
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Bank Recovery and Resolution Order 2014

Third-country resolution proceedings

103. After section 89G(1) insert—

“Chapter 6

Third-country resolution actions

Third-country resolution actions

Recognition of third-country resolution actions

89H.—(1) This section applies where the Bank of England is notified of third-country resolution action in respect of a third-country institution or third-country parent undertaking.

(2) The Bank must make an instrument which—

- (a) recognises the action, or
- (b) refuses to recognise the action, or
- (c) recognises part of the action and refuses to recognise the remainder.

An instrument within paragraph (a), (b) or (c) is a “third-country instrument” (as is an instrument under section 89I(4)(b)).

(3) The Bank may only make a decision under subsection (2) with the approval of the Treasury.

(4) Recognition of the action (or a part of it) may be refused only if the Bank and the Treasury are satisfied that one or more of the following conditions are satisfied—

- (a) recognition would have an adverse effect on financial stability in the United Kingdom or another EEA state;
- (b) the taking of action in relation to a branch located in the United Kingdom of a third-country institution is necessary to achieve one or more of the special resolution objectives;
- (c) under the third-country resolution action creditors (including in particular depositors) located or payable in an EEA state would not, by reason of being located or payable in the EEA state, receive the same treatment as creditors (including depositors) who are located or payable in the third country concerned and have similar legal rights;
- (d) recognition of, and taking action in support of, the third-country resolution action (or the part) would have material fiscal implications for the United Kingdom;

(e) recognition would be unlawful under section 6 of the Human Rights Act 1998⁽²⁾ (public authority not to act contrary to Human Rights Convention) or contrary to a provision of EU law.

(5) The recognition of third-country resolution action (or any part of it) is without prejudice to any normal insolvency proceedings.

(6) When exercising any function under or by virtue of this section or section 89I, the Bank and the Treasury must give due consideration to the interests of any EEA state where the third-country institution or third-country parent undertaking operates, and (in particular) to the potential effect of the exercise of any of those functions on—

- (a) where the institution or undertaking is a member of a group, any member of the group in such an EEA state, and
- (b) the financial stability in such an EEA state.

(7) In this section—

“EU institution” has the meaning given by Article 2.1(23) of the recovery and resolution directive,

“group” has the meaning given by section 474 of the Companies Act 2006⁽³⁾,

“normal insolvency proceedings” has the meaning given in Article 2.1(47) of the recovery and resolution directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure),

“third-country group company” means an undertaking—

- (a) which is (or, but for third-country resolution action or the exercise of a stabilisation power, would be) in the same group as a third-country institution or a third-country parent undertaking, and
- (b) in respect of which any conditions specified in an order made by the Treasury under section 81D⁽⁴⁾ are met (applying that order as if references to the bank were references to the third-country institution or third-country parent undertaking),

“third-country institution” has the meaning given by Article 2.1(86) of the recovery and resolution directive;

“third-country parent undertaking” has the meaning given by Article 2.1(87) of the recovery and resolution directive;

“third-country resolution action” means action under the law of a third country to manage the failure or likely failure of a third-country institution, third country parent undertaking or an EU institution—

- (a) the anticipated results of which are, in relation to a third-country institution or third-country parent undertaking or EU institution, broadly comparable to results which could have been anticipated from the exercise of a stabilisation option in relation to an entity in the United Kingdom corresponding to the institution or undertaking, and
- (b) the objectives of which are broadly comparable, in relation to the third country, to the objectives in section 4 as they apply in relation to the United Kingdom;

“third country” means a state other than an EEA state.

(2) 1998 c.42. Section 6(4) was repealed by Part 5 of Schedule 18 to the Constitutional Reform Act 2005 (c.4).

(3) 2006 c.46.

(4) Section 81D was inserted by section 100 of the Financial Services Act 2012 (c.21), and amended by paragraphs 1 and 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

Effect of recognition of third-country resolution action by Bank of England

89I.—(1) This section applies where an instrument under section 89H recognises any third-country resolution action (or a part of it).

(2) The third-country resolution action (or part) produces the same legal effects in any part of the United Kingdom as it would have produced had it been made (with due authority) under the law of that part of the United Kingdom.

