



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 8

#### AMENDMENTS OF BANKING ACT 2009

##### *Special resolution regime and bank administration*

#### **96 Objectives and conditions**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 3 (interpretation: other expressions), after “this Part—” insert—

““client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with).”
- (3) In section 4 (special resolution objectives), after subsection (8) insert—

“(8A) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.

(8B) Objective 7 is to minimise adverse effects on institutions (such as investment exchanges and clearing houses) that support the operation of financial markets.”
- (4) In section 8(2) (Condition A: private sector purchaser and bridge bank)—
  - (a) in paragraph (b) for “the banking systems of the United Kingdom, or” substitute “those systems,”, and
  - (b) after paragraph (c) insert “, or
  - (d) the protection of any client assets that may be affected.”
- (5) In section 47 (restriction of partial transfers), for subsection (3) substitute—

“(3) Provision under subsection (2) may, in particular, refer to—

  - (a) particular classes of deposit;

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(b) particular classes of client assets.”

(6) In the Table in section 261 (index of defined terms), after the entry relating to “central counterparty clearing services”, insert—

“Client assets (Part 1) | 3”.

## 97 Private sector purchasers

(1) The Banking Act 2009 is amended as follows.

(2) After section 26 insert—

### “26A Private sector purchaser: reverse share transfer

(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 11(2) (“the original instrument”) providing for the transfer of securities issued by a bank to a person (“the original transferee”).

(2) The Bank of England may make one or more private sector reverse share transfer instruments in respect of securities issued by the bank and held by the original transferee.

(3) A private sector reverse share transfer instrument is a share transfer instrument which—

- (a) provides for transfer to the transferor under the original instrument;
- (b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).

(4) The Bank of England must not make a private sector reverse share transfer instrument without the written consent of the original transferee.

(5) Sections 7, 8 and 50 do not apply to a private sector reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(6) Before making a private sector reverse share transfer instrument the Bank of England must consult—

- (a) the PRA,
- (b) the FCA, and
- (c) the Treasury.

(7) Section 26 applies where the Bank of England has made a private sector reverse share transfer instrument.”

(3) In section 29 (reverse share transfer)—

- (a) in subsection (3) for the words from “securities”, in the second place, to the end substitute “securities issued by the bank and held by a transferee under the onward share transfer order (“the onward transferee”).”, and
- (b) after subsection (4) insert—

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“(4A) The Treasury must not make a reverse share transfer order under subsection (3) unless—

- (a) the onward transferee is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the reverse share transfer order is made with the written consent of the onward transferee.”

(4) In section 31 (bridge bank: reverse share transfer)—

- (a) in subsection (1) omit the words from “providing for” to the end,
- (b) in subsection (2) for “person within subsection (1)(a) to (c)” substitute “transferee under the original instrument”,
- (c) after subsection (3) insert—

“(3A) The Bank of England must not make a bridge bank reverse share transfer instrument unless—

- (a) the transferee under the original instrument is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the bridge bank reverse share transfer instrument is made with the written consent of the transferee under the original instrument.”

(5) After section 42 insert—

**“42A Private sector purchaser: reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) (“the original instrument”) providing for the transfer of property, rights or liabilities of a bank to a person (“the original transferee”).
- (2) The Bank of England may make one or more private sector reverse property transfer instruments in respect of property, rights or liabilities of the original transferee.
- (3) A private sector reverse property transfer instrument is a property transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).
- (4) The Bank of England must not make a private sector reverse property transfer instrument without the written consent of the original transferee.
- (5) Sections 7, 8 and 50 do not apply to a private sector reverse property transfer instrument (but it is to be treated in the same way as any other property transfer

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instrument for all other purposes including for the purposes of the application of a power under this Part).

- (6) Before making a private sector reverse property transfer instrument the Bank of England must consult—
- (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.

- (7) Section 42 applies where the Bank of England has made a private sector reverse property transfer instrument.”

- (6) In section 44 (reverse property transfer)—

- (a) in subsection (3) for “of a transferee” to the end substitute “of a transferee under the onward property transfer instrument (“the onward transferee”).”,
- (b) after subsection (4) insert—

“(4A) The Bank of England must not make a reverse property transfer instrument unless—

- (a) the onward transferee is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a company wholly owned by a nominee of the Treasury, or
- (b) the reverse property transfer instrument is made with the written consent of the onward transferee.”

