



Banking Act 2009

2009 CHAPTER 1

PART 2

BANK INSOLVENCY

Introduction

90 Overview

- (1) This Part provides for a procedure to be known as bank insolvency.
- (2) The main features of bank insolvency are that—
 - (a) a bank enters the process by court order,
 - (b) the order appoints a bank liquidator,
 - (c) the bank liquidator aims to arrange for the bank's eligible depositors to have their accounts transferred or to receive their compensation from the FSCS,
 - (d) the bank liquidator then winds up the bank, and
 - (e) for those purposes, the bank liquidator has powers and duties of liquidators, as applied and modified by the provisions of this Part.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 90 to 93	Introduction
Sections 94 to 98	Bank insolvency order
Sections 99 to 105	Process of bank liquidation
Sections 106 to 112	Tenure of bank liquidator
Sections 113 to 116	Termination of process, &c.
Sections 117 to 122	Other processes

Status: This is the original version (as it was originally enacted).

<i>Sections</i>	<i>Topic</i>
Sections 123 to 135	Miscellaneous

91 Interpretation: “bank”

- (1) In this Part “bank” means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22).
- (2) But “bank” does not include—
 - (a) a building society within the meaning of section 119 of the Building Societies Act 1986,
 - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
 - (c) any other class of institution excluded by an order made by the Treasury.
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) An order under subsection (2)(c)—
 - (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.
- (5) Section 130 makes provision for the application of this Part to building societies.
- (6) Section 131 makes provision for the application of this Part to credit unions.

92 Interpretation: “the court”

In this Part “the court” means—

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

93 Interpretation: other expressions

- (1) In this Part “the FSA” means the Financial Services Authority.
- (2) In this Part a reference to “the FSCS” is a reference to—
 - (a) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000), or
 - (b) where appropriate, the scheme manager of that Scheme.
- (3) In this Part “eligible depositors” means depositors who are eligible for compensation under the FSCS.
- (4) For the purposes of a reference in this Part to inability to pay debts—
 - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and

- (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; and
- for the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.
- (5) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (6) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (7) A reference in this Part to action includes a reference to inaction.
- (8) The expression “fair” is used in this Part as a shorter modern equivalent of the expression “just and equitable” (and is not therefore intended to exclude the application of any judicial or other practice relating to the construction and application of that expression).

Bank insolvency order

94 The order

- (1) A bank insolvency order is an order appointing a person as the bank liquidator of a bank.
- (2) A person is eligible for appointment as a bank liquidator if qualified to act as an insolvency practitioner.
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank insolvency order takes effect in accordance with section 98; and—
- (a) the process of a bank insolvency order having effect may be described as “bank insolvency” in relation to the bank, and
 - (b) while the order has effect the bank may be described as being “in bank insolvency”.

95 Application

- (1) An application for a bank insolvency order may be made to the court by—
- (a) the Bank of England,
 - (b) the FSA, or
 - (c) the Secretary of State.
- (2) An application must nominate a person to be appointed as the bank liquidator.
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below).

96 Grounds for applying

- (1) In this section—
- (a) Ground A is that a bank is unable, or likely to become unable, to pay its debts,

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- (b) Ground B is that the winding up of a bank would be in the public interest, and
 - (c) Ground C is that the winding up of a bank would be fair.
- (2) The Bank of England may apply for a bank insolvency order only if—
- (a) the FSA has informed the Bank of England that the FSA is satisfied that Conditions 1 and 2 in section 7 are met, and
 - (b) the Bank of England is satisfied—
 - (i) that the bank has eligible depositors, and
 - (ii) that Ground A or C applies.
- (3) The FSA may apply for a bank insolvency order only if—
- (a) the Bank of England consents, and
 - (b) the FSA is satisfied—
 - (i) that Conditions 1 and 2 in section 7 are met,
 - (ii) that the bank has eligible depositors, and
 - (iii) that Ground A or C applies.
- (4) The Secretary of State may apply for a bank insolvency order only if satisfied—
- (a) that the bank has eligible depositors, and
 - (b) that Ground B applies.
- (5) The sources of information on the basis of which the Secretary of State may be satisfied of the matters specified in subsection (4) include those listed in section 124A(1) of the Insolvency Act 1986 (petition for winding up on grounds of public interest).

97 Grounds for making

- (1) The court may make a bank insolvency order on the application of the Bank of England or the FSA if satisfied—
- (a) that the bank has eligible depositors, and
 - (b) that Ground A or C of section 96 applies.
- (2) The court may make a bank insolvency order on the application of the Secretary of State if satisfied—
- (a) that the bank has eligible depositors, and
 - (b) that Grounds B and C of section 96 apply.
- (3) On an application for a bank insolvency order the court may—
- (a) grant the application in accordance with subsection (1) or (2),
 - (b) adjourn the application (generally or to a specified date), or
 - (c) dismiss the application.

