



Banking Act 2009

2009 CHAPTER 1

PART 1

SPECIAL RESOLUTION REGIME

Exercise of powers: general

7 General conditions

- (1) A stabilisation power may be exercised in respect of a bank only if the FSA is satisfied that the following conditions are met.
- (2) Condition 1 is that the bank is failing, or is likely to fail, to satisfy the threshold conditions (within the meaning of section 41(1) of the Financial Services and Markets Act 2000 (permission to carry on regulated activities)).
- (3) Condition 2 is that having regard to timing and other relevant circumstances it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will enable the bank to satisfy the threshold conditions.
- (4) The FSA shall treat Conditions 1 and 2 as met if satisfied that they would be met but for financial assistance provided by—
 - (a) the Treasury, or
 - (b) the Bank of England (disregarding ordinary market assistance offered by the Bank on its usual terms).
- (5) Before determining whether or not Condition 2 is met the FSA must consult—
 - (a) the Bank of England, and
 - (b) the Treasury.
- (6) The special resolution objectives are not relevant to Conditions 1 and 2.
- (7) The conditions for applying for and making a bank insolvency order are set out in sections 96 and 97.

Status: This is the original version (as it was originally enacted).

- (8) The conditions for applying for and making a bank administration order are set out in sections 143 and 144.

8 Specific conditions: private sector purchaser and bridge bank

- (1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 11(2) or 12(2) only if satisfied that Condition A is met.
- (2) Condition A is that the exercise of the power is necessary, having regard to the public interest in—
- (a) the stability of the financial systems of the United Kingdom,
 - (b) the maintenance of public confidence in the stability of the banking systems of the United Kingdom, or
 - (c) the protection of depositors.
- (3) Before determining whether Condition A is met, and if so how to react, the Bank of England must consult—
- (a) the FSA, and
 - (b) the Treasury.
- (4) Where the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom, the Bank may exercise a stabilisation power in respect of the bank in accordance with section 11(2) or 12(2) only if satisfied that Condition B is met (instead of Condition A).
- (5) Condition B is that—
- (a) the Treasury have recommended the Bank of England to exercise the stabilisation power on the grounds that it is necessary to protect the public interest, and
 - (b) in the Bank's opinion, exercise of the stabilisation power is an appropriate way to provide that protection.
- (6) The conditions in this section are in addition to the conditions in section 7.

9 Specific conditions: temporary public ownership

- (1) The Treasury may exercise a stabilisation power in respect of a bank in accordance with section 13(2) only if satisfied that one of the following conditions is met.
- (2) Condition A is that the exercise of the power is necessary to resolve or reduce a serious threat to the stability of the financial systems of the United Kingdom.
- (3) Condition B is that exercise of the power is necessary to protect the public interest, where the Treasury have provided financial assistance in respect of the bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.
- (4) Before determining whether a condition is met the Treasury must consult—
- (a) the FSA, and
 - (b) the Bank of England.
- (5) The conditions in this section are in addition to the conditions in section 7.

10 Banking Liaison Panel

- (1) The Treasury shall make arrangements for a panel to advise the Treasury about the effect of the special resolution regime on—
 - (a) banks,
 - (b) persons with whom banks do business, and
 - (c) the financial markets.
- (2) In particular, the panel may advise the Treasury about—
 - (a) the exercise of powers to make statutory instruments under or by virtue of this Part, Part 2 or Part 3 (excluding the stabilisation powers, compensation scheme orders, resolution fund orders, third party compensation orders and orders under section 75(2)(b) and (c)),
 - (b) the code of practice under section 5, and
 - (c) anything else referred to the panel by the Treasury.
- (3) The Treasury shall ensure that the panel includes—
 - (a) a member appointed by the Treasury,
 - (b) a member appointed by the Bank of England,
 - (c) a member appointed by the FSA,
 - (d) a member appointed by the scheme manager of the Financial Services Compensation Scheme,
 - (e) one or more persons who in the Treasury’s opinion represent the interests of banks,
 - (f) one or more persons who in the Treasury’s opinion have expertise in law relating to the financial systems of the United Kingdom, and
 - (g) one or more persons who in the Treasury’s opinion have expertise in insolvency law and practice.