

## TEMPLATE BAIL-IN ONWARD TRANSFER INSTRUMENT (PROPPs)

***IMPORTANT NOTE: This draft template instrument is intended to increase awareness and understanding of the actions that may take place in a bail-in resolution in the United Kingdom. In light of the fact that bail-in is a crisis management tool, the Bank of England (the Bank) must be able to retain the full discretion accorded to it under the Banking Act 2009 as to how to respond to the circumstances of a particular case. Any use of the Bank's bail-in powers will depend on the facts and circumstances of the particular case, and may be different from the actions and approach set out in this draft template instrument. Accordingly, this draft template instrument is not, and should not be regarded as, indicative of the Bank's settled view in relation to any aspect of bail-in or resolution generally, as indicative that any actual bail-in resolution instrument which may be required in connection with the resolution of a particular firm would be in this form or would contain provisions the same as or similar to any of the provisions herein or as specifying an exhaustive list of the powers that may be exercised or the provisions that may be included in any actual bail-in resolution instrument.***

### The [Name of Bank] plc Onward Transfer Instrument 20[ ]<sup>1</sup>

Made - - - - [date]

Coming into force - [date]

Having consulted the PRA, the FCA and HM Treasury, the Bank of England, in the exercise of the powers conferred by Section 48V of the Banking Act, makes this instrument.<sup>2</sup>

This instrument is designated by the Bank of England as supplemental to the [Name of Bank] Resolution Instrument 20[ ] made by the Bank on [ ] 20[ ].<sup>3</sup>

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1 This Template Onward Transfer Instrument (referred to in these notes as the "Template Onward Transfer Instrument") is to be read and used in conjunction with the Template Bail-in Resolution Instrument – PROPPs Structure (referred to in these notes as the "Template Resolution Instrument") and the Template Bail-in Supplemental Resolution Instrument – PROPPs Structure (referred to in these notes as the "Template Supplemental Resolution Instrument") and related notes to each and has been drafted on the same hypothetical basis as the Template Resolution Instrument and the Template Supplemental Resolution Instrument. Further explanations of individual provisions of this Template Onward Transfer Instrument, certain of which will depend on the way in which the bail-in is structured in the Resolution Instrument, are contained in the footnotes to it and in the footnotes to the Template Resolution Instrument and the Template Supplemental Resolution Instrument. References to the "Resolution Instrument" are to the resolution instrument as it would have been made at the commencement of a resolution and references to the "Supplemental Resolution Instrument" are to the supplemental resolution instrument as it would have been made (potentially on the Allocation Ratio Announcement Date as defined in the Template Resolution Instrument).

2 It is assumed in the Template Resolution Instrument and the Template Supplemental Resolution Instrument that the transfer of Shares and potentially other property to PROPPs Beneficiaries would be effected by way of an Onward Transfer Instrument under S.48V of the Banking Act. The BoE would be required to consult the PRA, FCA and HM Treasury before making such an instrument. It is possible that the Bank of England may decide to effect the granting of PROPPs and the transfer of the relevant entitlements in batches, in which case there would need to be more than one Onward Transfer Instrument and references would need to be amended accordingly.

3 S.48U Banking Act permits the BoE, where it has made a resolution instrument, to make with respect to the firm one or more resolution instruments which it designates as supplemental resolution instruments. Additional powers on which the BoE is relying in connection with the Onward Transfer Instrument may also be referenced.

# TEMPLATE BAIL-IN ONWARD TRANSFER INSTRUMENT (PROPPs)

## PART 1 GENERAL

### Citation and commencement

1. This Instrument may be cited as The [*Name of Bank*] plc Onward Transfer Instrument [*Year*].<sup>4</sup>
2. This Instrument comes into force at [ ] on [ ].

### Interpretation: general

3. In this Instrument:<sup>5</sup>

“Additional Shares” has the meaning given in Paragraph [15] of the [Bank] Resolution Instrument;

“Allocation Expiration Date” means the day falling [ ] days after the Allocation Ratio Announcement Date.

[“Allocation FX Rate” means [the middle exchange rate on the London Foreign Exchange Market at the close of business [on the day on which foreign exchange markets were open in London immediately prior to the [Allocation Ratio Announcement Date]], as published for such date on [ ] [or, in absence of any such published rate, such rate as the [Bank of England] determines];]<sup>6</sup>

“Allocation Period” means the period from and including the first day following the Allocation Ratio Announcement Date to but excluding the Allocation Expiration Date;

“Allocation Ratio Announcement Date” means [the date on which the Bank of England makes the Supplemental [Bank] Resolution Instrument announcing the Allocation Ratios];<sup>7</sup>

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<sup>4</sup> The Onward Transfer Instrument would be made following receipt of an Onward Transfer Request from the Depository. It is possible that more than one Onward Transfer Request would be made if the transfers of relevant entitlements to PROPP Beneficiaries were to be processed in batches. See Footnote [2].

<sup>5</sup> The Template Onward Transfer Instrument has been drafted on the basis that it should be capable of being read on its own and not simply state that terms defined in the Resolution Instrument or Supplemental Resolution Instrument have the same meaning in the Onward Transfer Instrument. It is also the case that certain definitions need to be amended when used in the Onward Transfer Instrument to reflect the fact that, at the time the Onward Transfer Instrument is made, the Resolution Instrument and the Supplemental Resolution Instrument will have been made and the bail-in structure will have been determined at the commencement of resolution and prior to the making of the Onward Transfer Instrument and, in some cases, as a result of the effluxion of time between the making of the various instruments. Consequently definitions used in the Template Resolution Instrument and the Template Supplemental Resolution Instrument have been repeated in this Template Onward Transfer Instrument (together where relevant with the related footnotes) but modified as appropriate. Note, however, terms defined in the Template Resolution Instrument and the Template Supplemental Resolution Instrument which are not used in this Template Onward Transfer Instrument (other than in the footnotes) have not been defined again in this Template Onward Transfer Instrument.

