



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

#### [<sup>F1</sup>CHAPTER 3

#### SPECIAL RESOLUTION ACTION]

#### *Treasury*

#### 76 **International obligation notice: general**

- (1) The Bank of England may not exercise [<sup>F1</sup>the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or] a stabilisation power in respect of a bank if the Treasury notify the Bank that the exercise would be likely to contravene an international obligation of the United Kingdom.
- (2) A notice under subsection (1)—
  - (a) must be in writing, and
  - (b) may be withdrawn (generally, partially or conditionally).
- (3) If the Treasury give a notice under subsection (1) the Bank of England must consider other exercises of [<sup>F2</sup>the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or] the stabilisation powers with a view to—
  - (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury's notice was based.
- (4) The Treasury may by notice to the Bank of England disapply subsection (3) in respect of a bank; and a notice may be revoked by further notice.

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[<sup>F3</sup>(5) “Resolution administrator appointment instrument” means an instrument under section 62B(2)(a).]

**Textual Amendments**

- F1** Words in s. 76(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **82(2)**
- F2** Words in s. 76(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **82(3)**
- F3** S. 76(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **82(4)**

**Commencement Information**

- I1** S. 76 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

**77 International obligation notice: [<sup>F4</sup>resolution company]**

- (1) This section applies where the Bank of England has transferred all or part of a bank's business to a [<sup>F5</sup>resolution company].
- (2) The Bank of England must comply with any notice of the Treasury requiring the Bank, for the purpose of ensuring compliance by the United Kingdom with its international obligations—
- (a) to take specified action under this Part in respect of the [<sup>F5</sup>resolution company], or
- (b) not to take specified action under this Part in respect of the [<sup>F5</sup>resolution company].
- (3) A notice under subsection (1)—
- (a) must be in writing, and
- (b) may be withdrawn (generally, partially or conditionally).
- (4) A notice may include requirements about timing.

**Textual Amendments**

- F4** Words in s. 77 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **83(2)**
- F5** Words in s. 77 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **83(1)**

**Commencement Information**

- I2** S. 77 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

**78 Public funds: general**

- (1) The Bank of England may not exercise [<sup>F6</sup>the power to make a mandatory reduction instrument or] a stabilisation power in respect of a bank without the Treasury's consent if the exercise would be likely to have implications for public funds.
- (2) In subsection (1)—

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- (a) “public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury, and
  - (b) action has implications for public funds if it would or might involve or lead to a need for the application of public funds.
- (3) The Treasury may by order specify considerations which are to be, or not to be, taken into account in determining whether action has implications for public funds for the purpose of subsection (1).
- (4) If the Treasury refuse consent under subsection (1), the Bank of England must consider other exercises of [<sup>F7</sup>the power to make a mandatory reduction instrument or] the stabilisation powers with a view to—
- (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury's refusal was based.
- (5) The Treasury may by notice to the Bank of England disapply subsection (4) in respect of a bank; and a notice may be revoked by further notice.
- (6) An order under subsection (3)—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of the House of Commons.

#### Textual Amendments

- F6** Words in s. 78(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **84(2)**
- F7** Words in s. 78(4) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **84(3)**

#### Commencement Information

- I3** S. 78 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I4** S. 78 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

### [<sup>F8</sup>78A. Pre-conditions for financial assistance: duty of Bank to give information

- (1) The Treasury may at any time require the Bank of England to inform them in writing whether or not a condition for financial assistance has been met in relation to a particular bank.
- (2) “Condition for financial assistance” means a condition specified in—
- (a) Article 37(10)(a) (financial assistance through government stabilisation tools), or
  - (b) Article 44(5)(a) (contributions to institution from resolution financing arrangement where [<sup>F9</sup>bail-in] liabilities have been excluded from bail-in),
- of the recovery and resolution directive.
- (3) If the Bank of England seeks the Treasury’s consent to the making of a mandatory reduction instrument or the exercise of a stabilisation power in accordance with section 78, the Bank must notify the Treasury in writing—

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- (a) whether or not the proposals involve action in relation to which a condition for financial assistance applies, and
- (b) if the proposals do involve such action, whether or not the condition in question has been met.]

