



BANK OF ENGLAND

May 2015

# The Bank of England's power to direct institutions to address impediments to resolvability

A Consultation Paper





BANK OF ENGLAND

May 2015

# The Bank of England's power to direct institutions to address impediments to resolvability

## A Consultation Paper

This consultation paper sets out the Bank of England's proposed policy for exercising its power to direct institutions to address impediments to resolvability under section 3A of the Banking Act 2009.

The Bank of England reserves the right to publish any information which it may receive as part of this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure, in accordance with access to information regimes under the Freedom of Information Act 2000 or the Data Protection Act 1998 or otherwise as required by law or in discharge of our statutory functions.

Please indicate if you regard all, or some of, the information you provide as confidential. If the Bank of England receives a request for disclosure of this information, the Bank of England will take your indication(s) into account, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system on emails will not, of itself, be regarded as binding on the Bank of England.

The Bank of England welcomes comments on the proposed Statement of Policy by 22 August 2015.

Please address those comments to:

Nikoletta Kleftouri  
Resolution Directorate  
Bank of England  
Threadneedle Street  
London  
EC2R 8AH

Email: [CP\\_2015resolvability@bankofengland.co.uk](mailto:CP_2015resolvability@bankofengland.co.uk)



## Contents

1	Introduction	5
2	Background to the Bank's new power to address impediments to resolvability	5
3	The Bank's objectives in requiring institutions to address impediments to resolvability	6
4	Interaction of the Bank's and PRA's powers to require institutions to address impediments to resolvability	6
5	Next steps	7
	<b>Appendix: Proposed Statement of Policy on the Bank of England's power to direct institutions to address impediments to resolvability</b>	<b>8</b>
1	Background	8
2	Statutory framework	8
3	The Bank's approach to using the power of direction	10
4	Decision-making	11
5	Right of appeal	11



## 1 Introduction

1.1 This consultation paper sets out the Bank of England's (Bank's) proposed policy for exercising its power to direct institutions to address impediments to resolvability under section 3A of the Banking Act 2009 (Banking Act) as amended following transposition of the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD). The purpose of this paper is to describe the context of this new power and to consult on a proposed Statement of Policy regarding its use (set out in the appendix), as required by section 3B(9) of the Banking Act.

1.2 The Bank's power of direction applies to: (i) banks, building societies and certain investment firms<sup>(1)</sup> (institutions) that are authorised by the Prudential Regulation Authority (PRA) or Financial Conduct Authority (FCA); (ii) parent companies of such institutions that are financial holding companies or mixed financial holding companies; and (iii) PRA or FCA-authorized financial institutions that are subsidiaries of such institutions or such parent companies. For the purposes of this paper, references to an 'institution' should in general be taken to also include the entities referred to in (ii) and (iii). The Bank is the United Kingdom's resolution authority, and the PRA or FCA is the competent authority.<sup>(2)</sup>

1.3 Under section 3A(4) of the Banking Act, the Bank also has a power to direct those institutions defined in paragraph 1.2 to maintain a minimum requirement for own funds and eligible liabilities (MREL). The Bank will be issuing a separate Statement of Policy later this year relating to MREL.

## 2 Background to the Bank's new power to address impediments to resolvability

2.1 A core feature of a stable financial system is that institutions must be 'resolvable', meaning that it is feasible and credible to place institutions into resolution without excessive disruption to the financial system, interruption to the provision of critical economic functions, or exposing public funds to losses. To achieve this, the authorities need to have an appropriate set of tools and powers to ensure that institutions are organised and operate in a manner that facilitates resolution.

2.2 The Financial Stability Board's (FSB's) international standard for effective resolution regimes (the Key Attributes),<sup>(3)</sup> agreed by the G-20 leaders in 2011, state that:

(i) jurisdictions should require that at least all domestically incorporated institutions that could be systemically significant if they fail have in place a recovery and resolution plan, including a group resolution plan if applicable (Key Attribute 11);

(ii) at least all global systemically important financial institutions (G-SIFIs) are subject to regular resolvability assessments (Key Attribute 10) and institution-specific cross-border co-operation agreements (Key Attribute 9); and

(iii) home and key host authorities of all G-SIFIs should maintain Crisis Management Groups (CMGs) with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the institution. CMGs should, among other things, keep the resolvability of G-SIFIs under active review (Key Attribute 8).

