



Banking Act 2009

2009 CHAPTER 1

PART 3

BANK ADMINISTRATION

Miscellaneous

155 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 administration,
 - (b) a reference to winding up includes a reference to making or being subject to a bank administration order,
 - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank administration order, and
 - (d) a reference to a liquidator includes a reference to a bank administrator.
- (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 administration order, the responsible office-holder is the bank administrator.
- (4) After section 21A of the Disqualification Act (bank insolvency – inserted by section 121 above) insert—

“21B Bank administration

Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.”

Status: This is the original version (as it was originally enacted).

156 Application of other law

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

157 Other processes

- (1) Before exercising an insolvency power in respect of a residual bank the FSA must give notice to the Bank of England, which may participate in any proceedings arising out of the exercise of the power.
- (2) In subsection (1)—
 - (a) “residual bank” means a bank all or part of whose business has been transferred to a commercial purchaser in accordance with section 11 or to a bridge bank in accordance with section 12, and
 - (b) “insolvency power” means—
 - (i) section 359 of the Financial Services and Markets Act 2000 (application for administration order), and
 - (ii) section 367 of that Act (winding-up petition).

158 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, a 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.

159 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 Union 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, a 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.

160 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) After subsection (1A) (inserted by section 125 above) insert—

“(1B) Rules may also be made for the purpose of giving effect to Part 3 of the Banking Act 2009 (bank administration); 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), after “(1A)” (inserted by section 125 above) insert “or (1B)”.
- (4) After subsection (2C) (inserted by section 125 above) insert—

“(2D) 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 3 of the Banking Act 2009.”
- (5) In subsection (3)—
 - (a) after “bank liquidator” (inserted by section 125 above) insert “or administrator”, and
 - (b) after “Part 2” (inserted by section 125 above) insert “or 3”.

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- (6) 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.

161 Fees

After section 414(8A) of the Insolvency Act 1986 (fees orders – inserted by section 126 above) insert—

“(8B) This section applies in relation to Part 3 of the Banking Act 2009 (bank administration) as in relation to Parts I to VII of this Act.”

162 Evidence

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (aa) (inserted by section 128 above) insert (before the “and”)—

“(ab) a statement made in pursuance of a requirement imposed by or under Part 3 of that Act (bank administration).”

163 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.

164 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.

165 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 (after the subsection added by section 129) add—

“(14) Section 165 of the Banking Act 2009 provides for provisions of that Act about bank administration to be “insolvency law” for the purposes of this section.”

166 Interpretation: general

- (1) 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.
- (2) In this Part “the FSA” means the Financial Services Authority.
- (3) 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; andfor 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.
- (4) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (5) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (6) A reference in this Part to action includes a reference to inaction.

167 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) the reference in section 159 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, and
- (d) in section 163—
 - (i) the reference to the Secretary of State is to be treated as a reference to the Department for Enterprise, Trade and Investment, and
 - (ii) the reference to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

168 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

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- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.