

2014 No. 3344

FINANCIAL SERVICES AND MARKETS

BUILDING SOCIETIES

The Building Societies (Bail-in) Order 2014

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| <i>Made</i> - - - - | <i>18th December 2014</i> |
| <i>Laid before Parliament</i> | <i>19th December 2014</i> |
| <i>Coming into force</i> - - | <i>10th January 2015</i> |

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

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 17(2) to (4) and 142(3) of the Financial Services (Banking Reform) Act 2013(c), make the following Order:

Citation and commencement

1. This Order may be cited as the Building Societies (Bail-in) Order 2014 and comes into force on 10th January 2015.

Amendments to Part 1 of the Banking Act 2009

2.—(1) Part 1 of the Banking Act 2009(d) is amended as follows.

(2) In section 84(e) (application of Part 1 to building societies: general), for the existing text before the Table substitute—

“This Part applies to building societies (within the meaning of section 119 of the Building Societies Act 1986(f)) as it applies to banks, subject to—

- (a) the provisions of the Table, and
- (b) sections 84A to 84D (which relate to the fourth stabilisation option).”.

(a) S.I. 2012/1759.

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

(c) 2013 c.33.

(d) 2009 c.1.

(e) Section 84 was amended by section 21 of the Financial Services Act 2010 (c.28) and S.I. 2014/3329.

(f) 1986 c.53. There are amendments to section 119, but none is relevant.

(3) After section 84 insert—

“Bail-in option: building societies

84A.—(1) This section applies for the purpose of the exercise of the fourth stabilisation option (bail-in) in relation to a building society.

(2) Subsection (2A) of section 12A(a) (bail-in option) is to be read as if the provision referred to included provision under this section.

(3) Subsection (1) of section 12AA(b) (bail-in: sequence of write-down and conversion of capital instruments and liabilities) is to be read as if the powers referred to included the powers conferred by this section, sections 84B and 84C and the provisions modified by section 84D.

(4) A resolution instrument with respect to a building society may make—

- (a) provision of the kind mentioned in subsection (5);
- (b) other provision for the purposes of, or in connection with, provision of the kind mentioned in subsection (5) made by that or another instrument.

(5) A resolution instrument may—

- (a) convert the building society into a company, or
- (b) transfer all the property, rights and liabilities of the building society to a company.

(6) In the following provisions of this section, “the successor company”, in relation to a building society, means the company into which the building society is converted, or to which the property, rights and liabilities of the building society are transferred, as a result of provision made under subsection (5).

(7) The provision that may be made under subsection (4)(b) includes—

- (a) provision cancelling shares in the building society;
- (b) provision cancelling membership rights in the building society;
- (c) provision converting shares in the building society into deposits with the successor company;
- (d) provision conferring rights and imposing liabilities in place of cancelled shares and membership rights;
- (e) provision requiring the FCA to cancel the building society’s registration under the Building Societies Act 1986 at a time specified in or determined in accordance with the instrument;
- (f) provision that any person approved for the purposes of Part 5 of the Financial Services and Markets Act 2000(c) (performance of regulated activities) in relation to the building society immediately before the resolution instrument is made continues to be approved for those purposes in relation to the successor company (but without affecting the powers of the FCA or PRA to vary or withdraw an approval);
- (g) provision which could be included in a property transfer instrument by virtue of—
 - (i) section 34(7) and (8)(d) (property held on trust), or
 - (ii) section 36(1) to (5) (continuity).

(8) The provision that may be made under subsection (4)(b) also includes—

(a) Section 12A was inserted by paragraph 2 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33) and amended by S.I. 2014/3329.
(b) Section 12AA was inserted by S.I. 2014/3329.
(c) 2000 c.8.
(d) Section 34(7) was amended, and section 34(8) was inserted, by section 98 of the Financial Services Act 2012 (c.21).

- (a) in a case where the resolution instrument makes provision under subsection (5)(a), provision for the successor company on its incorporation to be wholly owned by a company specified in the instrument;
- (b) in a case where the resolution instrument makes provision under subsection (5)(b) transferring the property, rights and liabilities of the building society to a company which is wholly owned by another company, provision relating to that other company;
- (c) in either case, provision—
 - (i) for the transfer of liabilities from the successor company to the other company mentioned in paragraph (a) or (b) (“the parent undertaking”), and for the creation of corresponding liabilities of the successor company to the parent undertaking;
 - (ii) replacing a liability (of any form) of the building society or the successor company with a liability or security (of any form or class) of the parent undertaking.