2.3 The BRRD and the UK implementing legislation (see paragraph 2.5 below) are designed to reflect the Key Attributes. Articles 10, 12 and 13 of the BRRD require resolution authorities to draw up and adopt a resolution plan for each institution within scope of the BRRD. Under articles 15 and 16 of the BRRD, for the purpose of drawing up or reviewing such a plan, the resolution authority, in consultation with the competent authority, must make an assessment of resolvability. The resolution authority assesses the extent to which an institution is resolvable without the assumption of any: extraordinary public financial support; central bank emergency liquidity assistance; or central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms. Where the resolution authority determines that there are substantive impediments to an institution's resolvability, it must require the institution to take action to address these impediments, in consultation with the competent authority and in accordance with the process specified in articles 17 and 18 of the BRRD.

2.4 Articles 88 and 89 of the BRRD require resolution colleges to be established for groups that operate on a cross-border basis within the European Union. The Bank must establish resolution colleges for such groups where it is the home resolution authority.<sup>(4)</sup> Through the resolution college, the relevant authorities<sup>(5)</sup> will undertake resolution planning and seek to reach joint decisions relating among others to:

(i) establishing a group resolution plan and undertaking a

(1) For the purposes of the UK special resolution regime, the term 'investment firm' means those firms that deal as principal and are required to hold initial capital of €730,000. The majority of such firms are prudentially regulated by the Financial Conduct Authority; the nine largest, more complex investment firms are prudentially regulated by the Prudential Regulation Authority.

(2) According to article 2 of the BRRD and article 4 of the Capital Requirements Regulation (EU No. 575/2013), 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned.

(3) For the latest version, see Financial Stability Board (2014), *Key attributes of effective resolution regimes for financial institutions*, available at [www.financialstabilityboard.org/wp-content/uploads/r\\_141015.pdf](http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pdf).

(4) The requirement does not apply if the Bank is satisfied that other groups or colleges (for example existing CMGs) perform the same functions and tasks, and comply with all the conditions and procedures as allowed under article 88 (6) of the BRRD, and article 194 of the Bank Recovery and Resolution (No. 2) Order 2014 (No. 2 Order).

(5) The requisite membership of resolution colleges is set out in article 88 (2) of the BRRD and article 192 of the No. 2 Order.

resolvability assessment; (ii) setting MREL at the consolidated and subsidiary levels; and (iii) agreeing measures to address impediments to resolvability.

2.5 The BRRD has been transposed in the United Kingdom through amendments to primary legislation, in particular the Banking Act, new secondary legislation and amendments to PRA and FCA rules. The Bank Recovery and Resolution Order 2014 added sections 3A and 3B to the Banking Act, which grant the Bank a power of direction over institutions to ensure the effective exercise of its stabilisation powers<sup>(1)</sup> or the winding up of such institutions.

2.6 When drawing up the proposed Statement of Policy, the Bank has taken into account the European Banking Authority's (EBA's) guidelines which further specify the measures that the resolution authority can require institutions to take to address impediments to resolvability, and the circumstances in which each measure may be applied.<sup>(2)</sup> Articles 17 and 18 of the BRRD grant resolution authorities wide discretion in selecting appropriate measures; the EBA guidelines allow for a case-by-case analysis of the impediments to the resolution of an institution or group that operates on a cross-border basis within the European Union, and the most effective ways to address them.

### 3 The Bank's objectives in requiring institutions to address impediments to resolvability

3.1 In order for resolution to be feasible and credible, institutions need to be organised in a way that facilitates the effective use of the stabilisation powers or the winding up of the relevant institution. This may require, for example, simplification of complex legal or operational structures. The Bank will work with institutions to ensure that any impediments to an orderly resolution are addressed. Resolvability assessments, and the actions flowing from them, form a key part of resolution planning on a 'business as usual' basis before an institution actually encounters distress.

