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STATUTORY INSTRUMENTS

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**2014 No. 3329**

**The Bank Recovery and Resolution Order 2014**

**Information and enforcement**

97. After section 83 insert—

**“Chapter 4**

**Information, investigation and enforcement**

*Powers to gather information*

**Information**

**83ZA.**—(1) This section applies only to information and documents reasonably required in connection with the exercise by the Bank of England of functions conferred by or under—

- (a) this Part, or
- (b) any other enactment giving effect to the resolution and recovery directive.

(2) The Bank of England may, by notice in writing given to a bank or banking group company, require the bank or banking group company—

- (a) to provide specified information or information of a specified description, or
- (b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified, and
- (b) at such place as may be specified.

(4) An officer who has written authorisation from the Bank of England to do so may require a bank or banking group company without delay—

- (a) to provide the officer with specified information or information of a specified description, or
- (b) to produce to the officer specified documents or documents of a specified description.

(5) The Bank of England may require any information provided under this section to be provided in such form as it may reasonably require.

(6) The Bank of England may require—

- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) The powers conferred by subsections (2) and (4) may also be exercised by the Bank to impose requirements on a person who is connected with a bank.

(8) “Officer” means an officer of the Bank of England, and includes a member of the Bank’s staff or an agent of the Bank.

(9) “Specified” means—

- (a) in subsections (2) and (3), specified in the notice, and
- (b) in subsection (4), specified in the authorisation.

(10) For the purposes of this section, a person is connected with a bank if that person is or has at any relevant time been—

- (a) a member of that bank’s group,
- (b) a controller of that bank (within the meaning of section 422 of the Financial Services and Markets Act 2000<sup>(1)</sup>),
- (c) any other member of a partnership of which that bank is a member, or
- (d) in relation to that bank, a person mentioned in Part 1 of Schedule 15 to the Financial Services and Markets Act 2000 (reading references in that Part to the authorised person as references to the bank).

(11) In subsection (10)(a) “group” has the meaning given by section 3(2)(b).

### **Reports by skilled persons**

**83ZB.**—(1) This section applies where the Bank of England has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”) under section 83ZA.

(2) This subsection applies to—

- (a) a bank (“B”),
- (b) a member of B’s group,
- (c) a partnership of which B is a member, or
- (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

(3) The Bank of England may either—

- (a) by notice in writing given to the person concerned, require that person to provide the Bank with a report on the matter concerned, or
- (b) itself appoint a person to provide the Bank with a report on the matter concerned.

(4) When acting under subsection (3)(a), the Bank may require the report to be in such form as may be specified in the notice.

(5) The Bank must give notice of an appointment under subsection (3)(b) to the person concerned.

(6) The person appointed to make a report—

- (a) must be a person appearing to the Bank to have the skills necessary to make a report on the matter concerned, and

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(1) 2000 c.8. Section 422 was amended by [SI 2009/534](#), [2013/3115](#).

- (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the Bank.
- (7) It is the duty of—
  - (a) the person concerned, and
  - (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by subsection (7) is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988(2).
- (9) The Bank may, in relation to an appointment under subsection (3)(b), require B to pay to the Bank a fee to cover the expenses incurred by the Bank in relation to the appointment.
- (10) In this section “group” has the meaning given by section 3(2)(b).

#### *Appointment of investigators*

#### **Appointment of persons to carry out general investigations**

**83ZC.**—(1) This section applies only for the purposes of the functions of the Bank of England mentioned in section 83ZA(1).

(2) If it appears to the Bank of England that there is good reason for doing so, the Bank may appoint one or more competent persons to conduct an investigation on its behalf into—

- (a) the nature, conduct or state of the business of a bank,
- (b) a particular aspect of that business, or
- (c) the ownership or control of a bank.

(3) If a person appointed under subsection (2) thinks it necessary for the purposes of the investigation, that person may also investigate the business of a person who is or has at any relevant time been—

- (a) a member of a group of which the bank under investigation is part, or
- (b) a partnership of which the bank is a member.

(4) A person appointed under subsection (2) who decides to investigate the business of any person under subsection (3) must give that person written notice of that decision.

