
STATUTORY INSTRUMENTS

2014 No.

BUILDING SOCIETIES

The Building Societies (Bail-in) Order 2014

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - *** 2014

The Treasury, in exercise of the powers conferred by section 17(2) to (4) of the Financial Services (Banking Reform) Act 2013(a), make the following Order:

Citation and commencement

1. This Order may be cited as the Building Societies (Bail-in) Order 2014 and comes into force on.....2014.

Amendments to Part 1 of the Banking Act 2009

2.—(1) Part 1 of the Banking Act 2009(b) is amended as follows.

(2) In section 84(c) (application of Part 1 to building societies: general) for “subject to the provisions of the Table” substitute—

“but—

- (a) so far as it relates to the first, second, and fourth stabilisation options, subject to the provisions of the Table, and
- (b) so far as it relates to the third stabilisation option, subject to sections 84A to 84D.”.

(3) After section 84 insert—

“Bail-in option: building societies

84A.—(1) For the purpose of exercising the third stabilisation option in respect of a building society, the Bank of England may make one or more resolution instruments making—

- (a) provision of the kind mentioned in subsection (2);
- (b) other provision for the purposes of, or in connection with, provision of the kind mentioned in subsection (2) made by that or another instrument.

(2) A resolution instrument may—

(a) 2013 c.33.
(b) 2009 c.1.
(c) Section 84 was amended by the Financial Services Act 2010 (c.28), section 21.

- (a) convert the building society into a company, or
- (b) transfer all the property, rights and liabilities of the society to a company.

(3) In this section and in sections 84B to 84D—

“company” means a company as defined in section 1(1) of the Companies Act 2006^(a) which is a public company limited by shares; and

“the successor company” is the company into which a building society is converted, or to which the property, rights and liabilities of a society are transferred, as a result of provision made under subsection (2).

(4) The provision that may be made under subsection (1)(b) includes—

- (a) provision cancelling shares in the building society;
- (b) provision cancelling membership rights in the society;
- (c) provision converting shares in the society into deposits with the successor company;
- (d) provision conferring rights and imposing liabilities in place of cancelled shares and membership rights;
- (e) provision requiring the FCA to cancel the society’s registration under the Building Societies Act 1986^(b) at a time specified in or determined in accordance with the instrument;
- (f) provision that any person approved for the purposes of Part 5 of the Financial Services and Markets Act 2000^(c) (performance of regulated activities) in relation to the society immediately before the resolution instrument is made continues to be approved for those purposes in relation to the successor company (but this does not affect the powers of the FCA or PRA to vary or withdraw an approval);
- (g) provision which could be included in a property transfer instrument by virtue of section 36(1) to (5) (continuity) or 37 (licences).

(5) The provision that may be made under subsection (1)(b) also includes provision for the successor company on its incorporation to be wholly owned by a specified company which is (or is to be) itself wholly owned by—

- (a) the Bank of England,
- (b) a bail-in administrator appointed by the resolution instrument, or
- (c) a person nominated by the Bank of England.

(6) A resolution instrument may provide for different provisions made under this section by the instrument to take effect at different times.

(7) Any reference (however expressed) in this Part to a resolution instrument under section 12A includes a reference to a resolution instrument under this section.

(8) In this section, “deposit” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), but ignoring the exclusions in article 6.

Further provision: conversion of building society into company

84B.—(1) This section applies where a resolution instrument makes provision under section 84A(2)(a).

(2) The resolution instrument must—

- (a) state the company’s proposed name;
- (b) set out the terms of the memorandum of association for the company;

(a) 2006 c.46.
(b) 1986 c.53.
(c) 2000 c.8.

- (c) set out the terms of the articles of association (to the extent that these are not supplied by the default application of model articles: see section 20 of the Companies Act 2006).

(3) The conversion into the successor company takes effect on the registration of the company under the Companies Act 2006.

(4) The successor company is to be treated as the same person in law as the building society.

(5) The documents required by section 9 of the Companies Act 2006 (registration documents) to be delivered to the registrar (within the meaning of that Act) include a copy of the resolution instrument.

(6) Sections 13 (statement of compliance) and 14 (registration) of the Companies Act 2006 apply with the modification that the reference to the requirements of that Act is a reference to the requirements of that Act as modified by this section.

