

# **BANKING ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Special Resolution Regime**

##### **Exercise of powers: general**

##### ***Section 7: General conditions***

31. This section provides that stabilisation powers can be exercised only in respect of a bank if the conditions set out in the section are met. Those conditions essentially demarcate the boundary that must be crossed before the stabilisation powers, the bank administration procedure and (normally) the bank insolvency procedure may be applied to a bank.
32. The first condition, set out in *subsection (2)*, is that, in the opinion of the FSA, the bank is failing, or is likely to fail, to satisfy its regulatory threshold conditions (as provided in the Financial Services and Markets Act 2000).
33. The second condition, set out in *subsection (3)*, is that, in the opinion of the FSA, it is not reasonably likely that action will be taken by or in respect of the bank that will enable the bank to satisfy the threshold conditions, having regard to timing and other relevant circumstances.
34. *Subsection (4)* provides that, in making this judgement, the FSA are required to discount any financial assistance provided by the Treasury or Bank of England (disregarding ordinary market assistance offered by the Bank on its usual terms). Before confirming that the second condition is met the FSA must consult the Bank of England and the Treasury. *Subsection (6)* provides that the special resolution regime objectives are not applicable to the FSA's decisions on whether a bank meets either of these conditions.

##### ***Section 8: Specific conditions: private sector purchaser and bridge bank***

35. This section sets out alternative conditions one of which must be satisfied before the Bank of England can exercise stabilisation powers so as to effect a transfer of a bank or banking business to a private sector purchaser or to a bridge bank. It provides that the Bank of England can exercise a stabilisation power only if it is satisfied that the exercise of the power is necessary having regard to certain public interest conditions, set out in *subsection (2)*, namely the stability of the UK's financial systems, the maintenance of public confidence in the stability of the UK's banking systems and the protection of depositors. *Subsection (3)* states that before exercising such powers the Bank must consult both the Treasury and the FSA.
36. *Subsection (4)* provides for the position where the Treasury has provided financial assistance to a bank in order to resolve or reduce a serious threat to the stability of the UK's financial systems. In this situation, as set out in *subsection (5)*, the Bank of England may only exercise a stabilisation power following a recommendation from the Treasury on the basis of it being necessary to protect the public interest. The Bank then

*These notes refer to the Banking Act 2009 (c.1)  
which received Royal Assent on 12 February 2009*

retains the discretion to consider whether the exercise of such a power is an appropriate way to provide that protection. *Subsection (6)* provides that these conditions are in addition to the conditions in section 7.

***Section 9: Specific conditions: temporary public ownership***

37. This section provides for alternative conditions one of which must be satisfied for the Treasury to exercise stabilisation powers to take a bank into temporary public ownership.
38. *Subsection (2)* provides that the first condition is that the exercise of the power is necessary to resolve or reduce a serious threat to the stability of the financial systems of the UK.
39. *Subsection (3)* sets the second, alternative, condition as follows: if the exercise of the power is necessary to protect the public interest, where the Treasury has provided financial assistance in respect of the bank for the purposes of resolving or reducing a serious threat to the stability of the UK's financial systems. *Subsection (4)* provides that the Treasury must consult the FSA and the Bank of England before determining whether this condition is met. *Subsection (5)* provides that these conditions are in addition to the conditions in section 7.

***Section 10: Banking Liaison Panel***

40. This section provides for a new Banking Liaison Panel to advise the Treasury on:
  - the effect of the special resolution regime on banks, their counterparties and the financial markets
  - the exercise of the powers to make statutory instruments of Parts 1, 2 or 3 (excluding certain regulations and orders).
  - the making of the section 5 code of practice
  - any matter referred to them by the Treasury
41. The members of the Panel will include representatives of the Authorities, FSCS and from the banking, legal and insolvency sectors.