Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Bank Recovery and Resolution Order 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 1239

BANKS AND BANKING
FINANCIAL SERVICES AND MARKETS

The Bank Recovery and Resolution Order 2016

Made - - - -	*15th December 2016*
Coming into force - -	*16th December 2016*

The Treasury are designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to financial services.

The Treasury in exercise of the powers conferred by section 2(2) of that Act and sections 28 and 30 of the Small Business, Enterprise and Employment Act 2015 [F3] make the following Order.

A draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972.

F1 S.I. 2012/1759.

F2 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), an order may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

F3 2015 c.26.

PART 1

Citation and commencement

Citation and commencement

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

(2) This Order comes into force on the day after the day on which it is made.

PART 2

Amendments of the Banking Act 2009 and related provision

CHAPTER 1

Amendments of the Banking Act 2009

Introduction to amendments of the Banking Act 2009

2. The Banking Act 2009 [F4] is amended in accordance with this Part.

F4 2009 c.1.

Overview

3. In the Table in section 1(6), in the first column of the entry for sections 48B to 48W, for "48W" substitute " 48WA ".

Interpretation of Part 1 of the Banking Act 2009

4. In section 3 (interpretation: other expressions) [F5] after subsection (2) insert—

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

F5 Section 3 has been amended by section 96 of, and paragraphs 1 and 4 of Schedule 17 to, the Financial Services Act 2012 (c.21); and by S.I. 2014/3329.

Removal of impediments to the exercise of the stabilisation powers etc

5. In section 3A(8) (removal of impediments to the exercise of stabilisation powers etc) [F6], in the definition of "institution", after "a bank" insert " , building society (within the meaning of section 119 of the Building Societies Act 1986 [F7]) ".

F6 Section 3A was inserted by S.I. 2014/3329.
F7 1986 c 53.

Cases where mandatory write-down, conversion etc applies

6. In section 6A(6)(b) (cases where mandatory write-down, conversion etc applies) [F8] omit ", on the basis of the valuation carried out in accordance with section 6E,".

F8 Section 6A was inserted by S.I. 2014/3329.

General conditions

7. In section 7(5C) (general conditions) [F9]—

(a) in paragraph (b), for the words from "determined", in the first place it occurs, to the end substitute " is less than the amount of its liabilities, ";

(b) in paragraph (d), for "one or more of paragraphs (a) to (c)" substitute " paragraph (b) or (c) (or both) ".

F9 Subsection (5C) was substituted, with subsections (1) to (5H), by S.I. 2014/3329.

Private sector purchasers

8. After section 11 (private sector purchaser), insert—

"**11A Private sector purchaser: marketing**

(1) Subject to subsection (4), the Bank of England must make arrangements for marketing—

(a) any securities issued by the bank which the Bank intends to transfer by a share transfer instrument under section 11(2)(a), or

(b) any property, rights or liabilities of the bank which the Bank intends to transfer by a property transfer instrument under section 11(2)(b).

(2) The arrangements under subsection (1) must—

(a) be as transparent as possible having regard to the circumstances and the need to maintain financial stability;

(b) ensure there is no conflict of interest;

(c) take account of the need for the Bank to act quickly to address the situation where a bank is failing or likely to fail;

(d) aim at maximising, as far as possible, the sale price for the securities or property, rights or liabilities involved.

(3) The arrangements under subsection (1) must not—

(a) materially misrepresent the securities or property, rights or liabilities which the Bank intends to transfer;

(b) favour or discriminate between potential purchasers or grant an unfair advantage to a potential purchaser.

(4) Subsection (1) does not apply if the Bank of England considers that complying with that subsection would undermine one or more of the special resolution objectives.

(5) In particular subsection (1) does not apply if the Bank considers that—

(a) there is a material threat to financial stability in the United Kingdom or another EEA state arising from or aggravated by the failure or likely failure of the bank, and

(b) complying with subsection (1) would undermine the effectiveness of the first stabilisation option in addressing that threat or achieving the objective in section 4(4).

(7) Any public disclosure of the marketing which may be required under Article 17(1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse [F10] may be delayed in accordance with Article 17(4) or (5) of that Regulation.".

F10 OJ L 173, p. 1.

Onward transfers

9.—(1) After section 26 (supplemental instruments) [F11], insert—

"**26ZA Onward share transfer instruments**

(1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a bank, in accordance with section 12(2) ("the original instrument").

(2) The Bank of England may make one or more onward share transfer instruments.

(3) An onward share transfer instrument is a share transfer 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 share transfer 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 share transfer instrument or otherwise).

(4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.

(5) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).

(6) Before making an onward share transfer instrument the Bank must consult—

(a) the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Section 26 applies where the Bank of England has made an onward share transfer instrument."

(2) In the table in section 83A (modifications of Part), after the entry for section 26, insert—

"Section 26ZA	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person."

F11 Section 26 was amended by paragraphs 1 and 14 of Schedule 17 to the Financial Services Act 2012 (c.21), and by S.I. 2014/3329.

Reverse share transfers

10.—(1) In section 26A (private sector purchaser: reverse share transfer) [F12]—

(a) in subsection (1), after "11(2)" insert " or 12(2) ",

(b) in subsections (2) to (7), omit the words "private sector" wherever they appear,

(c) after subsection (2) insert—

"(2A) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the bank and held by a transferee under the onward share transfer instrument ("the onward transferee").",

(d) in subsection (3)—

(i) at the end of paragraph (a) insert " (where subsection (2) applies) ",

(ii) after paragraph (a) insert—

"(ab) provides for transfer to the original transferee (where subsection (2A) applies);",

(iii) in paragraph (b), after "paragraph (a)" insert " or (ab) ",

(e) in subsection (4), after "instrument" insert " under subsection (2) ",

(f) after subsection (4) insert—

"(4A) The Bank of England must not make a reverse share transfer instrument under subsection (2A) unless—

(a) the onward transferee is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Bank of England or the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the onward transferee.",

(g) in the heading—

(i) omit "Private sector purchaser:",

(ii) at the end, insert " instruments ".

(2) In the heading to section 29, insert at the end " orders ".

F12 Section 26A was inserted by section 97 of the Financial Services Act 2012 (c.21)..

Property transfer instruments: special bail-in provision

11.—(1) Section 44B (property transfer instruments: special bail-in provision) [F13] is amended as follows.

(2) For subsections (1) to (3) substitute—

"(1) A property transfer instrument within subsection (2) may make special bail-in provision with respect to the bank (see section 48B) [F14].

(2) The instruments referred to in subsection (1) are—

(a) a property transfer instrument under section 11(2), 12(2), 12ZA(3) [F15] or 41A(2) [F16],

(b) a supplemental property transfer instrument under section 42 in relation to which the original instrument is—

(i) a property transfer instrument under section 11(2), 12(2), 12ZA(3) or 41A(2),

(ii) an onward property transfer instrument under section 43(2), or