



**BANK OF ENGLAND**

October 2018

# UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards

A Consultation Paper



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## UK withdrawal from the EU: The Bank of England's approach to resolution statements of policy and onshored Binding Technical Standards

October 2018

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The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority. We may use your details to contact you to clarify any aspects of your response.

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Responses are requested by Wednesday 2 January 2019.

**Please address any comments or enquiries to:**

Victoria Monro  
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## Contents

<b>1</b>	<b>Overview</b>	<b>1</b>
<b>2</b>	<b>Interpreting existing Bank of England Statements of Policy on resolution</b>	<b>5</b>
<b>3</b>	<b>Material amendments to BRRD BTS allocated to the Bank</b>	<b>8</b>
<b>4</b>	<b>The Bank's obligations under the Regulations</b>	<b>10</b>
<b>5</b>	<b>Next steps</b>	<b>11</b>
	<b>Appendix</b>	<b>12</b>

# 1 Overview

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1.1 The UK's withdrawal from the EU<sup>1</sup> requires changes to be made to UK legislation to ensure that it remains functional. The European Union (Withdrawal) Act 2018 (the 'Act') converts directly applicable EU law (eg EU Regulations) into UK law, and preserves domestic law that relates to EU membership (including domestic law that was introduced to implement EU Directives). This body of law is referred to as 'retained EU law'. The Act also provides Government ministers powers to make changes to the law so that it continues to operate effectively after the UK's withdrawal from the EU. These processes are often referred to as 'onshoring' or 'Nationalising the Acquis'<sup>2</sup> (NtA).<sup>3</sup>

1.2 Under the draft Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the Regulations),<sup>4</sup> HM Treasury proposes to delegate responsibility for fixing deficiencies arising in onshored Binding Technical Standards (BTS) to the UK financial regulators.<sup>5</sup> In particular, the regulators have the power to make instruments, where appropriate, to prevent, remedy or mitigate any failure of the onshored BTS to operate effectively or any other deficiency in the onshored BTS arising from the UK's withdrawal from the EU.

1.3 HM Treasury has decided that, subject to Parliamentary approval, responsibility for the BTS adopted by the European Commission pursuant to the Bank Recovery and Resolution Directive (the BRRD, 2014/59/EU) should rest with the Bank of England (the Bank) where they concern resolution, and with the Prudential Regulation Authority (PRA) and/or the Financial Conduct Authority (FCA) where they concern supervisory responsibilities. For the purposes of this consultation paper (CP), such BTS adopted pursuant to the BRRD are referred to as the 'BRRD BTS'. The BTS allocated to the Bank in its capacity as resolution authority are set out in Part 3 of the Schedule to the Regulations.

1.4 This CP sets out the Bank's proposals to fix deficiencies arising from the UK's withdrawal from the EU in relation to those onshored BRRD BTS for which it is responsible. This CP also sets out how references to EU legislation and concepts in existing statements of policy (SoPs) issued by the Bank in its capacity as resolution authority should be interpreted after the UK leaves the EU. The CP is relevant to all firms subject to the Bank's resolution powers. Further information on the PRA approach to the BRRD BTS for which the PRA is responsible can be found in PRA CP26/18. Of particular relevance to resolution will be the PRA's proposed changes to contractual recognition of bail-in and stay in resolution rules. The FCA plans to consult on its approach to BTS for which it is responsible in due course.

1.5 This CP is published as part of the Bank's consultation package on amending financial services legislation under the Act.<sup>6</sup> CP25/18 'The Bank of England's approach to amending

<sup>1</sup> References in this CP to the EU and/or its Member States include, as appropriate, the European Economic Area (EEA) States of Norway, Iceland and Liechtenstein.

<sup>2</sup> Acquis refers to the 'acquis communautaire'.

<sup>3</sup> HM Treasury has set out its approach to onshoring EU financial services regulation in 'HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act', June 2018:

<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>.

<sup>4</sup> The Regulations have been laid before Parliament and are expected to come into force in October 2018.

<sup>5</sup> In addition to the power to address deficiencies, the Regulations also delegate to the regulators an ongoing power to make and maintain technical standards but these powers cannot be exercised until after the UK has left the EU.

<sup>6</sup> The Bank and PRA has issued four consultation papers on Thursday 25 October 2018:

<http://www.bankofengland.co.uk/news/2018/october/boes-approach-to-amending-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

financial services legislation under the European Union (Withdrawal) Act' (the 'NtA approach CP') provides the Bank's general approach to addressing deficiencies in onshored BTS and to non-binding EU materials, including EBA Guidelines. The two documents should be read together.

1.6 As noted in the NtA approach CP, HM Treasury is responsible for addressing deficiencies in primary and secondary UK financial services legislation that arise following the UK's withdrawal from the EU. This includes the legislation governing the UK resolution regime, principally the Banking Act 2009 and associated secondary legislation (such as the Bank Recovery and Resolution (No. 2) Order 2014). HM Treasury consulted the Bank, PRA and FCA on its approach to amending this legislation and HM Treasury has laid the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018<sup>7</sup> (BRR (EU Exit) Regulations) before Parliament, which sets out the amendments HM Treasury proposes to make in that regard. The changes the Bank proposes to onshored BRRD BTS are consistent with changes that HM Treasury proposes to make in the draft BRR (EU Exit) Regulations.

1.7 The proposed changes are technical amendments to ensure an operable legal framework when the UK leaves the EU. The power to make 'EU Exit Instruments' under the Regulations can only be used to fix deficiencies that arise as a result of the UK's exit from the EU. They cannot be the basis for policy changes unrelated to the UK's withdrawal. As such, this CP does not include a cost benefit analysis, reflecting the fact that the proposed amendments to onshored BTS contained in this CP reflect the need to fix deficiencies, and do not constitute further policy changes.

1.8 As set out in the NtA approach CP, this CP focuses on changes where the Bank proposes to depart from the general approach described in Chapter 3 of that document, or where the Bank considers that an explanation would be appropriate to make clear the rationale for following the general approach.

1.9 HM Treasury has announced its intention to provide the financial services regulators with powers to introduce transitional measures that they could use to phase in onshoring changes. The NtA approach CP also sets out the Bank's proposed approach to applying transitional relief in relation to obligations on firms that are changing as a result of the UK's withdrawal from the EU. Readers of this CP should take this into account when considering the proposals.

1.10 The NtA approach CP also details, in paragraph 4.11, where the PRA has, at this stage and subject to responses to the consultation, identified examples of where it would not expect to provide transitional relief. These include elements of the PRA rules on contractual recognition of bail-in and contractual stays in resolution, which are required to ensure orderly resolution. Further detail is provided in PRA CP26/18. These proposals are, in particular, relevant to firms issuing or materially amending liabilities from exit day, including those issued to meet the minimum requirement for own funds and eligible liabilities (MREL).

1.11 The changes to BRRD BTS set out in this CP would have effect from 29 March 2019 ('exit day')<sup>8</sup> only in the event that there is no Implementation Period as set out in the draft Withdrawal Agreement between the UK and EU.<sup>9</sup> If the Withdrawal Agreement is ratified and the Implementation Period commences on 29 March 2019, changes would not take effect until

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<sup>7</sup> The relevant statutory instrument (including explanatory memorandum), as laid on Tuesday 23 October 2018, is available here: <http://www.legislation.gov.uk/ukdsi/2018/9780111173732>.

<sup>8</sup> As defined in the Act.

<sup>9</sup> Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community', March 2018: <https://www.gov.uk/government/publications/draft-withdrawal-agreement-19-march-2018>.

after the end of the Implementation Period. To the extent that it is necessary, further modifications to the onshored BTS may be required to reflect any agreement that is reached between the UK and EU on their future relationship.

1.12 The changes that the Bank proposes to make to onshored BRRD BTS are set out in a draft EU Exit Instrument that is appended to this CP. The BRRD BTS to which changes are proposed to be made are set out below:

- Articles 22 to 32 (on group resolution plans and assessments of resolvability), 37 to 41 (on the independence of valuers), and 50 to 109 (on joint decisions as part of resolution colleges) of Commission Delegated Regulation (EU) 2016/1075;
- Commission Delegated Regulation (EU) 2016/1400 (on business reorganisation plans);
- Commission Delegated Regulation (EU) 2016/1401 (on the methodologies and principles for valuation of derivatives liabilities);
- Commission Delegated Regulation (EU) 2016/1450 (on the methodology for setting a minimum requirement for own funds and eligible liabilities);
- Commission Delegated Regulation (EU) 2016/1712 (on the minimum level of information on financial contracts that should be maintained);
- Commission Implementing Regulation (EU) 2016/962 (on the transmission of information to the EBA);
- Commission Delegated Regulation (EU) 2018/344 (on methodologies for valuation of difference in treatment in resolution);
- Commission Delegated Regulation (EU) 2018/345 (on the methodology for assessing the value of assets and liabilities); and
- Commission Implementing Regulation (EU) 2018/308 (on the transmission of information concerning firms' minimum requirements for own funds and eligible liabilities to the EBA).

1.13 The Bank is not consulting on amendments to Commission Implementing Regulation (EU) 2016/1066 (on provision of information for the purpose of resolution plans) in this CP. This is because the EBA has proposed to repeal this BTS and replace it with an updated BTS. The new BTS is currently awaiting adoption by the European Commission. The Bank will bring forward proposals for addressing any deficiencies in that BTS, together with any other BTS adopted before exit day.

