

Status: Point in time view as at 16/12/2016.

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Banking Act 2009

2009 CHAPTER 1

PART 1

SPECIAL RESOLUTION REGIME

[^{F1}CHAPTER 5

SPECIAL CASES]

Textual Amendments

- F1** Pt. 1 Ch. 5 formed from ss. 83A-89G (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **98**

[^{F2}Banks not regulated by PRA

Textual Amendments

- F2** S. 83A and cross-heading inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 28](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

83A Modifications of Part

(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.

(2) In this section—

“FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000;

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“ immediate group ” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000;

“ PRA-authorized person ” has the meaning given by section 2B(5) of that Act.

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
[^{F3} Section 6A	Treat the reference to the PRA in subsections (3)(a) and (7) as references to the FCA.
Section 6C	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
Section 7	(a) Treat the references to the PRA in subsections [^{F4} (1), (5A), (5C), (5D) and (5F)] as references to the FCA. (b) ^{F5} . . . (c) If the bank has as a member of its immediate group a PRA-authorized person the FCA must consult the PRA before determining whether or not Condition 2 is met. [^{F6} (d) Subsections (5G)(a) and (5H)(a) do not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
[^{F7} Section 7A	In subsection (1), the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorized person]
^{F8}	^{F8}
.
^{F8}	^{F8}
.
[^{F9} Section 8ZA	(a) Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person. (b) Treat the definition of “normal insolvency proceedings” in subsection (5) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]
Section 9	Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
[^{F10} Section 12AA	Treat the definition of “normal insolvency proceedings” in subsection (2) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]
Section 24	Ignore subsection (1)(c).
Section 25	Ignore subsection (2)(c).
Section 26	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
[^{F11} Section 26ZA	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]

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- Section 26A Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 27 Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 28 Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 29 Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 30 Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 31 Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 41 Ignore subsection (1)(c).
- [^{F12}Section 41A Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
- Section 42 Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 42A Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 43 Subsection (7)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 44 Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- [^{F12}Section 44A Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
- [^{F13}Section 44D Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 44E Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
- Section 45 Subsection (8)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 46 Subsection (7)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- [^{F12}Section 48H Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 48U Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 48V Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 48W Subsection (9)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]

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[^{F10} Section 63	Treat the reference to insolvency in subsection (1A), as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011
Section 66	Treat the reference to insolvency in subsection (1ZA), as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011
Section 81AA	Treat the references to the PRA in subsections (3)(b) and (5)(a) as references to the FCA.]
Section 81B	[^{F14} (a) Treat the references to the PRA in subsections (2) and (2A) as references to the FCA. (b) Ignore subsection (6)(b) unless the bank has as a member of its immediate group a PRA-authorized person.]
[^{F15} Section 81ZBA	(b) Ignore subsection (8)(a) unless the bank has as a member of its immediate group a PRA-authorized person. (c) Treat the definition of “normal insolvency proceedings” in subsection (9) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]
[^{F12} Section 81BA	[^{F16} (a) Treat the references to the PRA in subsections (2)(a) and (2A) as references to the FCA. (b)] Subsection (5)(b) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
Section 82	(a) Treat the reference to the PRA in subsection (2) as a reference to the FCA. (b) Ignore subsection (5)(a).
[^{F17} Section 89H	Treat the definition of “normal insolvency proceedings” in subsection (7) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]]

Textual Amendments

- F3** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(2)**
- F4** Words in s. 83A(2) table substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(3)(a)**
- F5** Words in s. 83A(2) table omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(3)(b)**
- F6** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(3)(c)**
- F7** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(4)**
- F8** Words in s. 83A(2) table omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(5)**
- F9** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(6)**
- F10** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(7)**

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- F11** Words in s. 83A table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **9(2)**
- F12** Words in s. 83A(2) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 8**; [S.I. 2014/3160](#), art. 2(1)(b)
- F13** Words in s. 83A table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **13(4)**
- F14** Words in s. 83A(2) table substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(8)**
- F15** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(9)**
- F16** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(10)**
- F17** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(11)**

Building societies, &c.

84 Application of Part 1: general

[^{F18}This Part applies to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to—

- (a) the provisions of the Table, and
- (b) sections [^{F19}84ZA] to 84D (which relate to the [^{F20}second and fourth stabilisation options]).]

<i>Section</i>	<i>Topic</i>	<i>Modification or note</i>
F21	F21	F21
...
13	Temporary public ownership	The procedure provided by section 85 has effect in place of share transfer orders.
14 to 32	Transfer of securities	The procedure provided by section 85 has effect in place of share transfer orders; and— <ul style="list-style-type: none"> (a) sections 28 and 30 do not apply, and (b) section 27 applies following an order under section 85 as following a share transfer order.
33	Property transfer instrument: nature	A property transfer instrument in respect of a building society may— <ul style="list-style-type: none"> (a) cancel shares in the building society;

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		(b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).
33 and 36	Property transfer instrument: continuity	A property transfer instrument in respect of a bank which provides for transfer to a building society may confer rights and impose liabilities by way of actual or deemed shares in the building society.
34	Property transfer instrument: effect	A property transfer instrument may, in particular, have effect without causing sections 93 to 102D of the Building Societies Act 1986 (mergers and transfers) to apply.
42	Supplemental property transfer instrument	A supplemental property transfer instrument in respect of a building society may— (a) cancel shares in the building society; (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).
45	Temporary public ownership: property transfer	(a) Section 45 applies following an order under section 85 as following a share transfer order.

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		(b) A property transfer order in respect of a building society may cancel shares in the building society.
49 to 62	Compensation	(a) A reference to a share transfer order includes a reference to an order under section 85. (b) A resolution fund order may not be made under section 51(2)(b). (c) If and in so far as an order under section 85 provides for the issue of new deferred shares, section 51(2) shall not apply [^{F22} but the Treasury may make a third party compensation order].
63 to 75	Incidental functions	A reference to a share transfer order includes a reference to an order under section 85.

