done, in connection with the exercise in relation to an institution of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies (“State aid”), and
 - (b) section 145A (power to direct bank administrator) does not apply.
- (2) The Treasury may, in writing, direct any bail-in administrator, or any director of the institution, to take specified action to enable the United Kingdom to pursue any of the purposes specified in subsection (3) of section 145A (read with subsection (9) of that section).
- (3) Before giving a direction under this section the Treasury must consult the person to whom the direction is to be given.

- (4) The person must comply with the direction within the period of time specified in the direction, or, if no period of time is specified, as soon as is reasonably practicable.
- (5) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988."

Paragraph 11 inserts a *new section 256A* into the Act in order to enable the Treasury to direct a bail-in administrator, or a director of a bank under resolution, to take specified action to enable the UK to comply with any obligations relating to State aid should aid be provided in the course of a resolution. This power mirrors the power available to the Treasury under section 145A of the Act (power to direct bank administrators) in relation to bank administrators.

Other amendments of the Act

12 (1) Section 1 (overview) is amended as follows.

(2) In subsection (2)(a) for "three" substitute "four".

(3) For subsection (3) substitute –

"(3) The four "stabilisation options" are –

- (a) transfer to a private sector purchaser (section 11),
- (b) transfer to a bridge bank (section 12),
- (c) the bail-in option (section 12A), and
- (d) transfer to temporary public ownership (section 13)."

(4) In subsection (4) –

- (a) for "three" substitute "four";
- (b) before paragraph (a) insert –

"(za) the resolution instrument powers (sections 12A(2) and 48U to 48W),";

- (c) in paragraph (b), after "33" insert ", 41A".

13 In section 13 (temporary public ownership), in subsection (1), for "third" substitute "fourth".

Paragraphs 12 and 13 make minor amendments to sections 1 (overview) and 13 (temporary public ownership) of the Act so as to take account of the bail-in option (which becomes the new "third" stabilisation option) (and the temporary public ownership stabilisation option becomes the "fourth" stabilisation option).

14 In section 17 (share transfers: effect) –

- (a) in subsection (1), after "order" insert, "or by a resolution instrument";
- (b) in subsection (5), after "order" insert "or a resolution instrument";

(c) in subsection (6), after “order” insert “or a resolution instrument”.

15 In section 18 (share transfers: continuity), after subsection (5) insert –

“(6) This section applies to a resolution instrument that provides for a transfer of securities as it applies to a share transfer instrument (and references to transfers, transferors and transferees are to be read accordingly).”

16 In section 21 (ancillary instruments: production, registration etc), after subsection (5) insert –

“(6) This section applies to a resolution instrument that provides for a transfer of securities as it applies to a share transfer instrument.”

Paragraphs 14 to 16 make minor amendments to sections 17 (share transfers: effect), 18 (share transfers: continuity), 21 (ancillary instruments: production, registration etc) so as to ensure that any resolution instruments that have the effect of transferring securities (see *new section 12A(4)*) may make provision of a kind referred to in those sections in the same way that any other instrument or order under Part 1 of the Act that has that effect may make such provision.

17 In section 44 (reverse property transfer) –

- (a) in subsection (2), after “more” insert “bridge bank”;
- (b) in subsection (3), after “more” insert “bridge bank”;
- (c) in subsection (4), for “A reverse” substitute “A bridge bank reverse”;
- (d) in subsection (4A) –

(i) after “make a” insert “bridge bank”, and
(ii) in paragraph (b), for “the reverse” substitute “the
bridge bank reverse”;

- (e) in subsection (5), for “a reverse” substitute “a bridge bank reverse”;
- (f) in subsection (6), for “a reverse” substitute “a bridge bank reverse”;
- (g) in subsection (7), for “a reverse” substitute “a bridge bank reverse”;
- (h) in the heading, for “Reverse” substitute “**Bridge bank: reverse**”.

Paragraph 17 makes minor amendment to section 44 of the Act (reverse property transfer) to make clear the circumstances in which that power is available. Reverse property transfers in the context of the bail-in option are dealt with by *new section 44A*.

18 In section 63 (general continuity obligation: property transfers), in subsection (1)(a), for “or 12(2)” substitute “, 12(2) or 41A(2)”.

19 In section 66 (general continuity obligation: share transfers) –

- (a) in subsection (1)(a), after “13(2)” insert “, or which falls within subsection (1A)”;
- (b) in subsection (1)(d)(i), after “11(2)(a)” insert “, or in a case falling within subsection (1A)”;
- (c) after subsection (1) insert –

- has
by
- “(1A) A bank falls within this subsection if a resolution instrument (or supplemental resolution instrument) changed the ownership of the bank (wholly or partly) providing for the transfer, cancellation or conversion from one form to another of securities issued by the bank (and the reference in subsection (1)(b) to “the transfer” includes such a cancellation or conversion).”
- 20 In section 67 (special continuity obligation: share transfers), in subsection (4)(c), after “order” insert “or resolution instrument”.
- 21 In section 68 (continuity obligations: onward share transfers), in subsection (1)(a), after “transferred by” insert “a resolution instrument under section 12A(2) or supplemental resolution instrument under section 48U(2) or a”.