98 Commencement

- (1) A bank insolvency order shall be treated as having taken effect in accordance with this section.
- (2) In the case where—
- (a) notice has been given to the FSA under section 120 of an application for an administration order or a petition for a winding up order, and

- (b) the FSA or the Bank of England applies for a bank insolvency order in the period of 2 weeks specified in Condition 3 in that section, the bank insolvency order is treated as having taken effect when the application or petition was made or presented.
- (3) In any other case, the bank insolvency order is treated as having taken effect when the application for the order was made.
- (4) Unless the court directs otherwise on proof of fraud or mistake, proceedings taken in the bank insolvency, during the period for which it is treated as having had effect, are treated as having been taken validly.

Process of bank liquidation

99 Objectives

- (1) A bank liquidator has two objectives.
- (2) Objective 1 is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor—
 - (a) has the relevant account transferred to another financial institution, or
 - (b) receives payment from (or on behalf of) the FSCS.
- (3) Objective 2 is to wind up the affairs of the bank so as to achieve the best result for the bank's creditors as a whole.
- (4) Objective 1 takes precedence over Objective 2 (but the bank liquidator is obliged to begin working towards both objectives immediately upon appointment).

100 Liquidation committee

- (1) Following a bank insolvency order a liquidation committee must be established, for the purpose of ensuring that the bank liquidator properly exercises the functions under this Part.
- (2) The liquidation committee shall consist initially of 3 individuals, one nominated by each of—
 - (a) the Bank of England,
 - (b) the FSA, and
 - (c) the FSCS.
- (3) The bank liquidator must report to the liquidation committee about any matter—
 - (a) on request, or
 - (b) which the bank liquidator thinks is likely to be of interest to the liquidation committee.
- (4) In particular, the bank liquidator—
 - (a) must keep the liquidation committee informed of progress towards Objective 1 in section 99, and
 - (b) must notify the liquidation committee when in the bank liquidator's opinion Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable.

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- (5) As soon as is reasonably practicable after receiving notice under subsection (4)(b) the liquidation committee must either—
- (a) resolve that Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable (a “full payment resolution”), or
 - (b) apply to the court under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (6) Where a liquidation committee passes a full payment resolution—
- (a) the bank liquidator must summon a meeting of creditors,
 - (b) the meeting may elect 2 or 4 individuals as new members of the liquidation committee,
 - (c) those individuals replace the members nominated by the Bank of England and the FSA,
 - (d) the FSCS may resign from the liquidation committee (in which case 3 or 5 new members may be elected under paragraph (b)), and
 - (e) if no individuals are elected under paragraph (b), or the resulting committee would have fewer than 3 members or an even number of members, the liquidation committee ceases to exist at the end of the meeting.
- (7) Subject to provisions of this section, rules under section 411 of the Insolvency Act 1986 (as amended by section 125 below) may make provision about—
- (a) the establishment of liquidation committees,
 - (b) the membership of liquidation committees,
 - (c) the functions of liquidation committees, and
 - (d) the proceedings of liquidation committees.

101 Liquidation committee: supplemental

- (1) A meeting of the liquidation committee may be summoned—
- (a) by any of the members, or
 - (b) by the bank liquidator.
- (2) While the liquidation committee consists of the initial members (or their nominated replacements) a meeting is quorate only if all the members are present.
- (3) A person aggrieved by any action of the liquidation committee before it has passed a full payment resolution may apply to the court, which may make any order (including an order for the repayment of money).
- (4) The court may (whether on an application under subsection (3), on the application of a bank liquidator or otherwise) make an order that the liquidation committee is to be treated as having passed a full payment resolution.
- (5) If a liquidation committee fails to comply with section 100(5) the bank liquidator must apply to the court—
- (a) for an order under subsection (4) above, or
 - (b) for directions under or by virtue of section 168(3) or 169(2) of the Insolvency Act 1986 as applied by section 103 below.
- (6) A nominating body under section 100(2) may replace its nominee at any time.