- (7) In section 46 (temporary public ownership: reverse property transfer)—

- (a) in subsection (1) omit from “providing for” to the end, and
- (b) after subsection (3) insert—

“(3A) The Treasury must not make a reverse property transfer order unless—

- (a) the transferee under the original order is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the reverse property transfer order is made with the written consent of the transferee under the original order.”

- (8) In section 48A (creation of liabilities), in subsection (1) after “42(3)(b),” insert “42A(3)(b),”.

- (9) In section 53 (onward and reverse transfers: compensation), in subsection (1)—

- (a) before paragraph (a) insert—
  - “(za) the Bank of England makes a private sector reverse share transfer instrument under section 26A,” and
- (b) after paragraph (d) insert—
  - “(da) the Bank of England makes a private sector reverse property transfer instrument under section 42A,”.

- (10) In section 83 (supplemental), in subsection (2)(d)—

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- (a) at the end of sub-paragraph (iii) insert “and”, and
- (b) for sub-paragraphs (iv) and (v) substitute—
  - “(iv) is not subject to the restriction in section 29(3) that the securities issued by the bank were transferred under the original order (as defined in section 29(1)).”

(11) In the Table in section 261 (index of defined terms), after the entry relating to “partial property transfer”, insert—

“Private sector reverse property transfer instrument	42A
Private sector reverse share transfer instrument	26A”

## **98 Property transfer instruments: property held on trust**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 34(7) (effect of property transfer instruments: provision in respect of property held on trust), in paragraph (a) omit “(which provision may remove or alter the terms of the trust)”.
- (3) At the end of section 34 insert—
  - “(8) Provision under subsection (7)(a) may remove or alter the terms of the trust on which the property is held only to the extent that the Bank of England thinks it necessary or expedient for the purpose of transferring—
    - (a) the legal or beneficial interest of the transferor in the property;
    - (b) any powers, rights or obligations of the transferor in respect of the property.
  - (9) In subsection (8) references to the transferor are references to the transferor under the property transfer instrument.”
- (4) In section 45 (temporary public ownership: property transfer orders) after subsection (5) insert—
  - “(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury.”
- (5) In section 46 (temporary public ownership: reverse property transfer orders) after subsection (5) insert—
  - “(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury.”

## **99 Reports following exercise of a stabilisation power**

- (1) After section 79 of the Banking Act 2009 insert—

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**“79A Private sector purchaser: report**

- (1) This section applies where the Bank of England sells all or part of a bank's business to a commercial purchaser.
  - (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under section 11(2).
  - (3) The report must comply with any requirements as to content specified by the Treasury.
  - (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 11(2).”
- (2) After section 81 of that Act insert—

**“81A Accounting information to be included in reports under sections 80 and 81**

- (1) A report under section 80(1) or 81 must include accounting information in respect of the bank or bridge bank that is the subject of the report.
  - (2) In this section “accounting information” means—
    - (a) a balance sheet that, in the opinion of the person making the report, gives a true and fair view of the state of affairs of the bank or bridge bank as at the reporting date, and
    - (b) a profit and loss account that, in the opinion of the person making the report, gives a true and fair view of the profit or loss of the bank or bridge bank for the reporting period.
  - (3) In this section—
    - (a) “reporting period” means the period to which the report relates, and
    - (b) “reporting date” means the last day of the reporting period.”
- (3) In section 1(6) of that Act (table describing provisions of Part 1), in the entry relating to sections 76 to 81, for “81” substitute “81A”.

**100 Groups**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), for the entry in the Table relating to sections 82 and 83 substitute—

“Sections 81B to 83 | Groups”.

- (3) In section 20 (directors), after subsection (1) insert—
 

“(1A) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.”
- (4) After section 36 insert—

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### **“36A Directors**

- (1) A property transfer instrument may enable the Bank of England—
  - (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.”
- (5) For the italic heading before section 82 substitute “*Groups*”, and after that heading insert—

### **“81B Sale to commercial purchaser and transfer to bridge bank**

- (1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.
- (2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.
- (3) Condition 2 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in—
  - (a) the stability of the financial systems of the United Kingdom,
  - (b) the maintenance of public confidence in the stability of those systems,
  - (c) the protection of depositors, or
  - (d) the protection of any client assets that may be affected.
- (4) Condition 3 (which applies only in a financial assistance case) is that—
  - (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
  - (b) in the Bank's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.
- (5) Condition 4 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank of England must consult—
  - (a) the Treasury,
  - (b) the PRA, and
  - (c) the FCA.