3.2 The Bank may exercise its power of direction to require an institution to take measures to address impediments to the effective exercise of the stabilisation powers or the winding up of the institution. When determining this, the Bank will consider the extent to which a relevant matter could impede the ability of the Bank to advance one or more of the special resolution objectives through the exercise of the stabilisation powers, the bank insolvency procedure or the bank administration procedure. This is consistent with the Bank's duty under section 4 of the Banking Act to have regard to the special resolution objectives in using, or considering the use of those powers or procedures. In summary, these objectives are to:

- (i) ensure continuity of banking services in the United Kingdom and of critical functions;
- (ii) protect and enhance the stability of the financial system of the United Kingdom;
- (iii) protect and enhance public confidence in the stability of the financial system of the United Kingdom;
- (iv) protect public funds, including by minimising reliance on extraordinary public financial support;
- (v) protect depositors and investors covered by the relevant compensation schemes;
- (vi) protect, where relevant, client assets; and
- (vii) avoid interfering in property rights, in contravention of the European Convention on Human Rights.

## 4 Interaction of the Bank's and PRA's powers to require institutions to address impediments to resolvability

4.1 The PRA, as competent authority, also has powers (including rule-making powers) to require institutions to address impediments to resolvability. The PRA's approach to banking supervision explicitly states that the PRA may require institutions to take action, including restructuring, to improve the feasibility of orderly resolution.<sup>(3)</sup> This supports the PRA's general objective to promote the safety and soundness of PRA-authorised institutions by, among other things, seeking to minimise the adverse effect that the failure of such an institution could be expected to have on the stability of the UK financial system.<sup>(4)</sup>

4.2 The PRA also has objectives in respect of ring-fencing. These include implementing ring-fencing in a way that facilitates orderly resolution in the event that either a ring-fenced body (RFB) or another member of its group fails,

(1) The special resolution regime consists of five stabilisation options, the bank insolvency procedure and the bank administration procedure. (See section 1 of the Banking Act.) The five 'stabilisation options' are: transfer to a private sector purchaser, transfer to a bridge bank, transfer to an asset management vehicle, the bail-in option and transfer to temporary public ownership, as further described in the Banking Act. The stabilisation options are achieved through the exercise of one or more of the 'stabilisation powers': the resolution instrument powers, the share transfer powers, the property transfer powers and the third-country instrument powers.

(2) See EBA (2014), *Guidelines on the specification of measures to reduce or remove impediments to resolvability and the circumstances in which each measure may be applied under Directive 2014/59/EU*, available at [www.eba.europa.eu/documents/10180/933988/EBA-GL-2014-11+\(Guidelines+on+Impediments+to+Resolvability\).pdf](http://www.eba.europa.eu/documents/10180/933988/EBA-GL-2014-11+(Guidelines+on+Impediments+to+Resolvability).pdf).

(3) See PRA (2014), *The Prudential Regulation Authority's approach to banking supervision*, available at [www.bankofengland.co.uk/publications/Documents/prapapproach/bankingappr1406.pdf](http://www.bankofengland.co.uk/publications/Documents/prapapproach/bankingappr1406.pdf).

(4) See section 2B of the Financial Services and Markets Act 2000.

and supports the continuity of core services thereafter.<sup>(1)</sup> The PRA has an obligation to make rules for ring-fencing purposes, including to ensure that a RFB would be able to carry on core activities in the event of the insolvency of one or more other members of its group. Ring-fencing may also support the restructuring of banking groups following resolution. As such, ring-fencing complements broader policies to improve arrangements for resolving failing banks.

4.3 As a result, both the PRA, as competent authority, and the Bank, as resolution authority, have statutory objectives that require action to be taken to ensure that institutions can be resolved in an orderly way should they fail. The Bank and PRA will consult each other and co-operate closely in exercising these complementary responsibilities and powers.

## 5 Next steps

5.1 The Bank welcomes comments from interested parties on the proposed Statement of Policy by 22 August 2015. Please address those comments to:

Nikoletta Kleftouri  
Resolution Directorate  
Bank of England  
Threadneedle Street  
London  
EC2R 8AH

Email: [CP\\_2015resolvability@bankofengland.co.uk](mailto:CP_2015resolvability@bankofengland.co.uk)

---

(1) Section 142C of the Financial Services and Markets Act 2000 defines core services as:  
(i) facilities for the accepting of deposits or other payments into an account which is provided in the course of carrying on the core activity of accepting deposits;  
(ii) facilities for withdrawing money or making payments from such an account; and  
(iii) overdraft facilities in connection with such an account.