(9) A company may not be specified under subsection (8)(a) unless it is (or is to be) wholly owned by—

- (a) the Bank of England,
- (b) a resolution administrator appointed under section 62B(1)(a), or
- (c) a person nominated by the Bank of England.

(10) Where a resolution instrument makes provision under subsection (5), section 37 (licences) applies as if the references to a property transfer instrument were references to the resolution instrument.

(11) A resolution instrument may provide for different provision made under this section by the instrument to take effect at different times.

(12) In this section—

“company” means a company as defined in section 1(1) of the Companies Act 2006(b) which is a public company limited by shares;

“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.

Further provision: conversion of building society into company

84B.—(1) This section applies where a resolution instrument makes provision under section 84A(5)(a).

(2) The resolution instrument must—

- (a) state the company’s proposed name;
- (b) set out the terms of the memorandum of association of the company;
- (c) set out the terms of the articles of association of the company (to the extent that these are not to be supplied by the default application of model articles: see section 20 of the Companies Act 2006);
- (d) contain the statements and information required to be included in or to accompany an application for a certificate under section 761 of the Companies Act 2006 (public company: requirement as to minimum share capital).

(3) The conversion into the successor company takes effect on the registration of the company under the Companies Act 2006.

(a) Section 62B was inserted by S.I. 2014/3329.

(b) 2006 c.46.

(4) The successor company is to be treated as the same person in law as the building society.

(5) The documents required by section 9 of the Companies Act 2006 (registration documents) to be delivered to the registrar (within the meaning of that Act) include a copy of the resolution instrument.

(6) In section 13 of the Companies Act 2006 (statement of compliance) and section 14 of that Act (registration), the reference to the requirements of that Act is to be read as a reference to the requirements of that Act as modified by this section.

(7) If the resolution instrument complies with subsection (2)(d), an application for a trading certificate is to be taken to have been made in accordance with section 762 of the Companies Act 2006 (procedure for obtaining trading certificate).

(8) In this section—

“company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares;

“the successor company”, in relation to a building society, means the company into which the building society is converted as a result of provision made under section 84A(5)(a).

Further provision: transfer of business of building society to company

84C.—(1) A transfer under section 84A(5)(b) must be to a company which immediately before the transfer is wholly owned by—

- (a) the Bank of England,
- (b) a resolution administrator appointed under section 62B(1),
- (c) a person nominated by the Bank of England, or
- (d) a company which is itself wholly owned by a person within paragraphs (a) to (c).

(2) Where a resolution instrument has made provision under section 84A(5)(b), the building society is dissolved at such time as may be specified in or determined in accordance with the instrument.

(3) In this section, “company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares.

Bail-in option: modifications of this Act and other legislation

84D.—(1) Where a resolution instrument makes provision under section 84A(5) with respect to a building society, the exercise of the fourth stabilisation option involves the making (in that or a subsequent resolution instrument) of provision or proposals of any kind mentioned in section 12A(3) to (6)—

- (a) with respect to the successor company, or
- (b) where provision made under section 84A includes provision under subsection (8) of that section, with respect to the successor company or its specified parent undertaking.

(2) For the purpose of the making of provision or proposals as mentioned in subsection (1)(a) or (b)—

- (a) the Table in section 84 does not apply, and
- (b) the provisions in the first column of the following Table apply—
 - (i) in relation to the successor company, or
 - (ii) in a case within subsection (1)(b), in relation to the successor company or its specified parent undertaking,

as they apply in relation to a bank, but subject to the modifications in the third column of the Table.