(3) For the purposes of supporting, or giving full effect to, the third-country resolution action (or the part), the Bank of England may exercise, in relation to a third-country institution, a third-country parent undertaking or another third-country group company, one or more of the stabilisation options, or one or more of the stabilisation powers, available to the Bank in relation to a similar entity in the United Kingdom.

(4) But, for the purposes of exercising a power by virtue of subsection (3), provision which could otherwise be made under this Part in a mandatory reduction instrument, share transfer instrument, property transfer instrument or resolution instrument may instead be made in—

- (a) the instrument made under section 89H recognising the third-country resolution action (or part), or
- (b) a further instrument made by the Bank of England under this section.

An instrument under paragraph (b) is a “third-country instrument” (as is an instrument under section 89H(2)(a), (b) or (c)).

(5) This Part (other than this section) applies in relation to the exercise of any power by virtue of subsection (3), subject to subsections (6) to (8) and any other necessary modifications.

(6) Section 4 (special resolution objectives) has effect as if after subsection (9) there were inserted—

“(9A) Objective 8 is to support third-country resolution action with a view to promoting objectives which, in relation to the third country concerned, correspond to Objectives 1 to 7 in relation to the United Kingdom.”.

(7) Sections 7 to 8ZA(5) do not apply.

(8) Section 60B(6) (principle of no less favourable treatment) applies in relation to compensation arrangements in the case of third-country instruments in relation to any third-country resolution action (or a part of it) as if—

- (a) references to the initial instrument were to the first third-country instrument under section 89H(7) recognising that action (or part), and
- (b) in subsection (3) the reference to the coming into effect of the initial instrument were a reference to the taking of the third-country resolution action recognised (or recognised in part) by that instrument.

(9) Section 81B, 81ZBA and 81BA(8) have effect in relation to the exercise of a stabilisation power in respect of a third-country group company as if for subsections (2) and (3) (in each case) there were substituted—

(5) Section 8ZA is inserted by article 15 of this Order.

(6) Section 60B was inserted by paragraph 6 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

(7) Section 89H is inserted by article 102 of this Order.

(8) Sections 81B was inserted by section 100 of the Financial Services Act 2012 (c.21); section 81ZBA is inserted by article 91 of this Order; section 81BA was inserted by paragraph 7 of Schedule 2 to the Financial Services (Banking Reform) Act 2013 (c.33).

“(2) Condition 1 is that third-country resolution action has been taken in respect of a third-country institution, a third-country parent undertaking or another third-country group company, in the same group.

(3) Condition 2 is that the Bank of England is satisfied that the exercise of the power in respect of the third-country group company is necessary, having regard to the public interest in the stability of the financial systems of the United Kingdom and the third-country concerned.

(3A) In subsections (2) and (3) “third-country resolution action”, “third-country institution”, “third-country parent undertaking”, “third-country group company” and “third country” have the meaning given by section 89H(7).”.

(10) Section 89H(7) applies for the purposes of this section.

Third-country instruments: supplementary provision

89J.—(1) Section 23 (incidental provision) applies to a third-country instrument as it applies to a share transfer instrument.

(2) Section 24 (procedure: instruments)(9) applies to a third-country instrument as it applies to a share transfer instrument, except that references in that section to the bank are to be read as references to the third-country institution, third-country parent undertaking or other third-country group company, to which the third-country instrument relates.

(3) Section 76 (international obligation notice: general) applies in relation to the making of a third-country instrument under section 89H or 89I as it applies in relation to the exercise of a stabilisation power, except that—

- (a) for the purposes of section 76(3), section 4 is to be read subject to the modification in section 89I(6), and
- (b) in subsection (4), the reference to a bank is to be read as a reference to a third-country institution, a third-country parent undertaking or another third-country group company, in respect of which a third-country instrument is made.

(4) Section 77 (international obligation notice: bridge bank) applies where the Bank of England has, by virtue of section 89I(10), transferred all or part of the business of a third-country institution, a third-country parent undertaking or another third-country group company, to a bridge bank as it applies where the Bank of England has transferred all or part of the business of a bank or banking group company to a bridge bank.

