
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Bank Recovery and Resolution Order 2014

Power to address impediments to the resolution of institutions and their groups

6. In Part 1, after section 3 insert—

“Chapter 2

Pre-resolution powers of the Bank of England

Removal of impediments to the exercise of stabilisation powers etc

3A.—(1) In this section “relevant person” means—

- (a) an institution authorised for the purpose of the Financial Services and Markets Act 2000⁽¹⁾ by the PRA or FCA,
- (b) a parent of such an institution which—
 - (i) is a financial holding company or a mixed financial holding company; and
 - (ii) is established in, or formed under the law of any part of, the United Kingdom, or
- (c) a subsidiary of such an institution or of such a parent which—
 - (i) is a financial institution authorised by the PRA or FCA, and
 - (ii) is established in, or formed under the law of any part of, the United Kingdom.

(2) The Bank of England may give directions to a relevant person requiring that person to take measures which, in the opinion of the Bank of England, are required to address impediments to—

- (a) the effective exercise of the stabilisation powers, or
 - (b) the winding up of that person (whether by use of the bank insolvency procedure provided for under Part 2 of this Act or otherwise).
- (3) The power conferred by subsection (2) includes a power to direct a relevant person—
- (a) to amend a group financial support agreement;
 - (b) where there is no such agreement, to review the need to enter into one;
 - (c) to enter into an agreement for the provision of services relating to the provision of critical functions;
 - (d) to limit that person’s maximum individual and aggregate exposures (with “exposure” for this purpose having the meaning given in the capital requirements regulation);

(1) 2000 c.8.

- (e) to produce information which is relevant to the exercise of the stabilisation powers, and to provide that information to the Bank of England;
 - (f) to dispose of specified assets;
 - (g) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;
 - (h) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;
 - (i) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions—
 - (i) to change its legal or operational structure, or
 - (ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;
 - (j) to establish a financial holding company which is not a subsidiary of an institution, another financial holding company or a mixed financial holding company.
- (4) The Bank of England may give directions to a relevant person requiring that person—
- (a) to maintain a minimum requirement for own funds and eligible liabilities expressed as a percentage of the total own funds and liabilities of the relevant person, and
 - (b) for the purposes of paragraph (a), to—
 - (i) maintain particular kinds of eligible liabilities, or
 - (ii) issue particular kinds of eligible liabilities or take other specified steps.
- (5) Under subsection (4), the Bank may, in particular, direct a relevant person to endeavour to re-negotiate any eligible liability or relevant capital instruments issued by that person, for the purpose of ensuring that any decision by the Bank to write down or convert the liability or instrument concerned would have effect under the law which governs that liability or instrument.
- (6) The Bank may give directions to a relevant MAHC requiring it to establish a separate financial holding company as a parent of an institution for the purpose of—
- (a) facilitating the exercise of the stabilisation powers, or
 - (b) ensuring that the exercise of a stabilisation power does not have an adverse effect on the non-financial part of the group of the relevant MAHC.
- (7) Directions under this section—
- (a) must be in writing, and
 - (b) may be given with general effect or with respect to a particular relevant person or class of relevant persons.
- (8) In this section—
- “financial holding company” has the meaning given by Article 4.1(20) of the capital requirements regulation⁽²⁾;
 - “financial institution” has the meaning given by Article 4.1(26) of the capital requirements regulation;
 - “group” has the meaning given in section 3(2)(b);

(2) OJ No L 176, 27.6.2013, p1.

“group financial support agreement” has the meaning given by section 192JB(4) of the Financial Services and Markets Act 2000(3);

“institution” (except in the phrase “financial institution”) means a bank or investment firm;

“mixed financial holding company” has the meaning given by Article 4.1(21) of the capital requirements regulation;

“parent” means a parent undertaking within the meaning given by section 1162 of the Companies Act 2006(4);

“relevant MAHC” means a mixed activity holding company (within the meaning given by Article 4.1(22) of the capital requirements regulation) which has at least one subsidiary which—

- (a) is an institution, and
- (b) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company; and

“subsidiary” means a subsidiary undertaking within the meaning given by section 1162 of the Companies Act 2006.

Safeguards relating to directions under section 3A

3B.—(1) A direction given to a relevant person under section 3A must be accompanied by a notice which—

- (a) states when the direction takes effect (see subsections (2) and (3)),
- (b) gives the Bank of England’s reasons for giving the direction, and,
- (c) specifies a reasonable period within which the relevant person may make representations to the Bank about the direction.

(2) The direction may, if the Bank of England reasonably considers it necessary, take effect—

- (a) immediately it is given to the relevant person, or
- (b) on a later date specified in the direction.

(3) In any other case the direction takes effect when—

- (a) it has been confirmed by a notice under subsection (5), and
- (b) the period during which the direction may be referred to the Upper Tribunal (under subsection (6)) has expired and, if the matter was so referred, the reference and any appeal against the Tribunal’s determination, has been finally disposed of.

(4) Where representations are made by the relevant person within the period specified under subsection (1)(c), the Bank must, within a reasonable period, consider those representations and decide—

- (a) whether to confirm or revoke the direction, and
- (b) if the direction is revoked, whether to give a different direction.

(5) The Bank must—

- (a) if no representations are made within that specified period, give the relevant person written notice that the direction is confirmed, and

(3) c.8. Section 192JB was inserted by the Financial Services (Banking Reform) Act 2013 (c.33), s.133(1), and is amended by article 119 of this Order. The reference to subsection (4) is to that subsection as substituted by article 119(5) of this Order.

(4) 2006 c.46.

- (b) if representations are made, give the relevant person written notice of its decision under subsection (4).
- (6) If the relevant person is aggrieved by the confirmation of the direction, that person may refer the matter to the Upper Tribunal.
- (7) A notice under subsection (5)(a) or (b) confirming the direction must—
 - (a) inform the relevant person of the right to refer the matter to the Upper Tribunal, and
 - (b) indicate the procedure on such a reference.
- (8) A notice given under subsection (5)(b) of a decision by the Bank to give a different direction must comply with subsection (1).
- (9) The Bank must prepare one or more statements of its policy with respect to the giving of directions under section 3A.
- (10) No power conferred by section 3A may be exercised before the statement of policy in relation to the exercise of that power has been published.”