<sup>6</sup> This definition is one possible approach to dealing with non-sterling liabilities and an exchange rate which could be used in that context and has been included for the purpose of illustration only. Other approaches are possible. It is modelled on the definition of the official exchange rate in Rule 14.21 of the Insolvency (England and Wales) Rules 2016/1024 (debts in foreign currency) for use in a Bank Insolvency Procedure. Rule 14.21 provides that all debts incurred or payable in a currency other than sterling must be converted into sterling at a single rate for each currency determined by the office holder by reference to the exchange rates prevailing at the relevant date. This rate would be used to convert into sterling any securities the subject of bail-in which are denominated in a currency other than sterling. The Allocation FX Rate to be used in respect of SNP Instruments denominated in a currency other than sterling or for converting any non-sterling amounts which have been received and added to Deposited Property during the resolution period will be considered at the relevant time.

<sup>7</sup> The Allocation Ratio Announcement Date would be decided and the Supplemental [Bank] Resolution Instrument would be made following completion of the final equity valuation process (Valuation 3). The Template Instruments provide that the Supplemental [Bank] Resolution Instrument would be made on the Allocation Ratio Announcement Date, but this could be altered as required.

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“Allocation Ratios” means the Class [A] Allocation Ratio, the Class [B] Allocation Ratio, the Class [C] Allocation Ratio [EITHER] [and the Class [D] Allocation Ratio] [OR] [, the Class [D] 1 Allocation Ratio and the Class [D] 2 Allocation Ratio];

“[Bank]” means [Name of Bank] plc;

“Banking Act” means the Banking Act 2009 (as amended);

“[Bank] Onward Transfer Instrument” means this Instrument and any other transfer instrument made by the Bank of England under Section 48V of the Banking Act to transfer some or all of the Shares, [the SNP Instruments,] [the New Debt Instruments] [any cash amount] and any other securities comprised in the Deposited Property from the Depository or its nominee to PROPP Beneficiaries;<sup>8</sup>

“[Bank] Resolution Instrument” means The [Name of Bank] plc Resolution Instrument [Year] made by the Bank of England;

“Business Day” means any day on which commercial banks are open for general business in London but excluding Saturday and Sunday and any day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971;

“Cash Account” means the [non-interest earning] pounds sterling account maintained by the Depository for the benefit of PROPP Beneficiaries into which cash amounts are paid in accordance with the [Bank] Resolution Instrument;<sup>9</sup>

“Class [A] Allocation Ratio” means the fractional number specified in Paragraph [6] of the [Bank] Supplemental Resolution Instrument used by the Bank of England for the purpose of calculating the Class [A] Entitlement in accordance with Paragraph [37] of the [Bank] Resolution Instrument;

“Class [A] Entitlement”, in relation to a Class [A] PROPP Beneficiary, means the fractional amount of Deposited Share Property to which that Class [A] PROPP Beneficiary is entitled as determined in accordance with Paragraph [37] of the [Bank] Resolution Instrument and specified in the relevant Onward Transfer Request;

“Class [A] Portion”, in relation to a Class [A] PROPP Beneficiary, means the percentage of the AT1 Instruments in issue immediately prior to the Resolution Time that were then held by that PROPP Beneficiary calculated by reference to the principal amount outstanding of such AT1 Instruments held by that PROPP Beneficiary immediately prior to the Resolution Time and the aggregate principal amount outstanding of all AT1 Instruments in issue immediately prior to the Resolution Time;

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Following the final equity valuation the BoE should be able to determine the full extent of the bail-in required and set the Allocation Ratios for each class of PROPP. Once this has been determined by the BoE, the Allocation Period and the Allocation Expiration Date would be determined automatically as a consequence of the definitions in the Template Resolution Instrument.

8 The Template Resolution Instrument provides for the Shares in [Bank] to be transferred by the Resolution Instrument from the holders to the Depository and to be held by the Depository until transferred to the PROPP Beneficiaries. It is assumed that the subsequent transfer of Shares to PROPP Beneficiaries would be effected by way of an Onward Transfer Instrument made by the BoE under S.48V of the Banking Act. Such a transfer would not be subject to SDRT. The BoE would be required to consult the PRA, FCA and HM Treasury before making such an instrument. It is also proposed that the Onward Transfer Instrument be used to transfer other assets to which PROPP Beneficiaries may be entitled, for example any cash, any SNP Instruments if there is a deferred bail-in and any New Debt Instruments if they are to be created as part of the recapitalisation of the firm (see Footnote [7] of the Template Resolution Instrument).

9 A Cash Account has been included to cover the possibility (albeit unlikely) of a cash distribution or interest or principal payment being made in respect of the Shares or any debt instruments transferred to and held by the Depository during the bail-in.

