
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Bank Recovery and Resolution Order 2014

Exercise of stabilisation powers: general conditions

12. In section 7 (general conditions for exercise of stabilisation powers)(1), for subsections (1) to (5) substitute—

“(1) A stabilisation power may be exercised in respect of a bank only if—

- (a) the PRA is satisfied that Condition 1 is met, and
- (b) the Bank of England is satisfied that Conditions 2, 3 and 4 are met.

(2) Condition 1 is that the bank is failing or likely to fail.

(3) Condition 2 is that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will result in Condition 1 ceasing to be met.

(4) Condition 3 is that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.

(5) Condition 4 is that one or more of the special resolution objectives would not be met to the same extent by the winding up of the bank (whether under Part 2 or otherwise).

(5A) The PRA must treat Condition 1 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 on its usual terms.

(5B) The Bank of England must treat Condition 2 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (5A).

(5C) For the purposes of Condition 1, a bank is failing or likely to fail if—

- (a) it is failing, or is likely to fail, to satisfy the threshold conditions in circumstances where that failure would justify the variation or cancellation by the PRA under section 55J of the Financial Services and Markets Act 2000(2) of the bank’s permission under Part 4A of that Act to carry on one or more regulated activities,
- (b) the value of the assets of the bank determined in accordance with the valuation carried out for the purposes of section 6E(1) is less than the amount of its liabilities as so determined,
- (c) the bank is unable to pay its debts or other liabilities as they fall due,
- (d) one or more of paragraphs (a) to (c) will, in the near future, apply to the bank, or
- (e) extraordinary public financial support is required in respect of the bank and subsection (5E) does not apply to that support.

(1) 2009 c.1. Section 7 was amended by paragraph 8 of Schedule 17 to the Financial Services Act 2012 (c.21).

(2) 2000 c.8. Sections 55A to 55Z4 were inserted by section 11 of the Financial Services Act 2012 (c.8).

(5D) “The threshold conditions” means the threshold conditions, as defined by subsection (1) of section 55B of the Financial Services and Markets Act 2000, for which the PRA is treated as responsible under subsection (2) of that section.

(5E) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary public financial support takes any of the following forms—

- (a) a State guarantee to back liquidity facilities provided by central banks,
- (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 bank, where none of the circumstances referred to in subsection (5C)(a), (b), (c) or (d) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.

(5F) Before determining that Condition 1 is met, the PRA must consult the Bank of England.

(5G) Before determining whether or not Condition 2 is met, the Bank of England must consult—

- (a) the PRA,
- (b) the FCA, and
- (c) the Treasury.

(5H) Before determining that Conditions 3 and 4 are met, the Bank must consult—

- (a) the PRA,
- (b) the FCA, and
- (c) the Treasury.”