

*These notes refer to the Banking Act 2009 (c.1)
which received Royal Assent on 12 February 2009*

BANKING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Special Resolution Regime

Incidental functions

Section 75: Power to change law

202. This section enables the Treasury to modify legislation (both primary and secondary, excluding, however, the provisions of the Act, and secondary legislation to be made under it (other than orders and instruments made in exercise of a stabilisation power)) and the provisions of common law for the purpose of enabling the powers in Part 1 to be used effectively, having regard to the objectives of the special resolution regime. *Subsection (3)* provides that such an order may make provision which has retrospective effect, although the Treasury is to have regard to the fact that it is in the public interest to avoid retrospective legislation).
203. The power is to be exercised by order and is subject to the affirmative procedure. In cases of necessity (in practice, where the power needed to be exercised urgently), the section makes provision for the Treasury to make the order immediately, following which there are 28 days for both Houses of Parliament to approve the order, failing which, the order would lapse. *Subsection (8)* states that a lapse of an order does not prevent another order being made in new terms.