



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

#### [<sup>F1</sup>CHAPTER 1

#### INTRODUCTION]

### 3 Interpretation: other expressions

[<sup>F1</sup>(1)] In this Part—

[<sup>F2</sup>“Additional Tier 1 instruments” means capital instruments that meet the conditions laid down in Article 52(1) of the capital requirements regulation (or which qualify as Additional Tier 1 instruments by virtue of Chapter 2 [<sup>F3</sup>or 4] of Title I of Part Ten of that regulation),]

[<sup>F4</sup>“bail-in liabilities”, of an undertaking, means liabilities and capital instruments that—

- (a) do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments, of the undertaking, and
- (b) are not excluded liabilities listed in section 48B(8),]

[<sup>F2</sup>“the capital requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms, [<sup>F5</sup>as it [<sup>F6</sup>forms part of [<sup>F7</sup>assimilated] law],]

[<sup>F8</sup>“CRR rules” has the meaning given in section 144A of the Financial Services and Markets Act 2000,]

[<sup>F9</sup>“client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with),]

[<sup>F2</sup>“Common Equity Tier 1 instruments” means capital instruments that meet the conditions laid down in Article 28(1) to (4), 29(1) to (5) or 31(1) of

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the capital requirements regulation (or which qualify as Common Equity Tier 1 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),]

[<sup>F2</sup>“critical functions”, subject to [<sup>F10</sup>subsections (2) and (2A)], means activities, services or operations [<sup>F11</sup>(wherever carried out)] the discontinuance of which is likely <sup>F12</sup>...—

(a) to lead to the disruption of services that are essential to the economy [<sup>F13</sup>of the United Kingdom], or

(b) to disrupt financial stability [<sup>F14</sup>in the United Kingdom],

due to the size, market share, external and internal connectedness, complexity or cross-border activities of a bank or a group which includes a bank (with particular regard to the substitutability of those activities, services or operations).;]

[<sup>F15</sup>“FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000);]

[<sup>F16</sup>“normal insolvency proceedings” means the collective insolvency proceedings which—

(a) entail the partial or total divestment of a debtor and the appointment of a liquidator or administrator (or a similar officeholder),

(b) are normally applicable to institutions under the law of any part of the United Kingdom, and

(c) are either specific to those institutions or generally applicable to any natural or legal person;

and, in particular, includes the bank insolvency procedure and the bank administration procedure;]

[<sup>F17</sup>“eligible liabilities” has the meaning given by section 3A(4A),]

[<sup>F18</sup>“extraordinary public financial support” means financial assistance that is provided by the Treasury or the Bank of England in order to preserve or restore the viability, liquidity or solvency of a bank, a banking group company or a group which includes a bank, other than—

(a) ordinary market assistance offered by the Bank of England on its usual terms, or

(b) a liquidity facility which is provided—

(i) to a bank that is facing temporary liquidity problems but is solvent, and

(ii) by the Bank of England on its own initiative and on its own terms,

and for the purposes of this definition “group” (other than in “banking group company”) has the meaning given in subsection (2)(b);]

[<sup>F19</sup>“the PRA” means the Prudential Regulation Authority,

“the FCA” means the Financial Conduct Authority, and]

“financial assistance” has the meaning given by section 257.

[<sup>F2</sup>“own funds” means own funds as defined in Article 4.1(118) of the capital requirements regulation (read with Title I of Part Ten of that regulation),]

[<sup>F2</sup>“own funds requirements” means the requirements laid down in [<sup>F20</sup>Articles 92 to 93 of the capital requirements regulation and Article 94 of Chapter 3 of the Trading Book (CRR) Part of the PRA Rulebook] (read with Title I of Part Ten of that regulation),]

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[<sup>F2</sup>“the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms [<sup>F21</sup>as last amended by Directive (EU) 2019/879 of the European Parliament and of the Council of 20th May 2019],]

[<sup>F2</sup>“relevant capital instruments” means Additional Tier 1 instruments and Tier 2 instruments,]

[<sup>F22</sup>“relevant internal liabilities” of a bank or banking group company means eligible liabilities held by a resolution entity in the same resolution group as the bank or banking group company, either directly or indirectly (through other entities in the same resolution group that bought the liabilities from the bank or banking group company),]

“resolution entity” means an entity which is identified by the Bank of England in a resolution plan or a group resolution plan under Part 5 of the Bank Recovery and Resolution (No.2) Order 2014 as an entity in respect of which—

- (a) the Bank of England might exercise a stabilisation power, [<sup>F23</sup>or]
- (b) <sup>F24</sup>...
- (c) a relevant third-country authority might take third-country resolution action,

and for the purposes of this definition, <sup>F25</sup>... “relevant third-country authority” has the meaning given by section 81AA(14) <sup>F25</sup>... and “third-country resolution action” has the meaning given by section 89H(7),