Table

| <i>Section</i> | <i>Topic</i> | <i>Modification</i> |
|----------------|---|--|
| Section 12A | Bail-in option | <p>Treat references in subsection (4) to securities issued by a specified bank as references to securities issued by the building society, or by the successor company or its specified parent undertaking.</p> <p>For subsection (8) substitute—</p> <p>“(8) Subsection (8ZA) applies where—</p> <p>(a) the Bank of England has exercised the power in subsection (4) to transfer securities to a resolution administrator; or</p> <p>(b) by virtue of section 84A, 84B or 84C securities of a successor company or a specified parent undertaking are held by—</p> <p>(i) the resolution administrator,</p> <p>(ii) the Bank of England,</p> <p>(iii) a subscriber to the memorandum of association of a company into which the building society is converted in accordance with section 84B, or</p> <p>(iv) a person nominated for the purposes of section 84C(1)(c).</p> <p>(8ZA) The Bank of England must exercise its functions under this Part (see, in particular, section 48V) with a view to ensuring that any securities—</p> <p>(a) held by a person in the capacity of a resolution administrator,</p> <p>(b) held by the Bank of England,</p> <p>(c) held by a person as a result of being a subscriber to the memorandum of association of a company into which the building society is converted in accordance with section 84B,</p> <p>(d) held by a person as a result of being nominated by the Bank of England for the purposes of section 84C(1)(c),</p> <p>are so held only for so long as is, in the Bank of England’s opinion, appropriate having regard to the special resolution objectives.”.</p> |
| Section 12AA | Bail-in: sequence of write-down and conversion of capital instruments and liabilities | <p>In relation to the result to be achieved, treat any reference to an instrument or liability of the bank as a reference to an instrument or liability of the building society immediately before the making of the first resolution instrument under section 84A in respect of it.</p> |

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| Section 17(a) | Effect of transfer | |
| Section 18 | Continuity | |
| Section 41A(b), and any other provision so far as relating to property transfer instruments under section 41A(2) | Transfer of property subsequent to resolution instrument | |
| Section 48B(c) | Special bail-in provision | The provision that may be made in accordance with section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes provision replacing a liability (of any form) of the building society or its successor company with a liability of the successor company's specified parent undertaking. |
| Section 48C | Meaning of "protected deposit" | |
| Section 48D | General interpretation of section 48B | |
| Section 48E | Report on special bail-in provision | |
| Section 48F | Power to amend definition of "excluded liabilities" | |
| Section 48G | Priority between creditors | Treat the reference in subsection (1) to the treatment of liabilities on an insolvency as a reference to the treatment of liabilities on the insolvency of a building society. |
| Section 48H | Business reorganisation plans | Treat the reference in subsection (2)(a) to the bank as a reference to the building society. |
| Section 48L | Powers in relation to securities | Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking. |
| Section 48N | Directors and senior managers | Treat references to a director or senior manager of a specified bank as references to a director or senior manager of the building society or of the successor company or its specified parent undertaking. |
| Section 48O | Directions in or under resolution instrument | Treat references to a director of the bank as references to a director of the building society or of the successor company or its specified parent undertaking. |

- (a) Sections 17 and 18 were amended by paragraphs 14 and 15 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and S.I. 2014/3329.
- (b) Section 41A was inserted by paragraph 5 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by S.I. 2014/3329.
- (c) Sections 48B to 48W were inserted by paragraph 4 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by S.I. 2014/3329.

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| Section 48P | Orders for safeguarding certain financial arrangements | |
| Section 48Q | Continuity | |
| Section 48R | Execution and registration of instruments etc. | |
| Section 48S | Resolution instruments: general matters | |
| Section 48T | Resolution instruments: procedure | On the first occasion on which the power to make a resolution instrument is exercised in relation to a building society, treat the first reference in subsection (1) to a bank as a reference to the building society. |
| Section 48U | Supplemental resolution instruments | Treat the reference in subsection (1) to a bank as a reference to the building society. |
| Section 48V | Onward transfer | Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking. |
| Section 48W | Reverse transfer | Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking. |
| Section 48X(a) | Replacement of Bank's provisional valuation | Treat the first reference in subsection (2)(a) to the bank as a reference to the building society. |
| Section 48Y | Consequences of a replacement valuation | Treat the first reference in subsection (1) to the bank as a reference to the building society. |
| Section 48Z | Termination rights etc. | This section applies to contracts and other agreements entered into by the building society or by the successor company or its specified parent undertaking. |
| Section 49(b) | Compensation orders | Treat references to transferors as including references to the shareholding members of the building society. |
| Section 52A(c) | Compensation orders: bail-in option | |
| Section 53(d) | Onward and reverse transfers etc. | |
| Section 54(e) | Independent valuer: compensation scheme order or bail-in compensation order | |

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- (a) Sections 48X to 48Z were inserted by S.I. 2014/3329.
(b) Section 49 was amended by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(c) Section 52A was inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
(d) Section 53 was amended by section 97 of the Financial Services Act 2012, paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and S.I. 2014/3329.
(e) Section 54 was amended by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and S.I. 2014/3329.

