



Financial Services Act 2012

2012 CHAPTER 21

PART 4

COLLABORATION BETWEEN TREASURY AND BANK OF ENGLAND, FCA OR PRA

58 Duty of Bank to notify Treasury of possible need for public funds

- (1) Where it appears to the Bank of England that there is a material risk of circumstances within any of the following cases arising, the Bank must immediately notify the Treasury.
- (2) A notification under subsection (1) or section 59(2) is referred to in this Part as a “public funds notification”.
- (3) The first case is where the Treasury or the Secretary of State might reasonably be expected to regard it as appropriate to provide financial assistance to or in respect of a financial institution.
- (4) The second case is where—
 - (a) the Treasury, the Bank of England, the PRA, the FCA or the Secretary of State might reasonably be expected to regard it as appropriate to exercise any of their respective powers under Parts 1 to 3 of the Banking Act 2009, and
 - (b) the Treasury might reasonably be expected to regard it as appropriate to incur expenditure in connection with the exercise of any of those powers (whether by the Treasury, the Bank, the PRA, the FCA or the Secretary of State).
- (5) The third case is where the scheme manager of the Financial Services Compensation Scheme might reasonably be expected to request—
 - (a) a loan from the National Loans Fund under section 223B of FSMA 2000, or
 - (b) financial assistance from the Treasury,for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme.
- (6) A public funds notification must give a general indication of the matters giving rise to the notification.

(7) A public funds notification must be given or confirmed in writing.

59 Duty of Bank to notify Treasury of changes

- (1) This section applies where a public funds notification has been given.
- (2) If the Bank of England is of the opinion that the risk to which the notification relates continues but that there is a substantial change in the matters which gave rise to the notification, the Bank must notify the Treasury.
- (3) If the Bank of England is of the opinion that the risk to which the notification relates has ceased, it must notify the Treasury.
- (4) Before giving a notification under subsection (3), the Bank must consult the Treasury.
- (5) A notification under subsection (3) must be given or confirmed in writing.

60 Circumstances in which Treasury power of direction exercisable

- (1) This section makes provision about the circumstances in which the Treasury's power of direction under section 61 is exercisable, subject to the provisions of that section.
- (2) Where a public funds notification has been given, the power of direction is exercisable by reference to the notification unless the notification has been superseded by a notification under section 59(3).
- (3) Where qualifying financial assistance has been provided, the power of direction is exercisable by reference to the provision of the assistance unless it appears to the Treasury that the assistance has been recovered.
- (4) It is immaterial for the purposes of subsection (3)—
 - (a) whether the qualifying financial assistance was provided before or after the commencement of this section, and
 - (b) whether or not a public funds notification had been given in connection with it.
- (5) For the purposes of this Part qualifying financial assistance is provided if, and only if—
 - (a) the Treasury or the Secretary of State provide financial assistance to or in respect of a financial institution,
 - (b) the Treasury incur expenditure in connection with the exercise by the Treasury, the Bank, the PRA, the FCA or the Secretary of State of any of their powers under Parts 1 to 3 of the Banking Act 2009,
 - (c) the Treasury arrange a loan from the National Loans Fund in pursuance of a request by the scheme manager of the Financial Services Compensation Scheme under section 223B of FSMA 2000, or
 - (d) the Treasury provide financial assistance to the scheme manager of that scheme for the purpose of funding expenses incurred or expected to be incurred under it.
- (6) For the purposes of this section the circumstances in which qualifying financial assistance is to be taken to have been recovered include the following—
 - (a) where, in the case of a loan, the principal of the loan has been repaid and all interest due under the terms of the loan has been paid,

- (b) where, in the case of a guarantee or indemnity, the Treasury or the Secretary of State will not become liable under the guarantee or indemnity,
- (c) where, in a case involving the issue or transfer of shares to the Treasury in connection with the provision of qualifying financial assistance, the shares are no longer held by the Treasury.