Paragraphs 18 to 21 make minor modifications to sections 63 (general continuity obligation: property transfers), 66 (general continuity obligation: share transfers), 67 (special continuity obligation: share transfers) and 68 (continuity obligations: onward share transfers) so as to ensure that relevant instruments made in accordance with the bail-in option may make provision for continuity obligations between a bank under resolution and its group consistent with the arrangements in relation to other stabilisation options.

- 22 In section 71 (pensions), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b);
 - (b) after paragraph (c) insert “, and
 - (d) resolution instruments.”

Paragraph 22 makes minor amendments to section 71 of the Act (pensions) for the purposes of ensuring that a resolution instrument may make provision about the consequences of provision in an instrument for a pension scheme and about property, rights and liabilities of any pension scheme. This is consistent with the approach for other forms of instrument or order under Part 1 of the Act.

- 23 In section 72 (enforcement), in subsection (1) –
- (a) omit the “or” at the end of paragraph (b);
 - (b) after paragraph (c) insert “, and
 - (d) a resolution instrument.”

Paragraph 23 makes minor amendments to section 72 of the Act (enforcement) for the purposes of ensuring that the Treasury may make regulations under that section for the enforcement of obligations imposed in a resolution instrument.

- 24 In section 73 (disputes), in subsection (1) –
- (a) omit the “and” at the end of paragraph (b);
 - (b) after paragraph (c) insert “, and
 - (d) resolution instruments.”

Paragraph 24 makes minor amendments to section 73 of the Act (disputes) to extend that section to the new form of instrument (resolution instruments) created by this set of amendments to the Act. Section 73 provides that a relevant order or instrument under Part 1 of the Act (including a resolution instrument) may make provision about disputes and may, in particular, confer jurisdiction on a court or tribunal or may confer discretion on a specified person.

25 In section 74 (tax), in subsection (6), for “or 45” substitute “, 45, 48U or 48V”.

Paragraph 25 makes a minor amendment to section 74 of the Act (tax) to extend that section to certain new transfer powers conferred on the Bank of England (see *new sections 48U and 48V*) such that provision may be made in regulations regarding the fiscal consequences of provision made in an instrument or order (including resolution instruments and supplemental and onward transfer instruments).

26 After section 80 insert –

“80A Transfer for bail-in purposes: report

- (1) This section applies where the Bank of England makes one or more resolution instruments under section 12A(2) in respect of a bank.
- (2) The Bank of England must, on request by the Treasury, report to the Chancellor of the Exchequer about –
 - (a) the exercise of the power to make a resolution instrument under section 12A(2),
 - (b) the activities of the bank, and
 - (c) any other matters in relation to the bank that the Treasury may specify.
- (3) In relation to the matters in subsection (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.”

Paragraph 26 makes provision in relation to reporting requirements where the Bank of England makes one or more resolution instruments under *new section 12A(2)*. In particular, the Bank must report to the Treasury about the matters referred to in subsection (2). The Chancellor must lay in Parliament a copy of each report provided to the Treasury under subsection (2). These arrangements are consistent with the other reporting arrangements following an exercise by the Bank of its other stabilisation powers in relation to the commercial purchaser (section 11) and bridge bank (section 12) stabilisation options (see sections 79A and 80 of the Act) and are in addition to the reporting requirements in relation to an exercise of the power to make special bail-in provision (see *new sections 48E and 44C*).

27 In section 81A (accounting information to be included in reports under sections 80 and 81) –

- (a) in subsection (1), for “or 81” substitute “, 80A(2)(b) or 81”;
- (b) in the heading, for “**and 81**” substitute “, **80A(2)(b) and 81**”.

Paragraph 27 makes a consequential amendment to section 81A of the Act (accounting information to be included in reports under sections 80 and 81) in order to extend to reports under the *new section 80A*.

- 28 In section 85 (temporary public ownership), in subsection (1), for “third” substitute “fourth”.

Paragraph 28 makes a consequential amendment to section 85 of the Act (temporary public ownership) as the temporary public ownership stabilisation option is now the fourth stabilisation option (see the amendments to section 1 of the Act (overview) set out at paragraph 12).

- 29 In section 136 (overview), in the Table in subsection (3), for “152” substitute “152A”.