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“Class [A] PROPP” means a PROPP in respect of such proportion of Deposited Share Property as is determined in accordance with and subject to the [Bank] Resolution Instrument;<sup>10</sup>

“Class [A] PROPP Beneficiary” means a person who has been granted a Class [A] PROPP in accordance with [paragraph 24] of the [Bank] Resolution Instrument (or any person who acquires a Class [A] PROPP from that person by operation of law);

“Class [B] Allocation Ratio” means the fractional number specified in Paragraph [6] of the [Bank] Supplemental Resolution Instrument used by the Bank of England for the purpose of calculating the Class [B] Entitlement in accordance with Paragraph [39] of the [Bank] Resolution Instrument;

“Class [B] Entitlement”, in relation to a Class [B] PROPP Beneficiary, means the fractional amount of Deposited Share Property to which that Class [B] PROPP Beneficiary is entitled as determined in accordance with Paragraph [39] of the [Bank] Resolution Instrument and specified in the relevant Onward Transfer Request;

“Class [B] Portion”, in relation to a Class [B] PROPP Beneficiary, means the percentage of the Tier 2 Instruments in issue immediately prior to the Resolution Time that were then held by that PROPP Beneficiary calculated by reference to the principal amount outstanding of such Tier 2 Instruments held by that PROPP Beneficiary immediately prior to the Resolution Time and the aggregate principal amount outstanding of all Tier 2 Instruments in issue immediately prior to the Resolution Time;

“Class [B] PROPP” means a PROPP in respect of such proportion of Deposited Share Property as is determined in accordance with and subject to the [Bank] Resolution Instrument;

“Class [B] PROPP Beneficiary” means a person who has been granted a Class [B] PROPP in accordance with [paragraph 25] of the [Bank] Resolution Instrument (or any person who acquires a Class [B] PROPP from that person by operation of law);

“Class [C] Allocation Ratio” means the fractional number specified in Paragraph [6] of the [Bank] Supplemental Resolution Instrument used by the Bank of England for the purpose of calculating the Class [C] Entitlement in accordance with Paragraph [41] of the [Bank] Resolution Instrument;

“Class [C] Entitlement”, in relation to a Class [C] PROPP Beneficiary, means the fractional amount of Deposited Share Property to which that Class [C] PROPP Beneficiary is entitled as determined in accordance with Paragraph [41] of the [Bank] Resolution Instrument and specified in the relevant Onward Transfer Request;

“Class [C] Portion”, in relation to a Class [C] PROPP Beneficiary, means the percentage of the Preference Shares in issue immediately prior to the Resolution Time that were then held by that PROPP Beneficiary calculated by reference to the nominal value of such Preference Shares

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10 The number of classes of PROPP and the bailed-in securities to which they correspond will depend on the capital structure of the [Bank] and how the bail-in is structured. See Footnote [7] and Footnote [9] of the Template Resolution Instrument. In the Template Resolution Instrument and Template Supplemental Resolution Instrument four classes of PROPP (A, B, C and D) corresponding respectively to all AT1 Instruments, all Tier 2 Instruments, all Preference Shares and all SNP Instruments of the hypothetical firm [Bank] have been included for the purposes of illustration. In an actual bail-in resolution, the number of different classes of PROPP will be case specific. The Template Resolution Instrument does not provide for PROPPs to be granted to shareholders of the firm whose shares are transferred to the Depositary. If separate classes of PROPPs were necessary for different classes of AT1 Instruments, Tier 2 Instruments, Preference Shares or SNP Instruments for any reason, additional classes and nomenclature would be necessary. If there is a deferred bail-in and there is more than one class of SNP Instruments, additional classes of PROPP corresponding to the different classes of SNP Instrument would be necessary – e.g. D1, D2 etc. – in order to ensure the “return” of the same class of SNP Instruments which the original holder held immediately prior to the Resolution Time. In this Template Onward Transfer Instrument definitions referring to Class [D1] PROPPs and Class [D2] PROPPs and related terms have been included for the purpose of illustrating how a deferred bail-in might work if there was more than one class of SNP Instruments.

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held by that PROPP Beneficiary immediately prior to the Resolution Time and the aggregate nominal value of all Preference Shares in issue immediately prior to the Resolution Time;

“Class [C] PROPP” means a PROPP in respect of such proportion of Deposited Share Property as is determined in accordance with and subject to the [Bank] Resolution Instrument;

“Class [C] PROPP Beneficiary” means a person who has been granted a Class [C] PROPP in accordance with [paragraph 26] of the [Bank] Resolution Instrument (or any person who acquires a Class [C] PROPP from that person by operation of law);

[“Class [D] Allocation Ratio” means the fractional number specified in Paragraph [6] of the [Bank] Supplemental Resolution Instrument used by the Bank of England for the purpose of calculating the Class [D] Entitlement in accordance with Paragraph [43] of the [Bank] Resolution Instrument;]

[“Class [D] Entitlement”, in relation to a Class [D] PROPP Beneficiary, means the fractional amount of Deposited Share Property [and the fractional principal amount of New Debt Instruments]<sup>11</sup> to which that Class [D] PROPP Beneficiary is entitled as determined in accordance with Paragraph [43] of the [Bank] Resolution Instrument and specified in the relevant Onward Transfer Request;]

[“Class [D] Portion”, in relation to a Class [D] PROPP Beneficiary, means the percentage of the SNP Instruments in issue immediately prior to the Resolution Time that were then held by that PROPP Beneficiary calculated by reference to the principal amount outstanding of such SNP Instruments held by that PROPP Beneficiary immediately prior to the Resolution Time and the aggregate principal amount outstanding of all SNP Instruments in issue immediately prior to the Resolution Time;]

[“Class [D] PROPP” means a PROPP in respect of such proportion of Deposited Share Property as is determined in accordance with and subject to the [Bank] Resolution Instrument;]

[“Class [D] PROPP Beneficiary” means a person who has been granted a Class [D] PROPP in accordance with [paragraph 28] of the [Bank] Resolution Instrument (or any person who acquires a Class [D] PROPP from that person by operation of law);]

