



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

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

#### SPECIAL RESOLUTION ACTION]

#### *Incidental functions*

#### [<sup>F1</sup>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—

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**Changes to legislation:** *Banking Act 2009, Section 70C is up to date with all changes known to be in force on or before 27 June 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) View outstanding changes*

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- (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;
- F2  
....
- (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.]

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**Textual Amendments**

**F1** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

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**F2** Words in s. 70C(6) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 1 para. 26**; 2020 c. 1, Sch. 5 para. 1(1)

**Modifications etc. (not altering text)**

- C1** Ss. 70A-70C restricted (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(4), **87** (with reg. 88)
- C2** Ss. 70A-70C modified (31.12.2020 immediately before IP completion day) by S.I. 2019/341, reg. 18(2) (as inserted by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **20(5)**; 2020 c. 1, Sch. 5 para. 1(1))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(8A)(8B) inserted by [2012 c. 21 s. 96\(3\)](#)
- s. 8(2)(d) and word inserted by [2012 c. 21 s. 96\(4\)\(b\)](#)