## Appendix: Proposed Statement of Policy on the Bank of England's power to direct institutions to address impediments to resolvability

### 1 Background

1.1 This Statement of Policy is issued by the Bank of England (Bank), as the UK resolution authority, under section 3B(9) of the Banking Act 2009 as amended (Banking Act). The Statement of Policy sets out how the Bank expects to use its power to direct a 'relevant person' to address impediments to resolvability under section 3A of the Banking Act.

1.2 A 'relevant person' means:

- (i) an institution<sup>(1)</sup> authorised for the purpose of the Financial Services and Markets Act 2000 (FSMA) by the Prudential Regulation Authority (PRA) or Financial Conduct Authority (FCA);<sup>(2)</sup>
- (ii) 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
- (iii) 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 Statutory framework

#### Process leading up to the use of the Bank's power

2.1 The process for use of the Bank's power is set out in sections 3A and 3B of the Banking Act and, where applicable, articles 64–82 of the Bank Recovery and Resolution (No. 2) Order 2014 (No. 2 Order). The process to be followed depends upon whether the impediment to resolvability is identified as part of the resolvability assessment or is made independently of that assessment.

#### Use of the Bank's power following a resolvability assessment

2.2 The Bank must prepare resolution plans for all institutions within scope of the special resolution regime. The purpose of resolution planning is to develop a set of actions that would be taken by the Bank and relevant stakeholders (including other UK authorities and overseas authorities) in the event that an institution fails. Resolution planning includes:

- (i) gathering information to facilitate resolution;
- (ii) conducting resolvability assessments;
- (iii) developing resolution strategies; and
- (iv) enhancing resolvability.

2.3 As part of resolution planning, the Bank, in consultation with the competent authority (ie the PRA or the FCA), must assess the extent to which it would be feasible and credible<sup>(3)</sup> to place the institution into resolution and implement the preferred resolution strategy, while avoiding to the maximum extent possible any significant adverse effect on the financial system of any European Economic Area (EEA) State or the continuity of the institution's critical functions. The Bank must not assume that the institution will be in receipt of any: extraordinary public financial support; central bank emergency liquidity assistance; or central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms. This resolvability assessment shall be based on the following consecutive stages: (i) assessment of the feasibility and credibility of the liquidation of the institution under normal insolvency proceedings; (ii) selection of a preferred resolution strategy; (iii) assessment of the feasibility of the selected resolution strategy; and (iv) assessment of the credibility of the selected resolution strategy. The resolvability assessment will be conducted annually, unless the Bank determines otherwise in accordance with articles 53 and 54 of the No. 2 Order,<sup>(4)</sup> at the same time as, and for the purposes of, drawing up or updating the resolution plan. The Bank must notify the European Banking Authority without delay if it concludes that an institution is not resolvable.

2.4 Following a resolvability assessment, the Bank will inform the institution of any identified substantive impediments to resolvability.<sup>(5)</sup> The institution will then have four months to make its own proposal to remove the identified impediments. If the Bank concludes that the institution's proposal is insufficient or no proposal is received, the Bank must use its power to require the institution to take measures to address impediments to the effective exercise of the stabilisation

