Draft Order laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

BANKS AND BANKING
FINANCIAL SERVICES AND MARKETS

The Bank Recovery and Resolution Order 2014

Made - - - -	***
Coming into force - -	*1st January 2015*

The Treasury are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

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

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

Citation and commencement

1.—(1) This Order may be cited as the Bank Recovery and Resolution Order 2014.

(2) This Order comes into force on 1st January 2015.

Introduction to amendments of the Banking Act

2. The Banking Act 2009(**3**) is amended in accordance with Articles 3 to 111.

Creation of Chapter 1 of Part 1

3. Sections 1 to 3 become Chapter 1 of Part 1, entitled "Introduction" (and, accordingly, the existing italic heading before section 1 is omitted).

(**1**) SI 2012/1759.

(**2**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and |Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under s. 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).

(**3**) 2009 c.1.

Overview of Part 1

4.—(1) Section 1 (overview)(**4**) is amended as follows.

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

(3) In subsection (3)—

(a) for "four" substitute "five", and

(b) after paragraph (b) insert—

"(ba) transfer to an asset management vehicle (section 12ZA),".

(4) In subsection (4)—

(a) for "four" substitute "five",

(b) after paragraph (b) insert—

"(c) the third country instrument powers (sections 89H to 89J).".

(5) In the Table in subsection (6), at the appropriate places insert—

"Sections 3A and 3B	Pre-resolution powers"
"Sections 6A to 6D	Mandatory write-down, conversion etc of capital instruments"
"Section 6E	Valuation before mandatory write-down or stabilisation action"
"Sections 48B to 48W	Bail-in option"
"Sections 48X and 48Y	Replacement of provisional valuation"
"Section 48Z	Termination rights etc"
"Section 62A	Independent valuer"
"Sections 62B to 62E	Resolution administrator"
"Sections 83ZA to 83Z2	Information and enforcement"
"Sections 89H to 89J	Third-country resolution actions"

Interpretation of Part 1 of the Banking Act 2009

5.—(1) Section 3 (interpretation: other expressions)(**5**) is amended as follows.

(2) The existing text becomes subsection (1) and, in that subsection, at the appropriate places, insert—

""Additional Tier 1 instruments" means capital instruments that meet the conditions laid down in Article 52(1) of the capital requirements regulation (or which qualify as Additional Tier 1 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),";

(**4**) Section 1 was amended by paragraph 12 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33), there are other amending instruments but none are relevant.

(**5**) 2009 c.1. Section 3 was amended by paragraph 4 of Schedule 17 to the Financial Services Act 2012 (c.21), section 96(2) of the Financial Services Act 2012 (c.21).

""the capital requirements regulation" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms,"(**6**);

""Common Equity Tier 1 instruments" means capital instruments that meet the conditions laid down in Article 28(1) to (4), 29(1) to (5) or 31(1) of the capital requirements regulation (or which qualify as Common Equity Tier 1 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),";

""critical functions", subject to subsection (2), means activities, services or operations the discontinuance of which is likely in one or more EEA states—

(a) to lead to the disruption of services that are essential to the economy, or

(b) to disrupt financial stability,

due to the size, market share, external and internal connectedness, complexity or cross-border activities of a bank or a group which includes a bank (with particular regard to the substitutability of those activities, services or operations),;";

""eligible liabilities", of an undertaking, means liabilities and capital instruments that—

(a) do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments, of the bank, and

(b) are not excluded liabilities listed in section 48B(8),";

""extraordinary public financial support" has the meaning given in Article 2.1(28) of the recovery and resolution directive;";

""own funds" means own funds as defined in Article 4.1(118) of the capital requirements regulation (read with Title I of Part Ten of that regulation),";

""own funds requirements" means the requirements laid down in Articles 92 to 98 of the capital requirements regulation (read with Title I of Part Ten of that regulation),";

""the recovery and resolution directive" means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms,"(**7**);

""relevant capital instruments" means Additional Tier 1 instruments and Tier 2 instruments,";

""Tier 2 instruments" means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of the capital requirements regulation (or which qualify as Tier 2 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),".

(3) After that subsection insert—

"(2) For the purposes of the definition of "critical functions" in subsection (1)—

(a) a delegated act adopted by virtue of Article 2(2) of the recovery and resolution directive applies as it applies for the purposes of the definition of "critical functions" in Article 2(2) of that directive, and

(b) "group" means a parent undertaking within the meaning given by Article 4.1(15)(a) of the capital requirements regulation and its subsidiaries within the meaning given by Article 4.1(16) of that regulation."

