
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Bank Recovery and Resolution Order 2014

Suspension powers

77. After section 70 insert—

“Suspension of obligations

70A.—(1) The Bank of England may suspend obligations to make a payment, or delivery, under a contract where one of the parties to the contract is a bank in respect of which the Bank is exercising a stabilisation power.

(2) A suspension imposed under subsection (1) does not apply to—

- (a) payments of eligible deposits or eligible claims, or
- (b) payments or deliveries to excluded persons.

(3) A suspension imposed under subsection (1)—

- (a) begins when the instrument providing for the suspension is first published,
- (b) must end no later than midnight at the end of the first business day following the day on which the instrument providing for the suspension is published, and
- (c) subject to subsection (2), suspends all obligations to make a payment or delivery under the contract in question, whether the obligation concerned is that of the bank under resolution or of any other party to the contract.

(4) Where a payment or delivery under the contract concerned first fell due within the period of the suspension, that payment or delivery is treated as being due immediately on the expiry of the suspension.

(5) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(6) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(7) In this section—

“eligible claim” means a claim in respect of which compensation is payable under the Financial Services Compensation Scheme or a compensation scheme established under [Directive 97/9/EC](#) of the European Parliament and of the Council of 3rd March 1997 on investor-compensation schemes⁽¹⁾

“eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme or a scheme established under [Directive 2014/49/EU](#) of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes⁽²⁾.

(1) OJ L84, 26.03.1997, p.22.

(2) OJ L 173, 12.06.2014, p.149.

Restriction of security interests

70B.—(1) Where the Bank of England is exercising a stabilisation power in respect of bank, the Bank may suspend the rights of a secured creditor of the bank to enforce any security interest the creditor has in relation to any assets of the bank.

(2) A suspension under subsection (1)—

- (a) begins when the instrument providing for the suspension is first published, and
- (b) must end no later than midnight at the end of the first business day following the day on which that instrument is published.

(3) But the Bank of England may not suspend the rights of an excluded person to enforce any security interest that person may have in relation to any asset of the bank under resolution which has been pledged or provided to the excluded person in question as collateral or as cover for margin.

(4) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(5) Where the power in subsection (1) is being exercised in a partial property transfer, the Bank of England must ensure that any restrictions on the enforcement of security interests which it imposes under that subsection are applied consistently for all banking group companies in respect of which the Bank is exercising a stabilisation power.

(6) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(7) For the purposes of this section, a “security interest” means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

Suspension of termination rights

70C.—(1) The Bank of England may suspend the termination right of any party to a qualifying contract (other than a party who is an excluded person).

(2) A contract is a “qualifying contract” for the purpose of this section if—

- (a) one of the parties to the contract is a bank in respect of which the Bank is exercising a stabilisation power (a “bank under resolution”) and all the obligations under the contract to make a payment, make delivery or provide collateral continue to be performed, or
- (b) one of the parties to the contract is a subsidiary undertaking of a bank under resolution and the condition in subsection (3) is met.

(3) The condition is that—

- (a) the obligations of the subsidiary undertaking are guaranteed or otherwise supported by the bank under resolution,
- (b) the termination rights under the contract are triggered by the insolvency or the financial condition of the bank under resolution, and
- (c) if a property transfer instrument has been made in relation to the bank under resolution—
 - (i) all the assets and liabilities relating to the contract have been or are being transferred to, or assumed by, a single transferee, or

(ii) the Bank of England is providing adequate protection for the performance of the obligations of the subsidiary undertaking under the contract in any other way.

(4) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(5) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(6) A suspension imposed under subsection (1)—

- (a) begins when the instrument providing for the suspension is first published, and
- (b) must end no later than midnight at the end of the first business day following the day on which that instrument is published;

and, where the suspension is imposed in relation to a subsidiary undertaking of a bank under resolution, “midnight” means midnight in the EEA state in which the subsidiary undertaking is established.

(7) A person may exercise a termination right under a contract before the expiry of the suspension if that person is given notice by the Bank of England that the rights and liabilities of the bank under resolution covered by the contract are not—

- (a) to be transferred to another undertaking through the exercise of a stabilisation power, or
- (b) to be made subject to a mandatory reduction instrument or a resolution instrument.

(8) If—

- (a) no notice has been given by the Bank of England under subsection (7), and
- (b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under subsection (1) (or the occurrence of an event directly linked to the exercise of a stabilisation power),

a person may, on the expiry of the suspension, exercise the termination right in accordance with the terms of the contract.

(9) But, where the rights and liabilities of the bank under resolution or the subsidiary undertaking under the contract have been transferred to another undertaking, subsection (8) applies only if the event giving rise to the termination right has been triggered by that undertaking.

(10) For the purposes of this section, “termination right” means—

- (a) a right to terminate a contract,
- (b) a right to accelerate, close out, set-off or net obligations, or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract, or
- (c) a provision that prevents an obligation from arising under the contract.

Suspension: general provisions

70D.—(1) For the purposes of sections 70A to 70C—

“business day” means any day other than a Saturday, a Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

“excluded person” means—

- (a) a person who has been declared to be, or who is an operator of, a designated system under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999⁽³⁾,
- (b) a person who has been designated by an EEA state as a system under Article 2(a) of the [Directive 98/26/EC](#) of the European Parliament and of the Council on settlement finality in payment and securities settlement systems or an operator of such a system⁽⁴⁾,
- (c) a recognised central counterparty, EEA central counterparty or third country central counterparty, or
- (d) a central bank.

(2) For the purposes of subsection (1), “EEA central counterparty”, “recognised central counterparty” and “third country central counterparty” have the meaning given in section 285 of the Financial Services and Markets Act 2000⁽⁵⁾.”.

⁽³⁾ [SI 1999/2979](#), amended by [SI 2010/2993](#); [2013/472](#) (others not relevant).

⁽⁴⁾ OJ L166, 11.6.1998, p 45.

⁽⁵⁾ [2000 c.8](#). Section 285 was amended by [SI 2013/504](#).