



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

#### [<sup>F1</sup>CHAPTER 3

#### SPECIAL RESOLUTION ACTION]

#### *Incidental functions*

### 63 General continuity obligation: property transfers

(1) In this section and section 64—

- (a) “residual bank” means a bank all or part of whose business has been transferred in accordance with section 11(2)(b)[<sup>F1</sup>, 12(2) [<sup>F2</sup>, 12ZA(3)] [<sup>F3</sup>, 41A(2) or 44D(2)]],
- (b) “group company” means anything which is, or was immediately before the transfer, a group undertaking in relation to a residual bank,
- (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation),
- (d) “the transferred business” means the part of the bank's business that has been transferred, and
- (e) “transferee” means a commercial purchaser or [<sup>F4</sup>resolution company] to whom all or part of the transferred business has been transferred.

[<sup>F5</sup>(1A) In this section a reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors and (vii) a scheme of arrangement.]

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The residual bank and each group company must provide such services and facilities as are required to enable a transferee to operate the transferred business, or part of it, effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the residual bank or group company and the transferee.
- [<sup>F6</sup>(3A) The continuity obligation continues to apply despite the residual bank or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(2) of the Insolvency (Northern Ireland) Order 1989.]
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- [<sup>F7</sup>(4A) But if the services and facilities provided in pursuance of the continuity obligation were provided to the bank whose business has been transferred, under an agreement with that bank, before the property transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and subsection (4) does not apply).]
- (5) The continuity obligation is not limited to the provision of services or facilities directly to a transferee.
- (6) The Bank of England may, with the consent of the Treasury, by notice to the residual bank or a group company state that in the Bank's opinion—
- (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

#### Textual Amendments

- F1** Words in s. 63(1)(a) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 17](#); S.I. 2014/3160, art. 2(1)(b)
- F2** Words in s. 63(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 71\(2\)\(a\)](#)
- F3** Words in s. 63(1)(a) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\), arts. 1\(2\), 13\(3\)](#)
- F4** Words in s. 63(1)(e) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 71\(2\)\(b\)](#)
- F5** S. 63(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 71\(3\)](#)
- F6** S. 63(3A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 71\(4\)](#)
- F7** S. 63(4A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 71\(5\)](#)

#### Commencement Information

- I1** S. 63 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 64 Special continuity obligations: property transfers

- (1) Expressions in this section have the same meaning as in section 63.
- (2) The Bank of England may—
- cancel a contract or other arrangement between the residual bank and <sup>[F8]</sup>a third party] (whether or not rights or obligations under it have been transferred to a transferee);
  - modify the terms of a contract or other arrangement between the residual bank and <sup>[F9]</sup>a third party] (whether or not rights or obligations under it have been transferred to a transferee);
  - add or substitute a transferee as a party to a contract or other arrangement between the residual bank and <sup>[F10]</sup>a third party];
  - confer and impose rights and obligations on a group company and a transferee, which shall have effect as if created by contract between them;
  - confer and impose rights and obligations on the residual bank and a transferee which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the Bank of England shall aim, so far as is reasonably practicable, to preserve or include—
- provision for reasonable consideration, and
  - any other provision that would be expected in arrangements concluded between parties dealing at arm's length.
- <sup>[F11]</sup>(4) The power under subsection (2) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).
- (5) The power in subsection (2)(d) and (e) may be exercised only—
- in so far as the Bank of England thinks it necessary to do so to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business, or part of it, effectively, and
  - with the consent of the Treasury.
- (6) An obligation imposed on the residual bank or a group company under subsection (2) (d) or (e) continues to apply despite the residual bank or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(2) of the Insolvency (Northern Ireland) Order 1989.]
- <sup>[F12]</sup>(7) For the purposes of subsection (2), “third party” includes a group company.]

### Textual Amendments

- F8** Words in s. 64(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(2\)](#)
- F9** Words in s. 64(2)(b) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(2\)](#)
- F10** Words in s. 64(2)(c) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(2\)](#)
- F11** S. 64(4)-(6) substituted for s. 64(4) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(3\)](#)
- F12** S. 64(7) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(4\)](#)

