



Banking Act 2009

2009 CHAPTER 1

PART 1

SPECIAL RESOLUTION REGIME

[^{F1}CHAPTER 3

SPECIAL RESOLUTION ACTION]

[^{F1}Groups]

[^{F1}[^{F2}81BC] **Assessment of conditions for section 81BB**

- (1) This section applies for the purposes of section 81BB.
- (2) The PRA must treat Condition 3 as met if satisfied that it would be met but for financial assistance provided by—
 - (a) the Treasury, or
 - (b) the Bank of England,disregarding ordinary market assistance offered by the Bank of England on its usual terms.
- (3) The Bank of England must treat Condition 4 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (2).
- (4) For the purposes of Condition 3, a banking group company is failing or likely to fail if—
 - (a) it is contravening or likely to contravene a regulatory requirement where that contravention is serious in nature or directly related to a deterioration in the financial situation of the banking group company which threatens the viability of—
 - (i) the banking group company, or

Changes to legislation: Banking Act 2009, Section 81BC is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (ii) another undertaking in the same resolution group,
 - (b) it is failing, or is likely to fail, to satisfy the approval conditions set out in section 192R(3) to (6) of the Financial Services and Markets Act 2000 in circumstances where that failure—
 - (i) would justify the taking of measures in relation to the company by the PRA under section 192T(1) of that Act, and
 - (ii) is serious in nature,
 - (c) the value of the assets of the banking group company is less than the amount of its liabilities,
 - (d) the banking group company is unable to pay its debts or other liabilities as they fall due,
 - (e) paragraph (c) or (d) (or both) will, in the near future, apply to the banking group company, or
 - (f) extraordinary public financial support is required in respect of the banking group company and subsection (5) does not apply to it.
- (5) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary financial support takes any of the following forms—
- (a) a State guarantee to back liquidity facilities provided by [^{F3}the Bank of England],
 - (b) a State guarantee of newly issued liabilities,
 - (c) an injection of own funds, or purchase of capital instruments, at prices and on terms that do not confer an advantage upon the banking group company, where none of the circumstances referred to in subsection (4)(a), (b), (c), (d) or (e) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.
- (6) Before determining that Condition 3 is met, the PRA must consult the Bank of England.
- (7) Before determining whether or not Condition 4 is met, the Bank of England must consult—
- (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (8) Before determining that Conditions 5 and 6 are met the Bank of England must consult—
- (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (9) The special resolution objectives are not relevant to Conditions 3 and 4.
- (10) In this section “regulatory requirement” means a requirement imposed—
- (a) by or under the Financial Services and Markets Act 2000,
 - (b) by or under the capital requirements regulation [^{F4}including any [^{F5}assimilated] law that was originally made under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms],

Changes to legislation: Banking Act 2009, Section 81BC is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (c) by any enactment which [^{F6}was relied on by the United Kingdom immediately before IP completion day to implement the capital requirements directive and its implementing measures or any [^{F7}assimilated] law originally] made under that directive, or
- (d) by the Bank of England under this Act,

and for the purposes of this definition, “capital requirements directive” means [Directive 2013/36/EU](#) of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending [Directive 2002/87/EC](#) and repealing Directives [2006/48/EC](#) and [2006/49/EC](#).]]

Textual Amendments

- F1** Ss. 81B-81D inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(5)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(b); S.I. 2014/1847, art. 2
- F2** Ss. 81BB, 81BC inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **16**
- F3** Words in s. 81BC(5)(a) substituted (31.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(3), **70(a)**
- F4** Words in s. 81BC(10)(b) inserted (31.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(3), **70(b)(i)**
- F5** Word in s. 81BC(10)(b) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 68(2)(h)**
- F6** Words in s. 81BC(10)(c) substituted (31.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(3), **70(b)(ii)**
- F7** Word in s. 81BC(10)(c) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 68(2)(h)**

Changes to legislation:

Banking Act 2009, Section 81BC is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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\(4\)\(b\)](#)