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| Section 55(a) | Independent valuer: supplemental | |
| Section 56(b) | Independent valuer: money | |
| Section 57(c) | Valuation principles | Treat the reference in subsection (4) to a bank as a reference to the building society. Treat the reference in subsection (5) to a transferor as including a reference to a shareholding member of the building society. |
| Section 58(d) | Resolution fund | |
| Section 59 | Third party compensation: discretionary provision | Treat the reference in subsection (1) to a transferor as including a reference to a shareholding member of the building society. |
| Section 60A(e) | Further mandatory provision: bail-in provision | |
| Section 60B | Principle of no less favourable treatment | Treat references to pre-resolution shareholders and creditors of a bank as references to persons who were shareholding members of, or creditors of, the building society, immediately before the coming into effect of the first resolution instrument to be made in respect of the building society. Treat references to the bank as references to the building society. |
| Section 61(f) | Sources of compensation | |
| Section 62(g) | Procedure | |
| Section 62A(h) | Independent valuer: sections 6E and 48X | |
| Sections 62B to 62E | Resolution administrator | |

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- (a) Section 55 was amended by section 21 of the Financial Services Act 2010.
- (b) Section 56 was amended by section 21 of the Financial Services Act 2010 and paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- (c) Section 57 was amended by the paragraph 26 of Schedule 17 to the Financial Services Act 2012 and paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- (d) Section 58 was amended by S.I. 2014/3329.
- (e) Sections 60A and 60B were inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013. Section 60B was amended by S.I. 2014/3329.
- (f) Section 61 was amended by paragraph 41 of Schedule 2 to the Financial Services Act 2010 and paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- (g) Section 62 was amended by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- (h) Sections 62A to 62E were inserted by S.I. 2014/3329.

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| Sections 63, 64 and 66 to 70(a) where they apply in relation to a resolution instrument or in relation to a property transfer instrument under section 41A(2) | Continuity obligations | Treat references in sections 66(1A) and 68(1)(a) to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking. |
| Section 70A(b) | Suspension of obligations | |
| Section 70B | Restriction of security interests | |
| Section 70C | Suspension of termination rights | |
| Section 70D | Suspension: general provisions | |
| Section 71(c) | Pensions | This section applies in relation to a pension scheme of the building society or of the successor company. |
| Section 73 | Disputes | |
| Section 74 | Tax | This section enables regulations to make provision in relation to the building society, the successor company or its specified parent undertaking. |
| Section 75(d) | Power to change law | Treat the reference in subsection (5)(b) to building societies as including a reference to successor companies and their specified parent undertakings. |
| Section 78A(e) | Pre-conditions for financial assistance: duty of Bank to give information | |
| Section 80A(f) | Transfer for bail-in purposes: report | Treat the reference in subsection (1) to a bank as a reference to the building society. |
| Section 81A(g) | Accounting information to be included in reports under sections 80, 80A(2)(b) and 81 | |
| Sections 83ZA to 83Z2(h) | Information, investigation and enforcement | |
| Section 89K(i) | Insolvency proceedings | Treat the references in paragraphs (a) and (b) of subsection (1) to a relevant firm as references to the building society. |

- (a) Sections 63, 66, 67 and 68 were amended by paragraphs 17, 18, 19 and 20 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and sections 63, 64, 66, 67, 68 and 70 were amended by S.I. 2014/3329.
- (b) Sections 70A to 70D were inserted by S.I. 2014/3329.
- (c) Sections 71, 73 and 74 were amended by paragraphs 21, 23 and 24 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and S.I. 2014/3329.
- (d) Section 75 was amended by sections 101 and 102 of the Financial Services Act 2012 and S.I. 2013/504.
- (e) Section 78A was inserted by S.I. 2014/3329.
- (f) Section 80A was inserted by paragraph 25 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
- (g) Section 81A was inserted by section 99 of the Financial Services Act 2012 and amended by paragraph 26 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and S.I. 2014/3329.
- (h) Sections 83ZA to 83ZY were inserted by S.I. 2014/3329.
- (i) Sections 89K, 89L and 89M were inserted by S.I. 2014/3329.