- 30 After section 152 insert –

“152A Property transfer from transferred institution

- (1) This section applies where the Bank of England –
 - (a) makes a resolution instrument that transfers securities issued by a bank (or a bank’s parent undertaking), in accordance with section 12A(2), and
 - (b) later makes a property transfer instrument from the bank or from another bank which is or was in the same group as the bank, in accordance with section 41A(2).
- (2) This Part applies to the transferor under the property transfer instrument made in accordance with section 41A(2) as to the transferor under a property transfer instrument made in accordance with section 12(2).
- (3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and any regulations –
 - (a) are to be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.”

Paragraphs 29 and 30 make amendments to Part 3 of the Act (bank administration procedure). The bank administration procedure is designed to support the operation of certain property transfers. *New section 152A* provides that the bank administration procedure applies in relation to any property transfers following the making of a resolution instrument (i.e. under *new section 41A*). Subsection (3) provides that the Treasury may make modifications in regulations as regards the application of the provisions in Part 3 of the Act in such cases. The power is analogous to the power to make modifications to bank administration following a property transfer from temporary public ownership (section 152(3) (property transfer from temporary public ownership)).

- 31 In section 220 (insolvency etc), after subsection (4) insert –

“(4A) The fact that ownership of an authorised bank is transferred or otherwise changed as a result of a resolution instrument (or an instrument treated as a resolution instrument) does not itself prevent the bank from relying on section 213.”

Paragraph 31 makes a minor amendment to section 220 of the Act (insolvency etc) for the purposes of ensuring that a change of ownership of a bank as a result of the application of the bail-in option has no effect as regards a bank’s permission (where relevant) to issue banknotes pursuant to Part 6 of the Act (banknotes: Scotland and Northern Ireland).

32 In section 259 (statutory instruments) –

- (a) in the Table in subsection (3), in Part 1, in the entry relating to section 60 for “Third party compensation” substitute “Third party compensation: partial property transfers”;
- (b) in the Table in subsection (3), in Part 1, at the appropriate places insert –

“48F	Power to amend definition of “excluded liabilities”	Draft affirmative resolution
48G	Insolvency treatment principles	Draft affirmative resolution
48P		
52A	Safeguarding of certain financial arrangements	Draft affirmative resolution
	Bail-in compensation orders	Draft affirmative resolution”

“Section 60A	Third party compensation: Instruments containing special bail-in provision	Draft affirmative resolution”;
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- (c) in the Table in subsection (3), in Part 3, at the appropriate places insert –

“Section 152A	Property transfer from transferred institution	Draft affirmative resolution”;
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- (d) in subsection (5), after paragraph (d) insert –

- “(da) section 60A (special resolution regime: instruments containing special bail-in provision),”;
 (e) in subsection (5), after paragraph (k) insert –
 “(ka) section 152A (bank administration: property transfer from transferred institution),”.

Paragraph 32 amends section 259 of the Act (statutory instruments) to take account of the new orders and regulations which may be made pursuant to provision introduced to the Act as a result of this set of amendments.

- 33 In section 261 (index of defined terms), in the Table, at the appropriate places insert –

“Resolution instrument	12A”
“Special bail-in provision	48B”
“Bail-in compensation order	49”.

Paragraph 33 amends the index of defined terms set out in section 261 of the Act to take account of certain new terms that are introduced as a result of this set of amendments to the Act, such as “resolution instrument”.

PART 2

MODIFICATION OF INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS 2011

- 34 (1) This section modifies the application of the Investment Bank Special Administration Regulations 2011 (S.I. 2011/245) (“the regulations”) in cases where a resolution instrument has been made under section 12A of the Banking Act 2009 with respect to the investment bank in the relevant 3-month period.
- (2) In subsection (1) “the relevant 3-month period” means the 3 months ending with the date on which the FCA receives the notification under Condition 1 in regulation 8 of the regulations.
- (3) In their application to those cases, the regulations have effect with the modifications in sub-paragraph (4); and any enactment that refers to the regulations is to be read accordingly.

- appropriate
- (4) In regulation 8 (in its application to those cases) –
 - (a) in paragraph (5)(c)(ii), for “appropriate regulator” substitute “Bank of England” and after “notice” insert “and the regulator”;
 - (b) in paragraph (6), omit sub-paragraph (a) (but continue to read “that” in sub-paragraph (b) as a reference to the insolvency procedure to which the notice relates);
 - (c) after paragraph (6) insert –
 - “(6A) Where the FCA receives notice under Condition 1, it must also inform the Bank of England of the contents of the notice.
 - (6B) Where the Bank of England receives notice under subsection (6A), it shall, within the period in Condition 3, inform the person who gave the notice and the appropriate regulator whether or not it consents to the insolvency procedure to which the notice relates going ahead.””

Paragraph 34 makes similar amendments to paragraph 10, but makes the necessary modifications to the Investment Bank Special Administration Regulations 2011 (i.e. in cases of investment firms, rather than banks which are covered by section 120 of the Act as amended by paragraph 10).