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STATUTORY INSTRUMENTS

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**2014 No. 3329**

**The Bank Recovery and Resolution Order 2014**

**Cases where mandatory write-down, conversion etc applies: banking group companies**

**89.** Before section 81B (but after the heading “Groups”) insert—

**“Cases where mandatory write-down, conversion etc applies: banking group companies**

**81AA.**—(1) Section 6B (mandatory write-down, conversion, etc. of capital instruments) applies in relation to a banking group company in the cases set out in subsections (2), (4) and (8).

(2) Case 1 is where—

- (a) the conditions imposed by section 81B or 81ZBA on the exercise of a stabilisation power in accordance with section 11(2), 12(2) or 12ZA(3) are met in respect of the banking group company,
- (b) the Bank of England has decided to exercise the stabilisation power,
- (c) if the banking group company—
  - (i) is a financial institution which is a subsidiary of an institution (within the meaning of article 2.1(23) of the recovery and resolution directive) (“the parent institution”), but
  - (ii) is not an entity within Article 1.1(c) or (d) of that directive,the requirements of subsection (3) are met, and
- (d) section 12AA (mandatory write-down etc in bail-in cases) does not apply in relation to the banking group company by virtue of the exercise of a power under section 81BA (bail-in: banking group company).

(3) For the purposes of subsection (2)(c)—

- (a) the first requirement is that—
  - (i) the appropriate authority is satisfied that Condition 1 in section 7 is met in relation to the banking group company, and
  - (ii) the Bank of England is satisfied that Conditions 2, 3 and 4 of that section are met in relation to that company;
- (b) the second requirement is that—
  - (i) where the parent institution is a bank, the PRA is satisfied that Condition 1 in section 7 is met, and the Bank of England is satisfied that Conditions 2, 3 and 4 in that section are met in relation to the parent institution,
  - (ii) where the parent institution is a EU institution, subsection (6) applies in relation to the banking group company by reason of the EU institution, and
  - (iii) where the parent institution is a third-country institution, subsection (7) applies in relation to the banking group company by reason of that third country institution.

- (4) Case 2 is where—
- (a) the appropriate authority is satisfied that Condition 1 in section 7 is met in respect of the banking group company,
  - (b) the Bank of England is satisfied that—
    - (i) (ignoring section 6B) Condition 2 in section 7 is met, and
    - (ii) that Condition will continue to be met unless the action required by section 6B is taken in respect of the banking group company, and
  - (c) one of subsections (5), (6) or (7) apply in relation to the banking group company.
- (5) This subsection applies in relation to the banking group company if—
- (a) the PRA is satisfied that Condition 1 in section 7 is met in respect of a bank to which section 81D(1)(a) applies, and
  - (b) the Bank of England is satisfied that (ignoring section 6B) Condition 2 in section 7 is met in relation to that bank.
- (6) This subsection applies in relation to the banking group company if the EU resolution authority or competent authority has determined that—
- (a) the conditions for exercise of the power to write down or convert capital instruments set out in Article 59.3 of the recovery and resolution directive, or
  - (b) the conditions for resolution set out in Article 32.1(a) and (b) of the recovery and resolution directive,
- are satisfied in relation to an EU institution to which section 81D(1)(a) applies.
- (7) This subsection applies in relation to the banking group company if the relevant third-country authority has determined that any conditions required by the law of the third country to be met before—
- (a) any power for the relevant third country authority to write down or convert capital instruments provided for under the law of that third country may be exercised, or
  - (b) third-country resolution action may be taken,
- are met in relation to a third-country institution to which section 81D(1)(a) applies.
- (8) Case 3 is where—
- (a) extraordinary public financial support is required by the banking group company other than in circumstances where subsection (5E) of section 7 applies by virtue of paragraph (c) of that subsection, and
  - (b) the Bank of England is satisfied, on the basis of the valuation carried out in accordance with section 6E, that, in order for a bank or EU institution which is a member of the same group as the banking group company to fulfil its own funds requirements, relevant capital instruments of the banking group company need to be written down or converted into Common Equity Tier 1 instruments (or both).
- (9) For the purposes of determining if the matters set out in subsections (3) to (7) are satisfied, the FCA, PRA, Bank of England, EU resolution authority, competent authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.
- (10) For the purposes of subsections (3)(a) and (b), (4), (5) and (8)—
- (a) references in section 7 to the bank are to be read—
    - (i) in the case of subsections (3)(a) and (b), (4) and (5), as references to the banking group company, and

- (ii) in the case of subsection (8), as references to the banking group company or the parent institution (as the case may be), and
  - (b) section 7(5C)(a) is to be ignored in determining whether Condition 1 in that section is met in relation to the banking group company where that company is not a UK authorised person.
- (11) For the purposes of subsections (3), (4) and (5), the “appropriate authority” means—
  - (a) in the case of a banking group company which is a PRA-authorised person, the PRA;
  - (b) in the case of a banking group company which is a UK authorised person but not a PRA-authorised person, the FCA;
  - (c) in the case of a banking group company which is not an UK authorised person—
    - (i) if the PRA is the consolidating supervisor of the group, the PRA;
    - (ii) if the FCA is the consolidating supervisor of the group, the FCA;
    - (iii) if neither paragraph (i) nor paragraph (ii) apply, but there is a PRA-authorised person in the group, the PRA; and
    - (iv) in all other cases, the Bank of England.
- (12) Where the PRA is the “appropriate authority” under subsection (11) in relation to a banking group company in the same group as a UK authorised person which is not a PRA-authorised person, the PRA must consult the FCA before making any decision as to whether the conditions referred to in subsection (3)(a), (4)(a) or (5)(a) (the “relevant conditions”) are satisfied.
- (13) Where the FCA is the “appropriate authority” under subsection (11) in relation to a banking group company in the same group as a PRA-authorised person, the FCA must consult the PRA before making any decision as to whether the relevant conditions are satisfied.
- (14) For the purposes of this section—
  - “competent authority” has the meaning given in Article 2.1(21) of the recovery and resolution directive;
  - “consolidating supervisor” means a consolidating supervisor as defined in Article 4.1(41) of the capital requirements regulation;
  - “EU institution” means an institution within the meaning of Article 2.1(23) of the recovery and resolution directive which is incorporated in, or formed under the law of any part of, an EEA state other than the United Kingdom;
  - “EU resolution authority” means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);
  - “financial institution” has the meaning given by Article 2.1(4) of the recovery and resolution directive;
  - “PRA-authorised person” has the meaning given in section 2B(5) of the Financial Services and Markets Act 2000(1);
  - “relevant third-country authority” has the meaning given by Article 2.1(90) of the recovery and resolution directive;
  - “third-country institution” has the meaning given in section 89H(7);
  - “third-country resolution action” has the meaning given in section 89H(7);

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(1) Section 2B was inserted by the Financial Services Act 2012 (c.21) section 6.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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“UK authorised person” has the same meaning as in section 105(8) of the Financial Services and Markets Act 2000(2).”