1.14 The remaining chapters to this CP are structured as follows:

- **Chapter 2 - Interpreting existing Bank of England Statements of Policy on resolution** explains how to interpret Bank SoPs in light of any deficiencies arising from the UK's withdrawal from the EU;
- **Chapter 3 - Material amendments to BRRD BTS** sets out those changes to BTS which deviate from the approach to fixing deficiencies as set out in CP25/18 'The Bank of England's approach to amending financial services legislation under the European Union

(Withdrawal) Act' or where, in resolving a deficiency, the Bank has a choice between multiple options;

- **Chapter 4 – The Bank's obligations under the Regulations** sets out the Bank's legal obligations under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- **Chapter 5 - Next steps** invites feedback from firms on this CP; and
- **Appendix** provides the proposed draft EU Exit Instrument for the BRRD BTS allocated to the Bank.

1.15 This consultation closes on Wednesday 2 January 2019. The Bank invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to [ResolutionBTS@bankofengland.co.uk](mailto:ResolutionBTS@bankofengland.co.uk).

1.16 Responses to this CP will be shared with the FCA.

## 2 Interpreting existing Bank of England Statements of Policy on resolution

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2.1 This chapter addresses the three resolution SoPs made by the Bank under section 3B(9) of the Banking Act 2009. It provides guidance on how these policies should be interpreted when the UK leaves the EU in light of the changes made by the draft BRR (EU Exit) Regulations, and following the 'baseline' approach where it is assumed that the EU/EEA states would be treated as 'third countries' by the UK and would treat the UK as a 'third country'.

2.2 In particular, this chapter concerns:

- The Bank of England's power to direct institutions to address impediments to resolvability;<sup>10</sup>
- The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL) within groups, and further issues;<sup>11</sup> and
- The Bank of England's policy on valuation capabilities to support resolvability.<sup>12</sup>

2.3 In addition to the above SoPs, the Bank has published a document explaining the Bank's approach to resolution.<sup>13</sup> The Bank does not propose to update these documents in advance of exit day to reflect the UK's withdrawal from the EU, although they will be reviewed and updated in due course. Instead, in the event that there is no Implementation Period, the published versions of these documents will be updated to include a statement noting that they continue to apply after exit day but should be interpreted consistently with the principles set out in the NtA approach CP.

2.4 The NtA approach CP also sets out the Bank's proposed expectations regarding Guidelines and Recommendations issued by the European Supervisory Authorities (ESAs). The Bank continues to expect firms to comply with those Guidelines and Recommendations that firms are currently expected to comply with, to the extent that they remain relevant, when the UK leaves the EU. This includes Guidelines issued by the EBA in relation to resolution.

### References to the Bank Recovery and Resolution Directive and other EU legislation

2.5 The BRRD has been transposed into UK law. After the UK leaves the EU, the BRRD will no longer be a feature of the UK legal framework. The domestic legislation that transposes the BRRD will continue to apply, subject to any revisions made in accordance with the BRR (EU Exit) Regulations. While the BRRD may provide some context as to the original transposition of the requirements, at the point at which the UK leaves the EU, the BRRD itself will not have legal effect in the UK. Instead, the relevant domestic legislation that transposed the BRRD, as amended pursuant to the BRR (EU Exit) Regulations, will provide the source of the relevant

<sup>10</sup> December 2015: <https://www.bankofengland.co.uk/paper/2015/the-boes-power-to-direct-institutions-to-address-impediments-to-resolvability-sop>.

<sup>11</sup> June 2018: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>.

<sup>12</sup> June 2018: <https://www.bankofengland.co.uk/paper/2018/the-boes-policy-on-valuation-capabilities-to-support-resolvability>.

<sup>13</sup> 'The Bank of England's approach to resolution', published October 2017: <https://www.bankofengland.co.uk/paper/2017/the-bank-of-england-approach-to-resolution>.

legal duties, powers and obligations. Therefore, references to BRRD (and other European Directive) requirements should be read as being references to the relevant UK legislation that transposed the relevant provisions. References to EU Regulations should be treated as references to the relevant onshored regulation – that is, the UK version of the Regulation which has been retained and amended to address any deficiencies arising from the UK's withdrawal from the EU.

2.6 Following the UK's withdrawal from the EU, it may be that some aspects of the UK's implementation of the BRRD will no longer be appropriate. For example, the Bank will have no obligation to take joint decisions with other EEA resolution authorities through BRRD resolution colleges (see below for further detail). Where this is the case, those aspects of the domestic implementation of the BRRD will be deleted by the BRR (EU Exit) Regulations – any associated obligations as they appear in SoPs should therefore be interpreted as no longer applying.

## **References to Binding Technical Standards**

2.7 The SoPs may refer to existing BTS. After exit, references to any BRRD BTS should be taken to refer to the relevant onshored BTS as amended by the Bank or PRA/FCA. For example, references to Commission Delegated Regulation (EU) 2016/1450, setting out the methodology for setting MREL, should instead be taken to refer to the UK onshored version of this BTS as amended by the Bank.

2.8 The Appendix to this CP contains a draft EU Exit Instrument that sets out the BTS articles the Bank proposes to amend to fix deficiencies. Where an onshored BTS no longer contains a provision from the original EU BTS, because that provision (or the BTS itself) has not been retained, such provision should be interpreted to no longer apply.

## **References to European resolution colleges**

2.9 Any references to European resolution colleges, or to associated responsibilities or procedural obligations that the Bank has with regards to resolution colleges, should be interpreted as not applying.

2.10 For example, the Bank will have sole responsibility for determining MREL for groups subject to consolidated supervision in the UK after the UK leaves the EU. This, therefore, replaces references to joint decisions with other EEA regulators regarding MREL. The Bank will, however, continue to co-operate with EEA authorities and will continue to participate in Crisis Management Groups for global systemically important banks (G-SIBs) where the UK is either the home or a host authority.

## **References to the European Banking Authority (EBA)**

2.11 Where a SoP states that the Bank will engage with the EBA, this should be considered as no longer applying in accordance with the BRR (EU Exit) Regulations. For example, where a SoP says that the Bank will notify the EBA of a decision, the Bank will no longer have any obligation to notify the EBA from exit day.

## Other references to the European Economic Area (EEA)

2.12 SoPs may refer to obligations for the Bank to consider the economy, financial markets (including markets for financial services), financial system and/or financial stability of EEA states when exercising its powers. This might apply, for example, with regard to making decisions on the resolvability of a firm. After the UK leaves the EU, these references should instead be interpreted as requirements to consider the economy, financial markets (including markets for financial services), financial system and/or financial stability of the UK.

2.13 References to third countries should be read to include all EEA states. Accordingly, any requirements for the Bank to consider the interests of third countries (such as those detailed in Section 7A of the Banking Act 2009) continue to apply and will include the interests of EEA states.

2.14 SoPs may refer to liabilities that are governed by 'non-EEA law' – for example, with reference to the write-down or conversion of debt instruments. The PRA is currently consulting on proposals to amend the Contractual Recognition of Bail-In Part of the PRA Rulebook to ensure the rule is operable when the UK leaves the EU. The PRA is also clarifying its approach in respect of obligations under EEA law financial arrangements in scope of the Stay in Resolution Part of the PRA Rulebook. Readers should refer to the PRA CP26/18<sup>14</sup> in order to interpret the application of these provisions.

2.15 SoPs may refer to EEA authorities, or refer to EEA authorities when defining terms. In such cases, EEA authorities should be treated as within scope of that reference or definition only insofar as a third country authority would be in scope.

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<sup>14</sup> October 2018: <http://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>.

## 3 Material amendments to BRRD BTS allocated to the Bank

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3.1 The Appendix to this CP contains the draft EU Exit Instrument that provides for the changes the Bank is proposing to fix deficiencies in the BRRD BTS arising from EU withdrawal.<sup>15</sup> As noted in the NtA approach CP, the Bank considers it appropriate to provide specific commentary for 'material' fixes, judged as those that:

- deviate from the principles and approach to fixing deficiencies set out in the NtA approach CP; or
- reflect a specific solution proposed by the Bank where multiple solutions to the inoperable are available.

3.2 In the case of those BRRD BTS allocated to the Bank, the Bank does not consider there to be any amendments that meet this standard. The Bank does, however, consider that it may be of assistance to explain some of the changes where the reasoning behind the changes may not be obvious.

### References to resolution financing

3.3 The Bank proposes to remove references to 'resolution financing arrangements' in Commission Delegated Regulation (EU) 2016/1450 (on the methodology for setting a minimum requirement for own funds and eligible liabilities) (MREL), and instead cross-refer to the UK legislation that contains the relevant provisions concerning resolution financing. This reflects the UK's arrangements for resolution financing, under which the Bank is entitled to an amount raised by the bank levy in order to support the exercise of the resolution powers, providing the relevant safeguards have been met.<sup>16</sup>

### Deleted BTS

3.4 A number of BRRD BTS will be deleted as the requirements set in these BTS will no longer be applicable post exit – for example, the Bank will no longer be required to transmit information to the EBA. This deletion will also be done through the EU Exit Instrument, which deletes the onshored BTS in retained EU law (see Appendix). The following BTS will be deleted:

- Articles 50 to 109 of Commission Delegated Regulation (EU) 2016/1075 (regarding the organisation of resolution colleges and taking of joint decisions on group resolution planning, resolvability assessments, removal of impediments to resolution, setting of MREL and taking resolution);

<sup>15</sup> Other draft EU Exit Instruments for those BRRD BTS delegated to the PRA are included in the PRA CP26/18, published alongside this CP: <http://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>

<sup>16</sup> Further detail on the UK arrangements for resolution financing can be found in Chapter 11 of the HM Treasury's 2017 'Banking Act 2009: special resolution regime code of practice', available: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/602948/Special-Resolution-Regime-Code-of-Practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602948/Special-Resolution-Regime-Code-of-Practice.pdf).