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- (7) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.
- (8) In this section “financial assistance case” means a case in which the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank in the same group for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.

### **81C Section 81B: supplemental**

- (1) In the following provisions references to banks include references to banking group companies—
  - (a) section 10(1), and
  - (b) section 75(5)(a).
- (2) Where the Bank of England exercises a stabilisation power in respect of a banking group company in reliance on section 81B, the provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.
- (3) For the purposes of the application of section 143 (grounds for applying for bank administration order), the reference in subsection (2) to the Bank of England exercising a stabilisation power includes a case where the Bank of England intends to exercise such a power.

### **81D Interpretation: “banking group company” &c.**

- (1) In this Part “banking group company” means an undertaking—
  - (a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a bank, and
  - (b) in respect of which any conditions specified in an order made by the Treasury are met.
- (2) An order may require the Bank of England to consult specified persons before determining whether the conditions are met.
- (3) An order—
  - (a) is to 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) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—
  - (a) the order may be made, and
  - (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.
- (5) The lapse of an order under subsection (4)(b)—



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- (a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
- (b) does not prevent the making of a new order (in new terms).
- (6) Undertakings are in the same group for the purposes of sections 81B, 81C and this section if they are group undertakings in respect of each other.
- (7) Expressions defined in the Companies Act 2006 have the same meaning in section 81B and this section as in that Act.”
- (6) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 78 insert—
- |      |                                    |   |
|------|------------------------------------|---|
| “81D | Meaning of “banking group company” | Draft affirmative resolution (except for urgent cases)” |
|------|------------------------------------|---|
- (7) In the Table in section 261 (index of defined terms), after the entry relating to “bank insolvency order” insert—
- |                        |       |
|------------------------|-------|
| “Banking group company | 81D”. |
|------------------------|-------|

## **101 Application to investment firms**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), after the entry in the Table relating to sections 84 to 89 insert—
- |              |                    |
|--------------|--------------------|
| “Section 89A | Investment firms”. |
|--------------|--------------------|
- (3) In section 2 (interpretation: “bank”), at the end insert—
- “(8) Section 89A applies this Part to investment firms with modifications.”
- (4) In section 75(5) (power to change law: application to other institutions), omit the “or” following paragraph (c) and after that paragraph insert—
- “(ca) to investment firms.”.
- (5) After section 89 (and in Part 1) insert—

### *“Investment firms*

#### **89A Application to investment firms**

- (1) This Part applies to investment firms as it applies to banks, subject to the modifications in subsection (2).
- (2) Ignore sections 1(2)(b), 4(2)(b) and (6), 5(1)(b), 7(7), 8(2)(c) and 14(5).”
- (6) After section 159 insert—

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### **“159A Application to investment firms**

This Part applies to investment firms as it applies to banks.”

(7) After section 258 insert—

### **“258A Investment firm”**

(1) In this Act “investment firm” means a UK institution which is (or, but for the exercise of a stabilisation power, would be) an investment firm for the purposes of Directive [2006/49/EC](#) on the capital adequacy of investment firms and credit institutions.

(2) But “investment firm” does not include—

- (a) an institution which is also—
  - (i) a bank (within the meaning of Part 1),
  - (ii) a building society (within the meaning of section 119 of the Building Societies Act 1986), or
  - (iii) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
- (b) an institution which is of a class or description specified in an order made by the Treasury.

(3) An order—

- (a) is to 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) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—

- (a) the order may be made, and
- (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.

(5) The lapse of an order under subsection (4)(b)—

- (a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
- (b) does not prevent the making of a new order (in new terms).

(6) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.”

(8) In the Table in section 259 (statutory instruments), in Part 7 after the entry relating to section 257 insert—

“258A | Meaning of “investment firm” | Draft affirmative resolution (except for urgent cases)”

(9) In the Table in section 261 (index of defined terms), after the entry relating to “inter-bank payment system”, insert—

“Investment firm | 258A”.

