
DRAFT STATUTORY INSTRUMENTS

2020 No.

**The Bank Recovery and Resolution
(Amendment) (EU Exit) Regulations 2020**

PART 5

Other Provision made under the European Communities Act 1972

CHAPTER 1

Suspension of obligations, interests and rights

Interpretation

81. In this Chapter—

“the Act” means the Banking Act 2009;

“bank” has the meaning given in section 2 of the Act;

“banking group company” has the meaning given in section 81D of the Act;

“business day” and “excluded person” have the meanings given in section 70D of the Act;

“the FCA” and “the PRA” have the meanings given in section 3(1) of the Act;

“mandatory reduction instrument” has the meaning given in section 6B of the Act;

“resolution instrument” has the same meaning as in the Act;

“stabilisation options” and “stabilisation powers” have the meanings given in section 1 of the Act.

82. The exercise of any of the powers in this Chapter is to be treated as a “crisis management measure” under section 48Z of the Act.

Suspension of obligations prior to exercise of stabilisation powers

83.—(1) The Bank of England may make an instrument suspending obligations to make a payment, or delivery, under a contract where one of the parties to the contract is a bank and the conditions specified in paragraph (2) are met in relation to the bank.

(2) These conditions are that:

(a) the PRA has determined that Condition 1 in section 7 of the Act is met, having consulted the Bank of England;

(b) the Bank of England has determined that no action referred to in Condition 2 in that section will be taken immediately, having consulted the PRA, the FCA and the Treasury;

(c) the Bank of England has determined that the suspension would prevent further deterioration of the financial position of the bank, having consulted the PRA and the FCA;

(d) the suspension—

- (i) would allow additional time for the Bank of England to determine whether Conditions 3 and 4 in section 7 of the Act are met;
 - (ii) would allow additional time for determination of which stabilisation option is appropriate; or
 - (iii) would assist with the effective exercise of one or more of the stabilisation powers.
- (3) A suspension imposed under paragraph (1) does not apply to payments or deliveries to excluded persons.
- (4) Subject to paragraph (3), a suspension imposed under subsection (1) suspends all obligations to make a payment or delivery under the contract in question, whether the obligation is that of the bank or of any other party to the contract.
- (5) Before exercising the power in paragraph (1) the Bank of England must have regard to—
- (a) the impact a suspension might have on the orderly functioning of the financial markets; and
 - (b) rules and supervisory and judicial powers to safeguard the rights of creditors (including equal treatment) in normal insolvency proceedings (in view of the potential application of such proceedings to the bank following a determination that Condition 3 or 4 in section 7 of the Act is not met).
- (6) In paragraph (5)(b), “normal insolvency proceedings” has the meaning given in section 12AA of the Act.
- (7) A suspension imposed under paragraph (1)—
- (a) must be as short in duration as is reasonably practicable;
 - (b) begins when the instrument providing for the suspension is first published;
 - (c) may not continue to apply after the end of the period that the Bank of England considers likely to be required to carry out the determinations referred to in paragraph (2)(c) and (d)(i) and (ii); and
 - (d) in any event 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.
- (8) Where a payment or delivery under the contract concerned would have fallen due within the period of the suspension, that payment or delivery obligation is treated as falling due immediately on the expiry of the suspension.

Suspension of security interests prior to exercise of stabilisation powers

84.—(1) Where the Bank of England imposes a suspension under regulation 83(1) in respect of a bank, the Bank may make an instrument suspending 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) 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 which has been pledged or provided to the excluded person in question as collateral or as cover for margin.

(3) The Bank of England must ensure that any restrictions on the enforcement of security interests which it imposes by virtue of paragraph (1) are applied consistently with any such restrictions imposed on a banking group company in the same group by virtue of regulation 88.

(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 paragraph (1).

- (5) A suspension under paragraph (1)—
- (a) begins when the suspension under regulation 83(1) begins; and
 - (b) ends when the suspension under regulation 83(1) ends.

(6) For the purposes of this regulation, 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 prior to exercise of stabilisation powers

85.—(1) Where the Bank of England imposes a suspension under regulation 83(1) in respect of a bank, the Bank may make an instrument suspending the termination rights 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 regulation if—

- (a) one of the parties to the contract is the bank and all the obligations under the contract to make a payment, make a delivery or provide collateral continue to be performed; or
- (b) one of the parties to the contract is a subsidiary undertaking of the bank and the condition in paragraph (3) is met.

(3) The condition is that—

- (a) the obligations of the subsidiary undertaking are guaranteed or otherwise supported by the bank,
- (b) the termination rights under the contract are triggered by the insolvency or the financial condition of the bank; and
- (c) if a property transfer instrument may be made in relation to the bank—
 - (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 paragraph (1).