- (7) After the removal of the nominated members under section 100(6)(c) the FSA and the Bank of England—
- (a) may attend meetings of the liquidation committee,
 - (b) are entitled to copies of documents relating to the liquidation committee's business,
 - (c) may make representations to the liquidation committee, and
 - (d) may participate in legal proceedings relating to the bank insolvency.
- (8) Where a liquidation committee ceases to exist by virtue of section 100(6)(e)—
- (a) it may be re-formed by a creditors' meeting summoned by the bank liquidator for the purpose, and
 - (b) the bank liquidator must summon a meeting for the purpose if requested to do so by one-tenth in value of the bank's creditors.
- (9) Where a liquidation committee ceases to exist by virtue of section 100(6)(e) and has not been re-formed under subsection (8) above or under section 141(2) or 142(2) of the Insolvency Act 1986 (as applied by section 103 below)—
- (a) ignore a reference in this Part to the liquidation committee,
 - (b) for section 113(2) to (4) substitute requirements for the bank liquidator, before making a proposal—
 - (i) to produce a final report,
 - (ii) to send copies in accordance with section 113(2)(b),
 - (iii) to make it available in accordance with section 113(2)(c), and
 - (iv) to be satisfied as specified in section 113(4)(b),
 - (c) ignore Condition 2 in section 114, and
 - (d) for section 115(1) to (5) substitute a power for the bank liquidator to apply to the Secretary of State or Accountant of Court for release and requirements that before making an application the bank liquidator must—
 - (i) produce a final report,
 - (ii) send copies in accordance with section 115(2)(b),
 - (iii) make it available in accordance with section 115(2)(c), and
 - (iv) notify the court and the registrar of companies of the intention to vacate office and to apply for release.

102 Objective 1: (a) or (b)?

- (1) As soon as is reasonably practicable, a liquidation committee must recommend the bank liquidator to pursue—
- (a) Objective 1(a) in section 99,
 - (b) Objective 1(b) in section 99, or
 - (c) Objective 1(a) for one specified class of case and Objective 1(b) for another.
- (2) In making a recommendation the liquidation committee must consider—
- (a) the desirability of achieving Objective 1 as quickly as possible, and
 - (b) Objective 2 in section 99.
- (3) If the liquidation committee thinks that the bank liquidator is failing to comply with their recommendation, they must apply to the court for directions under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).

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- (4) Where the liquidation committee has not made a recommendation the bank liquidator may apply to the court under section 101(3); and the court may, in particular, make a direction in lieu of a recommendation if the liquidation committee fail to make one within a period set by the court.

103 General powers, duties and effect

- (1) A bank liquidator may do anything necessary or expedient for the pursuit of the Objectives in section 99.
- (2) The following provisions of this section provide for—
- (a) general powers and duties of bank liquidators (by application of provisions about liquidators), and
 - (b) the general process and effects of bank insolvency (by application of provisions about winding up).
- (3) The provisions set out in the Table apply in relation to bank insolvency as in relation to winding up, with—
- (a) the modifications set out in subsection (4),
 - (b) any other modification specified in the Table, and
 - (c) any other necessary modification.
- (4) The modifications are that—
- (a) a reference to the liquidator is a reference to the bank liquidator,
 - (b) a reference to winding up is a reference to bank insolvency,
 - (c) a reference to winding up by the court is a reference to the imposition of bank insolvency by order of the court,
 - (d) a reference to being wound up under Part IV or V of the Insolvency Act 1986 is a reference to being made the subject of a bank insolvency order,
 - (e) a reference to the commencement of winding up is a reference to the commencement of bank insolvency,
 - (f) a reference to going into liquidation is a reference to entering bank insolvency,
 - (g) a reference to a winding-up order is a reference to a bank insolvency order, and
 - (h) a reference to a company is a reference to the bank.
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

TABLE OF APPLIED PROVISIONS

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 127	Avoidance of property dispositions	Ignore section 127(2).

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 128	Avoidance of attachment, &c.	
Section 130	Consequences of winding- up order	Ignore section 130(4).
Section 131	Company's statement of affairs	(a) Treat references to the official receiver as references to the bank liquidator. (b) A creditor or contributory of the bank is entitled to receive a copy of a statement under section 131 on request to the bank liquidator.
Section 135	Provisional appointment	(a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank insolvency order. (b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply). (c) Ignore the reference to the official receiver. (d) Only a person who is qualified to act as an insolvency practitioner and who consents to act may be appointed. (e) A provisional bank liquidator may not pay dividends to creditors. (f) The appointment of a provisional bank liquidator lapses on the appointment of a bank liquidator.

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 141	Liquidation Committee (England and Wales)	The application of section 141 is subject to— (a) sections 100, 101 and 109 of this Act, (b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 141 to reflect (i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and (c) the omission of references to the official receiver.
Section 142	Liquidation Committee (Scotland)	The application of section 142 is subject to— (a) sections 100, 101 and 109 of this Act, (b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 142 to reflect (i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and (c) the omission of references to the official receiver.
Section 143	General functions of liquidator	(a) Section 143(1) is subject to Objective 1 in section 99 above.