Textual Amendments

- F18** Words in s. 84 substituted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, **2(2)**
- F19** Word in s. 84(b) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **20(a)**
- F20** Words in s. 84(b) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **20(b)**
- F21** Words in s. 84 omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(1)**
- F22** Words in s. 84 inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. **21(5)**, 26(1)(f)

Commencement Information

- I1** S. 84 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

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[^{F23}84ZA Bridge bank: share transfer instruments

- (1) This section applies for the purpose of the exercise of the second stabilisation option (transfer to a bridge bank) in relation to a building society.
- (2) A share transfer instrument made under section 12(2)(a) may—
 - (a) convert the building society into a company (“the successor company”), and
 - (b) make other provision for the purposes of, or in connection with the conversion of the building society.
- (3) The provision which may be made under subsection (2)(b) includes—
 - (a) provision cancelling shares in the building society;
 - (b) provision cancelling membership rights in the building society;
 - (c) provision converting shares in the building society into deposits with the successor company;
 - (d) provision conferring rights and imposing liabilities in place of cancelled shares and membership rights;
 - (e) provision requiring the FCA to cancel the building society's registration under the Building Societies Act 1986 at a time specified in or determined in accordance with the instrument;
 - (f) provision that any person approved for the purposes of Part 5 of the Financial Services and Markets Act 2000 (performance of regulated activities) in relation to the building society immediately before the share transfer instrument is made continues to be approved for those purposes in relation to the successor company (but without affecting the power of the FCA or the PRA to vary or withdraw an approval);
 - (g) provision for the successor company on its incorporation to be wholly owned by a bridge bank specified in the instrument (the “parent undertaking”);
 - (h) where provision is made under paragraph (g), provision—
 - (i) for the transfer of liabilities from the successor company to the parent undertaking, and for the creation of corresponding liabilities of the successor company to the parent undertaking;
 - (ii) replacing a liability (of any form) of the building society or the successor company with a liability or security (of any form or class) of the parent undertaking.
- (4) Section 15 (share transfer instruments) is to be read as if the provision referred to in subsection (1) of that section included the provision referred to in subsections (2) and (3) of this section.]

Textual Amendments

F23 S. 84ZA inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **21(1)**

[^{F24}84A. Bail-in option: building societies

- (1) This section applies for the purpose of the exercise of the fourth stabilisation option (bail-in) in relation to a building society.

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- (2) Subsection (2A) of section 12A (bail-in option) is to be read as if the provision referred to included provision under this section.
- (3) Subsection (1) of section 12AA (bail-in: sequence of write-down and conversion of capital instruments and liabilities) is to be read as if the powers referred to included the powers conferred by this section, sections 84B and 84C and the provisions modified by section 84D.
- (4) A resolution instrument with respect to a building society may make—
 - (a) provision of the kind mentioned in subsection (5);
 - (b) other provision for the purposes of, or in connection with, provision of the kind mentioned in subsection (5) made by that or another instrument.
- (5) A resolution instrument may—
 - (a) convert the building society into a company, or
 - (b) transfer all the property, rights and liabilities of the building society to a company.
- (6) In the following provisions of this section, “the successor company”, in relation to a building society, means the company into which the building society is converted, or to which the property, rights and liabilities of the building society are transferred, as a result of provision made under subsection (5).
- (7) The provision that may be made under subsection (4)(b) includes—
 - (a) provision cancelling shares in the building society;
 - (b) provision cancelling membership rights in the building society;
 - (c) provision converting shares in the building society into deposits with the successor company;
 - (d) provision conferring rights and imposing liabilities in place of cancelled shares and membership rights;
 - (e) provision requiring the FCA to cancel the building society’s registration under the Building Societies Act 1986 at a time specified in or determined in accordance with the instrument;
 - (f) provision that any person approved for the purposes of Part 5 of the Financial Services and Markets Act 2000 (performance of regulated activities) in relation to the building society immediately before the resolution instrument is made continues to be approved for those purposes in relation to the successor company (but without affecting the powers of the FCA or PRA to vary or withdraw an approval);
 - (g) provision which could be included in a property transfer instrument by virtue of—
 - (i) section 34(7) and (8) (property held on trust), or
 - (ii) section 36(1) to (5) (continuity).
- (8) The provision that may be made under subsection (4)(b) also includes—
 - (a) in a case where the resolution instrument makes provision under subsection (5)(a), provision for the successor company on its incorporation to be wholly owned by a company specified in the instrument;
 - (b) in a case where the resolution instrument makes provision under subsection (5)(b) transferring the property, rights and liabilities of the building society to a company which is wholly owned by another company, provision relating to that other company;

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- (c) in either case, provision—
- (i) for the transfer of liabilities from the successor company to the other company mentioned in paragraph (a) or (b) (“the parent undertaking”), and for the creation of corresponding liabilities of the successor company to the parent undertaking;
 - (ii) replacing a liability (of any form) of the building society or the successor company with a liability or security (of any form or class) of the parent undertaking.
- (9) A company may not be specified under subsection (8)(a) unless it is (or is to be) wholly owned by—
- (a) the Bank of England,
 - (b) a resolution administrator appointed under section 62B(1), or
 - (c) a person nominated by the Bank of England.
- (10) Where a resolution instrument makes provision under subsection (5), section 37 (licences) applies as if the references to a property transfer instrument were references to the resolution instrument.
- (11) A resolution instrument may provide for different provision made under this section by the instrument to take effect at different times.
- (12) In this section—
- “company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares;
- “deposit” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), but ignoring the exclusions in article 6.

Textual Amendments

F24 Ss. 84A-84D inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, 2(3)

84B. Further provision: conversion of building society into company

- (1) This section applies where
- ^{F25}(a) a share transfer instrument makes provision under section 84ZA(2)(a), or
 - (b) a resolution instrument makes provision under section 84A(5)(a)
- (2) The [^{F26}share transfer instrument or] resolution instrument must—
- (a) state the company’s proposed name;
 - (b) set out the terms of the memorandum of association of the company;
 - (c) set out the terms of the articles of association of the company (to the extent that these are not to be supplied by the default application of model articles: see section 20 of the Companies Act 2006);
 - (d) contain the statements and information required to be included in or to accompany an application for a certificate under section 761 of the Companies Act 2006 (public company: requirement as to minimum share capital).