(5) In this section—

- “business” includes any part of a business, and
- “group” has the meaning given by section 3(2)(b).

#### **Appointment of person to carry out investigations in particular cases**

**83ZD.**—(1) This section applies if it appears to the Bank of England that there are circumstances suggesting that a person may have failed to comply with any relevant requirement.

(2) The Bank may appoint one or more competent persons to conduct an investigation on its behalf.

- (3) In this section “relevant requirement” means—
- (a) a requirement imposed by the Bank of England under this Part (other than section 83ZN (regulatory sanctions)), or
  - (b) a requirement imposed by or under—
    - (i) any other provision of this Act, or
    - (ii) any other Act or subordinate legislation,
 which gives effect to the recovery and resolution directive.

### **Investigations etc in support of foreign resolution authorities**

**83ZE.**—(1) On receiving a request to which subsection (3) applies from a foreign resolution authority, the Bank of England may—

- (a) exercise the power conferred by section 83ZA, or
- (b) appoint one or more competent persons to investigate any matter.

(2) Accordingly, for the purposes of subsection (1)(a), section 83ZA(1) has effect as if it also referred to information and documents reasonably required by the Bank of England to meet such a request.

(3) This subsection applies to a request if the request is made by a foreign resolution authority in connection with the exercise by that authority of—

- (a) functions under the recovery and resolution directive, or
- (b) functions in relation to third-country resolution action (within the meaning of section 89H) corresponding to those exercisable by an EU resolution authority pursuant to the recovery and resolution directive.

(4) An investigator appointed under subsection (1)(b) has the same powers as an investigator appointed under section 83ZD.

(5) If the request has been made by an EU resolution authority in pursuance of any EU obligation, the Bank must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.

(6) In deciding whether or not to exercise its investigative power, the Bank may take into account in particular—

- (a) whether, in the territory of the foreign resolution authority concerned, corresponding assistance would be given to the Bank,
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom,
- (c) the seriousness of the case and its importance to persons in the United Kingdom,
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(7) The Bank may decide that it will not exercise its investigative power unless the foreign resolution authority undertakes to make such contribution towards the cost of its exercise as the Bank considers appropriate.

(8) Subsections (6) and (7) do not apply if the Bank considers that the exercise of its investigative power is necessary to comply with an EU obligation.

(9) “EU resolution authority” means an authority designated by an EEA state other than the United Kingdom in accordance with Article 3 of the recovery and resolution directive.

(10) “Foreign resolution authority” means—

- (a) an EU resolution authority, or
  - (b) an authority, in a territory which is not and does not form part of an EEA state, which exercises functions referred to in subsection (2)(b).
- (11) “Investigative power” means one of the powers mentioned in subsection (1).

### *Conduct of investigations*

#### **Investigations: general**

**83ZF.**—(1) This section applies if the Bank of England appoints one or more competent persons (“investigators”) under section 83ZC or 83ZD to conduct an investigation on its behalf.

(2) The Bank must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).

(3) A notice under subsection (2) must—

- (a) specify the provisions under which, and as a result of which, the investigator was appointed, and
- (b) state the reason for the investigator’s appointment.

(4) Nothing prevents the Bank from appointing a person who is a member of its staff as an investigator.

(5) An investigator must make a report of the investigation to the Bank.

(6) The Bank may, by a direction to an investigator, control—

- (a) the scope of the investigation,
- (b) the period during which the investigation is to be conducted,
- (c) the conduct of the investigation, and
- (d) the reporting of the investigation.

(7) A direction may, in particular—

- (a) confine the investigation to particular matters;
- (b) extend the investigation to additional matters;
- (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
- (d) require the investigator to make such interim reports as are so specified.

(8) If there is a change in the scope or conduct of the investigation and, in the opinion of the Bank, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(9) If the appointment is under section 83ZD, subsections (2) and (8) do not apply if the Bank believes that the notice required by the subsection in question would be likely to result in the investigation being frustrated.

#### **Powers of persons appointed under section 83ZC**

**83ZG.**—(1) This section applies to an investigator appointed under section 83ZC to conduct an investigation on behalf of the Bank of England.