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Commencement Information

**12** S. 64 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 65 Continuity obligations: onward property transfers

- (1) In this section—
- (a) “onward transfer” means a transfer of property, rights or liabilities (whether or not under a power in this Part) from—
    - (i) a person who is a transferee under a property transfer instrument under section 12(2) [<sup>F13</sup>or 12ZA(3)] (an “original transferee”), or
    - (ii) a bank, securities issued by which were earlier transferred by [<sup>F14</sup>a share transfer instrument under section 12(2) or] a share transfer order under section 13(2), and
  - (b) the person to whom the onward transfer is made is referred to as an “onward transferee”.
- (2) The continuity authority may—
- (a) provide for an obligation under section 63 to apply in respect of an onward transferee;
  - (b) extend section 64 so as to permit action to be taken under section 64(2) for the purpose of enabling an onward transferee to operate transferred business, or part of it, effectively.
- (3) “The continuity authority” means—
- (a) the Bank of England, where subsection (1)(a)(i) applies, and
  - (b) the Treasury, where subsection (1)(a)(ii) applies.
- (4) Subsection (2) may be relied on to impose obligations on—
- (a) an original transferee (where the original transfer was a property transfer),
  - (b) a residual bank within the meaning of section 63 (where the original transfer was a property transfer),
  - (c) the bank (where the original transfer was a share transfer),
  - (d) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of anything within paragraphs (a) to (c), or
  - (e) any combination.
- (5) Subsection (2) may be used to impose obligations—
- (a) in addition to obligations under or by virtue of section 63 or 64, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person—
- (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 63(3) to (7) and 64(3) and (4) apply to an obligation as applied under subsection (2)—
- (a) construing “transferred business” as the business transferred by means of the onward transfer, and

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) with any other necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

#### Textual Amendments

- F13** Words in s. 65(1)(a)(i) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **73(a)**
- F14** Words in s. 65(1)(a)(ii) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **73(b)**

#### Commencement Information

- I3** S. 65 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

## 66 General continuity obligation: share transfers

- (1) In this section and section 67—
- (a) “transferred bank” means a bank all or part of the ownership of which has been transferred in accordance with section 11(2)(a)<sup>[F15]</sup>, 12(2)(a)<sup>[F16]</sup> or 13(2)<sup>[F16]</sup>, or which falls within subsection (1A)],
- (b) “former group company” means anything which was a group undertaking in relation to the transferred bank immediately before the transfer (whether or not it is also a group undertaking in relation to the transferred bank immediately after the transfer),
- (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation), and
- (d) “the continuity authority” means—
- (i) the Bank of England, where ownership was transferred in accordance with section 11(2)(a)<sup>[F17]</sup>, 12(2)(a)<sup>[F18]</sup>, or in a case falling within subsection (1A)], and
- (ii) the Treasury, where ownership was transferred in accordance with section 13(2).

<sup>[F19]</sup>(1ZA) In this section a reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors and (vii) a scheme of arrangement.]

<sup>[F20]</sup>(1A) A bank falls within this subsection if a <sup>[F21]</sup>mandatory reduction instrument or resolution instrument (or supplemental resolution instrument) has changed the ownership of the bank (wholly or partly) by providing for the transfer, cancellation or conversion from one form or class to another of securities issued by the bank (and the reference in subsection (1)(b) to “the transfer” includes such a cancellation or conversion).]

- (2) Each former group company must provide such services and facilities as are required to enable the transferred bank to operate effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the transferred bank and the former group company.

<sup>[F22]</sup>(3A) The continuity obligation continues to apply despite the former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2)

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.]

- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- [<sup>F23</sup>(4A) But if the services and facilities provided in pursuance of the continuity obligation were provided to the transferred bank, under an agreement with that bank, before the share transfer instrument or order or the resolution instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and subsection (4) does not apply).]
- (5) The continuity obligation is not limited to the provision of services or facilities directly to the transferred bank.
- (6) The continuity authority may by notice to a former group company state that in the authority's opinion—
- (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.
- (8) The Bank of England may act under or by virtue of subsection (6) only with the consent of the Treasury.

#### Textual Amendments

- F15** Words in s. 66(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(2\)\(a\)](#)
- F16** Words in s. 66(1)(a) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 18\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F17** Words in s. 66(1)(d) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(2\)\(b\)](#)
- F18** Words in s. 66(1)(d)(i) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 18\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F19** S. 66(1ZA) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(3\)](#)
- F20** S. 66(1A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 18\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F21** Words in s. 66(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(4\)](#)
- F22** S. 66(3A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(5\)](#)
- F23** S. 66(4A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(6\)](#)

#### Commencement Information

- I4** S. 66 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 67 Special continuity obligations: share transfers

