

BANKING (SPECIAL PROVISIONS) ACT 2008

EXPLANATORY NOTES

COMMENTARY ON CLAUSES AND SCHEDULES

Transfer of property etc

Section 6: Transfer of whole or part of undertaking

26. 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 6, transfer property, rights and liabilities of a deposit-taker (rather than its securities). They may be transferred to a company wholly owned by the Bank of England or the Treasury, or to any other body corporate (subsection (1)). The property, rights and liabilities to be transferred may be specified in the order, or by reference to the whole or a part of the business of the institution concerned, or by identifying the manner in which they are to be determined (subsection (2)).
27. As with the powers in section 3, these powers may be used not only to transfer the business of a deposit-taker (or part of it) into public ownership, but also to effect a direct transfer to the private sector. Subsequent orders may also be made for supplementary or consequential purposes, or where it is later considered desirable to transfer other property, rights and liabilities for the purposes set out in section 2. As with section 3 orders, subsequent orders under section 6 may deal with supplementary or consequential matters without making a further transfer, and may transfer property to a different person (subsections (4) and (5)). A second or subsequent order may also transfer back property, rights and liabilities transferred by an earlier order (subsection (6)).

Schedule 2

28. [Paragraph 1](#) of Schedule 2 sets out examples of the property, rights and liabilities that may be transferred by an order under section 6. The remainder of Schedule 2 sets out particular provisions that may be included in an order under section 6. This includes provision for:
- the transfer of any interests or rights to be effective despite the absence of any consent or agreement;
 - certain interests and rights of third parties to be modified;
 - the creation of new rights between the deposit-taker and its group undertakings;
 - the modification of a pension scheme, including the transfer of property of an occupational pension scheme to another occupational scheme;
 - requiring steps to be taken to ensure the effective transfer of foreign property;
 - deeming the transferee to be an authorised person for the purposes of the Financial Services and Markets Act 2000;

*These notes refer to the Banking (Special Provisions) Act 2008
(c.2) which received Royal Assent on 21st February 2008*

- securing the effective continuation of licences, permissions and approvals;
- requiring disputes relating to matters arising under the order to be determined in a particular way.

Section 7: Compensation etc. for property etc. transferred

29. This section makes similar provision for compensation in relation to a transfer under section 6 as is made by section 5 in relation to a transfer under section 3. It requires the Treasury to make provision for determining the amount of any compensation payable by the Treasury to the deposit-taker whose assets, rights and liabilities have been transferred to the public sector under section 6; or, where a transfer has been made under that section to another private sector body, for determining the amount of consideration payable by that body. The Treasury may also provide for compensation or consideration to be payable to other persons affected by provisions made under section 6. There are similar assumptions, in relation to compensation payable by the Treasury, to those in section 5. Section 9(2) applies in the same way. Again an order must be made within three months of the transfer to which it relates (subsection (6)).