[“Class [D1] Allocation Ratio” means the fractional number specified in Paragraph [6] of the [Bank] Supplemental Resolution Instrument used by the Bank of England for the purpose of calculating the Class [D1] Entitlement in accordance with Paragraph [45A] of the [Bank] Resolution Instrument;]

[“Class [D1] Deposited Instrument Property” means the [xxxx] SNP Instruments and all and any other securities, property and cash received by or on behalf of the Depository or its agents and attributable to the [xxxx] SNP Instruments;<sup>12</sup>]

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11 Whilst it is unlikely that New Debt Instruments would be created (see Footnote [7] of the Template Resolution Instrument), references to such instruments have been included so that the point can be considered if it were to become relevant. References should be deleted if not relevant. In this Template Onward Transfer Instrument only one class of New Debt Instruments has been provided for illustration. If different classes were to be issued (e.g. having different regulatory capital status) additional definitions would be needed. If New Debt Instruments were created they could be issued directly to PROPP Beneficiaries or issued to the Depository and transferred by the Depository together with the other Deposited Property to which the relevant PROPP Beneficiaries become entitled. The latter process has been assumed for the purpose of this Template Onward Transfer Instrument.

12 For illustrative purposes it has been assumed in this Template Onward Transfer Instrument that there are two classes of SNP Instruments (the [xxxx] SNP Instruments and the [yyyy] SNP Instruments) and therefore that on a deferred bail-in two classes of PROPPs related to the SNP Instruments would be created, the Class [D1] PROPPs and the Class [D2] PROPPs, respectively. The reference to Deposited Instrument Property is only relevant if the SNP Instruments are to be the subject of deferred bail-in. In such case it is proposed that the SNP Instruments would be transferred to the Depository to be held by the Depository during the bail-in period and, assuming they are not written down in full, transferred to the Class [D1] PROPP Beneficiaries (or Class [D2] PROPP

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["Class [D1] Deposited Property" means Shares, any Deposited Share Property and [the Class [D1] Deposited Instrument Property];]

["Class [D1] Entitlement", in relation to a Class [D1] PROPP Beneficiary, means the fractional amount of Class [D1] Deposited Property [and the fractional principal amount of New Debt Instruments] to which that Class [D1] PROPP Beneficiary is entitled as determined in accordance with Paragraph [45A] of the [Bank] Resolution Instrument and specified in the relevant Onward Transfer Request;]

["Class [D1] Portion", in relation to a Class [D1] PROPP Beneficiary, means the percentage of [xxxx] SNP Instruments in issue immediately prior to the Resolution Time that were then held by that PROPP Beneficiary calculated by reference to the principal amount outstanding of such [xxxx] SNP Instruments held by that PROPP Beneficiary immediately prior to the Resolution Time and the aggregate principal amount outstanding of all [xxxx] SNP Instruments in issue immediately prior to the Resolution Time;]

["Class [D1] PROPP" means a PROPP in respect of such proportion of Class D1 Deposited Property as is determined in accordance with and subject to the [Bank] Resolution Instrument;<sup>13</sup>]

["Class [D1] PROPP Beneficiary" means a person who has been granted a Class [D1] PROPP in accordance with [paragraph 28] of the [Bank] Resolution Instrument (or any person who acquires a Class [D1] PROPP from that person by operation of law);]

["Class [D2] Allocation Ratio" means the fractional number specified in Paragraph [6] of the [Bank] Supplemental Resolution Instrument used by the Bank of England for the purpose of calculating the Class [D2] Entitlement in accordance with Paragraph [46B] of the [Bank] Resolution Instrument;]

["Class [D2] Deposited Instrument Property" means and includes the [yyyy] SNP Instruments and all and any other securities, property and cash received by or on behalf of the Depository or its agents and attributable to the [yyyy] SNP Instruments;]

["Class [D2] Deposited Property" means Shares, any Deposited Share Property and [the Class [D2] Deposited Instrument Property];]

["Class [D2] Entitlement", in relation to a Class [D2] PROPP Beneficiary, means the fractional amount of Class [D2] Deposited Property [and the fractional principal amount of New Debt Instruments] to which that Class [D2] PROPP Beneficiary is entitled as determined in accordance with Paragraph [46B] of the [Bank] Resolution Instrument and specified in the relevant Onward Transfer Request;]

["Class [D2] Portion", in relation to a Class [D2] PROPP Beneficiary, means the percentage of [yyyy] SNP Instruments in issue immediately prior to the Resolution Time that were then held by that PROPP Beneficiary calculated by reference to the principal amount outstanding of such [yyyy] SNP Instruments held by that PROPP Beneficiary immediately prior to the Resolution Time and the aggregate principal amount outstanding of all [yyyy] SNP Instruments in issue immediately prior to the Resolution Time;]

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Beneficiaries, as applicable) following the partial write down of such SNP Instruments and their partial exchange for shares in [Bank]. See also Footnotes [7], [9] and [14] of the Template Resolution Instrument.

13 This definition, the other Class [D1] related definitions and the Class [D2] related definitions are only relevant if there is a deferred bail-in of SNP Instruments and there is more than one class of SNP Instruments which are to be transferred to the Depository during in the bail-in period. See also Footnotes [7], [9] and [14] of the Template Resolution Instrument.