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- (3) The conversion into the successor company takes effect on the registration of the company under the Companies Act 2006.
- (4) The successor company is to be treated as the same person in law as the building society.
- (5) The documents required by section 9 of the Companies Act 2006 (registration documents) to be delivered to the registrar (within the meaning of that Act) include a copy of the [^{F27}share transfer instrument or] resolution instrument.
- (6) In section 13 of the Companies Act 2006 (statement of compliance) and section 14 of that Act (registration), the reference to the requirements of that Act is to be read as a reference to the requirements of that Act as modified by this section.
- (7) If the [^{F28}share transfer instrument or] resolution instrument complies with subsection (2)(d), an application for a trading certificate is to be taken to have been made in accordance with section 762 of the Companies Act 2006 (procedure for obtaining trading certificate).
- (8) In this section—

“company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares;

“the successor company”, in relation to a building society, means the company into which the building society is converted as a result of provision made under section [^{F29}84ZA(2)(a) or] 84A(5)(a).

Textual Amendments

- F24** Ss. 84A-84D inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, **2(3)**
- F25** Words in s. 84B(1) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **21(2)(a)**
- F26** Words in s. 84B(2) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **21(2)(b)**
- F27** Words in s. 84B(5) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **21(2)(b)**
- F28** Words in s. 84B(7) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **21(2)(b)**
- F29** Words in s. 84B(8) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **21(2)(c)**

84C. Further provision: transfer of business of building society to company

- (1) A transfer under section 84A(5)(b) must be to a company which immediately before the transfer is wholly owned by—
 - (a) the Bank of England,
 - (b) a resolution administrator appointed under section 62B(1),
 - (c) a person nominated by the Bank of England, or
 - (d) a company which is itself wholly owned by a person within paragraphs (a) to (c).

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- (2) Where a resolution instrument has made provision under section 84A(5)(b), the building society is dissolved at such time as may be specified in or determined in accordance with the instrument.
- (3) In this section, “company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares.

Textual Amendments

F24 Ss. 84A-84D inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, 2(3)

84D. [F30Transfer to a bridge bank or] Bail-in option: modifications of this Act and other legislation

[Where a share transfer instrument makes provision under section 84ZA(2) with respect to a building society, the second stabilisation option is to be exercised by making (in that or a subsequent share transfer instrument) provision under section 12(2)(a)—

- (a) with respect to the successor company, or
- (b) where provision made under section 84ZA includes provision under subsection (3)(g) of that section, with respect to the successor company or its specified parent undertaking.]
- (1) Where a resolution instrument makes provision under section 84A(5) with respect to a building society, the exercise of the fourth stabilisation option involves the making (in that or a subsequent resolution instrument) of provision or proposals of any kind mentioned in section 12A(3) to (6)—
- (a) with respect to the successor company, or
- (b) where provision made under section 84A includes provision under subsection (8) of that section, with respect to the successor company or its specified parent undertaking.
- (2) For the purpose of the making of [F32provision as mentioned in subsection (A1)(a) or (b) or] provision or proposals as mentioned in subsection (1)(a) or (b)—
- (a) the Table in section 84 does not apply, and
- (b) the provisions in the first column of the following Table apply [F33where relevant] —
- (i) in relation to the successor company, or
- (ii) in a case within subsection [F34(A1)(b) or] (1)(b), in relation to the successor company or its specified parent undertaking,
- as they apply in relation to a bank, but subject to the modifications in the third column of the Table.

Table

<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 12A	Bail-in option	Treat references in subsection (4) to securities issued by a specified bank as references to securities issued by the building society, or by the successor company or its specified parent undertaking.

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

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Section	Topic	Modification
		<p>For subsection (8) substitute—</p> <p>“(8) Subsection (8ZA) applies where—</p> <ul style="list-style-type: none"> (a) the Bank of England has exercised the power in subsection (4) to transfer securities to a resolution administrator; or (b) by virtue of section 84A, 84B or 84C securities of a successor company or a specified parent undertaking are held by— <ul style="list-style-type: none"> (i) the resolution administrator, (ii) the Bank of England, (iii) a subscriber to the memorandum of association of a company into which the building society is converted in accordance with section 84B, or (iv) a person nominated for the purposes of section 84C(1)(c). <p>(8ZA) The Bank of England must exercise its functions under this Part (see, in particular, section 48V) with a view to ensuring that any securities—</p> <ul style="list-style-type: none"> (a) held by a person in the capacity of a resolution administrator, (b) held by the Bank of England, (c) held by a person as a result of being a subscriber to the memorandum of association of a company into which the building society is converted in accordance with section 84B, (d) held by a person as a result of being nominated by the Bank of England for the purposes of section 84C(1)(c), <p>are so held only for so long as is, in the Bank of England’s opinion, appropriate having regard to the special resolution objectives.”.</p>
Section 12AA	Bail-in: sequence of write-down and conversion of capital instruments and liabilities	In relation to the result to be achieved, treat any reference to an instrument or liability of the bank as a reference to an instrument or liability of the building society immediately before the making of the first resolution instrument under section 84A in respect of it.
[^{F35} Section 15	Share transfer instruments	Treat references in subsection (1) to securities issued by a specified bank as references to securities issued by the building society, or by the successor company or its specified parent undertaking.]

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<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 17	Effect of transfer	
Section 18	Continuity	
[^{F36} Section 19	Conversion and delisting	
Section 20	Directors and senior managers	Treat references to a director or senior manager of a specified bank as references to a director or senior manager of the building society or of the successor company or its specified parent undertaking. In subsection (1A) treat the reference to a specified bank as a reference to the building society or its successor company.
Section 21	Ancillary instruments: production, registration etc	
Section 21	Incidental provision	
Section 24	Procedure: instruments	On the first occasion on which the power to make a share transfer instrument is exercised in relation to a building society, treat the references in this section to a bank as a reference to a building society.
Section 26	Supplemental Instruments	Treat the reference in subsection (3) to securities issued by the bank as a reference to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 26ZA	Onward share transfer instruments	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 30	Resolution company: share transfers	
Section 31	Resolution company: reverse share transfer]	
Section 41A, and any other provision so far as relating to property transfer instruments under section 41A(2)	Transfer of property subsequent to resolution instrument	