- Commission Delegated Regulation (EU) 2016/962 (specifying uniform formats, templates and definitions for identifying and transmitting information regarding the application of simplified obligations for certain institutions to the EBA); and
- Commission Implementing Regulation (EU) 2018/308 (specifying uniform formats, templates and definitions for identifying and transmitting information on MREL to the EBA).

## **Interpretation of the BTS**

3.5 The Bank has not sought to make changes to the BRRD BTS where certain concepts, while not identical, have a pre-existing and clear counterpart in UK law. For example, certain BRRD BTS refer to 'ex ante' and 'ex post' valuations; these are and should be continued to be read as references to the pre-resolution and full valuations under the Banking Act 2009. Similarly, certain BRRD BTS refer to the 'sale of business tool' and 'bridge institution tool'; these are and should continue to be read as references to the 'private sector purchaser' and 'bridge bank' options under the Banking Act 2009.

## 4 The Bank's obligations under the Regulations

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4.1 The Regulations will, subject to Parliamentary approval, delegate power to make changes to relevant BTS under Section 8 of the Act to the Bank by HM Treasury. As such the restrictions that apply to the use of the power in Section 8 also apply to the Bank.

4.2 In accordance with those restrictions, the Bank considers that all changes proposed in this CP are appropriate to prevent, remedy or mitigate any:

- (a) failure of the relevant BTS to operate effectively, or
- (b) other deficiency in the relevant BTS, arising from the UK's withdrawal from the EU.

4.3 The types of changes that fall within the scope of 'deficiency' are listed in Section 8(2) of the Act. This list is exhaustive, ie all amendments must address deficiencies of these types or make consequential, supplementary, transitory or transitional provision in connection with them.

4.4 The Bank also confirms that the proposals do not:

- (a) impose or increase taxation or fees;
- (b) make retrospective provision;
- (c) create a criminal offence which is capable of leading to imprisonment of more than two years;
- (d) establish a public authority;
- (e) implement the Article 50 Withdrawal Agreement;
- (f) result in the transfer of a function of an EU authority to a UK authority;
- (g) confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or
- (h) amend any legislation other than the relevant BTS.

### **Equality and diversity**

4.5 The Bank does not consider that the proposals give rise to equality and diversity implications.

## 5 Next steps

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5.1 The Bank invites feedback on the proposals set out in this paper by Wednesday 2 January 2019. Please provide those comments by email to the address below:

[ResolutionBTS@bankofengland.co.uk](mailto:ResolutionBTS@bankofengland.co.uk)

Alternatively you may provide comments by post to:

Victoria Monro  
Resolution Directorate  
Bank of England  
Threadneedle Street  
London  
EC2R 8AH

## Appendix: Draft EU Exit Instrument to implement fixes to BRRD BTS within the Bank’s remit

### EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RESOLUTION AND RECOVERY) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT [YEAR]

#### Powers exercised

- A. The Bank of England (“the Bank”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

#### Pre-conditions to making

- B. The Bank is the appropriate regulator for the specified EU Regulations specified in Part 3 of the Schedule to the Regulations.
- C. The Bank has consulted the Prudential Regulation Authority (“the PRA”) and the Financial Conduct Authority (“the FCA”) in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

#### Interpretation

- E. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
  - (b) “exit day” has the meaning given in the Act;
  - (c) “specified EU Regulations” has the meaning given in regulation 2(l) of the Regulations.
  - (d) “the Bank Recovery and Resolution BTS” means the specified EU Regulations made under Directive 2014/59/EU and listed in Part 3 of the Schedule to the Regulations that are not listed in Annex J , as they form part of domestic law by virtue of section 3 of the Act;
- F. The Bank makes the modifications specified in Annex A to each of the Bank Recovery and Resolution BTS.
- G. The Bank makes the modifications contained in the Annex listed in column (2) below to the corresponding specified EU Regulation (or part thereof) listed in column (1) below.

(1)	(2)
Articles 22 to 32 and 37 to 41 of Commission Delegated Regulation 2016/1075	B
Commission Delegated Regulation 2016/1400	C
Commission Delegated Regulation 2016/1401	D
Commission Delegated Regulation 2016/1450	E
Commission Delegated Regulation 2016/1712	F
Commission Delegated Regulation 2017/344	G
Commission Delegated Regulation 2017/345	H

#### Deletions

- H. The specified EU Regulations listed in Annex I are deleted.

#### Commencement

I. This instrument comes into force on exit day.

**Citation**

J. This instrument may be cited as the Technical Standards (Bank Resolution and Recovery) (Amendment etc.) (EU Exit) (No. 1) Instrument [YEAR].

**By order of the Bank of England**

[DATE]

## Annex A

### General Modifications

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#### 1 INTERPRETATIVE PROVISIONS

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- 1.1 In the Bank Recovery and Resolution BTS, unless the context otherwise provides -
- 1.1.1 a reference to “resolution authority” or “resolution authorities” is a reference to the Bank;
- 1.1.2 terms used in the Bank Recovery and Resolution BTS which are defined in the Bank Recovery and Resolution Order (No. 2) 2014 have the same meaning that is given to them by that Order;
- 1.1.3 “recovery and resolution entities” mean:
- (a) institutions that are established in the United Kingdom
  - (b) financial institutions that are established in the United Kingdom when the financial institution is a subsidiary of a credit institution or investment firm, or of a company referred to in paragraphs (c) or (d), and is covered by the supervision of the parent undertaking on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) 575/2013
  - (c) an entity of any of the following kinds which is established in the United Kingdom—
    - (i) financial holding companies;
    - (ii) mixed financial holding companies;
    - (iii) mixed-activity holding companies;
  - (d) UK parent financial holding companies or UK parent mixed financial holding companies.
- Expressions used in defining recovery and resolution entities have the same meaning as in the capital requirements regulation.
- 1.1.4 “resolution action” means the application of resolution tools or the exercise of resolution powers.
- 1.1.5 a reference to the PRA Rulebook or FCA Handbook is a reference to rules made by the PRA or FCA under the Financial Services & Markets Act 2000 and as amended at any time under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018;
- 1.1.6 omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”

## Annex B

### Resolution Plans, Independence of Valuers

## 2 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2016/1075

- 2.1 In this Annex new text is underlined and deleted text is struck through.
- 2.1.1 Articles 22 to 32 and 37 to 41 Regulation 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges, as they form part of domestic law by virtue of section 3 of the Act, is modified as follows:

### SECTION I

#### *Content of resolution plans*

#### *Article 22*

#### **Categories of information to be included in resolution plans**

A resolution plan shall contain at least the elements laid down in points (1) to (8) of this Article, including all information required under ~~Articles 10 and 12 of Directive 2014/59/EU Schedules 1, 2 and 2A of the Bank Recovery and Resolution (No 2) Order 2014~~ and any additional information necessary to enable the delivery of the resolution strategy:

...

(2) a description of the resolution strategy considered in the plan, including:

...

- (d) an estimation of the time frame for executing each material aspect of the plan, as required pursuant to paragraph 4(2)(d) of Schedule 1 to the Bank Recovery and Resolution (No 2) Order 2014 ~~point (d) of Article 10(7) of Directive 2014/59/EU~~;

...

- (g) for group resolution plans, arrangements for cooperation and coordination between resolution and other ~~relevant authorities of Member States in which group entities are located or have significant branches and relevant authorities of third countries in which group entities are located,~~ in line with the written arrangements and procedure as set out in Chapter VI, Section I;

(3) a description of the information, and the arrangements for the provision of this information, necessary in order to effectively implement the resolution strategy, including at least:

- (a) a description of the information, and processes for ensuring availability in an appropriate timescale of that information required for the purposes of valuation, in particular pursuant to section 6E or 48X of the Banking Act 2009 and Article 158 of the Bank Recovery and Resolution (No 2) Order 2014 ~~Articles 36 and 49 of Directive 2014/59/EU~~, and market ability, in particular pursuant to the marketing requirements for the sale of business and bridge bank tools;  
...
- (c) a description of the arrangements for the sharing of information between resolution authorities and other relevant authorities, including where relevant authorities in ~~other Member States or in third countries~~, ~~in accordance with Article 90 of Directive 2014/59/EU~~;
- (d) a detailed description of arrangements for ensuring that information pursuant to rules about resolution packs made by the PRA or FCA in accordance with sections 137G and 137K of the Financial Services and Markets Act 2000, sections 83ZA or 83ZB of the Banking Act 2009 and article 56 of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 11 of Directive 2014/59/EU~~ is up to date and available to the resolution authority ~~resolution authorities~~ when required;  
...
- (5) a description of the financing requirements and financing sources necessary for the implementation of the resolution strategy foreseen in the plan, including at least:  
...
  - (d) for groups, the description of any principles agreed for sharing responsibility for financing between sources of funding in different jurisdictions, ~~including between sources of funding in different Member States pursuant to point (f) of Article 12(3) of Directive 2014/59/EU~~;
  - ...
- (7) the conclusions of the assessment of resolvability, including at least:  
...
  - (d) a quantified assessment of any change to minimum requirements for eligible liabilities, or the appropriate location of eligible liabilities, that is required to remove or address impediments to resolvability, taking into account the criteria specified in Articles 123(6) and 123(7) of the Bank Recovery and Resolution (No 2) Order 2014 ~~45(6) of Directive 2014/59/EU~~ and further specified in the delegated acts adopted pursuant to the mandate set out in Article 123(8) of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 45(2) of Directive 2014/59/EU~~;