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| Section 89L | Restrictions on disclosure of confidential information | |
| Section 89M | Giving of notices, documents etc. under Part 1 | |

(3) Any statutory instrument made under a provision specified in the first column of the Table in subsection (2) applies—

- (a) to the successor company, or
- (b) in a case within subsection (1)(b), to the successor company or the specified parent undertaking,

as it applies in relation to a bank, but subject to modifications corresponding to those applying to the provision under which it is made and as if references to a provision modified by subsection (2) or (5) were references to that provision as so modified.

(4) Subsection (3) does not apply where the instrument—

- (a) states that it does not apply, or
- (b) makes express provision about building societies or their successor companies.

(5) Where a resolution instrument makes provision under section 84A in respect of a building society—

- (a) section 81BA(a) (groups: bail-in option) applies with the following modifications—
 - (i) references to a banking group company are to be read as references to a subsidiary of the building society, and
 - (ii) the power in subsection (1) of that section is to be exercised only where the Bank of England has exercised the stabilisation power in accordance with section 12A(2) in respect of the parent building society;
- (b) section 81CA applies as if references to a banking group company were references to a subsidiary of the building society or of the successor company; and
- (c) section 81D(b) (interpretation: “banking group company”) does not apply.

(6) Sections 97 to 102D of the Building Societies Act 1986(c) (transfer of business of building society to commercial company) do not apply where a resolution instrument makes provision under section 84A.

(7) Section 103 of the Building Societies Act 1986(d) (cancellation of registration) does not apply where a resolution instrument makes provision under section 84A(7)(e).

(8) In this section—

“company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares;

“specified parent undertaking” means a company by which in accordance with provision falling within paragraph (a) or (b) of section 84A(8) the successor company is (or is to be) wholly owned;

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- (a) Sections 81BA and 81CA were inserted by paragraph 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 and amended by S.I. 2014/3329.
 - (b) Section 81D was inserted by section 100 of the Financial Services Act 2012 and amended by paragraph 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.
 - (c) 1986 c.53, amended by section 1 of the Building Societies (Joint Account Holders) Act 1995 (c.5); sections 30, 31, 40 and 41 of and Schedules 7 and 9 to the Building Societies Act 1997 (c.32); section 1 of the Building Societies (Distributions) Act 1997 (c.41); Schedule 6 to the Mental Capacity Act 2005 (c.9); Schedule 16 to the Companies Act 2006; Schedule 9 to the Financial Services (Banking Reform) Act 2013; and S.I. 2001/2617, 2001/3649, 2007/2194, 2008/1519, 2009/1941 and 2013/496.
 - (d) Section 103 was amended by S.I. 2001/2617, 2009/805 and 2013/496.

“the successor company”, in relation to a building society, means the company into which the building society is converted, or to which the property, rights and liabilities of the building society are transferred, as a result of provision made under section 84A(5).”.

Charges

3.—(1) Where—

- (a) a resolution instrument makes provision under section 84A(5) of the Banking Act 2009 in relation to a building society;
- (b) by virtue of the conversion under section 84A(5)(a) of the Banking Act 2009 or the transfer under section 84A(5)(b) of that Act the successor company acquires property or undertaking which is subject to a charge; and
- (c) the charge is of a kind which would, if it had been created by the company after the acquisition of the property or undertaking, have been capable of being registered under section 859A of the Companies Act 2006^(a) (charges created by a company),

section 859C(2) and (3) of the Companies Act 2006 (charges existing on property or undertaking acquired) applies in relation to that charge.

(2) Despite regulation 6 of the Companies Act 2006 (Amendment of Part 25) Regulations 2013^(b), paragraph (1) applies regardless of the date of creation of the charge.

(3) In relation to a charge to which section 859C(2) and (3) of the Companies Act 2006 applies because of paragraph (1), Part 25 of the Companies Act 2006 has effect as if—

- (a) for sub-paragraphs (i) and (ii) of section 859K(2)(b)(c) there were substituted the words “the unique reference code allocated to the charge”;
- (b) for sub-paragraphs (i) and (ii) of section 859K(3)(b) there were substituted the words “the unique reference code allocated to the charge”;
- (c) section 859K(4) were omitted;
- (d) for section 859L(4)(b) there were substituted—
 - “(b) the registered name and number of the successor company that acquired the property or undertaking subject to the charge.”;
- (e) section 859L(4)(c) were omitted;
- (f) for section 859L(4)(d) there were substituted—
 - “(d) the unique reference code allocated to the charge.”;
- (g) in section 859O(2) the reference to the company that created the charge were a reference to the successor company that acquired the property or undertaking subject to the charge;
- (h) section 859O(3)(b) were omitted;
- (i) for section 859O(3)(c) there were substituted—
 - “(c) the unique reference code allocated to the charge.”.