(5) Section 89I(7) applies for the purposes of this section.

Chapter 7

General provisions

Insolvency Proceedings

89K.—(1) If—

- (a) a stabilisation power has been exercised in respect of a relevant firm, or
- (b) the conditions in section 7 are met in relation to a relevant firm,

(9) Section 24 was amended by paragraph 12 of Schedule 17 to the Financial Services Act 2012 (c.21).

(10) Section 89J is inserted by article 102 of this Order.

insolvency proceedings may not be commenced in relation to that firm except by, or with the consent of, the Bank of England.

(2) For the purposes of subsection (1), the commencement of insolvency proceedings means—

- (a) making an application for an administration order;
- (b) presenting a petition for winding up;
- (c) proposing a resolution for voluntary winding up;
- (d) appointing an administrator.

(3) In this section—

- (a) “relevant firm” means—
 - (i) a bank, building society, investment firm, financial holding company, mixed financial holding company or a mixed activity holding company, or
 - (ii) a financial institution which is a subsidiary undertaking of an entity within sub-paragraph (i);
- (b) “building society” has the meaning given in the Building Societies Act 1986⁽¹¹⁾;
- (c) “financial holding company” has the meaning given in Article 4.1(2) of the capital requirements regulation;
- (d) “financial institution” has the meaning given in Article 4.1(26) of the capital requirements regulation;
- (e) “mixed activity holding company” has the meaning given in Article 4.1(22) of the capital requirements regulation;
- (f) “mixed financial holding company” has the meaning given in Article 2.15 of [Directive 2002/87/EC](#) of the European Parliament and of the Council of 16th December 2002⁽¹²⁾ on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

Restrictions on disclosure of confidential information

89L.—(1) Sections 348⁽¹³⁾, 349⁽¹⁴⁾, 352⁽¹⁵⁾ and 353⁽¹⁶⁾ of the Financial Services and Markets Act 2000 (disclosure of information) apply for the purposes of this Part with the following modifications.

(2) Section 348 of that Act has effect as if—

- (a) in subsection (2)(b), after “Act” there were inserted “or of the Bank of England under Part 1 of the Banking Act 2009 or the Bank Recovery and Resolution (No 2) Order 2014”,
- (b) in subsection (3)(a), at the end there were inserted “or the Banking Act 2009”, and
- (c) in subsection (5)—
 - (i) after paragraph (c) there were inserted—

⁽¹¹⁾ 1986 c. 53.

⁽¹²⁾ OJ L 35, 11.02.2003, p1.

⁽¹³⁾ Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 (c.21) and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33).

⁽¹⁴⁾ Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012 (c.21), SI 2006/1183, SI 2007/1093 and SI 2011/1043.

⁽¹⁵⁾ Section 352 was amended by section 336 of the Criminal Justice Act 2003 (c.44).

⁽¹⁶⁾ Section 353 was amended by section 61 of the Consumer Credit Act 2006 (c.14), paragraph 23 of Schedule 12 to the Financial Services Act 2012 (c.21) and SI 2013/1881.

- “(ca) the Bank of England;
 - (cb) a resolution administrator appointed under Part 1 of the Banking Act 2009;”,
 - (ii) in paragraph (e) for “to (c)” there were substituted “to (cb)”, and
 - (iii) after subsection (6)(b) there were inserted—
 - “(c) a competent person appointed by the Bank of England under Chapter 4 of Part 1 of the Banking Act 2009.”
- (3) Section 349 of that Act has effect as if, in subsection (2)(c), for “or the PRA” substitute “the PRA, the Bank of England or a resolution administrator appointed by virtue of section 62B of the Banking Act 2009”.
- (4) Section 353 of that Act has effect as if in subsection (1)—
- (a) in paragraph (a), after “under this Act” there were inserted “or the Banking Act 2009”, and
 - (b) in paragraph (b) after “to the” there were inserted “Bank of England, the”.

Giving of notices, documents etc under Part 1

89M. Regulations under section 414 of the Financial Services and Markets Act 2000 (service of notices), and subsection (4) of that section, apply in relation to any notice, direction or document of any kind required to be given under any provision of this Part (however that requirement is expressed) as if those provisions were provisions of that Act.”