#### Article 23

#### Stages of assessment

- 2. Where the resolution authority considers that it is clear that institutions or groups pose similar risks to the financial system or that the circumstances in which their liquidation is unlikely to be feasible are similar, that resolution authority may conduct the assessment of the feasibility and credibility of the liquidation of those institutions or groups in a similar or identical manner.  
~~The types of institutions referred to in the first subparagraph may in particular be determined in accordance with the criteria referred to in Article 98(1)(j) of Directive 2013/36/EU.~~
- 3. Where a resolution authority concludes that it may not be feasible or credible to wind up the institution or group entities under normal insolvency proceedings, or that resolution

action may otherwise be necessary in the public interest because winding up under normal insolvency proceedings would not meet the resolution objectives to the same extent, it shall identify a preferred resolution strategy which is appropriate for the institution or group on the basis of information provided by the institution or group pursuant to sections 83ZA or 83ZB of the Banking Act 2009 and Article 56 of the Bank Recovery and Resolution (No 2) Order 2014 Article 11 of Directive 2014/59/EU and the criteria set out in this Regulation. To the extent necessary, it shall also identify variant strategies to address circumstances in which the strategy would not be feasible or credible.

...

5. Resolution authorities shall request from the institution or group in accordance with sections 83ZA or 83ZB of the Banking Act 2009 and Article 56 of the Bank Recovery and Resolution (No 2) Order 2014 Article 11 of Directive 2014/59/EU such additional information as is necessary to carry out the assessments of the preferred and variant strategies.

...

#### *Article 24*

#### **Feasibility and credibility of liquidation under normal insolvency proceedings**

...

2. When assessing the credibility of liquidation, resolution authorities shall consider the likely impact of the liquidation of the institution or group on the financial systems of the United Kingdom any Member State or of the Union to ensure the continuity of access to critical functions carried out by the institution or group and achieving the resolution objectives of Article 31 of Directive 2014/59/EU. For this purpose, resolution authorities shall take into account the functions performed by the institution or group and assess whether liquidation would be likely to have a material adverse impact on any of the following:

...

4. For this purpose resolution authorities shall consider whether the institution's or group's systems are able to provide the information required by the ~~relevant deposit guarantee schemes~~ UK deposit guarantee scheme for the purposes of providing payment to covered deposits in the amounts and time frames specified in the Depositor Protection part of the PRA Rulebook, Directive 2014/49/EU of the European Parliament and of the Council<sup>(5)</sup>, or where relevant in accordance with equivalent third country deposit guarantee schemes, including on covered deposit balances.

Resolution authorities shall also assess whether the institution or the group has the capability required to support the ~~deposit guarantee schemes'~~ UK deposit guarantee scheme operations, in particular by distinguishing between covered and non-covered balances on deposit accounts.

...

#### *Article 26*

#### **Assessment of feasibility of a resolution strategy**

...

2. Resolution authorities shall consider impediments to the short-term stabilisation of the institution or group. Resolution authorities shall also consider any foreseeable impediments to a business reorganisation which is required pursuant to sections 12A(2C) and 48H of the Banking Act 2009 Article 52 of Directive 2014/59/EU or otherwise likely to be required if the resolution strategy envisages all or part of the institution or group being restored to long-term viability.

...

#### *Article 27*

### **Assessment of feasibility: structure and operations**

Resolution authorities shall consider at least the following issues in assessing whether there are potential impediments to resolution related to the structure and operations of the institution or group:

- (1) matters addressed in paragraphs (a) to (g), (p), (r) and (s) of Schedule 2B to the Bank Recovery and Resolution (No 2) Order 2014 points 1 to 7, 16, 18 and 19 of Section C of the Annex to Directive 2014/59/EU;

...

#### *Article 28*

### **Assessment of feasibility: financial resources**

Resolution authorities shall consider at least the following issues in assessing whether there are potential impediments to resolution related to financial resources:

- (1) matters addressed in paragraphs (m), (n), (o) and (q) of Schedule 2B to the Bank Recovery and Resolution (No 2) Order 2014 13, 14, 15 and 17 of Section C of the Annex to Directive 2014/59/EU;

...

#### *Article 29*

### **Assessment of feasibility: information**

Resolution authorities shall consider at least the following issues in assessing whether there are potential impediments to resolution related to information:

- (1) matters addressed in paragraphs (h) to (l) of Schedule 2B to the Bank Recovery and Resolution (No 2) Order 2014 8 to 12 of Section C of the Annex to Directive 2014/59/EU;

...

#### *Article 30*

### **Assessment of feasibility: cross-border issues**

Resolution authorities shall consider at least the following issues in assessing whether there are potential impediments to resolution related to cross-border issues:

- (1) matters addressed in paragraph (t) of Schedule 2B to the Bank Recovery and Resolution (No 2) Order 2014 20 of Section C of the Annex to Directive 2014/59/EU;
- (2) existence of adequate processes for coordination and communication and assurances on actions to be taken between home and host authorities, ~~including~~ in third countries, to enable delivery of the resolution strategy;
- (3) whether law in relevant home and host jurisdictions overrides contractual termination rights in financial contracts that are triggered solely by the failure and resolution of an affiliated company.

For purposes of this Article, termination rights should be interpreted with reference to sections 48Z and 70C of the Banking Act 2009.

#### *Article 32*

### **Assessment of credibility of a resolution strategy**

1. After assessing the feasibility of the selected resolution strategy, resolution authorities shall assess its credibility, taking into consideration the likely impact of resolution on the financial systems and real economy of the United Kingdom any Member State or of the Union, with a view to ensuring the continuity of critical functions carried out by the institution or group. The assessment shall include evaluation of matters addressed in ~~points~~ paragraphs (u) to

~~(bb) of Schedule 2B to the Bank Recovery and Resolution (No 2) Order 201421 to 28 of Section C of the Annex to Directive 2014/59/EU.~~

2. In conducting this assessment, resolution authorities shall consider the likely impact of the implementation of the resolution strategy on the financial systems of the United Kingdom ~~any Member State or of the Union~~. For this purpose, resolution authorities shall take into account the functions performed by the institution or group and assess whether implementation of the resolution strategy would be likely to have a material adverse impact on any of the following:

...

#### *Article 37*

#### **Definitions**

For the purposes of this Chapter, the following definitions apply:

- (1) 'appointing authority' means the legal or natural person responsible for selecting and appointing the independent valuer for the purposes of conducting the valuation referred to in sections 6E, 48X or 54 of the Banking Act 2009 ~~Article 36(1) or Article 74(1) of Directive 2014/59/EU~~;
- (2) 'relevant entity' means an institution or an entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ whose assets and liabilities are to be valued pursuant to sections 6E, 48X or 54 of the Banking Act 2009 ~~Article 36 or 74 of Directive 2014/59/EU~~;
- (3) 'relevant public authority' means the appointing authority, the resolution authority or the authorities referred to in section 48T(1) of the Banking Act 2009 ~~points (a) to (h) of Article 83(2) of Directive 2014/59/EU~~, and ~~the first authority referred to in point (i) of Article 83(2) of Directive 2014/59/EU.~~

#### *Article 39*

#### **Qualifications, experience, ability, knowledge and resources**

...

4. Paragraph 3 shall not prevent:
- (a) the provision of instructions, guidance, premises, technical equipment or other forms of support where, in the assessment of the appointing authority, or such other authority as may be empowered to conduct this task in the United Kingdom ~~Member State concerned~~, this is considered necessary for achieving the goals of the valuation;

...

Article 41

**Material common or conflicting interests**

...

2. For the purposes of paragraph 1 an actual or potential interest shall be deemed material whenever, in the assessment of the appointing authority or such other authority as may be empowered to perform this task in the United Kingdom ~~Member State concerned~~, it could influence, or be reasonably perceived to influence, the independent valuer's judgement in carrying out the valuation.

3. For the purposes of paragraph 1 interests in common or in conflict with at least the following parties shall be relevant:

...

(c) the creditors identified by the appointing authority, or such other authority as may be empowered to perform this task in the United Kingdom ~~Member State concerned~~, to be significant on the basis of the information available to the appointing authority or such other authority as may be empowered to perform this task in the United Kingdom ~~Member State concerned~~;

(d) each group entity.

For purposes of this paragraph, 'senior management' means those natural persons who exercise executive functions within the relevant entity and who are responsible, and accountable to the management body, for the day-to-day management of the relevant entity.

...