Power to address impediments to the resolution of institutions and their groups

6. In Part 1, after section 3 insert—

(**6**) OJ No L 176, 27.6.2013, p1. For Corrigenda, see OJ L321, 30.11.2013, p.6.
(**7**) OJ No L 173, 12.6.2014, p190.

"Chapter 2

Pre-resolution powers of the Bank of England

Removal of impediments to the exercise of stabilisation powers etc

3A.—(1) In this section "relevant person" means—

(a) an institution authorised for the purpose of the Financial Services and Markets Act 2000(**8**) by the PRA or FCA,

(b) a parent of such an institution which—

(i) is a financial holding company or a mixed financial holding company; and

(ii) is established in, or formed under the law of any part of, the United Kingdom, or

(c) a subsidiary of such an institution or of such a parent which—

(i) is a financial institution authorised by the PRA or FCA, and

(ii) is established in, or formed under the law of any part of, the United Kingdom.

(2) The Bank of England may give directions to a relevant person requiring that person to take measures which, in the opinion of the Bank of England, are required to address impediments to—

(a) the effective exercise of the stabilisation powers, or

(b) the winding up of that person (whether by use of the bank insolvency procedure provided for under Part 2 of this Act or otherwise).

(3) The power conferred by subsection (2) includes a power to direct a relevant person—

(a) to amend a group financial support agreement;

(b) where there is no such agreement, to review the need to enter into one;

(c) to enter into an agreement for the provision of services relating to the provision of critical functions;

(d) to limit that person's maximum individual and aggregate exposures (with "exposure" for this purpose having the meaning given in the capital requirements regulation);

(e) to produce information which is relevant to the exercise of the stabilisation powers, and to provide that information to the Bank of England;

(f) to dispose of specified assets;

(g) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;

(h) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;

(i) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions—

(i) to change its legal or operational structure, or

(ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;

(**8**) 2000 c.8.

(j) to establish a financial holding company which is not a subsidiary of an institution, another financial holding company or a mixed financial holding company.

(4) The Bank of England may give directions to a relevant person requiring that person—

(a) to maintain a minimum requirement for own funds and eligible liabilities expressed as a percentage of the total own funds and liabilities of the relevant person, and

(b) for the purposes of paragraph (a), to—

(i) maintain particular kinds of eligible liabilities, or

(ii) issue particular kinds of eligible liabilities or take other specified steps.

(5) Under subsection (4), the Bank may, in particular, direct a relevant person to endeavour to re-negotiate any eligible liability or relevant capital instruments issued by that person, for the purpose of ensuring that any decision by the Bank to write down or convert the liability or instrument concerned would have effect under the law which governs that liability or instrument.

(6) The Bank may give directions to a relevant MAHC requiring it to establish a separate financial holding company as a parent of an institution for the purpose of—

(a) facilitating the exercise of the stabilisation powers, or

(b) ensuring that the exercise of a stabilisation power does not have an adverse effect on the non-financial part of the group of the relevant MAHC.

(7) Directions under this section—

(a) must be in writing, and

(b) may be given with general effect or with respect to a particular relevant person or class of relevant persons.

(8) In this section—

"financial holding company" has the meaning given by Article 4.1(20) of the capital requirements regulation(**9**);

"financial institution" has the meaning given by Article 4.1(26) of the capital requirements regulation;

"group" has the meaning given in section 3(2)(b);

"group financial support agreement" has the meaning given by section 192JB(4) of the Financial Services and Markets Act 2000(**10**);

"institution" (except in the phrase "financial institution") means a bank or investment firm;

"mixed financial holding company" has the meaning given by Article 4.1(21) of the capital requirements regulation;

"parent" means a parent undertaking within the meaning given by section 1162 of the Companies Act 2006(**11**);

"relevant MAHC" means a mixed activity holding company (within the meaning given by Article 4.1(22) of the capital requirements regulation) which has at least one subsidiary which—

(a) is an institution, and

(**9**) OJ No L 176, 27.6.2013, p1.

(**10**) c.8. Section 192JB was inserted by the Financial Services (Banking Reform) Act 2013 (c.33), s.133(1), and is amended by article 119 of this Order. The reference to subsection (4) is to that subsection as substituted by article 119(5) of this Order.

(**11**) 2006 c.46.