(10) In section 214B(1)(a) of FSMA 2000 (contribution to costs of special resolution regime) for “or credit union” substitute “, credit union or investment firm”.

## **102 Application to UK clearing houses**

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), after the entry in the Table relating to section 89A, insert—

“Sections 89B to 89G | UK clearing houses”.

(3) In section 2 (interpretation: “bank”), after subsection (8) insert—

“(9) Section 89B applies this Part to UK clearing houses with modifications.”

(4) After section 39 insert—

### **“39A Banks which are clearing houses**

Sections 89C to 89E (clearing house rules, membership and recognition) apply in relation to a bank which would be a UK clearing house but for section 89G(2) (exclusion of banks etc from definition of UK clearing house) as they apply in relation to a UK clearing house.”

(5) In section 75(5) (power to change law: application to other institutions), after paragraph (ca) insert—

“(cb) to UK clearing houses, or”.

(6) After section 89A (and in Part 1) insert—

*“UK clearing houses*

### **89B Application to UK clearing houses**

- (1) This Part applies to UK clearing houses as it applies to banks, subject to—
- (a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and
  - (b) any other necessary modifications.
- (2) For section 13 substitute—

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### **“13 Transfer of ownership**

- (1) The third stabilisation option is to transfer ownership of the UK clearing house to any person.
- (2) For that purpose the Bank of England may make one or more share transfer instruments.”
- (3) For sections 28 and 29 substitute—

### **“28 Onward transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which—
  - (a) provides for the transfer of—
    - (i) securities which were issued by the UK clearing house before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
    - (ii) securities which were issued by the UK clearing house after the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the UK clearing house (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.
- (5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—
  - (a) the Bank of England,
  - (b) a nominee of the Treasury, or
  - (c) a company wholly owned by the Bank of England or the Treasury.
- (6) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (7) Before making an onward share transfer instrument the Bank of England must consult—
  - (a) if the UK clearing house is a PRA-authorized person, the PRA, and

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(b) the FCA.

(8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

## **29 Reverse share transfer**

(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) (“the original instrument”) providing for the transfer of securities issued by a UK clearing house to a person (“the original transferee”).

(2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by the original transferee (whether or not they were transferred by the original instrument).

(3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by a transferee under the onward share transfer instrument (“the onward transferee”).

(4) A reverse share transfer instrument is a share transfer instrument which—

- (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
- (b) provides for transfer to the original transferee (where subsection (3) applies);
- (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).

(5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—

- (a) the original transferee is—
  - (i) the Bank of England,
  - (ii) a company wholly owned by the Bank of England or the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the reverse share transfer instrument is made with the written consent of the original transferee.

(6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—

- (a) the onward transferee is—
  - (i) the Bank of England,
  - (ii) a company wholly owned by the Bank of England or the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the reverse share transfer instrument is made with the written consent of the onward transferee.

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- (7) Sections 7 and 8 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
  - (8) Before making a reverse share transfer instrument the Bank of England must consult—
    - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
    - (b) the FCA.
  - (9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”
- (4) For sections 45 and 46 substitute—

**“45 Transfer of ownership: property transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which—
  - (a) provides for property, rights or liabilities of the UK clearing house to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the UK clearing house (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—
  - (a) the Bank of England,
  - (b) a company wholly owned by the Bank of England or the Treasury, or
  - (c) a nominee of the Treasury.
- (5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.
- (6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.
- (7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—
  - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
  - (b) the FCA.

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#### **46 Transfer of ownership: reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).
  - (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
  - (3) A reverse property transfer instrument is a property transfer instrument which—
    - (a) provides for transfer to the transferor under the original instrument;
    - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
  - (4) The Bank of England must not make a reverse property transfer instrument unless—
    - (a) the transferee under the original instrument is—
      - (i) the Bank of England,
      - (ii) a company wholly owned by the Bank of England or the Treasury, or
      - (iii) a nominee of the Treasury, or
    - (b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.
  - (5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.
  - (6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—
    - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
    - (b) the FCA.
  - (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”
- (5) For section 81 substitute—

#### **“81 Transfer of ownership: report**

- (1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a UK clearing house under section 13(2).
- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.