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<i>Section</i>	<i>Topic</i>	<i>Modification</i>
[^{F37} Section 44D and any other provision so far as relating to property transfer instruments under section 44D	Transfer of property subsequent to share transfer instrument	Section 44D also applies where the Bank of England has made a share transfer instrument in accordance with section 12(2) which provides for the conversion of the building society under section 84ZA(2).]
Section 48B	Special bail-in provision	The provision that may be made in accordance with section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes provision replacing a liability (of any form) of the building society or its successor company with a liability of the successor company's specified parent undertaking.
Section 48C	Meaning of "protected deposit"	
Section 48D	General interpretation of section 48B	
Section 48E	Report on special bail-in provision	
Section 48F	Power to amend definition of "excluded liabilities"	
Section 48G	Priority between creditors	Treat the reference in subsection (1) to the treatment of liabilities on an insolvency as a reference to the treatment of liabilities on the insolvency of a building society.
Section 48H	Business reorganisation plans	Treat the reference in subsection (2)(a) to the bank as a reference to the building society.
Section 48L	Powers in relation to securities	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 48N	Directors and senior managers	Treat references to a director or senior manager of a specified bank as references to a director or senior manager of the building society or of the successor company or its specified parent undertaking.
Section 48O	Directions in or under resolution instrument	Treat references to a director of the bank as references to a director of the building society or of the successor company or its specified parent undertaking.
Section 48P	Orders for safeguarding certain	

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<i>Section</i>	<i>Topic</i>	<i>Modification</i>
	financial arrangements	
Section 48Q	Continuity	
Section 48R	Execution and registration of instruments etc.	
Section 48S	Resolution instruments: general matters	
Section 48T	Resolution instruments: procedure	On the first occasion on which the power to make a resolution instrument is exercised in relation to a building society, treat the first reference in subsection (1) to a bank as a reference to the building society.
Section 48U	Supplemental resolution instruments	Treat the reference in subsection (1) to a bank as a reference to the building society.
Section 48V	Onward transfer	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 48W	Reverse transfer	Treat references to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.
Section 48X	Replacement of Bank's provisional valuation	Treat the first reference in subsection (2)(a) to the bank as a reference to the building society.
Section 48Y	Consequences of a replacement valuation	Treat the first reference in subsection (1) to the bank as a reference to the building society.
Section 48Z	Termination rights etc.	This section applies to contracts and other agreements entered into by the building society or by the successor company or its specified parent undertaking.
Section 49	Compensation orders	Treat references to transferors as including references to the shareholding members of the building society.
[^{F38} Section 52]	Transfer to resolution company]	
Section 52A	Compensation orders: bail-in option	
Section 53	Onward and reverse transfers etc.	

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<i>Section</i>	<i>Topic</i>	<i>Modification</i>
Section 54	Independent valuer: compensation scheme order or bail-in compensation order	
Section 55	Independent valuer: supplemental	
Section 56	Independent valuer: money	
Section 57	Valuation principles	Treat the reference in subsection (4) to a bank as a reference to the building society. Treat the reference in subsection (5) to a transferor as including a reference to a shareholding member of the building society.
Section 58	Resolution fund	
Section 59	Third party compensation: discretionary provision	Treat the reference in subsection (1) to a transferor as including a reference to a shareholding member of the building society.
Section 60A	Further mandatory provision: bail-in provision	
Section 60B	Principle of no less favourable treatment	Treat references to pre-resolution shareholders and creditors of a bank as references to persons who were shareholding members of, or creditors of, the building society, immediately before the coming into effect of the first resolution instrument to be made in respect of the building society. Treat references to the bank as references to the building society.
Section 61	Sources of compensation	
Section 62	Procedure	
Section 62A	Independent valuer: sections 6E and 48X	
Sections 62B to 62E	Resolution administrator	
Sections 63, 64 and 66 to 70 where they apply in relation to ^{F39} a share transfer	Continuity obligations	Treat references in sections 66(1A) and 68(1)(a) to securities issued by the bank as references to securities issued by the building society or by the successor company or its specified parent undertaking.

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<i>Section</i>	<i>Topic</i>	<i>Modification</i>
instrument or] a resolution instrument or in relation to a property transfer instrument under section 41A(2)		
Section 70A	Suspension of obligations	
Section 70B	Restriction of security interests	
Section 70C	Suspension of termination rights	
Section 70D	Suspension: general provisions	
Section 71	Pensions	This section applies in relation to a pension scheme of the building society or of the successor company.
Section 73	Disputes	
Section 74	Tax	This section enables regulations to make provision in relation to the building society, the successor company or its specified parent undertaking.
Section 75	Power to change law	Treat the reference in subsection (5)(b) to building societies as including a reference to successor companies and their specified parent undertakings.
[^{F40} Section 78	Public funds: general]	
Section 78A	Pre-conditions for financial assistance: duty of Bank to give information	
[^{F41} Section 79	Public funds: resolution company	Treat the reference in subsection (1) to a bank as a reference to a building society or its successor company.
Section 80	Resolution company: report	Treat the reference in subsection (1) to a bank as a reference to a building society or its successor company.]
Section 80A	Transfer for bail-in purposes: report	Treat the reference in subsection (1) to a bank as a reference to the building society.
Section 81A	Accounting information to be included in reports	

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<i>Section</i>	<i>Topic</i>	<i>Modification</i>
	under sections 80, 80A(2)(b) and 81	
Sections 83ZA to 83Z2	Information, investigation and enforcement	
Section 89K	Insolvency proceedings	Treat the references in paragraphs (a) and (b) of subsection (1) to a relevant firm as references to the building society.
Section 89L	Restrictions on disclosure of confidential information	
Section 89M	Giving of notices, documents etc. under Part 1	

(3) Any statutory instrument made under a provision specified in the first column of the Table in subsection (2) applies—

- (a) to the successor company, or
- (b) in a case within subsection [^{F42}(A1)(b) or] (1)(b), to the successor company or the specified parent undertaking,

as it applies in relation to a bank, but subject to modifications corresponding to those applying to the provision under which it is made and as if references to a provision modified by subsection (2) or (5) were references to that provision as so modified.

(4) Subsection (3) does not apply where the instrument—

- (a) states that it does not apply, or
- (b) makes express provision about building societies or their successor companies.