(2) The investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—

- (a) to attend before the investigator at a specified time and place and answer questions, or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (3) The investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (4) A requirement under subsection (2) or (3) may be imposed only so far as the investigator reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- (5) For the purposes of this section, a person (“B”) is connected with the person under investigation (“A”) if B is or has at any relevant time been—
- (a) a member of A’s group;
  - (b) a controller of A;
  - (c) a partnership of which A is a member; or
  - (d) in relation to A, a person mentioned in Part 1 or 2 of Schedule 15 to the Financial Services and Markets Act 2000 (reading references in those Parts to the authorised person or the person under investigation as references to A).
- (6) In this section—
- “controller” has the same meaning as in the Financial Services and Markets Act 2000 (see section 422),
  - “group” has the meaning given by section 3(2)(b), and
  - “specified” means specified in a notice in writing.

### **Powers of persons appointed as a result of section 83ZD**

- 83ZH.**—(1) This section applies to an investigator appointed under section 83ZD to conduct an investigation on behalf of the Bank of England.
- (2) The investigator has—
- (a) the powers conferred by section 83ZG on an investigator appointed under section 83ZC, and
  - (b) the powers conferred by subsections (3) and (4).
- (3) The investigator may require the person who is the subject of the investigation (“the person under investigation”) to give the investigator all assistance in connection with the investigation which that person is reasonably able to give.
- (4) The investigator may require a person who is neither the person under investigation nor a person connected with the person under investigation—
- (a) to attend before the investigator at a specified time and place and answer questions, or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (5) A requirement may only be imposed under subsection (4) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.
- (6) Section 83ZG(5) and (6) applies for the purposes of this section.

### Admissibility of statements made to investigators

**83ZI.**—(1) A statement made to an investigator appointed under section 83ZC or 83ZD by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, the PRA or the FCA (as the case may be), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than one under—

- (a) section 83ZN(4),
- (b) section 398 of the Financial Services and Markets Act 2000 (misleading FCA or PRA: residual cases)(3),
- (c) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath)(4),
- (d) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath)(5), or
- (e) Article 10 of the Perjury (Northern Ireland) Order 1979(6).

(4) “Information requirement” means a requirement imposed by an investigator under section 83ZG, 83ZH or 83ZJ.

### *Information and documents: supplemental provision*

### Information and documents: supplemental provision

**83ZJ.**—(1) If the Bank of England has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—

- (a) take copies or extracts from the document, or
- (b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.

(4) If the person to whom a document is so produced has reasonable grounds for believing—

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(3) [2000 c.8](#). Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services and Markets Act [2000 \(c.8\)](#), [SI 2013/1773](#).

(4) [1911 c.6](#).

(5) [1995 c.39](#).

(6) [SI 1979/1714 \(N.I. 19\)](#).

- (a) that the document may have to be produced for the purposes of any legal proceedings, and
  - (b) that it might otherwise be unavailable for those purposes,
- it may be retained until the proceedings are concluded.

(5) If a person who is required under this Part to produce a document fails to do so, the Bank or an investigator may require that person to state, to the best of that person's knowledge and belief, where the document is.

(6) A lawyer may be required under this Part to furnish the name and address of the lawyer's client.

(7) No person may be required under this Part to disclose information or produce a document in respect of which the person ("A") owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) A is the person under investigation or a member of that person's group,
- (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group,
- (c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (d) the imposing on A of a requirement with respect to such information or document has been specifically authorised by the Bank.

(8) If a person claims a lien on a document, its production under this Part does not affect the lien.

(9) In this section—

"controller" has the same meaning as in the Financial Services and Markets Act 2000 (see section 422)(7),

"group" has the meaning given by section 3(2)(b),

"investigator" means a person appointed under section 83ZC or 83ZD,

"relevant person", in relation to a person who is required to produce a document, means a person who—

- (a) has been or is or is proposed to be a director or controller of that person,
- (b) has been or is an auditor of that person,
- (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or
- (d) has been or is an employee of that person.

### **Protected items**

**83ZK.**—(1) A person may not be required under this Part to produce, disclose or permit the inspection of protected items.