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- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2).”
- (6) The table mentioned in subsection (1)(a) is as follows—

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 1	<p>Ignore subsection (2)(b) and (c).</p> <p>In subsection (3)(c), for “to temporary public ownership” substitute “of ownership”.</p> <p>In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “15, 26 and 28 to 31”.</p>
Section 4	<p>Ignore subsection (2)(b) and (c).</p> <p>Ignore subsection (3)(a), (b) and (ba).</p> <p>In subsection (5), for “banking” substitute “financial”.</p> <p>In subsection (6), for “protect depositors” substitute “maintain the continuity of central counterparty clearing services”.</p> <p>Ignore subsections (8A), (8B) and (9).</p>
Section 5	<p>Ignore subsection (1)(b) and (c).</p> <p>In subsection (3)—</p> <p style="padding-left: 20px;">(a) for “Sections 12 and 13 require” substitute “Section 12 requires”, and</p> <p style="padding-left: 20px;">(b) ignore the words “and temporary public ownership”.</p>
Section 6	<p>In subsection (4)—</p> <p style="padding-left: 20px;">(a) after “Before” insert “issuing or”, and</p> <p style="padding-left: 20px;">(b) ignore paragraph (d).</p> <p>In subsection (5) after “after” insert “issuing or”.</p>
Section 7	<p>In subsection (1), for “PRA” substitute “Bank of England”.</p> <p>In subsection (2), for the words following “satisfy the” substitute “recognition requirements”.</p> <p>The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the UK clearing house.</p> <p>In subsection (3), for “satisfy the threshold conditions” substitute “maintain the continuity of any critical clearing services it provides while also satisfying the recognition requirements”.</p> <p>In subsection (4), for “PRA” substitute “Bank of England”.</p> <p>Ignore subsection (4A).</p>



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<i>Provision</i>	<i>Modification</i>
	<p>In subsection (5)—</p> <ul style="list-style-type: none"><li>(a) for “PRA” substitute “Bank of England”, and</li><li>(b) ignore paragraph (a) unless the UK clearing house is a PRA- authorised person, in which case for “Bank of England” substitute “PRA”.</li></ul> <p>Ignore subsections (7) and (8).</p> <p>For the purposes of section 7—</p> <ul style="list-style-type: none"><li>(a) “critical clearing services” means central counterparty clearing services the withdrawal of which may, in the Bank of England's opinion, threaten the stability of the financial systems of the United Kingdom, and</li><li>(b) “recognition requirements” means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.</li></ul>
Section 8	<p>In subsection (1), omit “in accordance with section 11(2) or 12(2)”.</p> <p>Ignore subsection (2)(c) and (d).</p> <p>In subsection (3), ignore paragraph (a) unless the UK clearing house is a PRA- authorised person.</p> <p>In subsection (4), ignore the words “in accordance with section 11(2) or 12(2)”.</p>
Section 9	Ignore section 9.
Section 11	Ignore subsection (2)(a).
Section 13	See above.
Section 14	Ignore subsection (5).
Section 16	Ignore section 16.
Section 20	Ignore subsections (2) and (4).
Section 24	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA- authorised person.
Section 25	Ignore section 25.
Section 26	<p>In subsection (1), for “11(2)” substitute “13(2)”.</p> <p>In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA- authorised person.</p> <p>In subsection (6), for “11(2)” substitute “13(2)”.</p>
Sections 26A and 27	Ignore sections 26A and 27.
Sections 28 and 29	See above.
Section 30	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA- authorised person.
Section 31	In subsection (4), for “7, 8 and 51” substitute “7 and 8”.

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<i>Provision</i>	<i>Modification</i>
	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 41	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorized person.
Section 42	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 42A	In subsection (5), for “7, 8 and 50” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 43	In subsection (6), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (7), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Section 44	In subsection (5), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.
Sections 45 and 46	See above.
Sections 49 to 53	Ignore sections 49 to 53.
Section 54	In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.
	In subsection (4)(b), for “compensation scheme order” substitute “the order under section 89F”.
Section 55	In subsection (10), for “to which section 62 applies” substitute “under section 89F”.
Section 56	In subsection (6), for “to which section 62 applies” substitute “under section 89F”.
Section 57	In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.
	In subsection (4)(a), for “has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled” substitute “no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part”.
Section 58	In subsection (1), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.
	Ignore subsection (3).
	In subsection (4), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.