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		(b) Ignore section 143(2).
Section 144	Custody of property	
Section 145	Vesting of property	
Section 146	<i>Duty to summon final meeting</i>	<i>Section 146 is not applied—but section 115 below makes similar provision.</i>
Section 147	Power to stay or sist proceedings	An application may be made only by— (a) the bank liquidator, (b) the FSA, (c) the Bank of England, (d) the FSCS, or (e) a creditor or contributory (but only if the liquidation committee has passed a full payment resolution).
Section 148	List of contributories and application of assets	<i>By virtue of the Insolvency Rules the functions under this section are largely delegated to the liquidator—rules by virtue of section 125 may achieve a similar delegation to the bank liquidator.</i>
Section 149	Debts due from contributories	
Section 150	Power to make calls	
Section 152	Order on contributory: evidence	
Section 153	Exclusion of creditors	
Section 154	Adjustment of rights of contributories	
Section 155	Inspection of books by creditors	In making or considering whether to make an order under section 155 the court shall have regard to Objective 1 in section 99 above.

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 156	Payment of expenses of winding up	
Section 157	Attendance at company meetings (Scotland)	
Section 158	Power to arrest absconding contributory	
<i>Section 159</i>	<i>Powers to be cumulative</i>	<i>Section 159 is not applied—but subsection (5) above makes similar provision.</i>
Section 160	Delegation of powers to liquidator (England and Wales)	
Section 161	Orders for calls on contributories (Scotland)	
Section 162	Appeals from orders (Scotland)	An appeal may be brought only if the liquidation committee has passed a full payment resolution.
Section 167 and Schedule 4	General powers of liquidator	<p>(a) An application to the court may not be made under section 167(3) unless the liquidation committee has passed a full payment resolution (although a creditor or contributory may apply to the court with respect to any action (or inaction) of the liquidation committee, under section 101(3) above).</p> <p>(b) In exercising or considering whether to exercise a power under Schedule 4 the bank liquidator shall have regard to Objective 1 in section 99.</p> <p>(c) A reference to the liquidation committee is to</p>

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		the liquidation committee established by section 100. (d) The power in paragraph 4 of Schedule 4 includes the power to submit matters to arbitration. <i>Some additional general powers are conferred by section 104 below.</i>
Section 168	Supplementary powers of liquidator	(a) A direction or request under section 168(2) has no effect unless the liquidation committee has passed a full payment resolution. (b) Section 168(5) also applies in the case of the imposition of bank insolvency by order of the Court of Session. (c) An application to the court may not be made under section 168(5) unless the liquidation committee has passed a full payment resolution (except as provided in section 100 or 102 above).
Section 169	Supplementary powers (Scotland)	(a) Ignore section 169(1). (b) Powers of the bank liquidator by virtue of section 169(2) are subject to Objective 1 in section 99 above.
Section 170	Liquidator's duty to make returns	The liquidation committee is added to the list of

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		persons able to apply under section 170(2).
Section 172	Removal of liquidator	<i>Section 172 is not applied to a bank liquidator—but section 108 makes similar provision.</i> Section 172(1), (2) and (5) are applied to a provisional bank liquidator.
<i>Section 174</i>	<i>Release of liquidator</i>	<i>Section 174 is not applied—but section 115 makes similar provision.</i>
Section 175	Preferential debts	
Section 176	Preferential charge on goods restrained	
Section 176ZA	Expenses of winding up	
Section 176A	Share of assets for unsecured creditors	
Section 177	Appointment of special manager	
Section 178	Power to disclaim onerous property	
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rentcharge	
Section 181	Disclaimer: powers of court	
Section 182	Leaseholds	
Section 183	Effect of execution or attachment (England and Wales)	
Section 184	Execution of writs (England and Wales)	
Section 185	Effect of diligence (Scotland)	In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 the reference to an order of the court awarding winding up is a reference to the making of the bank insolvency order.