- (1) Expressions in this section have the same meaning as in section 66.
- (2) The continuity authority may—
  - (a) cancel a contract or other arrangement between the transferred bank and [<sup>F24</sup>a third party];
  - (b) modify the terms of a contract or other arrangement between the transferred bank and [<sup>F25</sup>a third party];
  - (c) confer and impose rights and obligations on a former group company and the transferred bank, which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the continuity authority shall aim, so far as is reasonably practicable, to preserve or include—
  - (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.
- [<sup>F26</sup>(4) The power under subsection (2) must be exercised by way of provision in a share transfer instrument or order or resolution instrument (or supplemental instrument or order).
- (5) The power in subsection (2)(c) may be exercised—
  - (a) only in so far as the continuity authority thinks it necessary to do so to ensure the provision of such services and facilities as are required to enable the transferred bank to operate effectively, and
  - (b) by the Bank of England only with the consent of the Treasury.
- (6) An obligation imposed on the transferred bank or a former group company under subsection (2)(b) or (c) continues to apply despite the transferred bank or former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(2) of the Insolvency (Northern Ireland) Order 1989.]

### Textual Amendments

- F24** Words in s. 67(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [75\(2\)](#)
- F25** Words in s. 67(2)(b) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [75\(2\)](#)
- F26** S. 67(4)-(6) substituted for s. 67(4) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [75\(3\)](#)

### Commencement Information

- I5** S. 67 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I6** S. 67 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 68 Continuity obligations: onward share transfers

- (1) In this section “onward transfer” means a transfer (whether or not under a power in this Part) of securities issued by a bank where—



*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) securities issued by the bank were earlier transferred by [<sup>F27</sup>a share transfer instrument under section 12(2),][<sup>F28</sup>a resolution instrument under section 12A(2) or supplemental resolution instrument under section 48U(2) or a] share transfer order under section 13(2), or
  - (b) the bank was the transferee under a property transfer instrument under section 12(2).
- (2) The continuity authority may—
- (a) provide for an obligation under section 66 to apply in respect of the bank after the onward transfer;
  - (b) extend section 67 so as to permit action to be taken under section 67(2) to enable the bank to operate effectively after the onward transfer.
- (3) In this section “continuity authority” has the same meaning as in sections 66 and 67.
- (4) Subsection (2) may be relied on to impose obligations on—
- (a) the bank,
  - (b) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of the bank,
  - (c) anything which is or was a group undertaking of the residual bank (in a case to which subsection (1)(b) applies), or
  - (d) any combination.
- (5) Subsection (2) may be used to impose obligations—
- (a) in addition to obligations under or by virtue of section 66 or 67, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person—
- (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 66(3) to (7) and 67(3) and (4) apply to an obligation as applied under subsection (2) with any necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

#### Textual Amendments

**F27** Words in s. 68(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **76**

**F28** Words in s. 68(1)(a) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 20**; S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

**I7** S. 68 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

## 69 Continuity obligations: consideration and terms

- (1) The Treasury may by order specify matters which are to be or not to be considered in determining—



*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) what amounts to reasonable consideration for the purpose of sections 63 to 68;
  - (b) what provisions to include in accordance with section 64(3)(b) or 67(3)(b).
- (2) An order—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A continuity authority may give guarantees or indemnities in respect of consideration for services or facilities provided or to be provided in pursuance of a continuity obligation.
- (4) In this section “continuity authority”—
- (a) in relation to sections 63 and 64, means the Bank of England, and
  - (b) in relation to sections 65 to 68, has the same meaning as in those sections.

#### Commencement Information

**I8** S. 69 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I9** S. 69 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 70 Continuity obligations: termination

- (1) The continuity authority may by notice terminate an obligation arising under section 63 or 66.
- (2) The power under subsection (1) is exercisable by giving a notice to each person—
- (a) on whom the obligation is imposed, or
  - (b) who has benefited or might have expected to benefit from the obligation.
- (3) In this section “continuity authority”—
- (a) in relation to section 63, means the Bank of England, and
  - (b) in relation to section 66, has the same meaning as in that section.
- (4) A reference in subsection (1) to obligations under a section includes a reference to obligations under that section as applied under section 65 or 68.

#### Commencement Information

**I10** S. 70 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## [<sup>F29</sup>70A. Suspension of obligations

- (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.

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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
- “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.

#### Textual Amendments

**F29** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

### 70B. Restriction of security interests

- (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.

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

#### Textual Amendments

**F29** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

### 70C. Suspension of termination rights

- (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).