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<i>Provision</i>	<i>Modification</i>
Section 59	In subsection (5), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”. Ignore subsections (6) to (8). Ignore section 59.
Section 60	In subsection (3)(c), ignore the references to bank insolvency and bank administration. In subsection (4)— (a) ignore paragraphs (a) and (b), and (b) in paragraph (c), for “a third party compensation order” substitute “an order under section 89F”. In subsection (5)— (a) ignore paragraph (a), and (b) in paragraph (c), for “a compensation scheme order or resolution fund order” substitute “an order under section 89F”.
Section 61	In subsection (1)— (a) ignore paragraphs (a) to (c), and (b) treat the subsection as including a reference to orders under section 89F. Ignore subsection (2)(b).
Section 62	Ignore section 62.
Section 65	In subsection (1)(a)(ii), for “order” substitute “instrument”. In subsection (3)— (a) in paragraph (a), ignore the words “where subsection (1)(a)(i) applies”, and (b) ignore paragraph (b).
Section 66	In subsection (1)— (a) in paragraph (a), ignore the reference to section 11(2)(a), (b) in paragraph (d)(i), ignore the words following “England”, and (c) ignore paragraph (d)(ii).
Section 68	In subsection (1)(a), for “order” substitute “instrument”.
Section 69	In subsection (4)— (a) in paragraph (a), ignore the words “in relation to sections 63 and 64”, and (b) ignore paragraph (b).
Section 70	In subsection (3)— (a) in paragraph (a), ignore the words “in relation to section 63”, and (b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).

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<i>Provision</i>	<i>Modification</i>
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words “share transfer instruments and”.
Section 81	See above.
Section 81B	In subsection (1), for “or 12(2)” substitute “, 12(2) or 13(2)”.
	Ignore subsection (3)(c) and (d).
	In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words “and the bank administration procedure”.
	Ignore subsection (3).
Sections 82 and 83	Ignore sections 82 and 83.

### **89C Clearing house rules**

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for the rules of the clearing house.
- (2) In particular, an instrument may—
  - (a) modify or amend the rules of a UK clearing house;
  - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this section may (but need not) be limited so as to have effect—
  - (a) for a specified period, or
  - (b) until a specified event occurs or does not occur.

### **89D Clearing house membership**

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for membership of the clearing house.
- (2) In particular, an instrument may—
  - (a) make provision modifying the terms on which a person is a member of a UK clearing house;
  - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

### **89E Recognition of transferee company**

- (1) The Bank of England may provide for a company to which the business of a UK clearing house is transferred in accordance with section 12(2) to be treated as a recognised clearing house for the purposes of the Financial Services and Markets Act 2000—
  - (a) for a specified period, or
  - (b) until a specified event occurs.
- (2) The provision may have effect—
  - (a) for a period specified in the instrument, or
  - (b) until the occurrence of an event specified or described in the instrument.
- (3) The power under this section—
  - (a) may be exercised only with the consent of the Treasury, and
  - (b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

### **89F Clearing house compensation orders**

- (1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.
- (2) The order may make provision establishing a scheme—
  - (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
  - (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
  - (c) for compensation to be paid to persons other than transferors.
- (3) An order—
  - (a) is to 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.

### **89G Interpretation: “UK clearing house” &c.**

- (1) In this Part “UK clearing house” means a clearing house—
  - (a) which is incorporated in, or formed under the law of any part of, the United Kingdom,
  - (b) which provides central counterparty clearing services, and
  - (c) in relation to which a recognition order is in force under Part 18 of the Financial Services and Markets Act 2000.
- (2) But “UK clearing house” does not include a clearing house which is also—
  - (a) a bank,

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- (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),
  - (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
  - (d) an investment firm.
- (3) Where a stabilisation power is exercised in respect of a UK clearing house, it does not cease to be a UK clearing house for the purposes of this Part if the recognition order referred to in subsection (1)(c) is later revoked.
- (4) In this Part—  
“central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and  
“PRA-authorized person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000.”
- (7) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 89 insert—
- |      |                                    |                               |
|------|------------------------------------|-------------------------------|
| “89F | Clearing house compensation orders | Draft affirmative resolution” |
|------|------------------------------------|-------------------------------|
- (8) In the Table in section 261 (index of defined terms)—
- (a) after the entry relating to “bridge bank share transfer instrument” insert—  