Further provision: transfer of business of building society to company

84C.—(1) A transfer under section 84A(2)(b) must be to a company which immediately before the transfer is wholly owned by—

- (a) the Bank of England,
- (b) a bail-in administrator appointed by the resolution instrument,
- (c) a person nominated by the Bank of England, or
- (d) where the resolution instrument has made provision under subsection (5) of section 84A, the company specified for the purposes of that subsection.

(2) Where a resolution instrument has made provision under section 84A(2)(b), the building society is dissolved at such time as may be specified in or determined in accordance with the instrument.

Modifications of this Act and other legislation

84D.—(1) Where a resolution instrument makes provision under section 84A in respect of a building society, the third stabilisation option is to be exercised in respect of the building society by making special bail-in provision—

- (a) in relation to the successor company, or
- (b) where the resolution instrument also makes provision under subsection (5) of section 84A, in relation to the successor company or the company which is as a result of the provision made under that subsection to be its parent undertaking.

(2) For the purposes of the exercise of the third stabilisation option as mentioned in subsection (1), the provisions listed in Table 1 (which would otherwise apply as mentioned in section 84) apply to a company which is the successor company in relation to the building society as they apply to a bank, but subject to the modifications in Table 2.

Table 1: provisions applied

<i>Section</i>	<i>Topic</i>
Section 12A(a)	Bail-in option
Section 12B	Bail-in administrators
Section 17(b)	Effect of transfer
Section 18(c)	Continuity
Section 41A(a), and any other provision so far	Transfer of property subsequent to

(a) Sections 12A and 12B were inserted by the Financial Services (Banking Reform) Act 2013, Schedule 17.
 (b) Section 17 was amended by the Financial Services (Banking Reform) Act 2013, Schedule 2.
 (c) Section 18 was amended by Financial Services (Banking Reform) Act 2013, Schedule 17.

as relating to property transfer instruments under section 41A(2)	resolution instrument
Sections 48B to 48W(b)	Bail-in option
Sections 49, 52A, 53 to 59 and 60A to 62(c)	Compensation
Sections 63, 64 and 66 to 70(d) where they apply in relation to a resolution instrument or in relation to a property transfer instrument under section 41A(2)	Continuity obligations
Section 71(e)	Pensions
Section 72	Enforcement
Section 73	Disputes
Section 74	Tax
Section 75(f)	Power to change law
Section 80A(g)	Transfer for bail-in purposes: report
Section 81A(h)	Accounting information to be included in reports

Table 2: modifications

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 12A(4)	Bail-in option	Treat references to securities issued by a specified bank as references to securities issued by the society or by the successor company.
Section 12A(8)		<p>This subsection also applies where the Bank of England has exercised the power in section 84A(4)(d) to issue shares in a successor company to itself, to the bail-in administrator or to a person nominated by it for the purposes of section 84C(1)(c).</p> <p>Treat references to the bail-in administrator as including references to—</p> <p>(a) the Bank of England,</p> <p>(b) a subscriber to the memorandum of association of a company into which the society is converted in accordance with section 84B, and</p> <p>(c) a person nominated by the Bank of England for the purposes of section 84C(1)(c).</p>
Section 48B	Special bail-in provision	The provision that may be made in accordance with section 48B(1)(b) (see

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- (a) Section 41A was inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2.
- (b) Sections 48B to 48W were inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2.
- (c) Sections 49, 53, 54, 56, 57, 61 and 62 were amended by, and sections 52A, 60A and 60B were inserted by, the Financial Services (Banking Reform) Act 2013, Schedule 2. Section 53 was also amended by the Financial Services Act 2012, section 97. Sections 55 and 56 were amended by the Financial Services Act 2010, section 21. Section 57 was also amended by the Financial Services Act 2012, Schedule 17. Section 61 was also amended by the Financial Services Act 2010, Schedule 2.
- (d) Sections 63, 66, 67 and 68 were amended by the Financial Services (Banking Reform) Act 2013, Schedule 2.
- (e) Sections 71 to 74 were amended by the Financial Services (Banking Reform) Act 2013, Schedule 2.
- (f) Section 75 was amended by the Financial Services Act 2012, sections 101 and 102 and by S.I. 2013/504.
- (g) Section 80A was inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2.
- (h) Section 81A was inserted by the Financial Services Act 2012, section 99 and amended by the Financial Services (Banking Reform) Act 2013, Schedule 2.