61 Treasury power of direction

- (1) Subsection (2) applies where—
 - (a) the power of direction is exercisable by virtue of section 60(2) by reference to a public funds notification and the Treasury are satisfied that Condition A is met, or
 - (b) the power of direction is exercisable by virtue of section 60(3) by reference to the provision of qualifying financial assistance and the Treasury are satisfied that Condition A or Condition B is met.
- (2) The Treasury may give a direction to the Bank of England relating to one or more of the following—
 - (a) the provision by the Bank to one or more financial institutions of financial assistance other than ordinary market assistance offered by the Bank on its usual terms,
 - (b) the exercise by the Bank of any of the stabilisation powers, as defined by section 1(4) of the Banking Act 2009, or
 - (c) the exercise by the Bank of its powers under Part 3 of that Act (bank administration).
- (3) Condition A is that the giving of the direction is necessary to resolve or reduce a serious threat to the stability of the financial system of the United Kingdom which is connected—
 - (a) in case within subsection (1)(a), with the matters to which the public funds notification relates;
 - (b) in a case within subsection (1)(b), with the matters that gave rise to the provision of the qualifying financial assistance.
- (4) Condition B is that—
 - (a) the qualifying financial assistance was provided for the purpose of resolving or reducing a serious threat to the stability of the financial system of the United Kingdom, and
 - (b) the giving of the direction is necessary to protect the public interest in connection with the provision of that assistance.
- (5) References to the provision of qualifying financial assistance are to be read in accordance with section 60(5).
- (6) This section is subject to section 62.
- (7) Nothing in this section limits the powers conferred by section 4(1) of the Bank of England Act 1946 (Treasury directions to the Bank).

62 Directions under section 61: supplementary provisions

- (1) References in this section to a direction are to a direction under section 61.

- (2) Before giving a direction, the Treasury must consult the Bank of England.
- (3) On being given a direction, the Bank must give the Treasury one or more reports on how it is complying or intends to comply with the direction, and on such other matters relating to the direction as it considers appropriate.
- (4) The Treasury may at any time by notice to the Bank revoke a direction.
- (5) The revocation of a direction does not affect the validity of anything previously done in accordance with it.
- (6) Where the Treasury's power of direction is exercised by virtue of section 60(2) by reference to a public funds notification, the direction remains in force (unless revoked under subsection (4)) even if the public funds notification is subsequently superseded by a notification under section 59(3).
- (7) Where the Treasury's power of direction is exercised by virtue of section 60(3) by reference to the provision of qualifying financial assistance, the direction remains in force (unless revoked under subsection (4)) even if it appears to the Treasury that the qualifying financial assistance has subsequently been recovered.
- (8) Each of the following must be in writing—
 - (a) a direction,
 - (b) a report under subsection (3), and
 - (c) a notice revoking a direction.

63 Duty to lay direction etc before Parliament

- (1) As soon as practicable after giving or revoking a direction under section 61 or receiving a report under section 62(3), the Treasury must lay before Parliament a copy of the direction, notice of revocation or report.
- (2) But subsection (1) does not apply in a case where the Treasury consider that the publication of the direction, notice of revocation or report would be against the public interest.
- (3) Where the Treasury decide that publication of a direction, notice of revocation or report would be against the public interest, they must from time to time review that decision and if they subsequently decide that publication is no longer against the public interest they must comply with subsection (1).

64 Duty of Treasury, Bank and PRA to co-ordinate discharge of functions

- (1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must arrange to co-ordinate the discharge of their respective functions so far as they—
 - (a) relate to the stability of the UK financial system, and
 - (b) affect the public interest.
- (2) In complying with subsection (1), the Treasury, the Bank and the PRA must have regard in particular to the importance of co-ordination in circumstances where the Bank has given, or is considering the giving of, a public funds notification.