“central counterparty clearing services	89G”
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  - (b) after the entry relating to “partial property transfer” insert—
  - “PRA-authorized person
  - (c) at the end insert—  

“UK clearing house	89G”.
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### 103 State aid

After section 145 of the Banking Act 2009 insert—

#### “145A Power to direct bank administrator

- (1) This section applies where—
- (a) a bank administration order has been made, and
  - (b) the Treasury are of the opinion that anything done, or proposed to be done, in connection with the exercise of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of TFEU applies (“State aid”).
- (2) The Treasury may, in writing, direct the bank administrator to take specified action to enable the United Kingdom to fulfil any of the purposes specified in subsection (3).

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- (3) The purposes are—
- (a) to inform the European Commission that State aid has been, may have been, or may be, given;
  - (b) to obtain a decision from the Commission whether State aid—
    - (i) has been given, or
    - (ii) would be given, if the action proposed was taken;
  - (c) to apply for approval that such aid is, or would be, compatible with the internal market, within the meaning of Article 107 of TFEU;
  - (d) to comply with any requirements to enable an investigation under Article 108 of TFEU to be carried out;
  - (e) to comply with any undertaking given to the European Commission in connection with the application for approval referred to in paragraph (c);
  - (f) to comply with any requests from the Commission relating to the application for approval, including the provision of information;
  - (g) to comply with any undertakings given to the Commission, or conditions imposed by the Commission, where approval has been given.
- (4) Before giving a direction under this section the Treasury must consult the bank administrator.
- (5) The bank administrator must comply with the direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.
- (6) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) A direction may specify circumstances in which the bank administrator is immune from liability in damages.
- (8) Immunity by virtue of subsection (7) does not extend to action—
- (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (9) If the United Kingdom has made, or proposes to make, an application to the Council of the European Union under Article 108 of TFEU, references in subsection (3) to the Commission are to be read as including references to the Council.
- (10) In this section “TFEU” means the Treaty on the Functioning of the European Union.”

#### *Inter-bank payment systems*

### **104 Inter-bank payment systems**

- (1) Part 5 of the Banking Act 2009 (inter-bank payment systems) is amended as follows.
- (2) After section 186 insert—

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**“186A Amendment of recognition order**

- (1) The Treasury may amend a recognition order.
  - (2) Before amending a recognition order the Treasury must—
    - (a) consult the Bank of England,
    - (b) notify the operator of the recognised inter-bank payment system, and
    - (c) consider any representations made.
  - (3) In addition, the Treasury—
    - (a) must consult the FCA before amending a recognition order in respect of a payment system the operator of which—
      - (i) is, or has applied to become, a recognised investment exchange, or
      - (ii) has, or has applied for, a Part 4A permission, and
    - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.
  - (4) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the amendment of its recognition order.”
- (3) For section 191 substitute—

**“191 Directions**

- (1) The Bank of England may give directions in writing to the operator of a recognised inter-bank system.
- (2) A direction may—
  - (a) require or prohibit the taking of specified action in the operation of the system;
  - (b) set standards to be met in the operation of the system.
- (3) If a direction is given for the purpose of resolving or reducing a threat to the stability of the UK financial system, the operator (including its officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.
- (4) A direction given for the purpose mentioned in subsection (3) must—
  - (a) include a statement that it is given for that purpose, and
  - (b) inform the operator of the effect of that subsection.
- (5) The Treasury may by order confer immunity on any person from liability in damages in respect of action or inaction in accordance with a direction (including a direction given for the purpose mentioned in subsection (3)).
- (6) An order—
  - (a) is to be made by statutory instrument, and
  - (b) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) An immunity conferred by or under this section does not extend to action or inaction—