(2) "Protected items" means—

- (a) communications between a professional legal adviser and that adviser's client or any person representing such a client which fall within subsection (3),
- (b) communications between a professional legal adviser, that adviser's client or any person representing such a client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection), and



- (c) items which—
  - (i) are enclosed with, or referred to in, such communications,
  - (ii) fall within subsection (3), and
  - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
  - (a) in connection with the giving of legal advice to the client, or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

### **Entry of premises under warrant**

**83ZL.**—(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, the Bank of England or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

- (2) The first set of conditions is—
  - (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and
  - (b) that on the premises specified in the warrant—
    - (i) there are documents which have been required, or
    - (ii) there is information which has been required.
- (3) The second set of conditions is—
  - (a) that the premises specified in the warrant are premises of a bank or a member of the same group (within the meaning of section 3(2)(b)) as a bank,
  - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and
  - (c) that if such a requirement were to be imposed—
    - (i) it would not be complied with, or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) The third set of conditions is—
  - (a) that an offence mentioned in section 83ZN(4) or (5) has been (or is being) committed by any person,
  - (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed,
  - (c) that an information requirement could be imposed in relation to those documents or that information, and
  - (d) that if such a requirement were to be imposed—
    - (i) it would not be complied with, or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) A warrant under this section authorises a constable—

- (a) to enter the premises specified in the warrant,
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them,
  - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,
  - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and
  - (e) to use such force as may be reasonably necessary.
- (6) A warrant under this section may be executed by any constable.
- (7) The warrant may authorise persons to accompany any constable who is executing it.
- (8) The powers in subsection (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.
- (9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards)<sup>(8)</sup> apply to warrants issued under this section.
- (10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(9)</sup> apply to warrants issued under this section.
- (11) In the application of this section to Scotland—
- (a) for the reference to a justice of the peace substitute references to a justice of the peace or a sheriff; and
  - (b) for the references to information on oath substitute references to evidence on oath.
- (12) “Investigator” means an investigator appointed under section 83ZC or 83ZD.
- (13) “Information requirement” means a requirement imposed—
- (a) by the Bank of England under section 83ZA or 83ZJ, or
  - (b) by an investigator under section 83ZG, 83ZH or 83ZJ.

### **Retention of documents obtained under section 83ZL**

**83ZM.**—(1) Any document of which possession is taken under section 83ZL (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

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(8) 1984 c.60, section 15 was amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15), and SI 2005/3496; section 16 was amended by section 109 of the Courts Act 2003 (c.39), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15) and SI 2005/3496.

(9) SI 1989/1341 (N.I. 12), amended by SI 2007/288 (N.I. 2).

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

### Offences etc

**83ZN.**—(1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on the defaulter under section 83ZG, 83ZH or 83ZJ, the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if that person were in contempt.

(3) “Officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

(4) A person who knows or suspects that an investigation is being or is likely to be conducted under section 83ZC, 83ZD or 83ZE is guilty of an offence if—

- (a) that person falsifies, conceals, destroys or otherwise disposes of a document which that person knows or suspects is or would be relevant to such an investigation, or
- (b) that person causes or permits the falsification, concealment, destruction or disposal of such a document,

unless that person shows that that person had no intention of concealing facts disclosed by the document from the investigator.

(5) A person who, in purported compliance with a requirement imposed on that person by any relevant requirement—

- (a) provides information which that person knows to be false or misleading in a material particular, or
- (b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 83ZL is guilty of an offence.

(7) Subsection (8) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(10) is in force on the relevant day.

(8) A person guilty of an offence under subsection (4), (5) or (6) is liable, on summary conviction—

- (a) in England and Wales, to imprisonment for a term not exceeding 3 months or a fine, or both;
- (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(9) Subsection (10) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not in force on the relevant day.

(10) A person guilty of an offence under subsection (4), (5) or (6) is liable, on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(11) In this section—

“court” means—

- (a) the High Court;
- (b) in Scotland, the Court of Session;

“relevant day” means the day on which the Bank Recovery and Resolution Order 2014 (which inserted this section into this Act) was made;

“relevant requirement” has the meaning given in section 83ZD.

