



# Financial Services Act 2010

## 2010 CHAPTER 28

### *Recovery and resolution plans*

#### **7 Rules made by FSA about recovery and resolution plans**

- (1) In the Financial Services and Markets Act 2000, after section 139A (which is inserted by section 6 above) insert—

##### **“139B Rules about recovery plans**

- (1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to prepare, and keep up-to-date, a recovery plan.
- (2) A “recovery plan” is a document containing information within subsection (3) or (4) of a specified description.
- (3) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of the authorised person—
  - (a) the business of the authorised person, or
  - (b) a specified part of the business of the authorised person,is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).
- (4) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of the authorised person by any other person.
- (5) The Authority must consider whether each recovery plan makes satisfactory provision in relation to the matters required by the rules to be covered by the plan.

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*Status: This is the original version (as it was originally enacted).*

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- (6) If the Authority considers that a recovery plan fails to make satisfactory provision in relation to any such matter, the Authority must take such steps as it considers appropriate to deal with the failure.
- (7) The steps that the Authority may take include requiring the recovery plan to be revised.
- (8) The authorised persons subject to general rules about recovery plans must include authorised persons in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.
- (9) Before preparing a draft of general rules about recovery plans having effect in relation to those persons, the Authority must consult—
  - (a) the Treasury; and
  - (b) the Bank of England.

### **139C Rules about resolution plans**

- (1) The Authority must exercise its power to make general rules so as to make rules requiring each authorised person (or each authorised person of a specified description) to prepare, and keep up-to-date, a resolution plan.
- (2) A “resolution plan” is a document containing information within subsection (3) or (4) of a specified description.
- (3) Information is within this subsection if it relates to action to be taken in the event of—
  - (a) circumstances arising in which it is likely that the business (or any part of the business) of the authorised person will fail; or
  - (b) the failure of the business (or any part of the business) of the authorised person.
- (4) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.
- (5) An example of information within subsection (4) is information that, in the event of that failure, would facilitate —
  - (a) planning by the Treasury in relation to the possible exercise of any of their powers under Part 1 of the Banking Act 2009; or
  - (b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.
- (6) The Authority must consider whether each resolution plan makes satisfactory provision in relation to the matters required by the rules to be covered by the plan.
- (7) If the Authority considers that a resolution plan fails to make satisfactory provision in relation to any such matter, the Authority must take such steps as it considers appropriate to deal with the failure.
- (8) The steps that the Authority may take include requiring the resolution plan to be revised.

- (9) The authorised persons subject to general rules about resolution plans must include authorised persons in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable.
- (10) Before preparing a draft of general rules about resolution plans having effect in relation to those persons, the Authority must consult—
  - (a) the Treasury; and
  - (b) the Bank of England.

### **139D Sections 139B and 139C: interpretation**

- (1) In sections 139B and 139C any reference to the taking of action includes the taking of action by—
  - (a) the authorised person;
  - (b) any other person in the same group as the authorised person; or
  - (c) a partnership of which the authorised person is a member.
- (2) In subsection (1)(b) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.
- (3) For the purposes of section 139C the cases in which the business (or any part of the business) of the authorised person is to be regarded as having failed include—
  - (a) the insolvency or bankruptcy of the authorised person;
  - (b) the authorised person entering into administration; and
  - (c) a power under Part 1 of the Banking Act 2009 being exercised in relation to the authorised person.
- (4) In sections 139B and 139C references to the business of an authorised person include the business of—
  - (a) any person in the same group as the authorised person; and
  - (b) a partnership of which the authorised person is a member;and, accordingly, references in subsection (3)(a) to (c) of this section to the authorised person include any person within paragraph (a) or (b).
- (5) In sections 139B and 139C “specified” means specified in general rules.
- (6) In this section—
  - “administration” includes administration under Part 3 of the Banking Act 2009;
  - “insolvency” includes insolvency under Part 2 of that Act.

### **139E Rules about recovery and resolution plans: supplementary provision**

- (1) General rules about recovery or resolution plans may, in particular—
  - (a) impose a requirement on authorised persons to collect, and keep up-to-date, information of a description specified in the rules; and
  - (b) make provision as to the inclusion in the plans of information in respect of the steps to be taken to ensure compliance with that requirement.

- (2) If the Authority considers that an authorised person has contravened that requirement, the Authority may require the authorised person to appoint a skilled person to collect or update the information in question.
- (3) References in this section to a skilled person are to a person—
  - (a) nominated or approved by the Authority; and
  - (b) appearing to the Authority to have the skills necessary to collect or update the information in question.
- (4) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.
- (5) A requirement imposed by subsection (4) is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) A contractual or other requirement imposed on a person (“P”) to keep any information in confidence does not apply if—
  - (a) the information is or may be relevant to anything required to be done as a result of section 139B or 139C or this section;
  - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done; and
  - (c) the Authority has approved the making of the request or the imposition of the requirement before it is made or imposed.
- (7) An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep in confidence if it is provided for the purposes of anything required to be done as a result of section 139B or 139C or this section.
- (8) General rules about recovery or resolution plans may, in particular, make provision about the form of the plans.
- (9) When making general rules about recovery or resolution plans, the Authority must have regard to any international standards about documents whose purpose corresponds to the purpose of recovery or resolution plans.

### **139F Special provision in relation to resolution plans**

- (1) In the case of resolution plans required to be prepared by general rules, the Authority must consult—
  - (a) the Treasury, and
  - (b) the Bank of England (“the Bank”),about the adequacy of the plans so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.
- (2) After being consulted under subsection (1)—

- (a) the Treasury or the Bank may notify the Authority that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter; and
  - (b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the Authority.
- (3) The Authority must have regard to any notification given under paragraph (a) of subsection (2) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.
- (4) If—
  - (a) a notification is given under that paragraph, but
  - (b) the Authority is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter,the Authority must give reasons for being of that opinion to the person who gave the notification.”
- (2) The Treasury may by order require the FSA to make, by a date specified in the order, recovery plan rules, or resolution plan rules, which impose requirements on authorised persons who are of a description specified in the order.
- (3) Before making an order under subsection (2), the Treasury must consult the FSA.
- (4) An order under subsection (2) is subject to negative resolution procedure.
- (5) In this section—
  - “the FSA” means the Financial Services Authority,
  - “recovery plan rules” means general rules imposing requirements of a kind mentioned in section 139B(1) of the Financial Services and Markets Act 2000, and
  - “resolution plan rules” means general rules imposing requirements of a kind mentioned in section 139C(1) of that Act.