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

**Textual Amendments**

**F29** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

**70D. Suspension: general provisions**

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

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“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,
- (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,
- (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.]

#### Textual Amendments

**F29** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

## 71 Pensions

- (1) This section applies to—
  - [<sup>F30</sup>(za) mandatory reduction instruments,]
  - (a) share transfer orders,
  - (b) share transfer instruments,<sup>F31</sup> ...
  - (c) property transfer instruments<sup>F32</sup>, and]
  - [<sup>F32</sup>(d) resolution instruments.]
- (2) An order or instrument may make provision—
  - (a) about the consequences of a transfer for a pension scheme;
  - (b) about property, rights and liabilities of any pension scheme of the bank.
- (3) In particular, an order or instrument may—
  - (a) modify any rights and liabilities;
  - (b) apportion rights and liabilities;
  - (c) transfer property of, or accrued rights in, one pension scheme to another (with or without consent).
- (4) Provision by virtue of this section may (but need not) amend the terms of a pension scheme.
- (5) A share or property transfer instrument may make provision in reliance on this section only with the consent of the Treasury.
- (6) In this section—

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) “pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities, and
  - (b) a reference to a pension scheme of a bank is a reference to a scheme in respect of which the bank, or a group company of the bank, is or was an employer.
- (7) In subsection (6)(b) the reference to a group company of the bank is a reference to anything that is or was a group undertaking in relation to the bank within the meaning given by section 1161(5) of the Companies Act 2006.

#### Textual Amendments

- F30** S. 71(1)(za) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **78**
- F31** Word in s. 71(1)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 21(a)**; S.I. 2014/3160, art. 2(1)(b)
- F32** S. 71(1)(d) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 21(b)**; S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I11** S. 71 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I12** S. 71 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

### <sup>F33</sup>72 Enforcement

#### Textual Amendments

- F33** S. 72 omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **79**

### 73 Disputes

- (1) This section applies to—
- [<sup>F34</sup>(za) mandatory reduction instruments,]
    - (a) share transfer orders,
    - (b) share transfer instruments, <sup>F35</sup> ...
    - (c) property transfer instruments [<sup>F36</sup>, <sup>F37</sup> ...
    - (d) resolution instruments] [<sup>F38</sup>, and
    - (e) third-country instruments.]
- (2) An order or instrument may include provision for disputes to be determined in a specified manner.
- (3) Provision by virtue of subsection (2) may, in particular—
- (a) confer jurisdiction on a court or tribunal;
  - (b) confer discretion on a specified person.

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F34** S. 73(1)(za) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **80(1)(a)**
- F35** Word in s. 73(1)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 23(a)**; S.I. 2014/3160, art. 2(1)(b)
- F36** S. 73(1)(d) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 23(b)**; S.I. 2014/3160, art. 2(1)(b)
- F37** Word in s. 73(1)(c) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **80(1)(b)**
- F38** S. 73(1)(e) and preceding word inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **80(1)(b)**

#### Commencement Information

- I13** S. 73 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**
- I14** S. 73 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

## 74 Tax

- (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of [<sup>F39</sup>the power to make a mandatory reduction instrument or] a stabilisation power.
- (2) Regulations may relate to—
- capital gains tax;
  - corporation tax;
  - income tax;
  - inheritance tax;
  - stamp duty;
  - stamp duty land tax;
  - stamp duty reserve tax.
- (3) Regulations may apply to—
- anything done in connection with an instrument or order;
  - things transferred or otherwise affected by virtue of an instrument or order;
  - a transferor or transferee under an instrument or order;
  - persons otherwise affected by an instrument or order.
- (4) Regulations may—
- modify or disapply an enactment;
  - provide for an action to have or not have specified consequences;
  - provide for specified classes of property (including securities), rights or liabilities to be treated, or not treated, in a specified way;
  - withdraw or restrict a relief;
  - extend, restrict or otherwise modify a charge to tax;
  - provide for matters to be determined by the Treasury in accordance with provision made by or in accordance with the regulations.