### **Prosecution of offences under section 83ZN**

**83ZO.**—(1) Proceedings for an offence under section 83ZN may be instituted—

- (a) in England and Wales, only by the Bank of England or by or with the consent of the Director of Public Prosecutions, and
- (b) in Northern Ireland, only by the Bank of England or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) In exercising its power to institute proceedings for an offence under section 83ZN, the Bank must comply with any conditions or restrictions imposed in writing by the Treasury.

(3) Conditions or restrictions may be imposed under subsection (2) in relation to proceedings generally, or such proceedings or categories of proceedings as the Treasury may direct.

### **Offences under section 83ZN by bodies corporate etc**

**83ZP.**—(1) If an offence under section 83ZN committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if that member were a director of the body.

(3) If an offence under section 83ZN committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In subsection (3) “partner” includes a person purporting to act as partner.

(5) “Officer” in relation to a body corporate means—

- (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, and

- (b) an individual who is a controller of the body (and for these purposes, “controller” has the meaning given in section 422 of the Financial Services and Markets Act 2000).
- (6) If an offence under section 83ZN committed by an unincorporated association (other than a partnership) is shown—
  - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member,that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

#### *Enforcement of relevant requirements*

#### **Injunctions: prevent failure to comply with relevant requirement**

**83ZQ.**—(1) If, on the application of the Bank of England, the court is satisfied that there is a reasonable likelihood that any person will contravene a relevant requirement, the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

- (2) The jurisdiction conferred by this section is exercisable—
  - (a) in England and Wales and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (3) In this section “relevant requirement” has the meaning given in section 83ZD.

#### **Regulatory sanctions**

**83ZR.**—(1) If the Bank of England considers that a person has failed to comply with a relevant requirement imposed on the person, it may do one or more of the following—

- (a) publish a statement to that effect;
- (b) impose on that person a penalty, in respect of the failure, of such amount as it considers appropriate;
- (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct;
- (d) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of—
  - (i) a named bank,
  - (ii) a bank of a specified description, or
  - (iii) any bank.
- (2) A prohibition under subsection (1)(d) may apply—
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) If the Bank of England considers that a failure by a person to comply with a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, an officer of that person, it may do one or more of the following—
  - (a) publish a statement to that effect;

- (b) impose on that officer a penalty, in respect of the failure, of such amount as it considers appropriate;
- (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct specified in the order.
- (4) A penalty under this section—
  - (a) must be paid to the Bank of England, and
  - (b) may be enforced by the Bank as a debt.
- (5) In this section “relevant requirement” has the meaning given in section 83ZD.

#### **Determination of sanctions**

**83ZS.** When determining the type of sanction, and level of any penalty, to be imposed on a person under section 83ZR, the Bank of England must take into account all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the failure,
- (b) the degree of responsibility of the person,
- (c) the financial strength of the person,
- (d) the amount of profits gained or losses avoided by the person,
- (e) the losses for third parties caused by the failure,
- (f) the level of co-operation of the person with the Bank,
- (g) previous failures by the person, and
- (h) any potential systemic consequences of the failure.

#### **Procedure: warning notice**

**83ZT.**—(1) If the Bank of England proposes to impose a sanction on a person under section 83ZR(1) or (3) it must give that person a warning notice.

(2) Section 387 of the Financial Services and Markets Act 2000<sup>(11)</sup> applies in relation to a warning notice given under subsection (1) and to the Bank as it applies in relation to a warning notice given under that Act and to the regulator which gave that notice, subject to subsections (3) and (4).

- (3) In complying with section 387(1)(a) of that Act, a warning notice must in particular—
  - (a) if it is about a proposal to publish a statement, set out the terms of the statement,
  - (b) if it is about a proposal to impose a penalty, specify the amount of the penalty,
  - (c) if it is about a proposal to direct a person to refrain from certain conduct, specify the conduct, and
  - (d) if it is about a proposal to impose a prohibition on holding an office or other position, specify the extent of the prohibition.

(4) For the purposes of subsection (2), section 387 of that Act has effect as if subsections (1A) and (3A) were omitted.

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(11) 2000 c.8. Section 387 was amended by paragraph 26 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

### **Procedure: decision notice**

**83ZU.**—(1) If the Bank of England decides to impose a sanction on a person under section 83ZR(1) or (3) it must without delay give that person a decision notice.