(5) Where a resolution instrument makes provision under section 84A in respect of a building society—

- (a) section 81BA (groups: bail-in option) applies with the following modifications—
 - (i) references to a banking group company are to be read as references to a subsidiary of the building society, and
 - (ii) the power in subsection (1) of that section is to be exercised only where the Bank of England has exercised the stabilisation power in accordance with section 12A(2) in respect of the parent building society;
- (b) section 81CA applies as if references to a banking group company were references to a subsidiary of the building society or of the successor company; and
- (c) section 81D (interpretation: “banking group company”) does not apply.

[Where—

- ^{F43}(5A) (a) the third stabilisation option is exercised in connection with the fourth stabilisation option in respect of a building society, and

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- (b) before the third stabilisation option is exercised—
- (i) the building society is converted into a company pursuant to section 84A(5)(a), or
 - (ii) all the property, rights and liabilities of the building society are transferred to a company pursuant to section 84A(5)(b),
- the references to the bank in section 12ZA(1)(a) and any other provision so far as relating to property transfer instruments under section 12ZA include a reference to the successor company.]
- (6) Sections 97 to 102D of the Building Societies Act 1986 (transfer of business of building society to commercial company) do not apply where
- ^{F44}(a) [a share transfer instrument makes provision under section 84ZA, or
 - (b)] a resolution instrument makes provision under section 84A.
- (7) Section 103 of the Building Societies Act 1986 (cancellation of registration) does not apply where
- ^{F45}(a) [a share transfer instrument makes provision under section 84ZA(3)(e), or
 - (b)] a resolution instrument makes provision under section 84A(7)(e).
- (8) In this section—
- “company” means a company as defined in section 1(1) of the Companies Act 2006 which is a public company limited by shares;
- “specified parent undertaking” means a company by which in accordance with provision falling within [^{F46}paragraph (g) of section 84ZA(3) or] paragraph (a) or (b) of section 84A(8) the successor company is (or is to be) wholly owned;
- “the successor company”, in relation to a building society, means the company into which the building society is converted, or to which the property, rights and liabilities of the building society are transferred, as a result of provision made under section [^{F47}84ZA(2) or] 84A(5).]

Textual Amendments

- F24** Ss. 84A-84D inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, **2(3)**
- F30** Words in s. 84D heading inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(10)**
- F31** S. 84D(A1) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(2)**
- F32** Words in s. 84D(2) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(3)(a)**
- F33** Words in s. 84D(2)(b) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(3)(b)(i)**
- F34** Words in s. 84D(2)(b)(ii) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(3)(b)(ii)**
- F35** Words in s. 84D(2) Table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(4)(a)**
- F36** Words in s. 84D(2) Table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(4)(b)**

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- F37** Words in s. 84D(2) Table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(4)(c)**
- F38** Words in s. 84D(2) Table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(4)(d)**
- F39** Words in s. 84D(2) Table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(4)(e)**
- F40** Words in s. 84D(2) Table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(4)(f)**
- F41** Words in s. 84D(2) Table inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(4)(g)**
- F42** Word in s. 84D(3)(b) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(5)**
- F43** S. 84D(5A) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(6)**
- F44** Words in s. 84D(6) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(7)**
- F45** Words in s. 84D(7) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(8)**
- F46** Words in s. 84D(8) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(9)(a)**
- F47** Words in s. 84D(8) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **22(9)(b)**

85 Temporary public ownership

- (1) For the purpose of exercising the [^{F48} fifth] stabilisation option in respect of a building society the Treasury may make one or more orders for the purposes of—
 - (a) arranging for deferred shares of a building society to be publicly owned,
 - (b) cancelling private membership rights in the building society,
 - (c) allowing the building society to continue in business while in public ownership, and
 - (d) eventually either winding up or dissolving the building society.
- (2) For the purpose specified in subsection (1)(a) an order may—
 - (a) arrange for the transfer of existing deferred shares;
 - (b) provide for new deferred shares.
- (3) For the purpose of arranging for the transfer of existing deferred shares an order may—
 - (a) provide for deferred shares to be transferred;
 - (b) make other provision for the purposes of, or in connection with, the transfer of deferred shares (whether or not the transfer has been or is to be effected by the order, by another order under this section or otherwise);
 - (c) relate to all or any specified class or description of deferred shares issued by the building society.
- (4) For the purpose of providing for new deferred shares an order may—
 - (a) issue or allow the Treasury to issue new deferred shares on behalf of the building society;
 - (b) specify or allow the Treasury to specify the terms and effect of new deferred shares;
 - (c) specify or allow the Treasury to specify the recipient of new deferred shares.

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- (5) For the purpose specified in subsection (1)(b) an order may—
- (a) cancel or permit the cancellation of shares (whether or not deferred) in the building society;
 - (b) confer rights and impose liabilities, or allow them to be conferred and imposed, in place of cancelled shares;
 - (c) prevent the issue or acquisition of shares in or other rights in respect of the building society otherwise than in accordance with the order.
- (6) For the purpose specified in subsection (1)(c) an order may make any provision which the Treasury think desirable to facilitate the business of the building society after the making of provision in accordance with subsections (3) to (5).
- (7) An order in respect of a building society may—
- (a) make provision expressly or impliedly disapplying or modifying the memorandum or rules of the building society;
 - (b) disapply or modify an enactment about, or in its application to, building societies.
- (8) The following sections apply to orders under this section as to share transfer orders: sections 17, 18, 20, 21, ^{F49}... , 23, 25^{F50}, 48Z], 71, [^{F51}73 and 83Z2].

Textual Amendments

- F48** Word in s. 85(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(3)**
- F49** Word in s. 85(8) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(4)(a)**
- F50** Word in s. 85(8) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(4)(b)**
- F51** Words in s. 85(8) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(4)(c)**

Commencement Information

- I2** S. 85 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I3** S. 85 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**

86 Distribution of assets on dissolution or winding up

- (1) The Treasury may by order make provision about the distribution of surplus assets of a building society which—
- (a) is the subject of a property transfer instrument or order, and
 - (b) is later wound up or dissolved by consent.
- (2) An order under section 85 may include provision about the distribution of surplus assets of the building society if it is later wound up or dissolved by consent.
- (3) “Surplus” means remaining after the satisfaction of liabilities to creditors and shareholders.
- (4) An order under or by virtue of this section—

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- (a) may include any provision of a kind that may be made by order under section 90B of the Building Societies Act 1986 (power to alter priorities on dissolution or winding up),
- (b) may be made whether or not the power under that section has been exercised, and
- (c) shall be treated for all procedural purposes in the same way as an order under that section.