*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Regulations may make provision for the fiscal consequences of the exercise of [<sup>F40</sup>the power to make a mandatory reduction instrument or] a stabilisation power in respect of things done—
- (a) during the period of three months before the date on which [<sup>F41</sup>the power to make the mandatory reduction instrument or (as the case may be)] the stabilisation power is exercised, or
  - (b) on or after that date.
- [<sup>F42</sup>(5A) Where the mandatory reduction provision required by section 6B is made in two or more mandatory reduction instruments, in subsection (5)(a) above the reference to the date on which the power to make the mandatory reduction instrument is exercised is, in relation to any of those instruments, a reference to the date on which the power is exercised to make the first of those instruments.]
- (6) In relation to the exercise of a supplemental or onward instrument or order under section 26, 27, 28, 30, 42, 43 [<sup>F43</sup>, 45, 48U or 48V], in subsection (5)(a) above “the stabilisation power” is a reference to the first stabilisation power in connection with which the supplemental or onward instrument or order is made.
- (7) The Treasury may by order amend subsection (2) so as to—
- (a) add an entry, or
  - (b) remove an entry.
- (8) Regulations or an order under this section—
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

#### Textual Amendments

- F39** Words in s. 74(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(2)**
- F40** Words in s. 74(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(3)(a)**
- F41** Words in s. 74(5)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(3)(b)**
- F42** S. 74(5A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(4)**
- F43** Words in s. 74(6) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 24**; S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I15** S. 74 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I16** S. 74 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

## 75 Power to change law

- (1) The Treasury may by order amend the law for the purpose of enabling the powers under this Part to be used effectively, having regard to the special resolution objectives.
- (2) An order may be made—
  - (a) for the general purpose of the exercise of powers under this Part,

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) to facilitate a particular proposed or possible use of a power, or
  - (c) in connection with a particular exercise of a power.
- (3) An order under subsection (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Act in connection with which the order is made (but in relying on this subsection the Treasury shall have regard to the fact that it is in the public interest to avoid retrospective legislation).
- (4) In subsection (1) “amend the law” means—
  - (a) disapply or modify the effect of a provision of an enactment (other than a provision made by or under this Act),
  - (b) disapply or modify the effect of a rule of law not set out in legislation, or
  - (c) amend any provision of an instrument or order made in the exercise of a stabilisation power.
- (5) Provision under this section may relate to this Part as it applies—
  - (a) to banks,
  - (b) to building societies,
  - (c) to credit unions (by virtue of section 89),<sup>F44</sup> ...
  - <sup>F45</sup>(ca) to investment firms,]
  - <sup>F46</sup>(cb) to [<sup>F47</sup>recognised central counterparties], ]<sup>F48</sup> ...
  - <sup>F49</sup>(cc) to third-country institutions,
  - (cd) to UK branches, or]
  - (d) to any combination.
- (6) Specific powers under this Part are without prejudice to the generality of this section.
- (7) An order—
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (8) But if the Treasury think it necessary to make an order without complying with subsection (7)(b)—
  - (a) the order may be made,
  - (b) the order shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made,
  - (c) the lapse of an order under paragraph (b) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
  - (d) the lapse of an order under paragraph (b) does not prevent the making of a new order (in new terms).
- <sup>F50</sup>(9) For the purposes of this section—
  - “third-country institution” has the meaning given by Article 2.1(86) of the recovery and resolution directive;
  - “UK branch” means a branch located in the United Kingdom of a third-country institution authorised for the purposes of the Financial Services and Markets Act 2000 by the PRA or the FCA.]

*Status: Point in time view as at 16/12/2016.*

*Changes to legislation: Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F44** Word in s. 75(5) omitted (1.8.2014) by virtue of [Financial Services Act 2012 \(c. 21\)](#), **ss. 101(4)**, 122(3) (with [Sch. 20](#)); [S.I. 2014/1847](#), [art. 2](#)
- F45** S. 75(5)(ca) inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 101(4)**, 122(3) (with [Sch. 20](#)); [S.I. 2014/1847](#), [art. 2](#)
- F46** S. 75(5)(cb) inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 102(5)**, 122(3) (with [Sch. 20](#)); [S.I. 2014/1847](#), [art. 2](#)
- F47** Words in Act substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), [regs. 1\(2\)](#), **25(2)** (with [regs. 52-58](#))
- F48** Word in s. 75(5)(cb) omitted (16.12.2016) by virtue of [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), [arts. 1\(2\)](#), **29(4)(a)(i)**
- F49** S. 75(5)(cc)(cd) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), [arts. 1\(2\)](#), **29(4)(a)(ii)**
- F50** S. 75(9) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), [arts. 1\(2\)](#), **29(4)(b)**

### Commencement Information

- I17** S. 75 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 1](#)
- I18** S. 75 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 1](#)

**Status:**

Point in time view as at 16/12/2016.

**Changes to legislation:**

Banking Act 2009, Cross Heading: Incidental functions is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.