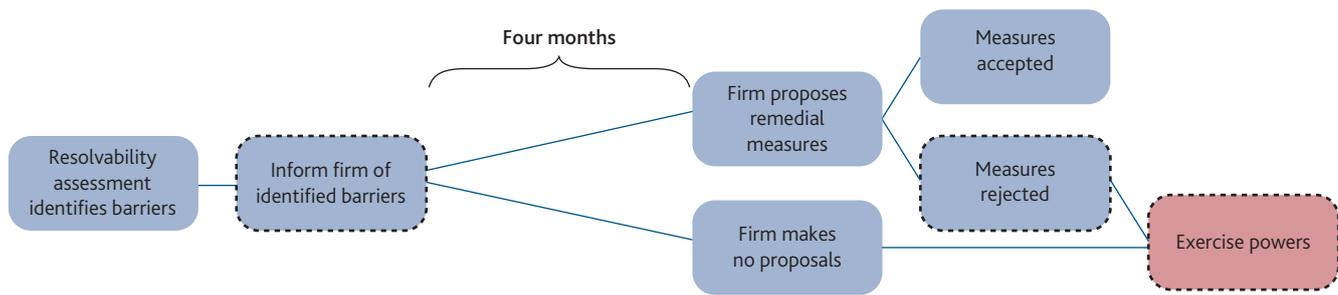
(1) For the purposes of the UK special resolution regime, the term 'institution' means banks, building societies and those investment firms that deal as principal and are required to hold initial capital of €730,000. References in this statement to an 'institution' shall, in general and unless otherwise stated, be taken to also include 'relevant persons'.

(2) The PRA and FCA are the UK competent authorities. According to article 2 of the Bank Recovery and Resolution Directive and article 4 of the Capital Requirements Regulation (EU No. 575/2013), 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned.

(3) For resolution to be feasible, the authorities should have the necessary legal powers — and the practical capacity to apply them — to ensure the continuity of functions critical to the economy. For resolution to be credible, the application of those resolution tools should not itself give rise to unacceptable adverse broader consequences for the financial system and the real economy. See FSB (2014), *Key attributes of effective resolution regimes for financial institutions*, available at [www.financialstabilityboard.org/wp-content/uploads/r\\_141015.pdf](http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pdf). The European Banking Authority's (EBA's) draft regulatory technical standards on assessment of resolvability list a number of criteria which the resolution authorities need to consider when assessing the feasibility and credibility of liquidation and of the resolution strategy. See EBA (2014), *EBA FINAL Draft Regulatory Technical Standards on the content of resolution plans and the assessment of resolvability*, available at [www.eba.europa.eu/documents/10180/933992/EBA-RTS-2014-15+\(Final+draft+RTS+on+Resolution+Plan+Contents\).pdf](http://www.eba.europa.eu/documents/10180/933992/EBA-RTS-2014-15+(Final+draft+RTS+on+Resolution+Plan+Contents).pdf).

(4) For example, a new resolvability assessment would need to be conducted in the event of major changes in the institution's business or structure.

(5) Such notice has the effect of suspending the Bank's duty to draw up (or review) a resolution plan for the institution, until the Bank has approved the institution's proposals to address identified impediments or exercised the power of direction.

**Figure 1** Process for exercising the power of direction following a resolvability assessment

Note: The dashed borders mark where a right of appeal is available.

powers or the winding up of that institution.<sup>(1)</sup> The institution must propose a plan to achieve the measures required by the Bank, within one month beginning on the date of the direction.

2.5 The process for exercising the power to address impediments to resolvability is set out in **Figure 1**.

2.6 The Bank must consult the PRA and the FCA and, where appropriate, the Financial Policy Committee before requiring the institution to take specified measures to address impediments to resolvability. For the purposes of assessing the institution's proposals and determining remedial measures, the Bank must take account of (i) the threat to financial stability posed by the impediments; and (ii) the effect of the remedial measures on: the business and financial stability of the institution and its ability to contribute to the economy of the United Kingdom and other EEA States; the EEA market for financial services; and the financial stability of any EEA State or of the EEA as a whole.

2.7 For groups that operate on a cross-border basis within the European Union, articles 68–82 of the No. 2 Order set out additional procedural requirements to be followed alongside those described in the preceding paragraphs. Joint decisions will be taken in the resolution college. Where the Bank is the group-level resolution authority (ie the PRA or the FCA is the consolidating supervisor), it will lead the joint decision-making process on the preferred resolution strategy, resolvability assessment, identification of substantive impediments to resolvability and actions to address them. The Bank will also set a minimum requirement for own funds and eligible liabilities in the resolution college.