Commencement Information

- 14** S. 86 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- 15** S. 86 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](#)

87 Interpretation

- (1) Expressions used in this group of sections and in the Building Societies Act 1986 have the same meaning in this group of sections as in that Act.
- (2) An order under section 119(1) of that Act defining “deferred shares”—
 - (a) may make special provision for the meaning of that expression in the application of this group of sections, and
 - (b) shall otherwise apply to this group of sections as to that Act.

Commencement Information

- 16** S. 87 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- 17** S. 87 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](#)

88 Consequential provision

- (1) The Treasury may by order make provision, in addition to the provisions of this group of sections, in consequence of the application of this Part to building societies.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part.
- (3) 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.

Commencement Information

- 18** S. 88 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- 19** S. 88 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](#)

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89 Credit unions

- (1) The Treasury may by order provide for the application of this Part to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) subject to modifications set out in the order.
- (2) An order may disapply, modify or apply (with or without modifications) any enactment which relates, or in so far as it relates, to credit unions.
- (3) 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.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.
- (5) In the application of this section to Northern Ireland the reference to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985.

Commencement Information

I10 S. 89 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

I11 S. 89 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](#)

^{F52}Investment firms

Textual Amendments

F52 S. 89A and cross-heading inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 101\(5\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/1447](#), art. 2(e); [S.I. 2014/1847](#), art. 2

89A Application to investment firms

- (1) This Part applies to investment firms as it applies to banks, subject to the modifications in ^{F53}the following Table—

<i>Provision</i>	<i>Modification</i>
Section 1	Ignore subsection (2)(b).
Section 4	Ignore subsections (2)(b), (6) and (7)(b).
Section 5	Ignore subsection (1)(b).
Section 7	Ignore subsection (7).
^{F54}	^{F54}
...	...
Section 8ZA	In subsection (5), ignore the reference to the bank insolvency procedure.

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<i>Provision</i>	<i>Modification</i>
Section 12AA	In subsection (2), in the definition of “normal insolvency proceedings” ignore the reference to the bank insolvency procedure.
Section 14	Ignore subsection (5).
Section 60	In subsection (3)(c), ignore the reference to bank insolvency.
Section 60B	In subsection (4), ignore the reference to bank insolvency.
Section 63	In subsection (1A), ignore the reference to bank insolvency.
Section 66	In subsection (1ZA), ignore the reference to bank insolvency.]

[^{F55}(2) In the case of investment firms which are FCA-regulated investment firms, in subsection (1) the reference to this Part is a reference to this Part as it applies to FCA-regulated banks by virtue of section 83A.

(3) In this section—

“FCA-regulated bank” has the meaning given by section 83A(2);

“FCA-regulated investment firm” means an investment firm which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000.]]

Textual Amendments

- F53** Words in s. 89A(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **101(2)**
- F54** Words in s. 89A(1) Table omitted (16.12.2016) by virtue of [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **23**
- F55** S. 89A(2)(3) substituted for s. 89A(2) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **101(3)**

[^{F56}[^{F57}*Recognised central counterparties*]

Textual Amendments

- F56** Ss. 89B-89G and cross-heading inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 102(6), 122(3)** (with [Sch. 20](#)); [S.I. 2014/1447](#), art. 2(h); [S.I. 2014/1847](#), art. 2
- F57** 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)

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

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89B Application to ^{F57}recognised central counterparties]

(1) ^{F58}Subject to subsection (1ZA), this Part] applies to ^{F57}recognised central counterparties] as it applies to banks, subject to—

^{F59}[subsection (1A),]
(za)

- (a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and
- (b) any other necessary modifications.

^{F60}(1ZA) [For the purposes of this section and sections 89C to 89G, this Act has effect disregarding any amendments made by the Bank Recovery and Resolution Order 2014 ^{F61}or by the Bank Recovery and Resolution Order 2016].]

^{F62}(1A) [The provisions relating to the third stabilisation option (bail-in) are to be disregarded in the application of this Part to recognised central counterparties.]

(2) For section 13 substitute—

“Transfer of ownership

- (1) The ^{F63}fourth] stabilisation option is to transfer ownership of the ^{F57}recognised central counterparty] to any person.
- (2) For that purpose the Bank of England may make one or more share transfer instruments.”

(3) For sections 28 and 29 substitute—

“Onward transfer

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a ^{F57}recognised central counterparty], in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which—
 - (a) provides for the transfer of—
 - (i) securities which were issued by the ^{F57}recognised central counterparty] before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
 - (ii) securities which were issued by the ^{F57}recognised central counterparty] after the original instrument;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the ^{F57}recognised central counterparty] (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.

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- (5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—
 - (a) the Bank of England,
 - (b) a nominee of the Treasury, or
 - (c) a company wholly owned by the Bank of England or the Treasury.
- (6) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (7) Before making an onward share transfer instrument the Bank of England must consult—
 - (a) if the [^{F57}recognised central counterparty] is a PRA-authorised person, the PRA, and
 - (b) the FCA.
- (8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

Reverse share transfer

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) (“the original instrument”) providing for the transfer of securities issued by a [^{F57}recognised central counterparty] to a person (“the original transferee”).
- (2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the [^{F57}recognised central counterparty] and held by the original transferee (whether or not they were transferred by the original instrument).
- (3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the [^{F57}recognised central counterparty] and held by a transferee under the onward share transfer instrument (“the onward transferee”).
- (4) A reverse share transfer instrument is a share transfer instrument which—
 - (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
 - (b) provides for transfer to the original transferee (where subsection (3) applies);
 - (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).
- (5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—
 - (a) the original transferee is—
 - (i) the Bank of England,

