
STATUTORY INSTRUMENTS

2016 No. 1239

The Bank Recovery and Resolution Order 2016

PART 4

Amendments of the Financial Services and Markets Act 2000

Assessment and resolution

33.—(1) In section 189 (assessment: procedure), in subsection (6) insert at the beginning “ Unless section 190A applies ”.

(2) After section 190, insert—

“190A Assessment and resolution

(1) This section applies if—

- (a) the appropriate regulator receives a section 178 notice in relation to a credit institution, investment firm or banking group company,
- (b) as a result of a direction under section 189(1A) ^{M1} or the application of section 189(1ZB) ^{M2}, the appropriate regulator is required to act under this Part in a timely manner in relation to that notice, and
- (c) the appropriate regulator does not complete the assessment required by section 185 before a relevant transfer instrument has been made by the Bank of England which transfers shares issued by, or voting power in, that credit institution, investment firm or banking group company.

(2) The transfer of shares or voting takes effect in accordance with the terms of the relevant transfer instrument, but the right of the person who acquires shares under that instrument (“the acquirer”) to exercise the voting power represented by those shares is suspended.

(3) During the suspension, the voting power represented by the shares in question may be exercised by the Bank (and only by the Bank).

(4) If the appropriate regulator issues a decision notice under section 189(7) objecting to the acquisition, the Bank may direct the acquirer to sell the shares within a period specified by the Bank in the direction (“the sale period”).

(5) In determining the sale period, the Bank must take account of prevailing market conditions.

(6) The suspension provided for in subsection (2) ends—

- (a) if the appropriate regulator gives notice under section 189(4)(a) or (b)(i) that it approves the acquisition, on the date of that notice, or
- (b) if the Bank gives a direction under subsection (4), on the earlier of the day on which the sale period ends and the day on which the shares are sold.

(7) In this section a “relevant transfer instrument” means an instrument made by the Bank acting in the exercise of its functions under sections 6A to 6C of the Banking Act 2009 or

under the special resolution regime under Part 1 of that Act, which transfers, or has the effect of transferring, shares issued by, or voting power in, the credit institution, investment firm or banking group company.”.

- (3) In section 191B (restriction notices), after subsection (3) insert—
- “(3A) Subsection (3)(a) and (b) does not apply where the voting power represented by the shares in question is suspended under section 190A(2).”.
- (4) In section 191C (orders for sale of shares), after subsection (6), insert—
- “(7) The appropriate regulator must obtain the consent of the Bank of England before making an application under this section in relation to shares if the Bank has the power to direct the sale of those shares under section 190A(4).
- (8) The appropriate regulator may not make an application under this section in relation to shares if the Bank of England has given a direction for the sale of those shares under section 190A(4).”.
- (5) In section 191F (offences under this Part) ^{M3}—
- (a) in subsection (2) at the end insert “ or section 190A applies ”;
- (b) after subsection (4) insert—
- “(4A) A person who fails to comply with a direction given by the Bank of England under section 190A(4) is guilty of an offence.”;
- (c) in subsection (9), after “(4)” insert “ or (4A) ”.
- (6) In section 401—
- (a) in subsection (3A)(g) ^{M4}, after “191F(2) to” insert “ (4) and (5) to ”;
- (b) after subsection (3A) insert—
- “(3AB) For the purposes of subsections (2)(a) and (3)(a), the Bank of England is the “appropriate regulator” in respect of an offence under section 191F(4A).”.

Marginal Citations

- M1** Subsection (1A) was inserted into section 189 by [S.I. 2014/3329](#).
- M2** Subsection (1ZB) was inserted by paragraph 39 of Schedule 2 to the [Bank of England and Financial Services Act 2016 \(c.14\)](#).
- M3** [Section 191F](#) was substituted, with sections 178 to 191G, for the original sections 178 to 191 by [S.I. 2009/534](#), and amended by section 26 of the Financial Services Act 2012.
- M4** Subsection (3A) was inserted into section 401 by paragraph 38 of Schedule 9 to the Financial Services Act 2012.

Changes to legislation:

There are currently no known outstanding effects for the The Bank Recovery and Resolution Order 2016, Section 33.