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 186	Rescission of contracts by court	
Section 187	Transfer of assets to employees	
Section 188	Publicity	
Section 189	Interest on debts	
Section 190	Exemption from stamp duty	
Section 191	Company's books as evidence	
Section 192	Information about pending liquidations	
Section 193	Unclaimed dividends (Scotland)	
Section 194	Resolutions passed at adjourned meetings	
Section 195	Meetings to ascertain wishes of creditors or contributories	The power to have regard to the wishes of creditors and contributories is subject to Objective 1 in section 99.
Section 196	Judicial notice of court documents	
Section 197	Commission for receiving evidence	
Section 198	Court order for examination of persons (Scotland)	
Section 199	Costs of application for leave to proceed (Scotland)	
Section 200	Affidavits	
Section 206	Fraud in anticipation of winding up	
Section 207	Transactions in fraud of creditors	
Section 208	Misconduct in course of winding up	
Section 209	Falsification of company's books	

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 210	Material omissions	
Section 211	False representations to creditors	
Section 212	Summary remedy against directors, &c.	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	
Section 215	Sections 213 & 214: procedure	
Section 216	Restriction on re-use of company names	
Section 217	Personal liability for debts	
Section 218	Prosecution of officers and members of company	(a) Ignore subsections (4) and (6). (b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State. (c) In subsection (5) treat the reference to subsection (4) as a reference to subsection (3).
Section 219	Obligations under section 218	
Section 231	Appointment of 2 or more persons	
Section 232	Validity of acts	
Section 233	Utilities	
Section 234	Getting in company's property	
Section 235	Co-operation with liquidator	Ignore references to the official receiver
Section 236	Inquiry into company's dealings	Ignore references to the official receiver
Section 237	Section 236: enforcement by court	
Section 238	Transactions at undervalue (England and Wales)	Anything done by the bank in connection with the exercise of

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 238.
Section 239	Preferences (England and Wales)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to giving a preference for the purpose of section 239.
Section 240	Sections 238 & 239: relevant time	
Section 241	Orders under sections 238 & 239	Having notice of the relevant proceedings means having notice of— (a) an application by the Bank of England, the FSA or the Secretary of State for a bank insolvency order, or (b) notice under section 120 below.
Section 242	Gratuitous alienations (Scotland)	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a gratuitous alienation for the purpose of section 242 or any other rule of law.
Section 243	Unfair preferences (Scotland)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to an unfair preference for the purpose of section 243 or any other rule of law.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	

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<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency.
Sections 423–425	Transactions defrauding creditors	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 423.
Sections 430 to 432 and Schedule 10	Offences	
Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.

104 Additional general powers

- (1) A bank liquidator has the following powers.
- (2) Power to effect and maintain insurances in respect of the business and property of the bank.
- (3) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank.
- (4) Power to make any payment which is necessary or incidental to the performance of the bank liquidator's functions.

105 Status of bank liquidator

A bank liquidator is an officer of the court.

Tenure of bank liquidator

106 Term of appointment

A bank liquidator appointed by bank insolvency order remains in office until vacating office—

- (a) by resigning under section 107,
- (b) on removal under section 108 or 109,
- (c) on disqualification under section 110,
- (d) on the appointment of a replacement in accordance with section 112,
- (e) in accordance with sections 113 to 115, or
- (f) on death.

107 Resignation

- (1) A bank liquidator may resign by notice to the court.
- (2) Rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below) may restrict a bank liquidator's power to resign.
- (3) Resignation shall take effect in accordance with those rules (which shall include provision about release).

108 Removal by court

- (1) A bank liquidator may be removed by order of the court on the application of—
 - (a) the liquidation committee,
 - (b) the FSA, or
 - (c) the Bank of England.
- (2) Before making an application the FSA must consult the Bank of England.
- (3) Before making an application the Bank of England must consult the FSA.
- (4) A bank liquidator removed by order has release with effect from a time determined by—
 - (a) the Secretary of State, or
 - (b) in the case of a bank liquidator in Scotland, the Accountant of Court.

109 Removal by creditors

- (1) A bank liquidator may be removed by resolution of a meeting of creditors held pursuant to section 195 of the Insolvency Act 1986 (as applied by section 103 above) provided that the following conditions are met.
- (2) Condition 1 is that the liquidation committee has passed a full payment resolution.

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- (3) Condition 2 is that the notice given to creditors of the meeting includes notice of intention to move a resolution removing the bank liquidator.
- (4) Condition 3 is that the Bank of England and the FSA—
 - (a) receive notice of the meeting, and
 - (b) are given an opportunity to make representations to it.
- (5) A bank liquidator who is removed under this section has release with effect—
 - (a) from the time when the court is informed of the removal, or
 - (b) if the meeting removing the bank liquidator resolves to disapply paragraph (a), from a time determined by—
 - (i) the Secretary of State, or
 - (ii) in the case of a bank liquidator in Scotland, the Accountant of Court.

110 Disqualification

- (1) If a bank liquidator ceases to be qualified to act as an insolvency practitioner, the appointment lapses.
- (2) A bank liquidator whose appointment lapses under subsection (1) has release with effect from a time determined by—
 - (a) the Secretary of State, or
 - (b) in the case of a bank liquidator in Scotland, the Accountant of Court.