“resolution group” means a resolution entity together with any subsidiary that—

- (a) is not a resolution entity itself,
- (b) is not a subsidiary of another resolution entity, and
- (c) where the subsidiary is established in a [<sup>F26</sup>country or territory other than the United Kingdom], is stated by the group resolution plan under Part 5 of the Bank Recovery and Resolution (No.2) Order 2014 to be included in the resolution group,

and for the purpose of this definition “subsidiary” has the meaning given by Article 4.1(16) of the capital requirements regulation,

[<sup>F2</sup>“Tier 2 instruments” means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of the capital requirements regulation (or which qualify as Tier 2 instruments by virtue of Chapter 2 [<sup>F27</sup>or 4] of Title I of Part Ten of that regulation),]

[<sup>F28</sup>(2) For the purposes of the definition of “critical functions” in subsection (1)—

- [<sup>F29</sup>(a) Article 6 of Commission Delegated Regulation (EU) 2016/778 (criteria relating to the determination of critical functions) applies,] and
- (b) “group” means a parent undertaking within the meaning given by Article 4.1(15)(a) of the capital requirements regulation and its subsidiaries within the meaning given by Article 4.1(16) of that regulation.]

[<sup>F30</sup>(2A) The Treasury may by regulations made by statutory instrument specify criteria for the determination of the activities, services and operations referred to in the definition of “critical functions”.

(2B) The power conferred by subsection (2A) includes—

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- (a) power to amend or revoke Article 6 of Commission Delegated Regulation (EU) 2016/778; and
  - (b) power to amend or repeal subsection (2)(a).
- (2C) A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.]
- [<sup>F31</sup>(3) In this Part references to a director include, in relation to an undertaking which has no board of directors, a member of the equivalent management body responsible for the management of the undertaking concerned.]
- [<sup>F32</sup>(4) In this Part a reference to the PRA rulebook is to the rulebook published by the PRA containing rules made by the PRA under the Financial Services and Markets Act 2000 as the rulebook has effect on [<sup>F33</sup>1 January 2022].]

#### Textual Amendments

- F1** S. 3(1): s. 3 renumbered as s. 3(1) (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **5(2)**
- F2** Words in s. 3(1) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **5(2)**
- F3** Words in s. 3(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **4(a)**
- F4** Words in s. 3(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **4(b)**
- F5** Words in s. 3(1) inserted (21.12.2018) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(3), **Sch. 1 para. 3(2)**
- F6** Words in s. 3 substituted (31.12.2020 immediately before IP completion day) by The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 (S.I. 2020/1385), regs. 1(4), **39(2)**
- F7** Word in s. 3(1) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendment) Regulations 2023 (S.I. 2023/1424), reg. 1(2), **Sch. para. 68(2)(a)**
- F8** Words in s. 3(1) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **9(2)(a)(i)**
- F9** Words in s. 3 inserted (1.1.2015) by Financial Services Act 2012 (c. 21), ss. **96(2)**, 122(3) (with Sch. 20); S.I. 2014/3323, art. 2
- F10** Words in s. 3(1) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 3(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in s. 3(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 3(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in s. 3(1) 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. 3(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in s. 3(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 3(3)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in s. 3(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 3(3)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

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- F15** Words in s. 3(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 3(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in s. 3(1) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 3(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in s. 3(1) substituted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **4(c)**
- F18** Words in s. 3(1) substituted (31.12.2020) by The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1470), reg. 1(2), **Sch. 2 para. 1(2)** (with Sch. 3)
- F19** Words in s. 3 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 17 para. 4** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F20** Words in s. 3(1) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **9(2)(a)(ii)**
- F21** Words in s. 3(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **4(d)**
- F22** Words in s. 3(1) substituted (1.1.2024) by The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 (S.I. 2023/1410), regs. 1(2), **4**
- F23** Word in s. 3 inserted (31.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(3), **62(a)(i)**
- F24** Words in s. 3 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(3), **62(a)(ii)**
- F25** Words in s. 3 omitted (31.12.2020) by virtue of The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(3), **62(a)(iii)**
- F26** Words in s. 3 substituted (31.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(3), **62(b)**
- F27** Words in s. 3(1) inserted (28.12.2020) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(2), **4(f)**
- F28** S. 3(2) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **5(3)**
- F29** S. 3(2)(a) substituted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 4**; 2020 c. 1, Sch. 5 para. 1(1)
- F30** S. 3(2A)-(2C) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 5**; 2020 c. 1, Sch. 5 para. 1(1)
- F31** S. 3(3) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **4**
- F32** S. 3(4) inserted (31.12.2020) by The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 6** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(b)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F33** Words in s. 3(4) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **9(2)(b)**

## Commencement Information

- I1** S. 3 in force at 21.2.2009 by S.I. 2009/296, art. 3, **Sch. para. 1**

**Changes to legislation:**

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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\(4\)\(b\)](#)