(5) A suspension under paragraph (1)—

- (a) begins when the suspension under regulation 83(1) begins; and
- (b) ends when the suspension under regulation 83(1) ends.

(6) 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 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.

(7) If—

- (a) no notice has been given by the Bank of England under paragraph (6); and
- (b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under paragraph (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.

(8) But, where the rights and liabilities of the bank or the subsidiary undertaking under the contract have been transferred to another undertaking, paragraph (7) applies only if the event giving rise to the termination right has been triggered by that undertaking.

(9) For the purposes of this regulation, “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 prior to exercise of stabilisation powers: procedure

86.—(1) The following sections of the Act apply in relation to an instrument under regulation 83, 84 or 85 as they apply to a resolution instrument—

- (a) section 48O;
- (b) section 48Q;
- (c) section 48R;
- (d) section 48S; and
- (e) section 48T.

(2) Where the Bank of England makes one or more instruments under regulation 83, 84 or 85 in respect of a bank, the Bank must, on request by the Treasury, report to the Chancellor of the Exchequer about—

- (a) the exercise of the power to make an instrument;
- (b) the activities of the bank; and
- (c) any other matters in relation to the bank that the Treasury may specify.

(3) In relation to the matters in paragraphs (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.

(4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.

Restriction on subsequent suspension

87. If the Bank of England exercises its powers under regulation 83(1) to impose a suspension, the Bank may not exercise its powers under section 70A to 70C of the Act in respect of the bank in question.

Groups

88.—(1) Regulations 83 to 87 apply to banking group companies incorporated in, or formed under the law of any part of, the United Kingdom with the following modifications.

(2) For the condition specified in regulation 83(2)(a) substitute—

- (a) the PRA is satisfied that Condition 1 in section 7 of the Act is met in respect of a bank in the same group as the banking group company, having consulted the Bank of England;
- (b) the EU resolution authority of an EU institution in the same group is satisfied that the condition set out in point (a) of Article 32(1) of the recovery and resolution directive is met in relation to that EU institution; or
- (c) a relevant third-country authority of a third-country institution in the same group is satisfied that any equivalent condition required by the law of the third country is met in relation to that third-country institution.

(3) For the condition specified in regulation 83(2)(b) substitute—

- (a) the Bank of England has determined that no action referred to in Condition 2 in section 7 of the Act will be taken immediately in respect of a bank in the same group as the banking group company, having consulted the PRA, the FCA and the Treasury; or

- (b) the EU resolution authority of an EU institution in the same group is satisfied that the condition set out in point (b) of Article 33a(1) of the recovery and resolution directive is met in relation to that EU institution.
- (4) For the condition specified in regulation 83(2)(c) substitute—
 - (a) the Bank of England has determined that the suspension would prevent further deterioration of the financial position of a bank in the same group as the banking group company, having consulted the PRA and the FCA; or
 - (b) the EU resolution authority of an EU institution in the same group as the banking group company is satisfied that the condition set out in point (c) of Article 33a(1) of the recovery and resolution directive is met in relation to that EU institution.
- (5) For the condition specified in regulation 83(2)(d) substitute—
 - (i) the suspension would allow additional time for the Bank of England to determine whether Conditions 2 and 3 in section 81B of the Act (sale to commercial purchaser and transfer to a bridge bank) are met;
 - (ii) the suspension would allow additional time for determination of which stabilisation option is appropriate;
 - (iii) the suspension would assist with the effective exercise of one or more of the stabilisation powers; or
 - (iv) the suspension is necessary for an EU resolution authority to take any decision referred to in point (d) of Article 33a(1) of the recovery and resolution directive.
- (6) In this regulation—
 - “EU institution” has the meaning given in section 81AA(14) of the Act;
 - “EU resolution authority” means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);
 - “group” has the meaning given by section 81D(7) of the Act;
 - “the recovery and resolution directive” has the meaning given in section 3(1) of the Act;
 - “relevant third-country authority” has the meaning given by Article 2.1(90) of the recovery and resolution directive;
 - “third-country institution” has the meaning given by section 89H(7) of the Act.

Suspension of obligations when Bank is exercising a stabilisation power

89. The Bank of England may exercise its powers under section 70A of the Act as if subsection (2) (a) were omitted.

Modification of Part for banks not regulated by the PRA

- 90.** In the application of this Part to an FCA-regulated bank the following modifications apply—
- (a) in regulation 83(2)—
 - (i) in paragraph (a) treat the reference to PRA as reference to the FCA;
 - (ii) in paragraphs (b) and (c) the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorized person;
 - (b) in regulation 88—
 - (i) in paragraph (2)(a) treat the reference to PRA as reference to the FCA;
 - (ii) in paragraphs (3)(a) and (4)(a) the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorized person.