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["Class [D2] PROPP" means a PROPP in respect of such proportion of Class [D2] Deposited Property as is determined in accordance with and subject to the [Bank] Resolution Instrument;]

["Class [D2] PROPP Beneficiary" means a person who has been granted a Class [D2] PROPP in accordance with [paragraph 28] of the [Bank] Resolution Instrument (or any person who acquires a Class [D2] PROPP from that person by operation of law);]

"Clearstream" means Clearstream Banking, S.A., and any successor thereto;

"common depository/safekeeper" means, in relation to any SNP Instruments, [New Debt Instruments], the person acting as common depository or common safekeeper, as the case may be, for [CREST,] the ICSDs or other relevant clearing system of the global instrument or master certificate in respect of such class of securities;

"CREST" means the central securities depository and electronic settlement system for UK securities operated by EUI;

"CSD", in relation to any AT1 Instruments, Tier 2 Instruments, Preference Shares and SNP Instruments, the person acting as central securities depository for those instruments, including (without limitation and to the extent appropriate in relation to any instrument) CREST, the ICSDs and DTC;

["Custodian" means [ ] and any other person appointed as custodian to hold the Shares [and SNP Instruments and New Debt Instruments] on behalf of the Depository in connection with the [Bank] Resolution Instrument from time to time;]

"default event provision" has the meaning contained in Section 48Z(1) of the Banking Act;

"Deposit Agreement" means the agreement [dated [ ]] between [Bank], [ ] as Depository, [Custodian], [the Resolution Administrator] and the Bank of England relating to the Shares [and SNP Instruments and New Debt Instruments] transferred to the Depository by the [Bank] Resolution Instrument;

"Depository" means [ ] and any other person appointed by the Bank of England from time to time to receive the Shares [, SNP Instruments and New Debt Instruments] in connection with the [Bank] Resolution Instrument;<sup>14</sup>

["Deposited Instrument Property" means the Class [D1] Deposited Instrument Property and the Class [D2] Deposited Instrument Property;]<sup>15</sup>

"Deposited Property" means the Deposited Share Property [and the Deposited Instrument Property];

"Deposited Shares" means the Shares and all and any Additional Shares transferred, issued or allotted to the Depository [or to the Custodian on behalf of the Depository];

"Deposited Share Property" means the Deposited Shares and all and any other securities, property and cash received by the Depository, [the Custodian] or their respective agents and attributable to the Deposited Shares;

"DTC" means the Depository Trust Company and any successor thereto;

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<sup>14</sup> The Depository function may be carried out by the Bank of England or a person appointed by the Bank of England.

<sup>15</sup> This definition is relevant only if there is a deferred bail-in of the SNP Instruments. See Footnotes [7,] [9] and [14] of the Template Resolution Instrument.

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“EUI” means Euroclear UK & Ireland Limited, and any successor thereto;

“Euroclear” means Euroclear Bank SA/NV, and any successor thereto;

“FCA” means the Financial Conduct Authority;

“Further [Bank] Supplemental Resolution Instrument” means any resolution instrument which is supplemental to the [Bank] Resolution Instrument other than the Supplemental [Bank] Resolution Instrument and this Instrument and including where the context requires any further [Bank] Onward Transfer Instrument made by the Bank of England in respect of [Bank] at any time;

“Holder”, in relation to a holding of AT1 Instruments, Tier 2 Instruments, Preference Shares or SNP Instruments, means the person shown on the records of the relevant CSD as entitled to the relevant instrument or, where that person has agreed to sell the relevant instrument and the sale transaction has reached the point at which it is irrevocable and will be settled in accordance with the rules or practice of the relevant CSD, the person to whom the relevant instrument will be transferred by the CSD;

“ICSD” means Euroclear or Clearstream, or both, as the context may require;

“Insolvency Act” means the Insolvency Act 1986 (as amended);

[“New Debt Instruments” means the £[ ] [perpetual] subordinated [bonds] [notes] [due [ ]] issued by [Bank] on or before the date of this Instrument having the terms and conditions [set out in the New Debt Instruments Trust Deed];]<sup>16</sup>

[“New Debt Instruments Trust Deed” means the trust deed in respect of the New Debt Instruments entered into on [ ] by [Bank] and [ ] as the trustee;]

“Onward Transfer Date” means [Date];

“Onward Transferee” means a PROPP Beneficiary who, together with details of the aggregate Deposited Property [and the aggregate principal amount of New Debt Instruments<sup>17</sup>] to be transferred to such PROPP Beneficiary, has been notified by [the Depository] to the Bank of England [and the Resolution Administrator] in an Onward Transfer Request submitted in accordance with the Deposit Agreement;

“Onward Transfer Request” means a request by the [Depository] to the Bank of England substantially in the form of Schedule [ ] to the Deposit Agreement for the making of this Instrument [or any further [Bank] Onward Transfer Instrument] to transfer the relevant

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<sup>16</sup> It is unlikely that New Debt Instruments would be created in connection with a resolution. See Footnote [7] of the Template Resolution Instrument. Consequently the references to New Debt Instruments would only be relevant if a decision should be taken in a particular case to include New Debt Instruments as part of the recapitalisation of the firm in resolution. If New Debt Instruments are not to be created and allocated to PROPP Beneficiaries this definition and the related definitions for New Debt Instruments should be deleted. If New Debt Instruments are to be created, such instruments could be structured as Additional Tier 1 and/or Tier 2 instruments, as required, to achieve the desired recapitalisation profile of the firm following the exercise of the bail-in power. It may not be known at the time the Resolution Instrument is made what characteristics and quantum of New Debt Instruments would be needed once the final equity valuation (Valuation 3) is concluded. Therefore the Resolution Instrument contains the terms and conditions on which they would be issued but the determination of the commercial terms such as quantum, interest rate, maturity and other commercial features and the entry into the documents is assumed to take place at or around the Allocation Ratio Announcement Date. In this Template Onward Transfer Instrument only one class of New Debt Instruments has been provided for the purpose of illustration. If multiple classes of New Debt Instruments were to be created additional definitions would be required. All classes of New Debt Instrument could be created using the same Trust Deed and Agency Agreement. Separate global notes and conditions would be necessary. An application for listing of the New Debt Instruments would be needed and listing particulars/a prospectus prepared.

