

BANKING (SPECIAL PROVISIONS) ACT 2008

EXPLANATORY NOTES

COMMENTARY ON CLAUSES AND SCHEDULES

Transfer of securities

Section 3: Transfer of securities

17. Where the Treasury is satisfied that it is desirable for one of the purposes set out in section 2, the Treasury may, by order under section 3, transfer the shares or other securities of a deposit-taker. The securities may be transferred to the Bank of England, a nominee of the Treasury, a company wholly owned by the Bank of England or the Treasury, or any other body corporate (which could be another bank or building society).
18. Securities are defined in section 15(1) and (2) as including shares and stock; debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness; warrants or other instruments entitling the holder to acquire such securities; and other rights granted by the deposit-taker which form part of its own funds for the purposes of Section 1 of Chapter 2 of Title V of the Banking Consolidation Directive (2006/48/EC).

Schedule 1

19. [Schedule 1](#) sets out particular provisions that may be included in an order under section 3. Such provisions may be necessary to ensure the effectiveness of the transfer of the securities. These include provision for#
 - transferring the securities free from charges, trusts and other liabilities,
 - ensuring that the transfer is effective despite any restrictions imposed on the transfer of those securities, any requirements for consent, or the absence of delivery of instruments of transfer;
 - the conversion of transferred securities from one form to another (to deal, for example, with the conversion of uncertificated or bearer securities into certificated securities or the conversion of a special class of shares into ordinary shares);
 - discontinuing the listing of securities issued by the deposit-taker on a UK regulated market;
 - the alteration of terms of securities issued by, or contracts involving, the relevant institution (where, for example, those terms may frustrate the purposes of the transfer);
 - the modification of pension scheme rights and liabilities and the transfer of pension assets or accrued rights (which may be relevant to deal with a case where a deposit-taker which is a part of a banking group with shared pension arrangements is transferred);

- the removal or appointment of directors, the termination of their appointment and the variation of the terms and conditions of their employment.

Section 4: Extinguishment of subscription rights

20. This section applies where the Treasury has made an order under section 3 transferring securities of a deposit-taker. It enables the Treasury, by order, to extinguish share options or other rights held by persons to subscribe for, or otherwise acquire, securities of that deposit-taker, or any of its subsidiaries. This power might be necessary in a case where persons have an enforceable right to be issued with or otherwise acquire shares or other securities of the deposit-taker or any of its subsidiaries. The existence of, and exercise of, such rights might frustrate the purposes of a transfer.

Section 5: Compensation for securities transferred

21. Subsection (1) requires the Treasury to make a scheme for determining either#
- the amount of any compensation payable by the Treasury to those who held securities immediately before they were transferred to the public sector by an order under section 3, or
 - the amount of any consideration payable by the transferee to those who held securities transferred to the private sector under section 3, or
 - in relation to an order under section 3 that transfers securities to both the public and private sector, the amount of any compensation payable by the Treasury and the private sector transferee respectively.
22. Subsection (2) requires the Treasury to make provision, by order, for determining the amount of any compensation to be payable to those whose rights are extinguished under an order under section 4 (rights to subscribe to, or otherwise acquire, those securities of the deposit-taker or its subsidiaries). Compensation is payable by the Treasury in a transfer to the public sector and by the transferee in a transfer to the private sector. The order must make provision for determining the amount of any compensation payable by the Treasury or the private sector transferee where the relevant section 3 order transfers securities to both of them.
23. The Treasury may also provide for compensation of any other persons whose rights are affected by virtue of any provision made under section 3 or 4 (subsection (3)).
24. Subsection (4) sets out certain assumptions for determining the amount of any compensation payable by the Treasury. The assumptions are that all financial assistance provided by the Bank of England or the Treasury has been withdrawn; and that no further public financial assistance would be provided to the deposit-taker (apart from ordinary market assistance from the Bank on its usual terms). Any announcement by the Treasury that they would, if necessary, put guarantee arrangements in place would also be disregarded. These assumptions ensure that any value that is dependent on the public support provided to the deposit-taker is disregarded when compensation is determined. (Section 9(2) enables the order to provide for further assumptions to be made in connection with the assessment of compensation).
25. An order must be made under section 5 within three months of the transfer to which it relates, although a second or subsequent order may be made after the end of that period (subsections (8) and (9)).