111 Release

A bank liquidator who is released is discharged from all liability in respect of acts or omissions in the bank insolvency and otherwise in relation to conduct as bank liquidator (but without prejudice to the effect of section 212 of the Insolvency Act 1986 as applied by section 103 above).

112 Replacement

- (1) Where a bank liquidator vacates office the Bank of England must as soon as is reasonably practicable appoint a replacement bank liquidator.
- (2) But where a bank liquidator is removed by resolution of a meeting of creditors under section 109—
 - (a) a replacement may be appointed by resolution of the meeting, and
 - (b) failing that, subsection (1) above applies.

Termination of process, &c.

113 Company voluntary arrangement

- (1) A bank liquidator may make a proposal in accordance with section 1 of the Insolvency Act 1986 (company voluntary arrangement).
- (2) Before making a proposal the bank liquidator—
 - (a) shall present a final report on the bank liquidation to the liquidation committee,

- (b) shall send a copy of the report to—
 - (i) the FSA,
 - (ii) the FSCS,
 - (iii) the Bank of England,
 - (iv) the Treasury, and
 - (v) the registrar of companies, and
 - (c) shall make the report available to members, creditors and contributories on request.
- (3) A proposal may be made only with the consent of the liquidation committee.
- (4) The liquidation committee may consent only if—
- (a) it has passed a full payment resolution, and
 - (b) the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositor still eligible for compensation under the scheme will be dealt with in accordance with section 99(2)(a) or (b).
- (5) The bank liquidator must be the nominee (see section 1(2) of the 1986 Act).
- (6) Part 1 of the 1986 Act shall apply to a proposal made by a bank liquidator, with the following modifications.
- (7) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (8) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank insolvency order.
- (9) On the termination of a company voluntary arrangement the bank liquidator may apply to the court to lift the suspension of the bank insolvency order.

114 Administration

- (1) A bank liquidator who thinks that administration would achieve a better result for the bank's creditors as a whole than bank insolvency may apply to the court for an administration order (under paragraph 38 of Schedule B1 to the Insolvency Act 1986).
- (2) An application may be made only if the following conditions are satisfied.
- (3) Condition 1 is that the liquidation committee has passed a full payment resolution.
- (4) Condition 2 is that the liquidation committee has resolved that moving to administration might enable the rescue of the bank as a going concern.
- (5) Condition 3 is that the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositors still eligible for compensation under the scheme will receive their payments or have their accounts transferred during administration.

115 Dissolution

- (1) A bank liquidator who thinks that the winding up of the bank is for practical purposes complete shall summon a final meeting of the liquidation committee.
- (2) The bank liquidator—
 - (a) shall present a final report on the bank insolvency to the meeting,
 - (b) shall send a copy of the report to—

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- (i) the FSA,
 - (ii) the FSCS,
 - (iii) the Bank of England,
 - (iv) the Treasury, and
 - (v) the registrar of companies, and
 - (c) shall make the report available to members, creditors and contributories on request.
- (3) At the meeting the liquidation committee shall—
- (a) consider the report, and
 - (b) decide whether to release the bank liquidator.
- (4) If the liquidation committee decides to release the bank liquidator, the bank liquidator—
- (a) shall notify the court and the registrar of companies, and
 - (b) vacates office, and has release, when the court is notified.
- (5) If the liquidation committee decides not to release the bank liquidator, the bank liquidator may apply to the Secretary of State for release; if the application is granted, the bank liquidator—
- (a) vacates office when the application is granted, and
 - (b) has release from a time determined by the Secretary of State.
- (6) In the case of a bank liquidator in Scotland, a reference in subsection (5) to the Secretary of State is a reference to the Accountant of Court.
- (7) On receipt of a notice under subsection (4)(a) the registrar of companies shall register it.
- (8) At the end of the period of 3 months beginning with the day of the registration of the notice, the bank is dissolved (subject to deferral under section 116).

116 Dissolution: supplemental

- (1) The Secretary of State may by direction defer the date of dissolution under section 115, on the application of a person who appears to the Secretary of State to be interested.
- (2) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (1).
- (3) Subsection (1) does not apply where the bank insolvency order was made by the court in Scotland; but the court may by direction defer the date of dissolution on an application by a person appearing to the court to have an interest.
- (4) A person who obtains deferral under subsection (1) or (3) shall, within 7 days after the giving of the deferral direction, deliver a copy of the direction to the registrar of companies for registration.
- (5) A person who without reasonable excuse fails to comply with subsection (4) is liable to a fine and, for continued contravention, to a daily default fine, in each case of the same amount as for a contravention of section 205(6) of the Insolvency Act 1986 (dissolution).