<sup>17</sup> This will be relevant only if New Debt Instruments are being created as part of the recapitalisation of the firm. If not relevant the provision should be deleted.

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Deposited Property [and the relevant principal amount of New Debt Instruments] to the relevant PROPP Beneficiaries;

“PRA” means the Prudential Regulation Authority;

“PROPP” or “potential right to onward property or proceeds” means a contingent beneficial interest in the Deposited Property or, in certain circumstances, the net cash proceeds of the sale of such Deposited Property, [or New Debt Instruments], as created by and determined in accordance with and subject to the [Bank] Resolution Instrument, the Supplemental [Bank] Resolution Instrument and this Instrument;

“PROPP Beneficiary” means a person who has been granted a PROPP in accordance with the [Bank] Resolution Instrument (or any person who acquires a PROPP from that person by operation of law);

“Resolution Administrator” means [ ] or any other person appointed by the Bank of England as a Resolution Administrator;

“Shares” means all the issued ordinary share capital of [Bank];

“Share Register” means the issuer register of members maintained by the Share Registrar on behalf of [Bank] in accordance with the Uncertificated Securities Regulations 2001;

“Share Registrar” means [ ];

“SNP Instruments” means the [xxxx] SNP Instruments and the [yyyy] SNP Instruments;<sup>18</sup>

“[xxxx] SNP Instruments” means the direct unsecured debt securities constituting secondary non-preferential debt for the purposes of the Insolvency Act issued by [Bank] with ISIN number[s] [ ];

“[yyyy] SNP Instruments” means the direct unsecured debt securities constituting secondary non-preferential debt for the purposes of the Insolvency Act issued by [Bank] with ISIN number[s] [ ];

“Supplemental [Bank] Resolution Instrument” means the [*Name of Bank*] plc Supplemental Resolution Instrument [*Year*] made by the Bank of England on [ ];

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18 If there are multiple classes of SNP Instruments which are to be the subject of bail-in immediately on resolution and which are to be treated the same way in bail-in, e.g. because they would rank *pari passu* in insolvency, it should be possible to create a single class of PROPPs for all such SNP Instruments. If a subsequent additional bail-in in respect of all classes of SNP Instruments was to occur, a single class of PROPPs for all such SNP Instruments should still be possible if the subsequent additional bail-in was to be proportionately the same in respect of all such classes of SNP Instruments. However, if there are multiple classes of SNP Instruments and different classes are to be treated differently in the bail-in there will need to be separate definitions for each class specifying the ISIN for each individual class and separate classes of PROPP corresponding to such separate classes of SNP Instruments.

If there is to be a deferred bail-in of SNP Instruments there will need to be separate definitions for each class of SNP Instrument (specifying the ISIN for each individual class) and separate definitions for each class of PROPPs corresponding to each such class of SNP Instruments in order to ensure that the relevant class of PROPP Beneficiaries receive the correct Deposited Instrument Property on conclusion of the bail-in. See Footnotes [7] and [9] of the Template Resolution Instrument.

In this Template Onward Transfer Instrument the Class [D] PROPPs correspond to all classes of SNP Instruments and in a deferred bail-in the Class [D1] PROPPs and Class [D2] PROPPs correspond to the relevant classes of SNP Instruments.

Note: If the SNP Instruments contain contractual terms providing for conversion or write-down, such SNP Instruments may have been converted or written down in accordance with their terms before the Resolution Time. Accordingly, the SNP Instruments to be bailed-in would be those not converted and the outstanding principal amount of such SNP Instruments would be the principal balance of such written down SNP Instruments following any contractual write-down.

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“Transferred Property” means the Shares, [sterling cash amount (if any),] [SNP Instruments (if any)] [and New Debt Instruments (if any)] transferred to each Onward Transferee as specified in Paragraph 4(1) of this Instrument;

“Transfer Time” means [a.m.] [p.m.] on the Onward Transfer Date; and

“Uncertificated Securities Regulations” means the Uncertificated Securities Regulations 2001 as amended by the Uncertificated Securities (Amendment and EU Exit) Regulations 2019.

Definitions used in this Instrument which are not otherwise defined shall have the meaning given to them by the Banking Act.

### PART 2

### TRANSFERS

#### Transfers

4.

(1) By this Instrument there is transferred to each Onward Transferee, as applicable:

- (a) the Deposited Share Property equal to the Class [A] Entitlement of that Onward Transferee, rounded down in accordance with the [Bank] Resolution Instrument;
- (b) the Deposited Share Property equal to the Class [B] Entitlement of that Onward Transferee, rounded down in accordance with the [Bank] Resolution Instrument;
- (c) the Deposited Share Property equal to the Class [C] Entitlement of that Onward Transferee, rounded down in accordance with the [Bank] Resolution Instrument; and

*[EITHER]*

- (d) [the Deposited Share Property [and the New Debt Instruments] equal to the Class [D] Entitlement of that Onward Transferee, rounded down in accordance with the [Bank] Resolution Instrument;]

*[OR]*

- (e) the Class [D1] Deposited Property equal to the Class [D1] Entitlement of that Onward Transferee, rounded down in accordance with the [Bank] Resolution Instrument;
- (f) the Class [D2] Deposited Property equal to the Class [D2] Entitlement of that Onward Transferee, rounded down in accordance with the [Bank] Resolution Instrument.