5. Without prejudice to paragraphs 3 and 4, a person shall be deemed to have an actual material interest in common or in conflict with the relevant entity where the independent valuer, in the year preceding the date on which that person's eligibility to act as independent valuer is assessed, has completed a statutory audit of the relevant entity pursuant to the law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2006/46/EC of the European Parliament and of the Council<sup>(6)</sup> and its implementing measures, as that law has effect on exit day.

6. Any person considered for the position of independent valuer, or appointed as an independent valuer shall:

...

(b) without delay notify the appointing authority or such other authority as may be empowered to perform the task referred to in paragraph 2 in the United Kingdom ~~Member State concerned~~ of any actual or potential interest which the independent valuer considers may, in the assessment of the authority, be considered to amount to a material interest in accordance with paragraph 2;

...

## Annex C

### Minimum Elements of Business Reorganisation Plans

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#### 3 MODIFICATIONS TO REGULATION 2016/1400

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- 3.1 In this Annex new text is underlined and deleted text is struck through.
- 3.2 Regulation 2016/1400 of 10 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

#### *Article 1*

##### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) 'reorganisation period' means the period, which shall be of a reasonable timescale, between the application of the bail-in tool and the moment when the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU under resolution is expected to have restored its long-term viability, during which measures included in the business reorganisation plan are implemented;
- (2) 'base case' means the business scenario which the management body or the person or persons appointed to operate the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU consider as most likely to materialise in the process of restoring the long-term viability of the institution or entity.
- (3) 'business reorganisation plan' has the meaning given in section 48H(2) of the Banking Act 2009.
- (4) 'crisis management measure' has the meaning given in section 48Z(1) of the Banking Act 2009.

#### *Article 2*

##### **Strategy and measures**

1. The business reorganisation plan shall include all of the following:
- (a) a historic and financial account of the factors that contributed to the difficulties of the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU including the relevant performance indicators that deteriorated in the period preceding the resolution and the reason for their deterioration;
- (b) a short description of crisis prevention and crisis management measures, where such measures have been applied by the competent authority, the resolution authority or the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU before the submission of the business reorganisation plan;
- ...

2. Where parts of the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ are to be wound down or sold, the reorganisation strategy referred to in paragraph 1(c) of this Article shall identify all of the following:  
...
4. For the parts of the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ that will not be wound down or sold, the business reorganisation plan shall indicate ways to remedy any shortcomings in their operation or performance that may have an impact on their long-term viability, even if these shortcomings are not directly related to the failure of that institution or entity.
5. The measures set out in the business reorganisation plan shall take into account the strengths and weaknesses of the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ and its reorganised business model by reference to the economic and market environment in which it operates.
6. The reorganisation strategy may include measures previously identified in the recovery plan or in the resolution plan, provided the resolution plan is accessible to the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ and when such measures remain valid following resolution. This option does not imply any obligation on the resolution authority to share the resolution plan with the management body or with the person or persons appointed as a resolution administrator in accordance with Article 72(1) of Directive 2014/59/EU

### Article 3

#### Financial performance — Regulatory requirements

1. The business reorganisation plan shall include the projected financial performance of the institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ during the reorganisation period and demonstrate how long-term viability will be restored. It shall set out in particular:  
...  
(d) a post-resolution balance sheet reflecting the new debt and capital structure and the write-down of assets based on the valuation conducted pursuant to section 6E of the Banking Act 2009 Article 36(1) of Directive 2014/59/EU or the *ex-post* definitive valuation referred to in section 48X of the Banking Act 2009 Article 36(10) thereof;  
...  
2. The business reorganisation plan shall set out the actions the institution or entity will take to ensure that it is able to fulfil all the applicable prudential and other regulatory requirements on a forward-looking basis as quickly as possible and at the latest by the end of the reorganisation period, including the minimum requirements for own funds and eligible liabilities within the meaning of section 3A(4) of the Banking Act 2009 and Part 9 of the Bank Recovery and Resolution Order (No 2) Order 2014 Article 45 of Directive 2014/59/EU.

### Article 4

#### Viability assessment

1. The business reorganisation plan shall contain sufficient information to allow the resolution authority and the competent authority to assess the feasibility of the proposed measures. The business reorganisation plan shall set out at least:  
...  
(b) a concise presentation of alternative reorganisation strategies or set of measures and justification as to why the measures in the business reorganisation plan have been chosen to restore long-term viability of the institution or entity referred to in paragraphs (b), (c) or (d) of

~~the definition of recovery and resolution entities points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, while respecting the resolution objectives and principles.~~

2. The business reorganisation plan shall include the necessary information to enable the resolution authority or the competent authority, to conduct a detailed analysis of the business reorganisation's impact on the critical functions of the institution or entity referred to in ~~paragraphs (b), (c) or (d) of the definition of recovery and resolution entities points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ and on financial stability.

...

4. With regard to the best-case and worst-case scenarios referred to in paragraph 3, the business reorganisation plan shall include a summary of the key information used in developing each scenario and the performance of the institution or entity referred to in ~~paragraphs (b), (c) or (d) of the definition of recovery and resolution entities points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ under each scenario. Such summary shall include in particular:

...

#### Article 5

### Implementation and adjustments

...

2. The business reorganisation plan shall provide for the possibility for the management body or any person or persons appointed ~~as a resolution administrator in accordance with Article 72(1) of Directive 2014/59/EU~~ to adjust the reorganisation strategy or individual measures where their implementation is no longer expected to contribute to the restoration of the long-term viability within the contemplated timescale. Such adjustments shall be communicated to the resolution authority and the competent authority in the progress report on the implementation of the business reorganisation plan referred to in Article 6. Where necessary for reasons of urgency, such adjustments may also be communicated through extraordinary reports.
3. The management body or the person or persons appointed ~~as a resolution administrator in accordance with Article 72(1) of Directive 2014/59/EU~~ shall not deviate from the implementation of the business reorganisation plan before obtaining approval for the adjustments according to the procedure set out in ~~section 48H(4) of the Banking Act 2009 and Articles 160, 162 and 171 of the Bank Recovery and Resolution Order (No 2) Order 2014~~paragraphs (7), (8) and (9) of Article 52 of Directive 2014/59/EU.

#### Article 6

### Progress report

1. The progress report to be submitted to the resolution authority pursuant to ~~section 48H(1)(c) of the Banking Act 2009 Article 52(10) of Directive 2014/59/EU~~ shall include a review and assessment of the progress of the implementation of business reorganisation plan, covering at least the following:
  - ...
  - (d) any other issues arising in the execution of the business reorganisation plan that may prevent the restoration of the long-term viability of the institution or entity referred to in ~~paragraphs (b), (c) or (d) of the definition of recovery and resolution entities points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU;~~
  - ...]
2. Resolution authorities may at all times require the management body or the person or persons appointed ~~as a resolution administrator in accordance with Article 72(1) of Directive 2014/59/EU~~ to provide information relating to the implementation of the business reorganisation plan.

## Annex D

## Valuing Liabilities Arising from Derivatives

**4 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2016/1401**

- 4.1 In this Annex new text is underlined and deleted text is struck through.
- 4.2 Regulation 2016/1401 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards for methodologies and principles on the valuation of liabilities arising from derivatives, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

*Article 1***Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'netting set' means a group of contracts subject to a netting arrangement as defined in Article 125 of the Bank Recovery and Resolution (No. 2) Order 2014 ~~Article 2(1)(98) of Directive 2014/59/EU~~;
- (2) 'valuer' means the independent expert appointed to carry out the valuation in compliance with the requirements and the criteria set out in Part Four of Commission Delegated Regulation (EU) 2016/1075 ~~(<sup>6</sup>)~~ or the resolution authority when conducting the valuation pursuant to sections 6E and 48X of the Banking Act of 2009 ~~paragraphs (2) and (9) of Article 36 of Directive 2014/59/EU~~;
- (3) 'central counterparty', or 'CCP', means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012, to the extent that it is either;
- (a) established in the United Kingdom ~~Union~~ and authorised in accordance with the procedure set out in Articles 14 to 21 of Regulation (EU) No 648/2012;

... *Article 2*

**Comparison between the destruction in value that would arise from the close-out and the bail-in potential of derivative contracts**

1. For the purpose of Article 158 of the Bank Recovery and Resolution (No. 2) Order 2014 ~~Article 49(4)(c) of Directive 2014/59/EU~~, the resolution authority shall compare the following:
- (a) the amount of losses that would be borne by the derivative contracts in a bail-in, obtained by multiplying:
- (i) the share, within all equally ranked liabilities, of liabilities arising from the derivative contracts determined as part of the valuation under sections 6E and 48X of the Banking Act 2009 ~~Article 36 of Directive 2014/59/EU~~ and not falling within the exclusions from bail-in pursuant to section 48B of that Act ~~Article 44(2) of that Directive~~; by
- ...
2. The comparison under paragraph 1 shall be made before a decision to close-out is taken, as part of the valuation to inform decisions about resolution actions required under section 6E of the Banking Act 2009 ~~Article 36 of Directive 2014/59/EU~~. Once a delegated act

~~adopted by the Commission pursuant to Article 36(15) of that Directive enters into force, the comparison shall follow the requirements set out in that delegated act Commission Delegated Regulation 2018/345.~~

### Article 3

#### Communication of the decision to close out

1. Prior to exercising the write-down and conversion powers in relation to liabilities arising from derivative contracts, the resolution authority shall communicate the decision to close out contracts pursuant to its powers to make special bail-in provision in accordance with sections 12A and 48B of the Banking Act 2009 Article 63(1)(k) of Directive 2014/59/EU to the counterparties to those contracts.

