

## EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (BANK RECOVERY AND RESOLUTION) (AMENDMENT ETC.) (EU EXIT) (No. 1) INSTRUMENT 2019

### 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 listed in Part 3 of the Schedule to the Regulations as they form part of domestic law by virtue of section 3 of the Act, excluding those listed in Annex J;
- 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 (EU) 2016/1075	B
Commission Delegated Regulation (EU) 2016/1400	C
Commission Delegated Regulation (EU) 2016/1401	D
Commission Delegated Regulation (EU) 2016/1450	E
Commission Delegated Regulation (EU) 2016/1712	F
Commission Delegated Regulation (EU) 2018/344	G
Commission Delegated Regulation (EU) 2018/345	H
Commission Implementing Regulation (EU) 2018/1624	I

### Deletions

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

Thursday 28 February: This document is near-final. The final version will be made and published close to exit day. We expect that the made instrument will be materially similar to this version. For more information, see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

## **Commencement**

I. This instrument comes into force on exit day.

## **Citation**

J. This instrument may be cited as the Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 1) Instrument 2019.

**By order of the Bank of England**  
[•] 2019

## 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”;
- 1.1.7 any reference to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the Act) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the Act.

## Annex B

### Resolution Plans, Independence of Valuers

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

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- 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 lines 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 2014 ~~21 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 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

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

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- 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 ~~(5)~~ 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.



Thursday 28 February: This document is near-final. The final version will be made and published close to exit day. We expect that the made instrument will be materially similar to this version. For more information, see: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

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

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

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- 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 ~~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

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

- 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**

	Field	Description of information to be maintained in detailed records of financial contracts
<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</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</u>

	Contractual Recognition of Bail-in or FCA Handbook IFPRU 11.6 first subparagraph of Article 55(1) of Directive 2014/59/EU)	2014/59/EU. 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 a <del>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</u> <del>Article 2, paragraph 1, point 100 of Directive 2014/59/EU.</del>
<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 Article 125 of the <u>Bank Recovery and Resolution (No 2) Order 2014 2(1)(98)</u> <del>of Directive 2014/59/EU</del> , a unique reference of the netting arrangement.
38	Type of liability/claim	Indicate whether liabilities arising from the financial contract are: —entirely excluded from bail-in



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		<p>pursuant to <u>section 48B of the Banking Act 2009 Article 44(2) of Directive 2014/59/EU</u>;</p> <p>— partially excluded from bail-in pursuant to <u>section 48B of the Banking Act 2009 44(2) of Directive 2014/59/EU</u>;</p> <p>— not excluded from bail-in pursuant to <u>section 48B of the Banking Act 2009 (2) of Directive 2014/59/EU</u>.</p>
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## Annex G

### Methodologies for Difference in Treatment in Valuation

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

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- 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<sup>(4)</sup>, 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

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

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- 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.~~ section 6E(3) of that Act.
- (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 ~~(4)~~.

### *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

~~Actpoints (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

### Resolution Planning

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#### 9 MODIFICATIONS TO SPECIFIED ARTICLES OF REGULATION 2018/1624

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- 9.1 In this Annex new text is underlined and deleted text is struck through.
- 9.2 Regulation 2018/1624 of 23 October 2018 laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066, as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

#### *Article 1*

##### **Subject matter**

This Regulation lays down implementing technical standards specifying procedures and a minimum set of standard templates for the submission to resolution authorities of information necessary to draw up and implement individual resolution plans and group resolution plans, in accordance with Articles 37(3A) and 40(4A) of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 11 of Directive 2014/59/EU, and group resolution plans in accordance Article 13 of that Directive.~~

#### *Article 2*

##### **Definitions**

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

- (1) ‘resolution entity’ means either of the following:
- (a) an entity established in the United Kingdom Union, which is identified by the resolution authority in accordance with Article 12 of Directive 2014/59/EU Article 40 of and Schedule 2 to the Bank Recovery and Resolution (No 2) Order 2014 as an entity in respect of which the resolution plan provides for resolution action; or
  - (b) an institution that is not part of a group subject to consolidated supervision pursuant to Part 6 of the Capital Requirements Regulations 2013 ~~Articles 111 and 112 of Directive 2013/36/EU of the European Parliament and of the Council (4)~~, in respect of which the resolution plan drawn pursuant to Article 37 of the Bank Recovery and Resolution (No 2) Order 2014 ~~Article 10 of Directive 2014/59/EU~~ provides for resolution action;
- (2) ‘resolution group’ means ~~either~~ of the following:
- (a) a resolution entity and its subsidiaries that are not:
    - (i) resolution entities themselves; or
    - (ii) subsidiaries of other resolution entities; or
    - (iii) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries;



- (b) ~~credit institutions permanently affiliated to a central body, the central body and any institution under the control of the central body when one of those entities is a resolution entity;~~

### *...Article 3*

#### **Provision of core information for the purpose of individual and group resolution plans**

1. Institutions and, in the case of groups, ~~Union~~ UK parent undertakings, shall submit to resolution authorities either directly or through the competent authority, the information specified in the templates set out in Annex I in accordance with the level of consolidation of information, frequency and format set out respectively in Articles 4, 5 and 6, and following the instructions set out in Annex II.
  