#### Use of the Bank's power in other circumstances

2.8 There may be circumstances which arise independently of the resolvability assessment process where the Bank considers it necessary to direct the institution to take certain measures in order to address impediments to the effective exercise of the stabilisation powers, or the winding up of that institution. For example, this could occur during late stage contingency planning where the Bank needs to act to address an impediment prior to placing the institution into resolution.

#### Process for giving a direction

2.9 Bank directions must be in writing and may be given with general effect or with respect to a particular institution or a class of institutions. Section 3A of the Banking Act provides that the directions may include, but are not limited to:

- (i) a requirement to amend a group financial support agreement or, where there is no such agreement, to review the need to enter into one;
- (ii) a requirement to enter into an agreement for the provision of services relating to the provision of critical functions;
- (iii) a restriction on maximum individual and aggregate exposures;
- (iv) a requirement to produce information which is relevant to the exercise of the stabilisation powers and to provide that information to the Bank;
- (v) a requirement to dispose of specified assets;
- (vi) a requirement to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;
- (vii) a requirement to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;
- (viii) a requirement to change its legal or operational structure to ensure that the performance of critical functions can be legally or operationally separated from the performance of other functions;
- (ix) a requirement to establish a financial holding company which is not a subsidiary of an institution, another financial holding company or a mixed financial holding company;

(1) See article 66(3) of No. 2 Order.

- (x) a requirement to maintain a minimum requirement for own funds and eligible liabilities;
- (xi) for the purposes of (x), a requirement to maintain or issue particular kinds of eligible liabilities, or take other specified steps; and
- (xii) a requirement to endeavour to renegotiate any eligible liability or relevant capital instruments to ensure that any decision by the Bank to write down or convert the liability or instrument would have effect under the law which governs that liability or instrument.

2.10 A direction by the Bank must be accompanied by a notice which: (i) states when the direction takes effect; (ii) gives the Bank's reasons for giving the direction; and (iii) specifies a reasonable period within which the institution may make representations to the Bank about the direction.

2.11 The Bank must demonstrate how the remedial measures will adequately address the impediments in a manner proportionate to the burden or restriction imposed by the direction. As is the case with any public body in the exercise of its functions, the Bank will have regard to restrictions and conventions of public law, in particular the requirement for the authorities to act reasonably and to have respect for the rule of law and the principle of legal certainty. The Bank must also act in accordance with common law principles of procedural fairness when exercising its power of direction.

2.12 If a person fails to comply with a direction given under section 3A(2) of the Banking Act, remediation will be sought through the general enforcement powers contained in sections 83ZQ–83ZY of the Banking Act, which include one or more of the following:

- (i) publication of a statement to that effect;
- (ii) imposition of a penalty in respect of the failure of such amount that the Bank considers appropriate;
- (iii) direction to refrain from any conduct, with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated; and
- (iv) prohibition of specific persons from holding an office or position involving responsibility for taking decisions about the management of a named bank, a bank of a specified description or any bank.

### 3 The Bank's approach to using the power of direction

3.1 The Bank will exercise the power of direction when required to address impediments to the effective exercise of the stabilisation powers or the winding up of that institution. When determining what constitutes 'effective' exercise of the stabilisation powers for these purposes, the Bank will have regard to the stabilisation powers it would expect to use in the preferred resolution strategy and the extent to which the impediment identified would prevent or reduce its ability to achieve the special resolution objectives. In the context of the bail-in tool, this extends to assessing whether there are impediments to restructuring the activities of an institution as part of the resolution, that could adversely affect the effectiveness of the tool in stabilising the institution and advancing the special resolution objectives.

3.2 The Bank will endeavour to respond within a reasonable period to an institution's proposals for remedial measures or to an institution's representations in relation to the direction given by the Bank. The Bank will prioritise the different impediments to resolvability and require the firm to follow a staged approach, where the most material impediments are addressed first.

3.3 The Bank's direction may be given to a parent company in relation to impediments at a subsidiary level. Directions will include a timeframe by which the identified impediments to resolvability must be addressed. The period of time allowed may vary, taking into account the expected length of time to complete resolution planning, including the time required within a resolution college for cross-border groups. The Bank will oversee the institution's progress and may choose to make its directions public, if appropriate and depending on the circumstances at the time.