...

### Article 7

#### Valuation of cleared derivative contracts entered into between an institution under resolution and a CCP

2. The resolution authority shall communicate to the CCP and the national authority empowered by national law to supervise the CCP (the 'CCP's competent authority') its decision to close out the derivative contracts pursuant to its powers to make special bail-in provision in accordance with sections 12A and 48B of the Banking Act 2009 Article 63(1)(k) of Directive 2014/59/EU. The decision to close out shall take effect immediately, or on the date and time specified in the communication.

...

### Article 8

#### Point in time for establishing the value of derivative liabilities and early determination

2. The valuer may, as part of a provisional valuation carried out pursuant to section 6E of the Banking Act 2009 Article 36(9) of Directive 2014/59/EU, determine the value of liabilities arising from derivatives earlier than at the point in time determined pursuant to paragraph 1. Such early determination shall be made on the basis of estimates, relying on the principles laid down in Article 5 and Article 6(2) to (5), and on data available at the time of the determination.
3. Where the valuer carries out an early determination pursuant to paragraph 2, the resolution authority may at any time request the valuer to update the provisional valuation to take into account relevant observable market developments or evidence of commercially reasonable replacement trades concluded at the point in time determined pursuant to paragraph 1. These developments or evidence, where available by the date and time specified pursuant to Article 3(2), shall be taken into account in the *ex post* definitive valuation carried out pursuant to section 48X of the Banking Act 2009 Article 36(10) of Directive 2014/59/EU.
4. Where the valuer carries out an early determination pursuant to paragraph 2 in relation to derivative contracts entered into between an institution under resolution acting as a clearing member and a CCP, the valuer shall take due account of any estimate of expected close-out costs provided by the CCP.

Where the CCP provides a valuation of the early termination amount in accordance with the CCP default procedures by the deadline set pursuant to Article 7(5) and (6), that valuation shall be taken into account in the *ex post* definitive valuation carried out pursuant to section 48X of the Banking Act 2009 Article 36(10) of Directive 2014/59/EU.

## Annex E

## Methodology for Setting MREL

**5 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2016/1450**

- 5.1 In this Annex new text is underlined and deleted text is struck through.
- 5.2 Regulation 2016/1450 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

*Article 1***Determining the amount necessary to ensure loss absorption**

- ...
2. For the purpose of determining the loss absorption amount in accordance with this Article and of any contribution of the UK deposit guarantee scheme to the resolution costs pursuant to Article 6, the resolution authority shall, consistently with Article 123(6) of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 45(6) of Directive 2014/59/EU~~, request from the competent authority a summary of the capital requirements currently applicable to an institution or group, and in particular the following:
- (a) own funds requirements pursuant to Articles 92 and or imposed for the purpose of giving effect to an enhanced prudential measure direction or an enhanced prudential measure recommendation within the meaning of Article 458 of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(4)</sup>, which include:
- (i) CET1 capital ratio of 4,5 % of the total risk exposure amount;
  - (ii) a Tier 1 capital ratio of 6 % of the total risk exposure amount;
  - (iii) a total capital ratio of 8 % of the total risk exposure amount;
- (b) any requirement to hold additional own funds in excess of these requirements, in particular any imposed under Part 4A or 9A of the Financial Services & Markets Act 2000 or Part 7 the Capital Requirements Regulation 2013 ~~pursuant to, or point (a) of Article 104(1), of Directive 2013/36/EU;~~
- (c) combined buffer requirements as defined in Article 128(6) of Directive 2013/36/EU regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014;
- ...
3. For the purposes of this Regulation, capital requirements shall be interpreted in accordance with the competent authority's application of transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013 and in the provisions of legislation of the United Kingdom, or any part of the United Kingdom, ~~national~~ exercising the options granted to the competent authorities by that Regulation.
- ...
6. Where the option in paragraph 5(b) is applied, the resolution authority shall provide the competent authority with a reasoned explanation of the loss absorption amount that has been set, in the framework of the obligation of the resolution authority to consult the

competent authority under Part 9 of the Bank Recovery and Resolution (No 2) Order 2014 Article 45(6) of Directive 2014/59/EU.

#### Article 2

### **Determination of the amount necessary to continue to comply with conditions for authorisation and to carry out activities and sustain market confidence in the institution**

...

3. When estimating the institution's regulatory capital needs after implementation of the preferred resolution strategy, the resolution authority shall use the most recent reported values for the relevant total risk exposure amount or leverage ratio denominator, as applicable, unless all the following factors apply:

...

- (b) the change referred to in point (a) is considered in the resolvability assessment to be both feasible and credible without adversely affecting the provision of critical functions by the institution, and without recourse to extraordinary public financial support other than contributions provided pursuant to sections 228 or 229 of the Banking Act 2009 which meet the condition for financial assistance set out in section 78A(2) of that Act and which are in accordance with the code of practice under section 5 of that Act ~~from resolution financing arrangements, consistently with Article 101(2) of Directive 2014/59/EU and the principles governing their use set out in paragraphs 5 and 8 of Article 44 of that Directive.~~

...

6. The capital requirements referred to in paragraph 5 shall include the following:
  - (a) own funds requirements pursuant to Articles 92 and any imposed for the purposes of giving effect to an enhanced prudential measure direction or an enhanced prudential measure recommendation within the meaning of Article 458 of Regulation (EU) No 575/2013, which include:
    - ...
    - (b) any requirement to hold own funds in excess of the requirement listed in point (a) of this paragraph, in particular any imposed under Part 4A or 9A of the Financial Services & Markets Act 2000 or Part 7 of the Capital Requirements Regulation 2013 ~~pursuant to point (a) of Article 104(1) of Directive 2013/36/EU;~~
    - (c) the Basel I floor according to Article 500 of Regulation (EU) No 575/2013;
    - (d) any applicable leverage ratio requirement.

...

8. The default additional amount shall be equal to the combined buffer requirement, as defined in regulation 2 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, as specified in Chapter 4, Section 1 of Directive 2013/36/EU ~~which would apply to the institution after the application of resolution tools.~~

The additional amount required by the resolution authority may be lower than the default amount, if the resolution authority determines that a lower amount would be sufficient to sustain market confidence and ensure both the continued provision of critical economic functions by the institution and the access to funding without recourse to extraordinary public financial support other than contributions provided pursuant to sections 228 or 229 of the Banking Act 2009 which meet the condition for financial assistance set out in section 78A(2) of that Act and which are in accordance with the code of practice under section 5 of that Act ~~from resolution financing arrangements, consistently with Article 101(2) and paragraphs 5 and 8 of Article 44 of Directive 2014/59/EU.~~

The assessment of the amount necessary to support market confidence shall take into account whether the capital position of the institution after the resolution would be appropriate in comparison with the current capital position of peer institutions.

...

### Article 3

#### Exclusions from bail-in or partial transfer which are an impediment to resolvability

1. The resolution authority shall identify any liabilities which are excluded from bail-in ~~under Article 44(2) of Directive 2014/59/EU~~ or are reasonably likely to be fully or partially excluded from bail-in ~~under section 48B of the Banking Act 2009 Article 44(3) of that Directive~~, or transferred to a recipient in full, using other resolution tools based on the resolution plan.

...

Where the resolution authority determines that conditions referred to in the first subparagraph are met, it shall also assess whether the need to absorb losses and to contribute to the recapitalisation which would be borne by the liabilities referred to in the first subparagraph, were they not excluded from bail-in, can be satisfied by liabilities which qualify for inclusion in MREL and are not excluded from loss absorption or recapitalisation without breaching the safeguards on the financial interests of transferors and others provided by the four methods provided for in section 49 of the Banking Act 2009 ~~creditor safeguards provided in Article 73 of Directive 2014/59/EU.~~

...

### Article 4

#### Business model, funding model and risk profile

1. For purposes of point (d) of Article 123(6) of the Bank Recovery and Resolution (No 2) Order 2014 ~~45(6) of Directive 2014/59/EU~~ and within the framework of the consultation required by Article Part 9 of the Bank Recovery and Resolution (No 2) Order 2014 ~~45(6) of Directive 2014/59/EU~~, the resolution authority shall take into account information received from the competent authority, including the summary and explanation of the outcomes of the supervisory review and evaluation process conducted pursuant to ~~Article 97 of Directive 2013/36/EU~~ regulation 34A of the Capital Requirements Regulations 2013 and in particular:

...

- (c) information on how risks and vulnerabilities arising from the business model, funding model, and overall risk profile of the institution identified in the supervisory review and evaluation process are reflected, directly or indirectly, in the additional own fund requirements applied to an institution in a requirement imposed under Part 4A or Part 9A of the Financial Services & Markets Act 2000 or Part 7 of the Capital Requirements Regulation 2013 ~~pursuant to point (a) of Article 104(1) of Directive 2013/36/EU~~, based on the outcomes of the supervisory review and evaluation process;

...

2. The information referred to in paragraph 1 shall be taken into account by the resolution authority where it makes any adjustments to the default loss absorption and recapitalisation amounts, as described in Article 1(5) and Article 2(9), in order to ensure that the adjusted MREL, adequately reflects risks affecting resolvability arising from the institution's business model, funding profile and overall risk profile.