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- (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.”
- (4) In section 186 (procedure)—
  - (a) for subsection (2) substitute—
    - “(2) In addition, the Treasury—
      - (a) must consult the FCA before making a recognition order in respect of a payment system the operator of which—
        - (i) is, or has applied to become, a recognised investment exchange, or
        - (ii) has, or has applied for, a Part 4A permission, and
      - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.”, and
    - (b) in subsection (3), for “or the FSA” substitute “, the FCA or the PRA”.
- (5) In section 187 (de-recognition), for subsection (4) substitute—
  - “(4) In addition, the Treasury—
    - (a) must consult the FCA before revoking a recognition order in respect of a payment system the operator of which—
      - (i) is, or has applied to become, a recognised investment exchange, or
      - (ii) has, or has applied for, a Part 4A permission, and
    - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.”
- (6) In section 192 (role of FSA)—
  - (a) in subsection (1), for “the FSA” substitute “the FCA or the PRA”,
  - (b) for subsection (2) substitute—
    - “(2) The Bank of England—
      - (a) must consult the FCA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(a), and
      - (b) must consult the PRA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(b).”,
    - (c) in subsection (3)—
      - (i) for “the FSA”, in the first place, substitute “the FCA or the PRA”,
      - (ii) for “the FSA”, in the second place, substitute “it”,
      - (iii) for “section 186(2)” substitute “section 186(2)(a) or (b)”, and
      - (iv) in paragraph (a), for “the FSA” substitute “the FCA or (as the case may be) the PRA”, and
    - (d) in the heading, for “FSA” substitute “FCA and PRA”.
- (7) After section 202 insert—

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### **“202A Injunctions**

- (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 of England, the court is satisfied—
- (a) that there has been a compliance failure by the operator of a recognised inter-bank payment system, and
  - (b) that there are steps which could be taken for remedying the failure,
- the court may make an order requiring the operator, and anyone else 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 the operator of a recognised inter-bank payment system, or
  - (b) that a person may have been knowingly concerned in a compliance failure,
- the court may make an order restraining the operator or person from dealing with any assets which it is satisfied the operator or person is reasonably likely to deal with.
- (4) 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.
- (5) 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.”
- (8) After section 203 insert—

### **“203A Records**

- (1) The Bank of England must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions under this Part, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.
- (2) The duty in subsection (1) does not apply to a decision to issue a notice under section 204(1).

### **203B Annual report**

- (1) At least once a year the Bank of England must make a report to the Treasury on—
    - (a) the discharge of its functions under this Part,
    - (b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met, and
    - (c) such other matters as the Treasury may from time to time direct.
  - (2) Subsection (1) does not require the inclusion in the report of any information whose publication would in the opinion of the Bank of England be against the public interest.
  - (3) The Treasury must lay before Parliament a copy of each report received by them under this section.”
- (9) In section 204 (information)—
- (a) after subsection (1), insert—

“(1A) The Bank of England may by notice in writing require the operator of a recognised inter-bank payment system to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of its financial stability objective.”,
  - (b) in subsections (2) and (3), after “notice” insert “under subsection (1) or (1A)”,
  - (c) in subsection (4), for paragraph (b) substitute—

“(b) the FCA;  
(ba) the PRA;”, and
  - (d) in paragraph (c) of that subsection, for “or the FSA” substitute “, the FCA or the PRA”.
- (10) In section 206A (services forming part of recognised inter-bank payment systems)—
- (a) in subsection (4)(a), for “and the FSA” substitute “, the FCA and the PRA”, and
  - (b) in subsection (6), for paragraph (b) (and the “and” at the end of it) substitute—

“(b) the FCA,  
(ba) the PRA, and”.

## **105 International obligations**

In Part 5 of the Banking Act 2009, after section 206A insert—

### **“206B International obligations**

- (1) If it appears to the Treasury that any action proposed to be taken by the Bank of England in exercising its powers under this Part would be incompatible with EU obligations or any other international obligations of the United Kingdom, the Treasury may direct the Bank not to take that action.

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- (2) If it appears to the Treasury that any action which the Bank of England has power under this Part to take is required for the purpose of implementing any such obligation, the Treasury may direct the Bank to take that action.
- (3) A direction under this section—
  - (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient, and
  - (b) is enforceable on an application by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.”

*Further amendments*

**106 Amendments relating to new regulators**

Schedule 17 contains amendments of the Banking Act 2009 related to the provisions of Part 2 of this Act.