(4) In this article—

“resolution instrument” has the meaning given by section 12A of the Banking Act 2009;

“successor company” has the meaning given by section 84D(8) of the Banking Act 2009.

^(a) Sections 859A and 859C were inserted by S.I. 2013/600.

^(b) S.I. 2013/600.

^(c) Sections 859K, 859L and 859O were inserted by S.I. 2013/6000.

Amendment to Building Societies Act 1986

4.—(1) Section 90D of the Building Societies Act 1986(a) (notice to the FCA and the PRA) is amended as follows.

(2) In subsection (5) after “FCA” insert “, the Bank of England”.

(3) In subsection (7)—

(a) in paragraph (a), for “2 weeks” substitute “7 days”;

(b) for paragraph (b) substitute—

“(b) both—

(i) the Bank of England has informed the person who gave the notice that it does not intend to exercise a stabilisation power under Part 1 of the Banking Act 2009 in relation to the building society (and condition 5 has been met, if applicable), and

(ii) each of the PRA and the Bank of England has informed the person who gave the notice that it does not intend to apply for a building society insolvency order (under section 95 of the Banking Act 2009(b) as applied by section 90C(c)).”.

(4) After subsection (8) insert—

“(8A) Condition 5—

(a) applies only if a resolution instrument has been made under section 12A of the Banking Act 2009 with respect to the building society in the three months ending with the date on which the Bank of England 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.”.

(5) In subsection (10)—

(a) for “the PRA receives notice under Condition 1” substitute “notice has been given under Condition 1”;

(b) omit paragraph (a);

(c) omit the “and” at the end of paragraph (b);

(d) after paragraph (c) insert—

“; and

(d) if Condition 5 applies, the Bank of England must, 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.”.

(6) In subsection (11)—

(a) for “the FCA receives notice under Condition 1” substitute “notice has been received under Condition 1”;

(b) omit paragraph (a);

(c) after paragraph (b) insert—

“; and

(c) if Condition 5 applies, the Bank of England must, 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.”.

(a) Section 90D was inserted by S.I. 2009/805 and amended by S.I. 2013/496.

(b) Section 95 was amended by paragraph 32 of Schedule 17 to the Financial Services Act 2012.

(c) Section 90C was inserted by S.I. 2009/805.

(7) After subsection (11) insert—

“(12) 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)).”.

Amendment to the Building Societies (Insolvency and Special Administration) Order 2009

5. In Schedule 1 to the Building Societies (Insolvency and Special Administration) Order 2009(a) (modified application of Parts 2 and 3 of the Banking Act 2009 to building societies), after paragraph 32 insert—

“Property transfer from transferred institution

32ZA. Where a resolution instrument makes provision under section 84A of the 2009 Act in respect of a building society, in section 152A of the 2009 Act(b) (property transfer from transferred institution)—

- (a) the first reference in paragraphs (a) and (b) of subsection (1) to a bank (which would otherwise apply as mentioned in section 90C(2)(a) of the 1986 Act) is to be read as a reference—
 - (i) to the successor company (defined in section 84D(8) of the 2009 Act), or
 - (ii) in a case within section 84D(1)(b) of the 2009 Act, to the successor company or its specified parent undertaking (defined in section 84D(8) of the 2009 Act);
- (b) in paragraph (a) of subsection (1) ignore the reference to a bank’s parent undertaking;
- (c) in paragraph (b) of subsection (1) ignore “or from another a bank which is or was in the same group as the bank”; and
- (d) the reference in subsection (1) to sections 12A(2) and 41A(2) of the 2009 Act and the reference in subsection (2) to section 41A(2) is to those section as applied and modified by section 84D(2) of the 2009 Act.”.