The resolution authority shall provide the competent authority with a reasoned explanation on how that information has been taken into account in any such adjustment, in the framework of the obligation of the resolution authority to consult the competent authority under Article Part 9 of the Bank Recovery and Resolution (No 2) Order 2014 ~~45(6) of Directive 2014/59/EU~~.

3. In the case of an entity or group which is subject to capital and prudential requirements pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(5)</sup> or Regulation (EU) No 909/2014 of the European Parliament and of the Council <sup>(6)</sup>, only capital requirements pursuant to Regulation (EU) No 575/2013 and those imposed in a law of the United Kingdom (or any part of it) which, immediately before exit day, implemented Directive 2013/36/EU, and its implementing measures, as that law has effect on exit day, should be taken into account for assessing the default loss absorption and recapitalisation requirements pursuant to Articles 1 and 2 of this Regulation.

The resolution authority may adjust the loss absorption amount to take account of feasible and credible contributions to loss absorption or recapitalisation envisaged by specific sources required by Regulation (EU) No 648/2012 or Regulation (EU) No 909/2014.

...

#### Article 5

##### Size and systemic risk

1. For institutions and groups which have been designated as G-SIIs or O-SIIs by the relevant competent authorities, and for any other institution which the competent authority, or the resolution authority considers reasonably likely to pose a systemic risk in case of failure and which does not fall within Article 2(2) of this Regulation, the resolution authority shall take into account the requirements set out in section 78A(2)(b) of the Banking Act 2009 and the code of practice under section 5 of that Act ~~Article 44 of Directive 2014/59/EU~~.
2. ~~Where a joint decision on MREL by the resolution college is required in accordance with Article 45 of Directive 2014/59/EU, for institutions which have been designated as G-SIIs or O-SIIs by the relevant competent authorities, and institutions within them, and for any other institution which the competent authority or the resolution authority considers reasonably likely to pose a systemic risk in case of failure, any downward adjustment to estimate capital requirements after resolution pursuant to Article 2(3) shall be documented and explained in the information provided to the members of the resolution college.~~

#### Article 6

##### Contributions by the UK deposit guarantee scheme to the financing of resolution

1. The resolution authority may reduce the MREL to take account of the amount which a the UK deposit guarantee scheme is expected to contribute to the financing of the preferred resolution strategy ~~in accordance with Article 109 of Directive 2014/59/EU~~.
2. The size of any such reduction shall be based on a credible assessment of the potential contribution from the UK deposit guarantee scheme, and shall at least:
  - (a) be less than a prudent estimate of the potential losses which the UK deposit guarantee scheme would have had to bear, had the institution been wound up under normal insolvency proceedings, taking into account the priority ranking of the UK deposit guarantee scheme pursuant to section 175 of the Insolvency Act 1986 ~~Article 108 of Directive 2014/59/EU~~;
  - (b) be less than the target level of the UK deposit guarantee scheme limit on deposit guarantee scheme contributions set out in the second subparagraph of Article 109(5) of Directive 2014/59/EU;
  - (c) take account of the overall risk of exhausting the mandatory contributions available to financial means of the UK deposit guarantee scheme due to contributing to multiple bank failures or resolutions; and
  - (d) be consistent with any other relevant provisions in the law of the United Kingdom, or any part of the United Kingdom, national law and the duties and responsibilities of the authority responsible for the UK deposit guarantee scheme.
3. The resolution authority shall, after consulting the authority responsible for the UK deposit guarantee scheme, document its approach as regards the assessment of the overall risk of exhausting the mandatory contributions available to financial means of the UK deposit guarantee scheme and apply reductions in accordance with paragraph 1, provided that that risk is not excessive.
4. In this Article, "mandatory contributions" and "target level" have the meanings given in rules made by the PRA under the Financial Services & Markets Act 2000.

## Annex F

### Information on Financial Contracts

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#### 6 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2016/1712

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- 6.1 In this Annex new text is underlined and deleted text is struck through.
- 6.2 Regulation 2016/1712 of 7 June 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards specifying a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

#### *Article 1*

##### **Requirement to maintain detailed records of financial contracts**

1. An institution or entity referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ shall be required by the competent authority or resolution authority to maintain detailed records of financial contracts where the resolution plan or the group resolution plan foresees the taking of resolution actions in relation to the institution or entity concerned in the event the conditions for resolution are met.
2. Where necessary to ensure comprehensive and effective planning, competent authorities and resolution authorities may impose the requirements referred to in paragraph 1 on institutions or entities referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU~~ which are not covered by paragraph 1 of this Article.

...

**ANNEX**

**The minimum set of the information on financial contracts to be included in the detailed records**

	<b>Field</b>	<b>Description of information to be maintained in detailed records of financial contracts</b>
<b>Section 1 — Parties to the financial contract</b>		
.....		
10	Contractual recognition — Write down and conversion powers (only for contracts governed by third country law subject to the requirement of the contractual term under the <u>PRA Rulebook Contractual Recognition of Bail-in or FCA Handbook IFPRU 11.6 first subparagraph of Article 55(1) of Directive 2014/59/EU</u> )	The contractual term required under <u>the PRA Rulebook Contractual Recognition of Bail-in or FCA Handbook IFPRU 11.6 Article 55(1) of Directive 2014/59/EU</u> . When such contractual term is included in a master agreement and applies to all trades governed by that master agreement, it can be recorded at the master agreement level.
11	Contractual recognition — Suspension of termination rights (only for contracts governed by third country law)	The contractual term by which the creditor or party to the agreement creating the liability recognises the power of the resolution authority of <del>a Member State</del> to suspend termination rights. Where such contractual term is included in a master agreement and applies to all trades governed by that master agreement, it can be recorded at the master agreement level.
12	Contractual recognition — Resolution powers (only for contracts governed by third country law)	The contractual term, if any, by which the creditor or party to the agreement creating the liability recognises the power of <u>the a Member State</u> resolution authority to apply resolution powers other than those identified in fields 10 and 11. Where such contractual term is included in a master agreement and applies to all trades governed by that master agreement, it can be recorded at the master agreement level.
<b>Section 2a — Financial contract type</b>		
29	Type of the financial contract	Classify the financial contract according to <u>Article 58 of the Bank Recovery and Resolution Order (No 2) Order 2014 Article 2, paragraph 1, point 100 of Directive 2014/59/EU</u> .
<b>Section 2b — Details on the transaction</b>		
37	Netting agreement	If the financial contract is a part of a netting arrangement as defined in <u>Article 125 of the Bank Recovery and Resolution (No 2) Order 2014 2(1)(98) of Directive 2014/59/EU</u> , a unique reference of the netting arrangement.
38	Type of liability/claim	Indicate whether liabilities arising from the

	<p>financial contract are:</p> <ul style="list-style-type: none"><li>—entirely excluded from bail-in pursuant to <u>section 48B of the Banking Act 2009</u> <del>Article 44(2) of Directive 2014/59/EU</del>;</li><li>—partially excluded from bail-in pursuant to <u>section 48B of the Banking Act 2009</u> <del>44(2) of Directive 2014/59/EU</del>;</li><li>—not excluded from bail-in pursuant to <u>section 48B of the Banking Act 2009</u> <del>(2) of Directive 2014/59/EU</del>.</li></ul>
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## Annex G

### Methodologies for Difference in Treatment in Valuation

#### 7 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2018/344

- 7.1 In this Annex new text is underlined and deleted text is struck through.
- 7.2 Regulation 2018/344 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

##### *Article 1*

##### **General provisions**

1. For the purposes of determining the treatment of shareholders and creditors under normal insolvency proceedings, the valuation shall only be based on information about facts and circumstances which existed and could reasonably have been known at the resolution decision date which, had they been known by the valuer, would have affected the measurement of the assets and liabilities of the entity at that date.

For the purposes of this Regulation, 'resolution decision date' means the date on which the decision to resolve an entity, is adopted pursuant to ~~Article 82 of Directive 2014/59/EU~~.

For the purposes of this Regulation, 'entity' means an institution or entity as referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities.

For the purposes of this Regulation 'valuer' means the required independent person meeting the conditions set out in Article 38 of the Commission Delegated Regulation (EU) 2016/1075.

...

##### *Article 3*

##### **Steps of the valuation**

For the purposes of determining whether a difference in treatment as referred to in sections 60(2) and 60B(1) of the Banking Act 2009 ~~in Article 74(2) of Directive 2014/59/EU~~ exists the valuer shall assess:

- (a) the treatment that shareholders and creditors in respect of which resolution actions have been effected, or the ~~relevant~~ UK deposit guarantee scheme, would have received had the entity, entered normal insolvency proceedings at the resolution decision date, disregarding any provision of extraordinary public financial support;

...

##### *Article 4*

##### **Determination of the treatment of shareholders and creditors under normal insolvency proceedings**

...

9. For the purpose of determining any unsecured amount of claims under derivatives contracts ~~claims~~ in insolvency, the valuer shall apply methodologies set out in Commission Delegated Regulation (EU) 2016/1401 ~~(4)~~, to the extent consistent with insolvency law and practice.

...

*Article 6*

**Valuation report**

The valuer shall prepare a valuation report to the resolution authority which shall include at least the following elements:

...

- (c) an explanation, where feasible, why the valuation differs from other relevant valuations, including the resolution valuations conducted in accordance with Commission Delegated Regulation (EU) 2018/345 or other regulatory or accounting valuations.

