



Banking Act 2009

2009 CHAPTER 1

PART 1

SPECIAL RESOLUTION REGIME

[^{F1}CHAPTER 6

THIRD-COUNTRY RESOLUTION ACTIONS

Textual Amendments

- F1** Pt. 1 Ch. 6, 7 inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **103**

Third-country resolution actions

89H. Recognition of third-country resolution actions

- (1) This section applies where the Bank of England is notified of third-country resolution action in respect of a third-country institution or third-country parent undertaking.
- (2) The Bank must make an instrument which—
 - (a) recognises the action, or
 - (b) refuses to recognise the action, or
 - (c) recognises part of the action and refuses to recognise the remainder.An instrument within paragraph (a), (b) or (c) is a “third-country instrument” (as is an instrument under section 89I(4)(b)).
- (3) The Bank may only make a decision under subsection (2) with the approval of the Treasury.

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- (4) Recognition of the action (or a part of it) may be refused only if the Bank and the Treasury are satisfied that one or more of the following conditions are satisfied—
- (a) recognition would have an adverse effect on financial stability in the United Kingdom^{F2}...;
 - (b) the taking of action in relation to a branch located in the United Kingdom of a third-country institution is necessary to achieve one or more of the special resolution objectives;
 - (c) under the third-country resolution action creditors (including in particular depositors) located or payable in [^{F3}the United Kingdom] would not, by reason of being located or payable in the [^{F4}United Kingdom], receive the same treatment as creditors (including depositors) who are located or payable in the ^{F5}... country concerned and have similar legal rights;
 - (d) recognition of, and taking action in support of, the third-country resolution action (or the part) would have material fiscal implications for the United Kingdom;
 - (e) recognition would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention)^{F6}....
- (5) The recognition of third-country resolution action (or any part of it) is without prejudice to any normal insolvency proceedings.

^{F7}(6)

(7) In this section—

^{F8} ...

“group” has the meaning given by section 474 of the Companies Act 2006,

^{F8} ...

“third-country group company” means an undertaking—

- (a) which is (or, but for third-country resolution action or the exercise of a stabilisation power, would be) in the same group as a third-country institution or a third-country parent undertaking, and
- (b) in respect of which any conditions specified in an order made by the Treasury under section 81D are met (applying that order as if references to the bank were references to the third-country institution or third-country parent undertaking),

[^{F9}“third-country institution” means an institution established in a country or territory other than the United Kingdom that would, if it were established within the United Kingdom, be regarded as a bank, building society, credit union or investment firm;]

“third-country parent undertaking” [^{F10}means a parent undertaking, parent financial holding company or a parent mixed financial holding company established in a country or territory outside the United Kingdom];

“third-country resolution action” means action under the [^{F11}law of a country or territory outside the United Kingdom] to manage the failure or likely failure of a third-country institution [^{F12}or third-country parent undertaking] —

- (a) the anticipated results of which are, in relation to a third-country institution or third-country parent undertaking^{F13}..., broadly comparable to results which could have been anticipated from the exercise of a stabilisation option in relation to an entity in the United Kingdom corresponding to the institution or undertaking, and

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- (b) the objectives of which are broadly comparable, in relation to the [F14 country or territory concerned], to the objectives in section 4 as they apply in relation to the United Kingdom;

F15
...

Textual Amendments

- F2** Words in s. 89H(4)(a) 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. 41(2)(a)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F3** Words in s. 89H(4)(c) 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. 41(2)(b)(i)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F4** Words in s. 89H(4)(c) 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. 41(2)(b)(ii)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F5** Word in s. 89H(4)(c) 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. 41(2)(b)(iii)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F6** Words in s. 89H(4)(e) 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. 41(2)(c)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F7** S. 89H(6) omitted (31.12.2020) by virtue of The Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394), reg. 1(2), **Sch. 1 para. 41(3)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F8** Words in s. 89H(7) 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. 41(4)(a)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F9** Words in s. 89H(7) 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. 41(4)(b)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F10** Words in s. 89H(7) 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. 41(4)(c)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F11** Words in s. 89H(7) 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. 41(4)(d)(i)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F12** Words in s. 89H(7) substituted (29.8.2023) by Financial Services and Markets Act 2023 (c. 29), **ss. 75(4)(a)**, 86(3); S.I. 2023/779, reg. 4(ww)
- F13** Words in s. 89H(7) omitted (29.8.2023) by virtue of Financial Services and Markets Act 2023 (c. 29), **ss. 75(4)(b)**, 86(3); S.I. 2023/779, reg. 4(ww)
- F14** Words in s. 89H(7) 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. 41(4)**

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(d)(iii) (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**

F15 Words in s. 89H(7) 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. 41(4)(e)** (with reg. 8) (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 10(a)**); 2020 c. 1, **Sch. 5 para. 1(1)**

Modifications etc. (not altering text)