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- (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse share transfer instrument is made with the written consent of the original transferee.
- (6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—
- (a) the onward transferee is—
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse share transfer instrument is made with the written consent of the onward transferee.
- (7) Sections 7 and 8 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (8) Before making a reverse share transfer instrument the Bank of England must consult—
- (a) if the [^{F57}recognised central counterparty] is a PRA-authorized person, the PRA, and
 - (b) the FCA.
- (9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”
- (4) For sections 45 and 46 substitute—

“Transfer of ownership: property transfer

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a [^{F57}recognised central counterparty], in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which—
 - (a) provides for property, rights or liabilities of the [^{F57}recognised central counterparty] to be transferred (whether accruing or arising before or after the original instrument);
 - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the [^{F57}recognised central counterparty] (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—
 - (a) the Bank of England,

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- (b) a company wholly owned by the Bank of England or the Treasury, or
 - (c) a nominee of the Treasury.
- (5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.
- (6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.
- (7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—
- (a) if the [^{F57}recognised central counterparty] is a PRA-authorized person, the PRA, and
 - (b) the FCA.

Transfer of ownership: reverse property transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).
- (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
- (3) A reverse property transfer instrument is a property transfer instrument which—
- (a) provides for transfer to the transferor under the original instrument;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
- (4) The Bank of England must not make a reverse property transfer instrument unless—
- (a) the transferee under the original instrument is—
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.
- (5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.
- (6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—
- (a) if the [^{F57}recognised central counterparty] is a PRA-authorized person, the PRA, and
 - (b) the FCA.
- (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”
- (5) For section 81 substitute—

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“Transfer of ownership: report

- (1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a [^{F57}recognised central counterparty] under section 13(2).
 - (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.
 - (3) The report must comply with any requirements as to content specified by the Treasury.
 - (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2).”
- (6) The table mentioned in subsection (1)(a) is as follows—

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 1	Ignore subsection (2)(b) and (c). In subsection (3)(c), for “to temporary public ownership” substitute “ of ownership ”. In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “ 15, 26 and 28 to 31 ”.
Section 4	Ignore subsection (2)(b) and (c). Ignore subsection (3)(a), (b) and (ba). In subsection (5), for “banking” substitute “ financial ”. In subsection (6), for “protect depositors” substitute “ maintain the continuity of central counterparty clearing services ”. Ignore subsections (8A), (8B) and (9).
Section 5	Ignore subsection (1)(b) and (c). In subsection (3)— (a) for “Sections 12 and 13 require” substitute “ Section 12 requires ”, and (b) ignore the words “and temporary public ownership”.
Section 6	In subsection (4)— (a) after “Before” insert “ issuing or ”, and (b) ignore paragraph (d). In subsection (5) after “after” insert “ issuing or ”.
Section 7	In subsection (1), for “PRA” substitute “ Bank of England ”. In subsection (2), for the words following “satisfy the” substitute “ recognition requirements ”.

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The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the [^{F57}recognised central counterparty].

In subsection (3), for “satisfy the threshold conditions” substitute “ maintain the continuity of any critical clearing services it provides while also satisfying the recognition requirements ”.

In subsection (4), for “PRA” substitute “ Bank of England ”.

Ignore subsection (4A).

In subsection (5)—

- (a) for “PRA” substitute “ Bank of England ”, and
- (b) ignore paragraph (a) unless the [^{F57}recognised central counterparty] is a PRA-authorized person, in which case for “Bank of England” substitute “ PRA ”.

Ignore subsections (7) and (8).

For the purposes of section 7—

- (a) “critical clearing services” means central counterparty clearing services the withdrawal of which may, in the Bank of England's opinion, threaten the stability of the financial systems of the United Kingdom, and
- (b) “recognition requirements” means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.

Section 8 In subsection (1), omit “in accordance with section 11(2) or 12(2)”.

Ignore subsection (2)(c) and (d).

In subsection (3), ignore paragraph (a) unless the [^{F57}recognised central counterparty] is a PRA-authorized person.

In subsection (4), ignore the words “in accordance with section 11(2) or 12(2)”.

Section 9 Ignore section 9.

Section 11 Ignore subsection (2)(a).

Section 13 See above.

Section 14 Ignore subsection (5).

Section 16 Ignore section 16.

Section 20 Ignore subsections (2) and (4).

Section 24 In subsection (1), ignore paragraph (c) unless the [^{F57}recognised central counterparty] is a PRA-authorized person.

Section 25 Ignore section 25.

Section 26 In subsection (1), for “11(2)” substitute “ 13(2) ”.

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- In subsection (5), ignore paragraph (a) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- In subsection (6), for “11(2)” substitute “ 13(2) ”.
- Sections 26A and 27 Ignore sections 26A and 27.
- Sections 28 and 29 See above.
- Section 30 In subsection (5), ignore paragraph (a) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- Section 31 In subsection (4), for “7, 8 and 51” substitute “ 7 and 8 ”.
- In subsection (5), ignore paragraph (a) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- Section 41 In subsection (1), ignore paragraph (c) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- Section 42 In subsection (5), ignore paragraph (a) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- Section 42A In subsection (5), for “7, 8 and 50” substitute “ 7 and 8 ”.
- In subsection (6), ignore paragraph (a) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- Section 43 In subsection (6), for “7, 8 and 52” substitute “ 7 and 8 ”.
- In subsection (7), ignore paragraph (a) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- Section 44 In subsection (5), for “7, 8 and 52” substitute “ 7 and 8 ”.
- In subsection (6), ignore paragraph (a) unless the [F57]recognised central counterparty] is a PRA-authorized person.
- Sections 45 and 46 See above.
- Sections 49 to 53 Ignore sections 49 to 53.
- Section 54 In subsection (1), for “A compensation scheme order” substitute “ An order under section 89F ”.
- In subsection (4)(b), for “compensation scheme order” substitute “ the order under section 89F ”.
- Section 55 In subsection (10), for “to which section 62 applies” substitute “ under section 89F ”.
- Section 56 In subsection (6), for “to which section 62 applies” substitute “ under section 89F ”.
- Section 57 In subsection (1), for “A compensation scheme order” substitute “ An order under section 89F ”.
- In subsection (4)(a), for “has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled” substitute “ no longer qualifies as a recognised body under Part 18 of the Financial Services