Amendment to the Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014

6. In regulation 12 of the Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014(c) (application to building societies), after paragraph (2) insert—

“(3) Where a resolution instrument makes provision under section 84A of the Act with respect to a building society, these Regulations apply—

- (a) to the successor company, or
- (b) where provision made under section 84A includes provision under subsection (8) of that section, to the successor company and to its specified parent undertaking,

as they apply to banks, subject to the modifications specified in paragraphs (2)(a), (b) and (d) and (4).

(4) The modification specified in this paragraph is that references in these Regulations to sections of the Act are to be read as to those sections as applied or as applied and modified by virtue of section 84D of the Act.

(5) In this regulation, “successor company” and “specified parent undertaking” have the meanings given by section 84D(8) of the Act.”.

(a) S.I. 2009/805.

(b) Section 152A was inserted by paragraph 29 of Schedule 2 to the Financial Services (Banking Reform) Act 2013.

(c) S.I. 2014/3330.

Review

7.—(1) The Treasury must from time to time—

- (a) carry out a review of articles 2 to 6,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how 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^(a) (which is partially implemented by means of articles 2 to 6) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by articles 2 to 6,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published before the end of the period of five years beginning with the day on which this Order comes into force.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

Mark Lancaster
Gavin Barwell

18th December 2014

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies Part 1 of the Banking Act 2009 (c.1) (special resolution regime) in consequence of the application to building societies of the bail-in stabilisation option introduced by the Financial Services (Banking Reform) Act 2013 (c.33) (see in particular sections 12A and 48B to 48W of the Banking Act 2009). Part 1 of the Banking Act 2009 was amended by the Bank Recovery and Resolution Order 2014 (S.I. 2014/3329) which transposes in part 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 (OJ No. L 173 (12.6.2014), p.190). This Order also implements in part that Directive. A transposition note setting out how that Directive is transposed into UK law is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk.

Article 2 inserts new sections 84A to 84D into the Banking Act 2009.

Section 84A gives the Bank of England power, for the purpose of exercising the bail-in option, in a resolution instrument to convert the building society into a public limited company or to transfer the business of the society to such a company. Although the Order does not make provision to this effect, the successor company would need to be authorised as a bank under Part 4A of the

(a) OJ No. L 173 (12.6.2014), p.190.

Financial Services and Markets Act 2000 (c.8). Section 84A(7) to (11) gives examples of the provision such a resolution instrument may include. It may, for example—

- cancel shares and membership rights in the society,
- convert shares in the society into deposits in the successor company,
- confer rights and impose liabilities in place of cancelled shares and membership rights,
- provide for the successor company to be wholly owned by a parent undertaking which is itself wholly owned by the Bank of England or its nominee or the resolution administrator appointed under section 62B of the Banking Act 2009.

Section 84B contains further provision about the conversion of a building society into a company, and section 84C contains further provision about the transfer of the business of a society to a company which must be owned by the Bank of England, its nominee, the resolution administrator or a parent undertaking referred to in section 84A(8).

Section 84D(1) enables the bail-in option to be exercised in relation to the successor company of a building society demutualised under section 84A (or the parent undertaking, if it has a parent undertaking). Section 84D(2) modifies the application of Part 1 of the Banking Act 2009 for cases where a resolution instrument contains provision under section 84A to demutualise a building society. Generally the bail-in powers are to be exercised in relation to the successor company (or its parent undertaking, as appropriate). However some further modifications are included, for example to secure that for the purposes of compensation, the principle of no less favourable treatment in section 60B of the Banking Act 2009 is that the shareholding members of the society and creditors of the society do not receive less favourable treatment than would have been the case had the society entered insolvency. Section 84D also disapplies the transfer of business regime and provision about cancellation of registration in the Building Societies Act 1986 (c.53).

Where on demutualisation the successor company acquires assets subject to a charge, article 3 enables that charge (whenever created) to be registered under Part 25 of the Companies Act 2006 (c.46).

Article 4 makes a consequential amendment to section 90D of the Building Societies Act 1986 (notice to regulators of insolvency process), article 5 makes consequential amendments to Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805) and article 6 makes consequential amendments to the Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014 (S.I. 2014/3330).

Article 7 requires the Treasury to review the operation and effect of this Order and publish a report within five years after it comes into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Order should remain as it is, or be revoked or amended. A further instrument would be needed to revoke or amend the Order.

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Order on www.legislation.gov.uk.

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