(2) The Shares, [the sterling cash amount (if any),] [the [xxxx] SNP Instruments,] [the [yyyy] SNP Instruments] [and the New Debt Instruments] transferred to an Onward Transferee by Paragraph [4(1)] will be credited to the securities account or cash account, as applicable, of such Onward Transferee provided to the Depository by [the common depository/safekeeper for EUI as operator of CREST, Euroclear and Clearstream] [and DTC] pursuant to Paragraph [ ] of the [Bank] Resolution Instrument prior to the Exchange Expiration Date [and specified in the Onward Transfer Request ].<sup>19</sup>

<sup>19</sup> Unless the Bank of England has received adequate prior notice of an alternative securities account to be used for this purpose.

## TEMPLATE BAIL-IN ONWARD TRANSFER INSTRUMENT (PROPPs)

- (3) The transfer of Shares, [the sterling cash amount (if any),] [the [xxxx] SNP Instruments,] [the [yyyy] SNP Instruments] [and New Debt Instruments,] as applicable, effected under Paragraph [4(1)] to each Onward Transferee shall vest title to the Transferred Property to which such Onward Transferee is entitled pursuant to Paragraph [4(1)]:
  - (a) free from all trusts, liabilities, claims and encumbrances;
  - (b) together with all rights, benefits or privileges which attach or accrue to or arise from or in respect of such Transferred Property on or after the Transfer Time [other than, in the case of the Shares, the right to vote which shall vest on, but not before, the Voting Rights Transfer Date]; and
  - (c) regardless of any restriction on the holding or transfer of shares to which any Onward Transferee [or any other person] may be subject.
- (4) The transfer[s] under Paragraph [4(1)] take[s] place at the Transfer Time.

### Overriding nature of transfer

5. This Part 2 takes effect at the Transfer Time irrespective of whether the Shares [or the [xxxx] SNP Instruments or the [yyyy] SNP Instruments] [or the New Debt Instruments] have been produced, delivered, transferred or otherwise dealt with or are subsequently purported to be produced, delivered, transferred or otherwise dealt with.

### Registration of Shares

6.
  - (1) Each Onward Transferee to which Shares are transferred by Paragraph [4] is entitled with effect from the Transfer Time to be entered in the register of members of [Bank] as holder of the Shares transferred to such Onward Transferee by virtue of this Instrument without the need for delivery of any instrument or transfer or other instrument or document and notwithstanding—
    - (a) the absence of any required consent or concurrence to or with the transfer; and
    - (b) any other restriction relating to the transfer.
  - (2) [Bank] shall procure that [the Share Registrar] shall forthwith after the Transfer Time and for so long as Shares are held in CREST be maintained in accordance with the Uncertificated Securities Regulations.
7. Following the transfers effected by Paragraph [4(1)], all Shares which remain registered in the name of the Depository, [all cash which remains standing to the credit of the Cash Account], [and] [all [xxxx] SNP Instruments] [all [yyyy] SNP Instruments] [and all New Debt Instruments] which remain credited to any securities account of or are otherwise held by or on behalf of the Depository, shall continue be held by the Depository on trust in accordance with the Deposit Agreement until sold in accordance with the [Bank] Resolution Instrument.

### CREST

8. With effect from the [Transfer Time] all the Shares shall be admitted to the CREST system and EUI shall do all things necessary or desirable to secure the admission of the Shares to the CREST system with effect from the [Transfer Time] (including taking such action as is described in the Schedule to this Instrument).

PART 3

MISCELLANEOUS

**Ending of suspension of listing**

9. [By this Instrument, the suspension of the listing of the Shares [and the suspension of the listing of the [xxxx] SNP Instruments and the [yyyy] SNP Instruments] is ended with effect from [the Transfer Time] without the need for any notice to, or consent of, [Bank] or any other person.]<sup>20</sup>

[By this Instrument, [Bank] is instructed to make arrangements to end the suspensions of the listing of any overseas listed Shares, [and the suspension of the listing of the [xxx] SNP Instruments and the [yyyy] SNP Instruments] with effect from the [Transfer Time] without the need for consent from any other person other than as required by the laws of the relevant jurisdiction(s).]

**Provision of assistance**

10. [Bank] shall exercise all rights to which it is entitled by contract or otherwise to procure that the Share Registrar, the CSDs, the common depositaries/safekeepers, the trustees and the paying agents in respect of the Shares, the SNP Instruments [and the New Debt Instruments], shall do, and the Share Registrar, CSDs, the trustees and the paying agents in respect of the Shares, the SNP Instruments [and the New Debt Instruments] [and all other persons] are required by this Instrument to do, all things necessary or desirable to give effect to the transfers in Part 2, including taking such action as is described in the Schedule to this Instrument.

**Bank of England Power to Instruct**

11. The Bank of England shall have the authority to give instructions, on behalf of [Bank], to the Share Registrar, CSDs, the common depositaries/safekeepers, the trustees and the paying agents [and any other person] in respect of the Shares, the SNP Instruments [and the New Debt Instruments] following the making of this Instrument.

**Directors**

12. The directors of [Bank] shall do all things necessary to give effect to this Instrument and shall refrain from exercising any power (whether deriving from common law, statute or [Bank]'s memorandum or articles of association) which could have the effect of undermining the actions and prohibitions provided for or contemplated in this Instrument.

**Memorandum and Articles of Association**

13. This Instrument takes effect notwithstanding any provision in [Bank]'s memorandum of association or articles of association, or any contracts to which [Bank] is a party.