3.4 Article 17(5) of the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD) and section 3A(3) of the Banking Act identify a non-exhaustive set of examples of directions that the resolution authority may seek to make, as listed in paragraph 2.9. In addition, the list below provides a number of illustrative examples of possible scenarios in which the Bank may consider exercising its power of direction:

#### Loss-absorbing capacity

- (i) Where action is required to ensure issuance of liabilities at the parent company level that would allow for loss absorption and recapitalisation of group entities, consistent with the special resolution objectives.

#### Funding arrangements

- (ii) Where the funding of subsidiaries by the parent company is not adequately subordinated or is subject to set-off or

where there are no arrangements in place that would allow for losses to be transferred to the legal entity to which resolution tools would be applied.

- (iii) Where more information is required to assess the institution's potential liquidity needs implied by the resolution strategy, including a breakdown by currencies, legal entities, business lines, intraday needs and location of collateral across the group.

### Continuity of contracts in resolution

- (iv) Where action is required to ensure continuity of contracts in resolution, including continuity of operational services (whether provided within the group or by third parties), of trading agreements and of access to payment services and financial market infrastructures.

### Information systems and data requirements

- (v) Where action is required to ensure that there are systems in place that produce a rapid and effective valuation for the purposes of resolution, and that the institution's valuation systems, process, controls and resources are aligned to support the institution's resolution strategy.
- (vi) Where an institution's information systems and data availability do not ensure that the institution is able to produce required resolution-related data quickly and accurately, and or/that the Bank has access to information necessary to implement the resolution strategy.

### Post bail-in restructuring

- (vii) Where, to address the causes of failure and restore the long-term viability of an institution, action is required to ensure that a business line and/or legal entity could maintain continuity of service, be unwound or be transferred to a third party following a bail-in.

## 4 Decision-making

4.1 In accordance with article 3 of the BRRD, the Bank has been designated as the resolution authority for the United Kingdom. All decisions made by the Bank as resolution authority, including decisions in relation to the Bank's resolution plans, resolvability assessments and the exercise of the power to direct institutions to address impediments to resolvability, will therefore be taken in the Bank's resolution decision-making structures. Decisions on the use of the Bank's resolution powers will be taken by the Governor, the Deputy Governor, Financial Stability or the Executive Director, Resolution (or their delegates), as appropriate, where applicable as advised by the Bank's advisory committees which include staff from the Bank and PRA.

4.2 Before deciding to exercise its power of direction over an institution, the Bank, as resolution authority, will consult with

the PRA and FCA. The PRA has its own formal decision-making structure for responding to Bank consultations, which mirrors the Bank process in allocating consultation decisions, taking into account the category of institution and impact of the decision on the PRA's objectives.

4.3 Once the Bank has considered PRA and FCA views and reached a final decision, the Bank will co-ordinate with the PRA or FCA on issues pertaining to resolvability. For example, depending on the nature of the barrier identified in the resolvability assessment, the Bank could choose to exercise its power of direction, or alternatively, the Bank could propose that the PRA take action to require an institution to address an impediment to resolvability. Where there are common impediments affecting a range of institutions, the PRA could require the impediments to be addressed through rules of general application made pursuant to its statutory rule-making powers, or the Bank could give a direction with general effect or with respect to a particular class of institutions.

4.4 The decision-making framework for the exercise of the Bank's power of direction will be guided by two principles: (i) complying with legal requirements, including those for operational independence of the resolution authority and structural separation of staff and reporting lines; and (ii) maintaining close co-operation between the supervisory and resolution functions in relation to resolution activities, with institutions receiving co-ordinated Bank and PRA or FCA communications on resolution matters. More broadly, institutions' primary point of contact for going-concern prudential matters remains the PRA or the FCA.

## 5 Right of appeal

5.1 An institution has a right of appeal in relation to: (i) the Bank's determination that there are substantive impediments to the resolvability of an institution; (ii) the Bank's conclusion that the measures set out in the institution's proposals would not adequately address the impediments; or (iii) the use of the Bank's power of direction. Section 3B(7) of the Banking Act requires the Bank to inform the institution of the right to refer the matter to the Upper Tribunal and to indicate the procedure for such a reference.