#### Textual Amendments

- F8** S. 78A inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **85**
- F9** Word in s. 78A(2)(b) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **12**

### 79 Public funds: [<sup>F10</sup>resolution company]

- (1) This section applies where the Bank of England has transferred all or part of a bank's business to a [<sup>F11</sup>resolution company].
- (2) The Bank of England may not take action in respect of the [<sup>F11</sup>resolution company] without the Treasury's consent if the action would be likely to have implications for public funds.
- (3) Section 78(2) and (3) have effect for the purposes of this section.

#### Textual Amendments

- F10** Words in s. 79 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **86(2)**
- F11** Words in s. 79 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **86(1)**

#### Commencement Information

- I5** S. 79 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

### [<sup>F12</sup>79A Private sector purchaser: report

- (1) This section applies where the Bank of England sells all or part of a bank's business to a commercial purchaser.
- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under section 11(2).
- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 11(2).]

#### Textual Amendments

- F12** S. 79A inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), ss. **99(1)**, 122(3) (with [Sch. 20](#)); [S.I. 2014/3323](#), art. 2

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## 80 <sup>F13</sup>Resolution company:] report

- (1) Where the Bank of England transfers all or part of a bank's business to a <sup>F14</sup>resolution company], the Bank must report to the Chancellor of the Exchequer about the activities of the <sup>F14</sup>resolution company].
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer to the <sup>F14</sup>resolution company].
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) or (3) before Parliament.
- (5) The Bank must comply with any request of the Treasury for a report dealing with specified matters in relation to a <sup>F14</sup>resolution company].
- (6) A request under subsection (5) may include provision about—
  - (a) the content of the report;
  - (b) timing.

### Textual Amendments

**F13** Words in s. 80 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **87(2)**

**F14** Words in s. 80 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **87(1)**

### Commencement Information

**I6** S. 80 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

## <sup>F15</sup>80A Transfer for bail-in purposes: report

- (1) This section applies where the Bank of England makes one or more resolution instruments under section 12A(2) in respect of a bank.
- (2) The Bank of England must, on request by the Treasury, report to the Chancellor of the Exchequer about—
  - (a) the exercise of the power to make a resolution instrument under section 12A(2),
  - (b) the activities of the bank, and
  - (c) any other matters in relation to the bank that the Treasury may specify.
- (3) In relation to the matters in subsection (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.]

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#### Textual Amendments

**F15** S. 80A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 25](#); S.I. 2014/3160, art. 2(1)(b)

### 81 Temporary public ownership: report

- (1) Where the Treasury make one or more share transfer orders under section 13(2) in respect of a bank, the Treasury must lay before Parliament a report about the activities of the bank.
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first share transfer order.
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The obligation to produce reports continues to apply in respect of each year until the first during which no securities issued by the bank are owned by—
  - (a) a company wholly owned by the Treasury, or
  - (b) a nominee of the Treasury.

#### Commencement Information

**I7** S. 81 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

### [<sup>F16</sup>81A Accounting information to be included in reports under sections 80]<sup>F17</sup>, 80A(2)(b) and 81]

- (1) A report under section 80(1)<sup>F18</sup>, 80A(2)(b) or 81] must include accounting information in respect of the bank or [<sup>F19</sup>resolution company] that is the subject of the report.
- (2) In this section “accounting information” means—
  - (a) a balance sheet that, in the opinion of the person making the report, gives a true and fair view of the state of affairs of the bank or [<sup>F19</sup>resolution company] as at the reporting date, and
  - (b) a profit and loss account that, in the opinion of the person making the report, gives a true and fair view of the profit or loss of the bank or [<sup>F19</sup>resolution company] for the reporting period.
- (3) In this section—
  - (a) “reporting period” means the period to which the report relates, and
  - (b) “reporting date” means the last day of the reporting period.]

#### Textual Amendments

**F16** S. 81A inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\), ss. 99\(2\), 122\(3\)](#) (with [Sch. 20](#)); S.I. 2014/3323, art. 2

**F17** Words in s. 81A heading substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 26\(b\)](#); S.I. 2014/3160, art. 2(1)(b)

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- F18** Words in s. 81A(1) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 26\(a\)](#); S.I. 2014/3160, [art. 2\(1\)\(b\)](#)
- F19** Words in s. 81A substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [88](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(8A)(8B) inserted by [2012 c. 21 s. 96\(3\)](#)
- s. 8(2)(d) and word inserted by [2012 c. 21 s. 96\(4\)\(b\)](#)