**Continuity**

14. [The Onward Transferees must provide as soon as practicable [the Bank of England] [and the Resolution Administrator] with such information and assistance as is reasonably requested by [the

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20 The duration of the suspension of the listing of the Shares and the SNP Instruments needs to be considered. Since the Shares are to be transferred to a Depositary for the duration of the bail-in, and as trading of the Shares on the stock exchange would not be possible whilst they are held by the Depositary, it is expected that the suspension of the listing of Shares would remain in place until the bail-in is complete. This would also be likely to be the position with regard to the SNP Instruments. The BoE would liaise with the FCA in connection with the restoration of the listing of the Shares and any other securities the listing of which on the Official List has been suspended during the bail-in period. It is possible that the restoration of the listing of such securities may be made by the FCA under its powers rather than by the BoE in the Onward Transfer Instrument. The firm in resolution will need to carefully consider the content of any announcement which it may be required to make at the time of the making of the Onward Transfer Instrument under the disclosure obligations of the FCA, to which it will remain subject notwithstanding any suspension of listing of securities during the bail-in period.

## TEMPLATE BAIL-IN ONWARD TRANSFER INSTRUMENT (PROPPs)

Bank of England] or [the Resolution Administrator] in writing for any purpose relating to, in connection with or in consequence of this Instrument.]

### **Execution, issue and delivery of instruments**

15. [Add any provision required relating to execution, issue or delivery of instruments].

### **Overriding effect of this Instrument**

16. This Instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.

17. Section 48Z(6) of the Banking Act (which makes provision in respect of default event provisions) is applied by this Instrument.

18. [Section 48Z(6) of the Banking Act does not apply to the extent that it would be incompatible with the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979), as amended or the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226), as amended.]

*The Governor and Company of the Bank of England*

# TEMPLATE BAIL-IN ONWARD TRANSFER INSTRUMENT (PROPPs)

## SCHEDULE 1

### ACTION TO BE TAKEN BY THE DEPOSITARY, CSDs AND THE SHARE REGISTRAR FOLLOWING THE MAKING OF THIS INSTRUMENT<sup>21</sup>

#### The Depositary

1. Following the submission of the Onward Transfer Request to which this Instrument relates to the Bank of England, and not less than [ ] Business Days prior to the Onward Transfer Date, the Depositary will provide to each CSD and the Share Registrar the information relating to each Onward Transferee to enable each CSD and the Share Registrar to carry out the actions specified in this Schedule.

#### CSDs

2. As soon as practicable following the Transfer Time each CSD shall update the records relating to the accounts of each PROPP Beneficiary as at the Allocation Record Date and to which Transferred Property was transferred by this Instrument on the Onward Transfer Date to record:
  - (a) the crediting of Shares [and any other securities comprised in the Deposited Share Property] to the securities account[s] of such account holder with the relevant CSD;
  - (b) [if applicable, the crediting of any sterling cash amount to the cash account of such account holder with the relevant CSD;]
  - (c) [if applicable, the crediting of the aggregate principal amount of [xxxx] SNP Instruments (following any reduction and cancellation in the principal amount and any modification to the terms and conditions thereof pursuant to the [Bank] Resolution Instrument or the [Bank] Supplemental Resolution Instrument or any Further [Bank] Supplemental Resolution Instrument) to the securities account[s] of such account holder with the relevant CSD;]<sup>22</sup>
  - (d) [if applicable, the crediting of the aggregate principal amount of [yyyy] SNP Instruments (following any reduction and cancellation in the principal amount and any modification to the terms and conditions thereof pursuant to the [Bank] Resolution Instrument or the [Bank] Supplemental Resolution Instrument or any Further [Bank] Supplemental Resolution Instrument) to the securities account[s] of such account holder with the relevant CSD;]<sup>23</sup>
  - (e) [if applicable, the crediting of the aggregate principal amount of and the ISINs in respect of New Debt Instruments to the securities account[s] of such account holder with the relevant CSD.]<sup>24</sup>

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21 The relevant provisions will depend on the structure of the bail-in in the Resolution Instrument and the Supplemental Resolution Instrument – i.e. whether, if there was an immediate bail-in of the SNP Instruments with a subsequent additional bail-in of the SNP Instruments or if there were a deferred bail-in of the SNP Instruments, with the SNP Instruments being transferred to the Depositary and subsequently written down at the Further Reduction Time (as will have been specified in the [Bank] Supplemental Resolution Instrument) and, in either case, whether any class of PROPP Beneficiaries are to receive any New Debt Instruments.

22 This provision is relevant if there is a deferred bail-in of the SNP Instruments which have been transferred to and held by the Depositary during the bail-in period and where such SNP Instruments, following the write down of such SNP Instruments, will then need to be transferred to the relevant classes of PROPP Beneficiary.

23 This provision is relevant if there is a deferred bail-in of the SNP Instruments which have been transferred to and held by the Depositary during the bail-in period and where such SNP Instruments, following the write down of such SNP Instruments, will then need to be transferred to the holders of the relevant classes of PROPPs.

24 This provision is relevant only if New Debt Instruments are to be created and transferred to PROPP Holders.

## TEMPLATE BAIL-IN ONWARD TRANSFER INSTRUMENT (PROPPs)

### Share Registrar

3. As soon as practicable following the Transfer Time, the Share Registrar shall, if required, update the Share Register as required by the Uncertificated Securities Regulations 2001 to record the transfer of Shares to each Onward Transferee.

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**EXPLANATORY NOTE**

[An explanatory note would be included in the Onward Transfer Instrument as made and would be a description of the Onward Transfer Instrument made in the particular case. It would be analogous to the kind of explanatory note which sometimes accompanies a statutory instrument and would briefly describe the purpose and key provisions of the Onward Transfer Instrument. The explanatory note would not be part of the Onward Transfer Instrument.]

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