(2) If the decision is to publish a statement, the decision notice must set out the terms of the statement.

(3) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.

(4) If the decision is to refrain from certain conduct, the decision notice must specify the conduct.

(5) If the decision is to impose a prohibition on holding an office or other position, the decision notice must specify the extent of the prohibition.

(6) Section 388 of the Financial Services and Markets Act 2000(12) applies in relation to a decision notice given under subsection (1) and the Bank as it applies in relation to a decision notice given under that Act and the regulator which gave that notice, subject to subsection (7).

(7) Section 388 of that Act has effect for the purposes of subsection (6) as if—

- (a) in subsection (1)(e)(i) for “this Act” there were substituted “section 83ZW of the Banking Act 2009”, and
- (b) subsections (1A) and (2) were omitted.

### **Procedure: general**

**83ZV.**—(1) Sections 389(13), 390(14) and 392 to 394(15) of the Financial Services and Markets Act 2000 apply in relation to a warning notice given under section 83ZT, a decision notice given under section 83ZU and the Bank as they apply in relation to a warning notice or decision notice given under that Act and the regulator which gave that notice, subject to subsections (2) to (4).

(2) Section 389 of that Act has effect as if subsection (2) were omitted,

(3) Section 390 of that Act has effect as if—

- (a) in subsection (2A), in paragraph (a), for “133(6)(b)” there were substituted “133(5)(b)”,
- (b) in that paragraph, for “133(6)” there were substituted “133(5)”,
- (c) for subsection (4) there were substituted—

“(4) A final notice about a direction under section 83ZR(1)(c) or (3)(c) of the Banking Act 2009 or a prohibition under section 83ZR(1)(d) of that Act must—

- (a) specify the conduct to which the direction relates or the extent of the prohibition, and
- (b) give details of the date on which the direction or prohibition has effect.”.

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(12) Section 388 was amended by paragraph 27 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(13) Section 389 was amended by paragraph 28 of Schedule 9 to the Financial Services Act 2012 (c.21).

(14) Section 390 was amended by paragraph 29 of Schedule 9 to the Financial Services Act 2012 (c.21), SI 2010/2012.

(15) Section 392 was amended by paragraph 29 of Schedule 2 to the Financial Services Act 2010 (c.28); section 18 and paragraph 37 of Schedule 8, paragraph 31 of Schedule 9 and paragraph 8 of schedule 13 to the Financial Services Act 2012 (c.21), section 4 of the Financial Services (Banking Reform) Act 2013 (c.33), SI 2007/126 and 2013/1388; section 393 was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012 (c.21); section 394 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23) and paragraph 33 of Schedule 9 to the Financial Services Act 2012 (c.21).

- (4) Section 392 has effect as if for paragraphs (a) and (b) there were substituted—  
 “(a) warning notice given under section 83ZT(1) of the Banking Act 2009;  
 (b) a decision notice given under section 83ZU(1) of the Banking Act 2009.”.

### **Appeal**

**83ZW.**—(1) If the Bank of England decides to impose a sanction on a person under section 83ZR, the person may appeal to the Upper Tribunal.

(3) The Bank of England may not impose a sanction while an appeal under this section could be brought or is pending.

### **Injunctions: failure to comply with certain section 83ZR sanctions**

**83ZX.**—(1) If, on the application of the Bank of England, the court is satisfied—

- (a) that there is a reasonable likelihood that there will be a compliance failure, or
- (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Bank, the court is satisfied—

- (a) that there has been a compliance failure, and
- (b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring anyone who appears to have been knowingly concerned in the failure to take such steps as the court may direct to remedy it.

(3) If, on the application of the Bank of England, the court is satisfied—

- (a) that there may have been a compliance failure by any person, or
- (b) that a person may have been knowingly concerned in a compliance failure,

the court may make an order restraining that person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.

(4) “Compliance failure” means—

- (a) a failure to comply with a direction under section 83ZR(1)(c) or (3)(c), or
- (b) a breach of a prohibition imposed under section 83ZR(1)(d).

(5) The jurisdiction conferred by this section is exercisable—

- (a) in England and Wales and Northern Ireland, by the High Court, and
- (b) in Scotland, by the Court of Session.