65 Memorandum of understanding: crisis management

- (1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must prepare and maintain a memorandum describing in general terms how they intend to comply with section 64 in relation to the circumstances mentioned in subsection (2) of that section.
- (2) The memorandum must, in particular, make provision about—
 - (a) what the Treasury and the Bank regard as a material risk for the purposes of section 58(1);
 - (b) steps to be taken when the Bank has given a public funds notification;
 - (c) the respective roles of the Treasury, the Bank and the PRA, in cases where the Bank has given a public funds notification, in relation to the consideration and assessment of, and taking of, steps to resolve or reduce, threats to the stability of the UK financial system;
 - (d) how the Treasury, the Bank and the PRA will co-operate in fulfilling those roles;
 - (e) the use by the Treasury of their power under section 61;
 - (f) matters connected with the Bank's compliance with a direction under that section;
 - (g) the obtaining and sharing of information.
- (3) The memorandum may make provision about such other matters as may be agreed between the Treasury, the Bank and the PRA, which must be matters that—
 - (a) relate to the stability of the UK financial system or the regulation of financial services, and
 - (b) affect the public interest.
- (4) The memorandum need not make provision about the relationship between the Bank and the PRA.
- (5) The Treasury, the Bank of England and the PRA may, with the agreement of a body falling within subsection (6), include in the memorandum provisions relating to co-operation between any of them and that body in relation to matters falling within subsection (3)(a) and (b).
- (6) The bodies falling within this subsection are—
 - (a) the FCA;
 - (b) the scheme manager of the Financial Services Compensation Scheme;
 - (c) any other body exercising functions that relate to the stability of the UK financial system or the regulation of financial services.
- (7) The Treasury must—
 - (a) lay before Parliament a copy of the memorandum and any revised memorandum, and
 - (b) publish the memorandum as currently in force in such manner as they think fit.

66 Memorandum of understanding: international organisations

- (1) The Treasury, the Bank of England, the FCA and the PRA (“the UK authorities”) must prepare and maintain a memorandum describing how they intend to co-ordinate the exercise of their relevant functions so far as they relate to membership of, or relations

Status: This is the original version (as it was originally enacted).

with, the European Supervisory Authorities, EU institutions and other international organisations.

- (2) The “European Supervisory Authorities” are the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.
- (3) “Relevant function”—
 - (a) in relation to the FCA or the PRA, means any of its functions;
 - (b) in relation to the Bank of England, means any of its functions relating to the stability of the UK financial system or the regulation of financial services;
 - (c) in relation to the Treasury, means any of their functions relating to the matters mentioned in paragraph (b).
- (4) The memorandum is to be made with a view to ensuring—
 - (a) that, to the extent that it is appropriate to do so, the UK authorities agree consistent objectives in relation to matters of common interest;
 - (b) that, to the extent that it is appropriate to do so, they exercise their relevant functions in a way that is likely to advance those objectives;
 - (c) that they exercise their relevant functions in a way that is consistent and effective.
- (5) The memorandum must, in particular, make provision—
 - (a) stating, in relation to each of the UK authorities, those international organisations of which it is a member or with which it has relations and which are concerned with matters that are related to its relevant functions;
 - (b) for there to be a committee for the purposes of the co-ordination mentioned in subsection (1);
 - (c) for that committee to include representatives of the UK authorities and to be chaired by a representative of the Treasury;
 - (d) about the procedures to be followed by the UK authorities in agreeing consistent objectives in relation to matters that materially affect 2 or more of them;
 - (e) about how the UK authorities will consult each other about the discharge of their relevant functions relating to international organisations.
- (6) The memorandum need not make provision about co-ordination between the FCA and the PRA in relation to membership of, or relations with, the European Supervisory Authorities (as to which, see section 3E of FSMA 2000).
- (7) The UK authorities may, with the agreement of a body exercising functions relating to the stability of the UK financial system or the regulation of financial services, include in the memorandum provisions relating to co-operation between any of them and that body in relation to membership of, or relations with, the European Supervisory Authorities, EU institutions and other international organisations.
- (8) The Treasury must—
 - (a) lay before Parliament a copy of the memorandum and any revised memorandum, and
 - (b) publish the memorandum as currently in force in such manner as they think fit.

67 Interpretation of Part 4

- (1) This section has effect for the interpretation of this Part.
- (2) “Public funds notification” is to be read in accordance with section 58(2).
- (3) “Financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (4) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for the purposes of this Part; and subsection (3) is subject to this subsection.
- (5) “Qualifying financial assistance” is to be read in accordance with section 60(5).