2. Where a resolution authority ~~or, in the case of groups, a group level resolution authority,~~ applies simplified obligations in accordance with ~~Article 4 of Directive 2014/59/EU~~ Articles 7 and 8 of the Bank Recovery and Resolution (No 2) Order 2014, it shall inform the institutions or ~~Union~~ UK parent undertakings concerned which information is not required to be included in the submission of information referred to in paragraph 1 of this Article. It shall identify that information by reference to the templates set out in Annex I.

### *Article 4*

#### **Level of consolidation of information**

...

2. In the case of groups, ~~Union~~ UK parent undertakings shall submit the information referred to in Article 3(1) in accordance with the following specifications:

- (a) the information specified in template Z 01.00 of Annex I in relation to the following:

...

- (ii) group institutions which exceed 0,5 % of the total risk exposure amount or 0,5 % of the total Common Equity Tier 1 of the group on the basis of the consolidated situation of the ~~Union~~ UK parent undertaking;

...

- (b) the information specified in templates Z 02.00 and Z 03.00 of Annex I:

- (i) at the level of the ~~Union~~ UK parent undertaking or, where different, at the level of each resolution entity on an individual basis;

- (ii) at the level of each group institution that is a relevant legal entity and does not fall within the scope of point (i), on an individual basis, except in those cases when the resolution authority has fully waived the application of the individual minimum requirement for own funds and eligible liabilities pursuant to ~~Article 45(11) or (12) of Directive 2014/59/EU~~ Article 147 of the Bank Recovery and Resolution (No 2) Order 2014 to that institution;

(iii) at the level of the ~~Union~~ UK parent undertaking on a consolidated basis or, where different, at the level of each resolution entity on the basis of the consolidated situation of the resolution group;

...

(d) the information specified in templates Z 05.01 and Z 05.02 of Annex I:

(i) at the level of the ~~Union~~ UK parent undertaking or, where different, at the level of each resolution entity on an individual basis;

(ii) at the level of the ~~Union~~ UK parent undertaking on a consolidated basis or, where different, at the level of each resolution entity on the basis of the consolidated situation of the resolution group;

(e) the information specified in template Z 06.00 of Annex I at the level of the ~~Union~~ UK parent undertaking on a consolidated basis, in relation to all credit institutions which are relevant legal entities;

(f) the information specified in template Z 07.01 of Annex I, ~~separately for each Member State in which the group operates the~~ UK;

...

#### *Article 6*

##### **Format for the submission of information**

1. Institutions or, in the case of groups ~~Union~~ UK parent undertakings, shall submit the information referred to in Article 3(1) in the data exchange formats and representations specified by resolution authorities, and shall respect the data point definitions included in the single data point model referred to in Annex III and the validation rules referred to in Annex IV, as well as the following specifications:

...

2. The data submitted by institutions or, in the case of groups by ~~Union~~ UK parent undertakings, shall be associated with the following information:

...

#### *Article 7*

##### **Provision of additional information for the purpose of individual or group resolution plans**

1. Where a resolution authority or a group-level resolution authority, considers information not covered by any template set out in Annex I to be necessary for the purposes of drawing up and implementing resolution plans, or where the format in which additional information is provided by the competent authority pursuant to Article 8(2) is not suitable for the purposes of drawing up or implementing resolution plans, the resolution authority shall request such information from the institution or the ~~Union~~ UK parent undertaking.

2. For the purposes of the request pursuant to paragraph 1, the resolution authority shall:

...

(b) specify, taking into account the volume and complexity of the required information, the appropriate timeframe within which the institution or, in the case of groups the ~~Union~~ UK parent undertaking, shall provide the information to the resolution authority;

(c) specify the format to be used by institutions or, in the case of groups, by ~~Union~~ UK parent undertakings in order to provide the information to the resolution authority;

(d) specify whether the information has to be completed on an individual or group level basis and whether its scope is local, ~~Union-wide~~ or global;

...

## *Article 8*

### **Cooperation between competent and resolution authorities**

...

3. In the case referred to in paragraph 2, resolution authorities shall ensure that institutions or, in the cases of groups ~~Union~~ UK parent undertakings, are informed of the information which is required to be included in the submission of information pursuant to Article 3(1). They shall identify that information by reference to the templates set out in Annex I.

## Annex J

### Deletions

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#### 10 DELETIONS OF SPECIFIED EU REGULATIONS

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- 10.1 The following Articles and specified EU Regulations, as they form part of domestic law by virtue of section 3 of the Act, are deleted:
- 10.1.1 Articles 50 to 109 of Regulation 2016/1075.
- 10.1.2 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.
- 10.1.3 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.