		also rule 3(a) and (b) of section 48B(5)) includes provision replacing a liability (of any form) of the building society with a security (of any form or class) of the successor company's parent undertaking.
Section 48E(4)	Report on special bail-in provision	Treat references to priority of liabilities on a liquidation as references to the priority of liabilities on the liquidation of the society.
Section 48G	Priority between creditors	Treat the reference to the treatment of liabilities on an insolvency as a reference to the treatment of liabilities on the insolvency of the society.
Section 48H(2)(a)	Business reorganisation plans	Treat the reference to the bank as a reference to the society.
Section 48N	Directors	Treat references to the directors of a specified bank as references to the directors of the society and of the successor company.
Section 48T(1)	Resolution instruments: procedure	Treat the first reference to a bank as a reference to the society.
Section 48U(1)	Supplemental resolution instruments	Treat the reference to a bank as a reference to the society.
Section 48V(1)	Onward transfer	Treat the reference to a specified bank as including a reference to the society.
Sections 49, 57 and 59	Compensation orders	Treat references to transferors as including references to the shareholding members of the society (within the meaning of paragraph 5 of Schedule 2 to the Building Societies Act 1986). In section 57(4), treat the reference to a bank as a reference to the society.
Section 60B	Principle of no less favourable treatment	Treat references to the pre-resolution shareholders and creditors of a bank as references to the persons who were shareholding members of the society (within the meaning of paragraph 5 of Schedule 2 to the Building Societies Act 1986) or were creditors of the society, immediately before the coming into effect of the first resolution instrument to be made in respect of the society. Treat references to the bank as references to the society.
Section 71	Pensions	This section applies in relation to a pension scheme of the society or of the successor company.
Section 75	Power to change law	Treat the reference in subsection (5)(b) to building societies as including a reference to successor companies.
Section 80A(1)	Transfer for bail-in purposes: report	Treat the reference to a bank as a reference to the society.

(3) Nothing in subsection (1) or (2) prevents references to a bank in sections 7(a) (general conditions for exercise of stabilisation powers), 8A(b) (specific conditions: bail in), 76 (international obligations notice: general), 78 (public funds: general), 81BA(c) (groups: bail-in option), 81CA (section 81BA: supplemental) and 81D(d) (interpretation: “banking group company”) from being read (in accordance with section 84) as a reference to the building society concerned.

(4) Where a resolution instrument makes provision under section 84A in respect of a building society—

- (a) section 81BA applies with the modifications that—
 - (i) references to a banking group company are to be read as references to a subsidiary of the society, and
 - (ii) the power in subsection (1) is only to be exercised where the Bank of England has also exercised the stabilisation power in accordance with section 12A(2) in respect of the parent society.
- (b) sections 81CA and 81D apply with the modification that references to a banking group company are to be read as references to a subsidiary of the society or to a subsidiary of the successor company.

(5) Sections 97 to 102D of the Building Societies Act 1986 (transfer of business of building society to commercial company) do not apply where a resolution instrument makes provision under section 84A.

(6) Section 103 of the Building Societies Act 1986 (cancellation of registration) does not apply where a resolution instrument makes provision under section 84A(4)(e).”.

(4) In section 261 (index of defined terms), in the entry beginning “Resolution instrument” after “12A” insert “& 84A”.

Consequential amendments

3.—(1) Section 90D of the Building Societies Act 1986(e) (notice to the FCA and the PRA) is amended as follows.

(2) For subsection (7) substitute—

“(7) Condition 3 is—

- (a) in a case where the Bank of England had made a resolution instrument under section 12A of the Banking Act 2009 in respect of the building society during the 3 months ending with the day on which the notice complying Condition 1 is received by the FCA (or as the case requires by the FCA and the PRA), that the Bank of England has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates, or
- (b) in any other case, that either—
 - (i) the period of 2 weeks beginning with the day on which the notice is received has ended, or
 - (ii) the person who gave the notice is informed by each of the PRA and the Bank of England that it does not intend to take a step falling within subsection (7A).

(7A) The steps falling within this subsection are—

- (a) in relation to the PRA, applying for a building society insolvency order (under section 95 of the Banking Act 2009 as applied by section 90C above);

(a) Section 7 was amended by the Financial Services Act 2012, Schedule 17.

(b) Section 8A was inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2.