- (6) The bank liquidator may give the notice summoning the final meeting under section 115 above at the same time as giving notice of any final distribution of the bank's property; but, if summoned for an earlier date the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the bank liquidator is able to report to the meeting that the winding up of the bank is for practical purposes complete.
- (7) A bank liquidator must retain sufficient sums to cover the expenses of the final meeting under section 115 above.

Other processes

117 Bank insolvency as alternative order

- (1) On a petition for a winding up order or an application for an administration order in respect of a bank the court may, instead, make a bank insolvency order.
- (2) A bank insolvency order may be made under subsection (1) only—
 - (a) on the application of the FSA made with the consent of the Bank of England, or
 - (b) on the application of the Bank of England.

118 Voluntary winding-up

A resolution for voluntary winding up of a bank under section 84 of the Insolvency Act 1986 shall have no effect without the prior approval of the court.

119 Exclusion of other procedures

- (1) The following paragraphs of Schedule B1 to the Insolvency Act 1986 (administration) apply to a bank insolvency order as to an administration order.
- (2) Those paragraphs are—
 - (a) paragraph 40 (dismissal of pending winding-up petition), and
 - (b) paragraph 42 (moratorium on insolvency proceedings).
- (3) For that purpose—
 - (a) a reference to an administration order is a reference to a bank insolvency order,
 - (b) a reference to a company being in administration is a reference to a bank being in bank insolvency, and
 - (c) a reference to an administrator is a reference to a bank liquidator.

120 Notice to FSA of preliminary steps

- (1) An application for an administration order in respect of a bank may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a bank may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a bank may not be made unless the conditions below are satisfied.

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- (4) An administrator of a bank may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the FSA has been notified—
 - (a) by the applicant for an administration order, that the application has been made,
 - (b) by the petitioner for a winding up order, that the petition has been presented,
 - (c) by the bank, that a resolution for voluntary winding up may be made, or
 - (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—
 - (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
 - (b) both—
 - (i) the FSA has informed the person who gave the notice that it does not intend to apply for a bank insolvency order, and
 - (ii) the Bank of England has informed the person who gave the notice that it does not intend to apply for a bank insolvency order or to exercise a stabilisation power under Part 1.
- (8) Condition 4 is that no application for a bank insolvency order is pending.
- (9) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a bank's creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (10) Where the FSA receives notice under Condition 1—
 - (a) the FSA shall inform the Bank of England,
 - (b) the FSA shall inform the person who gave the notice, within the period in Condition 3(a), whether it intends to apply for a bank insolvency order, and
 - (c) if the Bank of England decides to apply for a bank insolvency order or to exercise a stabilisation power under Part 1, the Bank shall inform the person who gave the notice, within the period in Condition 3(a).

121 Disqualification of directors

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act—
 - (a) a reference to liquidation includes a reference to bank insolvency,
 - (b) a reference to winding up includes a reference to making or being subject to a bank insolvency order,
 - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank insolvency order, and
 - (d) a reference to a liquidator includes a reference to a bank liquidator.

- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank insolvency order, the responsible office-holder is the bank liquidator.
- (4) After section 21 of the Disqualification Act (interaction with Insolvency Act) insert—

“21A Bank insolvency

Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.”

122 Application of insolvency law

- (1) The Secretary of State and the Treasury may by order made jointly—
 - (a) provide for an enactment about insolvency to apply to bank insolvency (with or without specified modifications);
 - (b) amend, or modify the application of, an enactment about insolvency in consequence of this Part.
- (2) An order under subsection (1)—
 - (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.

Miscellaneous

123 Role of FSCS

- (1) For the purpose of co-operating in the pursuit of Objective 1 in section 99 the FSCS—
 - (a) may make or arrange for payments to or in respect of eligible depositors of the bank, and
 - (b) may make money available to facilitate the transfer of accounts of eligible depositors of the bank.
- (2) The FSCS may include provision about expenditure under this section; and, in particular—
 - (a) money may be raised through the imposition of a levy under Part 15 of the Financial Services and Markets Act in respect of expenditure or possible expenditure under this section, and
 - (b) sums raised in connection with the scheme (whether or not under paragraph (a)) may be expended under this section.
- (3) In section 220(3)(a) of the Financial Services and Markets Act 2000 (Compensation Scheme: information) after “liquidator” insert “, bank liquidator”.
- (4) The FSCS is entitled to participate in proceedings for or in respect of a bank insolvency order.
- (5) A bank liquidator must—
 - (a) comply with a request of the FSCS for the provision of information, and