C1 S. 89H(2) excluded (16.12.2022) by S.I. 2019/855, reg. 97A(1) (as inserted by **The Russia (Sanctions) (EU Exit) (Amendment) (No. 17) Regulations 2022** (S.I. 2022/1331), regs. 1(2)(b), **19**)

89I. Effect of recognition of third-country resolution action by Bank of England

- (1) This section applies where an instrument under section 89H recognises any third-country resolution action (or a part of it).
- (2) The third-country resolution action (or part) produces the same legal effects in any part of the United Kingdom as it would have produced had it been made (with due authority) under the law of that part of the United Kingdom.
- (3) For the purposes of supporting, or giving full effect to, the third-country resolution action (or the part), the Bank of England may exercise, in relation to a third-country institution, a third-country parent undertaking or another third-country group company, one or more of the stabilisation options, or one or more of the stabilisation powers, available to the Bank in relation to a similar entity in the United Kingdom.
- (4) But, for the purposes of exercising a power by virtue of subsection (3), provision which could otherwise be made under this Part in a mandatory reduction instrument, share transfer instrument, property transfer instrument or resolution instrument may instead be made in—
 - (a) the instrument made under section 89H recognising the third-country resolution action (or part), or
 - (b) a further instrument made by the Bank of England under this section.

An instrument under paragraph (b) is a “third-country instrument” (as is an instrument under section 89H(2)(a), (b) or (c)).

- (5) This Part (other than this section) applies in relation to the exercise of any power by virtue of subsection (3), subject to subsections (6) to ^[F16](9A)] and any other necessary modifications.
- (6) Section 4 (special resolution objectives) has effect as if after subsection (9) there were inserted—

“(9A) Objective 8 is to support third-country resolution action with a view to promoting objectives which, in relation to the ^[F17]country or territory] concerned, correspond to Objectives 1 to 7 in relation to the United Kingdom.”.
- (7) Sections 7 to 8ZA do not apply.
- (8) Section 60B (principle of no less favourable treatment) applies in relation to compensation arrangements in the case of third-country instruments in relation to any third-country resolution action (or a part of it) as if—

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- (a) references to the initial instrument were to the first third-country instrument under section 89H recognising that action (or part), and
 - (b) in subsection (3) the reference to the coming into effect of the initial instrument were a reference to the taking of the third-country resolution action recognised (or recognised in part) by that instrument.
- (9) Section 81B, 81ZBA and 81BA have effect in relation to the exercise of a stabilisation power in respect of a third-country group company as if for subsections (2) and (3) (in each case) there were substituted—
- “(2) Condition 1 is that third-country resolution action has been taken in respect of a third-country institution, a third-country parent undertaking or another third-country group company, in the same group.
 - (3) Condition 2 is that the Bank of England is satisfied that the exercise of the power in respect of the third-country group company is necessary, having regard to the public interest in the stability of the financial systems of the United Kingdom and the [F18country or territory] concerned.
- (3A) In subsections (2) and (3) “third-country resolution action”, “third-country institution”, “third-country parent undertaking”, [F19and “third-country group company”] have the meaning given by section 89H(7).”

[Sections 81ZZBA, 81ZZBB, 81ZBB, 81ZBC, 81BB and 81BC do not apply.]
F20(9A)

- (10) Section 89H(7) applies for the purposes of this section.

Textual Amendments

- F16** Word in s. 89I(5) substituted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **23(a)**
- F17** Words in s. 89I(6) 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. 42(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in s. 89I(9) 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. 42(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in s. 89I(9) 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. 42(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** S. 89I(9A) inserted (28.12.2020) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(2), **23(b)**

89J. Third-country instruments: supplementary provision

- (1) Section 23 (incidental provision) applies to a third-country instrument as it applies to a share transfer instrument.
- (2) Section 24 (procedure: instruments) applies to a third-country instrument as it applies to a share transfer instrument, except that references in that section to the bank are to be read as references to the third-country institution, third-country parent undertaking or other third-country group company, to which the third-country instrument relates.

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- (3) Section 76 (international obligation notice: general) applies in relation to the making of a third-country instrument under section 89H or 89I as it applies in relation to the exercise of a stabilisation power, except that—
- (a) for the purposes of section 76(3), section 4 is to be read subject to the modification in section 89I(6), and
 - (b) in subsection (4), the reference to a bank is to be read as a reference to a third-country institution, a third-country parent undertaking or another third-country group company, in respect of which a third-country instrument is made.
- (4) Section 77 (international obligation notice: bridge bank) applies where the Bank of England has, by virtue of section 89I, transferred all or part of the business of a third-country institution, a third-country parent undertaking or another third-country group company, to a bridge bank as it applies where the Bank of England has transferred all or part of the business of a bank or banking group company to a bridge bank.
- (5) Section 89I(7) applies for the purposes of this section.]

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