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- and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part ”.
- Section 58 In subsection (1), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.
- Ignore subsection (3).
- In subsection (4), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.
- In subsection (5), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.
- Ignore subsections (6) to (8).
- Section 59 Ignore section 59.
- Section 60 In subsection (3)(c), ignore the references to bank insolvency and bank administration.
- In subsection (4)—
- (a) ignore paragraphs (a) and (b), and
 - (b) in paragraph (c), for “a third party compensation order” substitute “ an order under section 89F ”.
- In subsection (5)—
- (a) ignore paragraph (a), and
 - (b) in paragraph (c), for “a compensation scheme order or resolution fund order” substitute “ an order under section 89F ”.
- Section 61 In subsection (1)—
- (a) ignore paragraphs (a) to (c), and
 - (b) treat the subsection as including a reference to orders under section 89F.
- Ignore subsection (2)(b).
- Section 62 Ignore section 62.
- Section 65 In subsection (1)(a)(ii), for “order” substitute “ instrument ”.
- In subsection (3)—
- (a) in paragraph (a), ignore the words “where subsection (1)(a)(i) applies”, and
 - (b) ignore paragraph (b).
- Section 66 In subsection (1)—
- (a) in paragraph (a), ignore the reference to section 11(2)(a),
 - (b) in paragraph (d)(i), ignore the words following “England”, and
 - (c) ignore paragraph (d)(ii).
- Section 68 In subsection (1)(a), for “order” substitute “ instrument ”.
- Section 69 In subsection (4)—

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	(a) in paragraph (a), ignore the words “in relation to sections 63 and 64”, and
	(b) ignore paragraph (b).
Section 70	In subsection (3)—
	(a) in paragraph (a), ignore the words “in relation to section 63”, and
	(b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words “share transfer instruments and”.
Section 81	See above.
Section 81B	In subsection (1), for “or 12(2)” substitute “ , 12(2) or 13(2) ”. [^{F64} In subsection (2), for “PRA” substitute “Bank of England”] Ignore subsection (3)(c) and (d). In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words “and the bank administration procedure”. Ignore subsection (3).
Sections 82 and 83	Ignore sections 82 and 83.

Textual Amendments

- F58** Words in s. 89B(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **102(2)**
- F59** S. 89B(1)(za) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 9(a)**; S.I. 2014/3160, art. 2(1)(b)
- F60** S. 89B(1ZA) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **102(3)**
- F61** Words in s. 89B(1ZA) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **24**
- F62** S. 89B(1A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 9(b)**; S.I. 2014/3160, art. 2(1)(b)
- F63** Word in s. 89B(2) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 9(c)**; S.I. 2014/3160, art. 2(1)(b)
- F64** Words in s. 89B(6) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 10 para. 7**; S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

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89C [F65 Recognised central counterparty] rules

- (1) A property transfer instrument made in respect of a [F57 recognised central counterparty] may make provision about the consequences of a transfer for the rules of the [F65 recognised central counterparty].
- (2) In particular, an instrument may—
 - (a) modify or amend the rules of a [F57 recognised central counterparty];
 - (b) in a case where some, but not all, of the business of a [F57 recognised central counterparty] is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this section may (but need not) be limited so as to have effect—
 - (a) for a specified period, or
 - (b) until a specified event occurs or does not occur.

Textual Amendments

F65 Words in s. 89C 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(3)** (with regs. 52-58)

89D [F66 Recognised central counterparty] membership

- (1) A property transfer instrument made in respect of a [F57 recognised central counterparty] may make provision about the consequences of a transfer for membership of the [F66 recognised central counterparty].
- (2) In particular, an instrument may—
 - (a) make provision modifying the terms on which a person is a member of a [F57 recognised central counterparty];
 - (b) in a case where some, but not all, of the business of a [F57 recognised central counterparty] is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

Textual Amendments

F66 Words in s. 89D 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(3) (with regs. 52-58)

89E Recognition of transferee company

- (1) The Bank of England may provide for a company to which the business of a [F57 recognised central counterparty] is transferred in accordance with section 12(2) to be treated as a [F67 recognised central counterparty] for the purposes of the Financial Services and Markets Act 2000—
 - (a) for a specified period, or
 - (b) until a specified event occurs.

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- (2) The provision may have effect—
 - (a) for a period specified in the instrument, or
 - (b) until the occurrence of an event specified or described in the instrument.
- (3) The power under this section—
 - (a) may be exercised only with the consent of the Treasury, and
 - (b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

Textual Amendments

F67 Words in s. 89E(1) 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(4) (with regs. 52-58)

89F ^[F68] **Recognised central counterparty] compensation orders**

- (1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.
- (2) The order may make provision establishing a scheme—
 - (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
 - (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
 - (c) for compensation to be paid to persons other than transferors.
- (3) An order—
 - (a) is to 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.

Textual Amendments

F68 Words in s. 89F 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(3) (with regs. 52-58)

89G **Interpretation: “[^{F57} recognised central counterparty]” &c.**

- ^[F69](1) In this Part, “recognised central counterparty” has the meaning given by section 285 of the Financial Services and Markets Act 2000.]
- (2) But ^[F70]“recognised central counterparty” does not include a recognised clearing house] which is also—
 - (a) a bank,
 - (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),

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- (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
- (d) an investment firm.

[^{F71}(3) Where a stabilisation power is exercised in respect of a recognised central counterparty, the body does not cease to be a recognised central counterparty for the purposes of this Part if the recognition order under Part 18 of the Financial Services and Markets Act 2000 is later revoked.]

(4) In this Part—

^{F72}

“PRA-^{F72}authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000.]

Textual Amendments

F69 S. 89G(1) 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(5)(a) (with regs. 52-58)

F70 Words in s. 89G(2) 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(5)(b) (with regs. 52-58)

F71 S. 89G(3) 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(5)(c) (with regs. 52-58)

F72 Words in s. 89G(4) omitted (1.4.2013) by virtue of [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(5)(d) (with regs. 52-58)

Status:

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

Changes to legislation:

Banking Act 2009, Chapter 5 is up to date with all changes known to be in force on or before 16 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.