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- (b) provide the FSCS with any other information which the bank liquidator thinks might be useful for the purpose of co-operating in the pursuit of Objective 1.
- (6) A bank liquidator may enter into an agreement under section 221A of the Financial Services and Markets Act 2000 (Compensation Scheme: delegation of functions) for the bank liquidator to exercise functions of the scheme manager for the purpose of facilitating the pursuit of Objective 1.
- (7) Where a bank insolvency order is made in respect of a bank, the fact that it later ceases to be an authorised person does not prevent the operation of the compensation scheme in respect of it; and for that purpose the bank is a relevant person within the meaning of section 213(9) of the Financial Services and Markets Act 2000 despite the lapse of authorisation.

124 Transfer of accounts

- (1) This section applies where a bank liquidator arranges, in pursuit of Objective 1 in section 99, for the transfer of eligible depositors' accounts from the bank to another financial institution.
- (2) The arrangements may disapply, or provide that they shall have effect despite, any restriction arising by virtue of contract or legislation or in any other way.
- (3) In subsection (2) “restriction” includes—
 - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
 - (b) a requirement for consent (by any name).
- (4) In making the arrangements mentioned in subsection (1) the bank liquidator must ensure that eligible depositors will be able to remove money from transferred accounts as soon as is reasonably practicable after transfer.

125 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) After subsection (1) insert—
 - “(1A) Rules may also be made for the purpose of giving effect to Part 2 of the Banking Act 2009 (bank insolvency orders); and rules for that purpose shall be made—
 - (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—
 - (i) the Treasury, and
 - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
 - (b) in relation to Scotland, by the Treasury.”
- (3) In subsection (2)—
 - (a) after “subsection (1),” insert “(1A)”; and
 - (b) in paragraph (b), after “Secretary of State” insert “or the Treasury”.
- (4) After subsection (2B) insert—

“(2C) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 2 of the Banking Act 2009.”

- (5) In subsection (3)—
 - (a) after “provisional liquidator” insert “or bank liquidator”, and
 - (b) after “Parts I to VII of this Act” insert “or Part 2 of the Banking Act 2009”.
- (6) In subsection (5), after “the Secretary of State” insert “or the Treasury”.
- (7) In paragraph 27 of Schedule 8 to the Insolvency Act 1986 (provisions capable of inclusion in company insolvency rules), after “Secretary of State” insert “or the Treasury”.
- (8) Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee) shall not apply to the first set of rules which is made in reliance on this section.

126 Fees

After section 414(8) of the Insolvency Act 1986 (fees orders) insert—

“(8A) This section applies in relation to Part 2 of the Banking Act 2009 (bank insolvency) as in relation to Parts I to VII of this Act.”

127 Insolvency Services Account

A bank liquidator who obtains money by realising assets in the course of the bank insolvency must pay it into the Insolvency Services Account (kept by the Secretary of State).

128 Evidence

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (a) insert (before the “and”)—

“(aa) a statement made in pursuance of a requirement imposed by or under Part 2 of the Banking Act 2009 (bank insolvency),”.

129 Co-operation between courts

- (1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts).
- (2) At the end of that section add—
 - “(13) Section 129 of the Banking Act 2009 provides for provisions of that Act about bank insolvency to be “insolvency law” for the purposes of this section.”

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130 Building societies

- (1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
 - (a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;
 - (b) amend an enactment amended by this Part;
 - (c) replicate, with or without modifications, any provision of this Part;
 - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.
- (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 building societies.

131 Credit unions

- (1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
 - (a) amend the Credit Unions Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions;
 - (b) amend an enactment amended by this Part;
 - (c) replicate, with or without modifications, any provision of this Part;
 - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies 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.

132 Partnerships

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships.
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships).

- (3) This section does not apply in relation to partnerships constituted under the law of Scotland.

133 Scottish partnerships

- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland.
- (2) An order—
- (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

134 Northern Ireland

In the application of this Part to Northern Ireland—

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,
- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,
- (c) references to the Secretary of State, except in section 122, are to be treated as references to the Department of Enterprise, Trade and Investment,
- (d) a reference to the Insolvency Services Account is to be treated as a reference to the Insolvency Account,
- (e) a 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,
- (f) the Judgments Enforcement (Northern Ireland) Order 1981 has effect in place of sections 183 and 184 of the Insolvency Act 1986 (applied by section 103 above), and
- (g) the reference in section 132 to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

135 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (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.