## Annex H

### Methodologies for Valuing Assets and Liabilities

#### 8 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2018/345

- 8.1 In this Annex new text is underlined and deleted text is struck through.
- 8.2 Regulation 2018/345 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

#### GENERAL PROVISIONS

##### Article 1

##### Definitions

For the purpose of this Regulation the following definitions shall apply:

- (a) 'valuation' means either the assessment of an entity's assets and liabilities conducted by a valuer pursuant to section 6E of the Banking Act 2009 ~~Article 36(1) of Directive 2014/59/EU~~, or the provisional valuation conducted by the resolution authority or the valuer, as the case may be, pursuant ~~respectively to~~ section 6E(3) of that Act. ~~paragraphs (2) and (9) of Article 36 of that Directive.~~
- (b) 'valuer' means either the independent valuer within the meaning of Article 38 of Commission Delegated Regulation (EU) 2016/1075 ~~(<sup>3</sup>)~~ or the resolution authority when conducting a provisional valuation pursuant to section 6E(3) of the Banking Act 2009 ~~paragraphs (2) and (9) of Article 36 of Directive 2014/59/EU.~~
- (c) 'entity' means an institution or an entity as referred to in paragraphs (b), (c) or (d) of the definition of recovery and resolution entities ~~points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU.~~
- ...
- (f) 'disposal value' means the measurement basis ~~referred~~ referred to in Article 12(5).
- ...
- (j) 'resolution date' means the date on which the decision to resolve an entity is adopted, ~~pursuant to Article 82 of Directive 2014/59/EU.~~

##### Article 2

##### General criteria

- ...
5. The valuation shall subdivide creditors in classes according to their priority ranking under applicable insolvency law, and shall include the following estimates:
- ...
- (b) the proceeds each class would receive if the entity were wound-up under normal insolvency proceedings;
- When calculating the estimates pursuant to points (a) and (b) of the first subparagraph, the

valuer may apply the criteria set out in Article 4 of Commission Delegated Regulation (EU) 2018/344 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution as appropriate.

6. Where appropriate and feasible, taking into account timing and credibility of the valuation, the resolution authority may request several valuations. In that case, the resolution authority shall establish the criteria to determine how these valuations shall be used for the purposes set out in section 6E of the Banking Act 2009 Article 36 of Directive 2014/59/EU.

#### Article 3

##### Valuation date

The valuation date shall be one of the following dates:

- ...
- (b) where an *ex post* definitive valuation required by section 48X of the Banking Act 2009 Article 36(10) of Directive 2014/59/EU is conducted, the resolution date;
- (c) in relation to liabilities arising from claims under derivatives contracts, the point in time determined pursuant to Article 8 of Commission Delegated Regulation (EU) 2016/1401<sup>(4)</sup>.

#### Article 4

##### Sources of information

The valuation shall be based on any information pertinent to the valuation date which is deemed relevant by the valuer. In addition to the entity's financial statements, related audit reports and regulatory reporting as of a period ending as close as possible to the valuation date, that relevant information may include the following:

- ...
- (f) where available, supervisory assessments of the entity's financial condition, ~~including information acquired pursuant to point (h) of Article 27(1) of Directive 2014/59/EU;~~
- ...

#### Article 6

##### Valuation report

The valuer shall prepare a valuation report to the resolution authority which shall include at least the following elements:

- (a) except as provided in section 6E of the Banking Act 2009 Article 36(9) of Directive 2014/59/EU, the information referred to in subsection 6E(7), paragraphs (a) to (d) of that Act ~~points (a) to (c) of Article 36(6) of that Directive;~~
- (b) except as provided in section 6E(9) of the Banking Act 2009 Article 36(9) of Directive 2014/59/EU, the information referred to in subsection 6E(7), paragraph (e) of that Act Article 36(8) of Directive 2014/59/EU;
- (c) the valuation of the liabilities arising from claims under derivatives contracts carried out in accordance with Commission Delegated Regulation (EU) 2016/1401;
- ...
- (f) any additional information which in the valuer's opinion would assist the resolution authority or competent authority for purposes of independent or provisional valuation under sections 6E, 48X and 48Y of the Banking Act 2009 Article 36(1) to (11) of Directive 2014/59/EU.

## CHAPTER II

**CRITERIA FOR THE VALUATION FOR THE PURPOSE OF SECTION 6E(4)(a)(i) OF THE BANKING ACT ~~ARTICLE 36(4)(a)~~**

*Article 7*

**General principles**

1. The valuations for the purpose referred to in subsection 6E(4)(a)(i) of the Banking Act 2009 point (a) of Article 36(4) of Directive 2014/59/EU shall be based on fair and realistic assumptions and shall seek to ensure that losses under the appropriate scenario are fully recognised. Where such valuation is available, it shall inform the determination of the competent authority ~~or of the resolution authority as appropriate~~, that an institution is 'failing or likely to fail' as referred to in section 7(2) of the Banking Act 2009 Article 32(1)(a) of Directive 2014/59/EU. Based on existing supervisory guidance or other generally recognised sources setting out criteria conducive to the fair and realistic measurement of different types of assets and liabilities, the valuer may challenge the assumptions, data, methodologies and judgements on which the entity based its valuations for financial reporting obligations or for the calculation of regulatory capital and capital requirements and disregard them for the purposes of the valuation.

...

**CHAPTER III**

**CRITERIA FOR THE VALUATION FOR THE PURPOSE OF SECTION 6E(4)(a)(ii) TO (v), SECTION 6E(4)(b) AND SECTION 6E(10) OF THE BANKING ACT 2009 ~~ARTICLE 36(4)(b), (c), (d), (e), (f), (g) AND OF ARTICLE 36(9), SECOND SUBPARAGRAPH~~**

*Article 10*

**General principles**

1. The valuer shall assess the impact on the valuation of each resolution action that the resolution authority may adopt to inform the decisions referred to in sections 6E(4)(a)(ii) to (v) and section 6E(4)(b) of the Banking Act 2009 points (b) to (g) of Article 36(4) of Directive 2014/59/EU. Without prejudice to the valuer's independence, the resolution authority may consult with the valuer in order to identify the range of resolution actions being considered by that authority, including actions contained in the resolution plan or, if different, any proposed resolution scheme.

...

4. Where the values of the valuation diverge significantly from the values presented by the entity in the financial statements, the valuer shall use the assumptions of that valuation, to inform the adjustments to the assumptions and to the accounting policies necessary for the preparation of the an updated balance sheet, consistent with section 6E(7) of the Banking Act 2009 required under Article 36(6) of Directive 2014/59/EU, in a way consistent with the applicable accounting framework. As regards losses identified by the valuer which cannot be recognised in the an updated balance sheet, the valuer shall specify the amount, describe the reasons underlying the determination of the losses and the likelihood and time horizon of their occurrence.
5. Where capital instruments or other liabilities are converted to equity, a valuation shall provide an estimate of the post-conversion equity value of new shares transferred or issued as consideration to holders of converted capital instruments or other creditors. That estimate shall form the basis for the determination of the conversion rate or rates pursuant to section 6C(4)(d) of the Banking Act 2009 Article 50 of Directive 2014/59/EU.

*Article 11*

**Selection of the measurement basis**

...

4. Where the resolution actions referred to in Article 10(1) require that assets and liabilities are to be retained by an entity that continues to be a going concern institution, the valuer shall use the hold value as the appropriate measurement basis. The hold value may, if considered fair, prudent and realistic, anticipate a normalisation of market conditions.

The hold value shall not be used as the measurement basis where assets are transferred to an asset management vehicle pursuant to section 12ZA of the Banking Act 2009 ~~Article 42 of Directive 2014/59/EU~~ or to a bridge institution pursuant to section 12 of that Act ~~Article 40 of that Directive~~, or where a sale of business tool pursuant to section 11 of that Act ~~Article 38 of Directive 2014/59/EU~~ is used.

...

### *Article 13*

#### **Methodology for calculating and including a buffer for additional losses**

1. To address the uncertainty of provisional valuations conducted in accordance with sections 6E(4)(a)(ii) to (v) and section 6E(4)(b) of the Banking Act 2009 ~~points (b) to (g) of Article 36(4) of Directive 2014/59/EU~~, the valuer shall include in the valuation a buffer to reflect facts and circumstances supporting the existence of additional losses of uncertain amount or timing. In order to avoid double counting of uncertainty, the assumptions supporting the calculation of the buffer shall be adequately explained and justified by the valuer.

## Annex I

### Deletions

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#### **9 DELETIONS OF SPECIFIED EU REGULATIONS**

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- 9.1 The following Articles and specified EU Regulations, as they form part of domestic law by virtue of section 3 of the Act, are deleted:
- 9.1.1 Articles 50 to 109 of Regulation 2016/1075.
- 9.1.2 Commission Implementing Regulation (EU) 2016/962 of 16 June 2016 laying down implementing technical standards with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to Directive 2014/59/EU of the European Parliament and of the Council.
- 9.1.3 Commission Implementing Regulation (EU) 2018/308 of 1 March 2018 laying down implementing technical standards for Directive 2014/59/EU of the European Parliament and of the Council with regard to formats, templates and definitions for the identification and transmission of information by resolution authorities for the purposes of informing the European Banking Authority of the minimum requirement for own funds and eligible liabilities.