(c) Section 81BA and 81CA were inserted by the Financial Services (Banking Reform) Act 2013, Schedule 2.

(d) Section 81D was inserted by the Financial Services Act 2012, section 100 and amended by the Financial Services (Banking Reform) Act 2013, Schedule 2.

(e) Section 90D was inserted by S.I. 2009/805 and amended by S.I. 2013/496.

(b) in relation to the Bank of England, applying for a building society insolvency order or exercising a stabilisation power under Part 1 of the Banking Act 2009.”.

(3) In subsection (10), for paragraph (c) substitute—

“(c) The Bank of England shall—

- (i) in a case within subsection (7)(a), inform the person who gave the notice, within the period of 2 weeks beginning with the day on which the notice is received, whether it consents to the insolvency procedure to which the notice relates, and
- (ii) if in a case within subsection (7)(b) it decides to apply for a building society insolvency order or to exercise a stabilisation power under Part 1 of the Banking Act 2009, inform the person who gave the notice, within that period.”.

(4) In subsection (11), for paragraph (b) substitute—

“(b) the Bank of England shall—

- (i) in a case within subsection (7)(a), inform the person who gave the notice, within the period of 2 weeks beginning with the day on which the notice is received, whether it consents to the insolvency procedure to which the notice relates, and
- (ii) if in a case within subsection (7)(b) it decides to apply for a building society insolvency order or to exercise a stabilisation power under Part 1 of the Banking Act 2009, inform the person who gave the notice, within that period.”.

(5) After subsection (11) insert—

“(12) References in this section to the insolvency procedure to which the notice relates are to the application, determination, resolution or appointment falling within subsection (1), (2), (3) or (4) (as the case requires).”.

Review

4.—(1) The Treasury must from time to time—

- (a) carry out a review of articles 2 and 3,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how Directive [] of the European Parliament and of the Council of [date] establishing a framework for the recovery and resolution of credit institutions and investment firms^(a) (which is partially implemented by means of articles 2 and 3) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those articles,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published before the end of the period of five years beginning with the day on which this Order comes into force.

(5) Reports under this article are afterwards to be published at intervals not exceeding five years.

^(a) Directive not yet finalised.

Date

Two of the Lords Commissioners of Her Majesty's Treasury

name

name

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations modify Part 1 of the Banking Act 2009 (special resolution regime) in consequence of the application to building societies of the third stabilisation option introduced by the Financial Services (Banking Reform) Act 2013. The third stabilisation option is the bail-in option, as to which see in particular sections 8A, 12A, 12B and 48B to 48W of the Banking Act 2009.

Article 2 inserts new sections 84A to 84D into the Banking Act 2009.

Section 84A gives the Bank of England power, for the purpose of exercising the third stabilisation option, in a resolution instrument to convert the building society into a public limited company or to transfer the business of the society to such a company. The successor company would be authorised as a bank under Part 4A of the Financial Services and Markets Act 2000. Section 84A(4) to (6) gives examples of the provision such a resolution instrument may include. It may, for example—

- cancel shares and membership rights in the society,
- convert shares in the society into deposits in the successor company,
- confer rights and impose liabilities in place of cancelled shares and membership rights,
- provide for the successor company to be wholly owned by a parent undertaking which is itself wholly owned by the Bank of England or its nominee or the bail-in administrator appointed under section 12B of the Banking Act 2009.

Section 84B contains further provision about the conversion of a building society into a company, and section 84C contains further provision about the transfer of the business of a society to a company which must be owned by the Bank of England, its nominee, the bail-in administrator or a parent company referred to in section 84A(5).

Section 84D modifies the application of Part 1 of the Banking Act 2009 for cases where a resolution instrument contains provision under section 84A to demutualise a building society. Generally the special bail-in powers are to be exercised in relation to the successor company (or the parent, as appropriate, if a parent is established under section 84A(5)). However some further modifications are included, for example to secure that for the purposes of compensation, the principle of no less favourable treatment in section 60B of the Banking Act 2009 is that the shareholding members of the society and creditors of the society do not receive less favourable treatment than would have been the case had the society entered insolvency. Section 84D also disapplies the transfer of business regime and provision about cancellation of registration in the Building Societies Act 1986.

Article 3 makes a consequential amendment to section 90D of the Building Societies Act 1986 (notice to regulators of insolvency process).