(6) In this section—

- (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,
- (b) references to remedying a failure include mitigating its effect, and
- (c) references to dealing with assets include disposing of them.

### **Publication**

**83ZY.**—(1) In the case of a warning notice under section 83ZT(1)—

- (a) neither the Bank of England nor a person to whom it is given or copied may publish the notice,



- (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the Bank has published those details, and
  - (c) after consulting the persons to whom the notice is given or copied, the Bank may publish such information about the matter to which the notice relates as it considers appropriate.
- (2) A person to whom a decision notice under section 83ZU(1) is given or copied may not publish the notice or any details concerning it unless the Bank has published the notice or those details.
- (3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (5) Subject to subsection (8), where the Bank gives a decision notice it may publish such information about the matter to which the notice relates as it considers appropriate.
- (6) Where the Bank publishes information under subsection (5) and the person to whom the decision notice is given refers the matter to the Upper Tribunal, the Bank must, without undue delay, publish on its official website information about the status of the appeal and its outcome.
- (7) Subject to subsection (8), where the Bank gives a final notice—
- (a) it must, without undue delay, publish details of any sanction to which the notice relates on its internet website, and
  - (b) it may publish such other information about the matter to which the notice relates as it considers appropriate.
- (8) Information about a matter to which a decision notice or a final notice relates must be published anonymously where—
- (a) the sanction is imposed (or proposed to be imposed) on an individual and following an obligatory prior assessment publication of personal data is found to be disproportionate, or
  - (b) were it not published anonymously, publication would—
    - (i) jeopardise the stability of financial markets or an ongoing criminal investigation, or
    - (ii) cause, insofar as it can be determined, disproportionate damage to the persons involved.
- (9) Where subsection (8) applies, the person publishing the information may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction is imposed.
- (10) Where the Bank publishes information in accordance with subsections (6) to (9), it must—
- (a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998<sup>(16)</sup> requires the information to be retained for a different period, and

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(16) 1998 c.29.

- (b) disclose to the European Banking Authority any penalty imposed, any appeal against such a penalty and the outcome of the appeal, unless such a disclosure is not permitted by section 348 of the Financial Services and Markets Act 2000.

(11) In this section “notice of discontinuance” and “final notice” have the same meaning as in sections 389 and 390 of the Financial Services and Markets Act 2000 (which are applied (with modifications) by section 83ZV).

### **Co-operation**

**83ZZ.** In connection with the exercise of its powers to impose sanctions under section 83ZR, the Bank of England must take such steps as it considers appropriate to co-operate with—

- (a) the FCA,
- (b) the PRA, and
- (c) any person who exercises functions outside the United Kingdom equivalent to those exercisable by the Bank under this Part or any other enactment giving effect to the recovery and resolution directive.

### **Delegation of enforcement functions**

**83Z1.**—(1) The Bank of England may, by agreement made with the appropriate regulator, delegate to that regulator its enforcement functions, subject to such restrictions and conditions, and for such period, as may be specified in the agreement.

(2) For the purposes of this section—

- (a) “enforcement functions” of the Bank of England are its functions under, or by virtue of—
  - (i) section 83ZD;
  - (ii) section 83ZF;
  - (iii) section 83ZJ;
  - (iv) section 83ZL;
  - (v) section 83ZO;
  - (vi) sections 83ZQ to 83ZZ;
- (b) “the appropriate regulator” means—
  - (i) the FCA or the PRA, where the requirement concerned was imposed on a UK authorised person which is not a PRA-authorised person, and
  - (ii) in any other case, the PRA.

(3) The Bank of England must make provision for the reimbursement of any expenses incurred by the appropriate regulator in the performance, in accordance with the terms of any agreement, of any functions delegated under this section.

### *Enforcement of share transfer orders*

### **Enforcement: share transfer orders**

**83Z2.**—(1) The Treasury may by regulations make provision for the enforcement of obligations imposed by or under a share transfer order.

(2) Regulations—

- (a) may confer jurisdiction on a court or tribunal,
  - (b) may not impose a penalty or create a criminal offence,
  - (c) may make provision which has effect in respect of an order only if applied by the order.
- (3) Regulations are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament.”.