



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

##### *Incidental functions*

#### **63 General continuity obligation: property transfers**

- (1) In this section and section 64—
  - (a) “residual bank” means a bank all or part of whose business has been transferred in accordance with section 11(2)(b) or 12(2),
  - (b) “group company” means anything which is, or was immediately before the transfer, a group undertaking in relation to a residual bank,
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation),
  - (d) “the transferred business” means the part of the bank’s business that has been transferred, and
  - (e) “transferee” means a commercial purchaser or bridge bank to whom all or part of the transferred business has been transferred.
- (2) The residual bank and each group company must provide such services and facilities as are required to enable a transferee to operate the transferred business, or part of it, effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the residual bank or group company and the transferee.
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (5) The continuity obligation is not limited to the provision of services or facilities directly to a transferee.

---

*Status: This is the original version (as it was originally enacted).*

---

- (6) The Bank of England may, with the consent of the Treasury, by notice to the residual bank or a group company state that in the Bank’s opinion—
- (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

#### **64 Special continuity obligations: property transfers**

- (1) Expressions in this section have the same meaning as in section 63.
- (2) The Bank of England may—
- (a) cancel a contract or other arrangement between the residual bank and a group company (whether or not rights or obligations under it have been transferred to a transferee);
  - (b) modify the terms of a contract or other arrangement between the residual bank and a group company (whether or not rights or obligations under it have been transferred to a transferee);
  - (c) add or substitute a transferee as a party to a contract or other arrangement between the residual bank and a group company;
  - (d) confer and impose rights and obligations on a group company and a transferee, which shall have effect as if created by contract between them;
  - (e) confer and impose rights and obligations on the residual bank and a transferee which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the Bank of England shall aim, so far as is reasonably practicable, to preserve or include—
- (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm’s length.
- (4) The power under subsection (2)—
- (a) may be exercised only in so far as the Bank of England thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business, or part of it, effectively,
  - (b) may be exercised only with the consent of the Treasury, and
  - (c) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

#### **65 Continuity obligations: onward property transfers**

- (1) In this section—
- (a) “onward transfer” means a transfer of property, rights or liabilities (whether or not under a power in this Part) from—
    - (i) a person who is a transferee under a property transfer instrument under section 12(2) (an “original transferee”), or
    - (ii) a bank, securities issued by which were earlier transferred by a share transfer order under section 13(2), and

- (b) the person to whom the onward transfer is made is referred to as an “onward transferee”.
- (2) The continuity authority may—
  - (a) provide for an obligation under section 63 to apply in respect of an onward transferee;
  - (b) extend section 64 so as to permit action to be taken under section 64(2) for the purpose of enabling an onward transferee to operate transferred business, or part of it, effectively.
- (3) “The continuity authority” means—
  - (a) the Bank of England, where subsection (1)(a)(i) applies, and
  - (b) the Treasury, where subsection (1)(a)(ii) applies.
- (4) Subsection (2) may be relied on to impose obligations on—
  - (a) an original transferee (where the original transfer was a property transfer),
  - (b) a residual bank within the meaning of section 63 (where the original transfer was a property transfer),
  - (c) the bank (where the original transfer was a share transfer),
  - (d) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of anything within paragraphs (a) to (c), or
  - (e) any combination.
- (5) Subsection (2) may be used to impose obligations—
  - (a) in addition to obligations under or by virtue of section 63 or 64, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person—
  - (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 63(3) to (7) and 64(3) and (4) apply to an obligation as applied under subsection (2)—
  - (a) construing “transferred business” as the business transferred by means of the onward transfer, and
  - (b) with any other necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

## **66 General continuity obligation: share transfers**

- (1) In this section and section 67—
  - (a) “transferred bank” means a bank all or part of the ownership of which has been transferred in accordance with section 11(2)(a) or 13(2),
  - (b) “former group company” means anything which was a group undertaking in relation to the transferred bank immediately before the transfer (whether or not it is also a group undertaking in relation to the transferred bank immediately after the transfer),

---

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

---

- (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation), and
- (d) “the continuity authority” means—
  - (i) the Bank of England, where ownership was transferred in accordance with section 11(2)(a), and
  - (ii) the Treasury, where ownership was transferred in accordance with section 13(2).
- (2) Each former group company must provide such services and facilities as are required to enable the transferred bank to operate effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the transferred bank and the former group company.
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (5) The continuity obligation is not limited to the provision of services or facilities directly to the transferred bank.
- (6) The continuity authority may by notice to a former group company state that in the authority’s opinion—
  - (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.
- (8) The Bank of England may act under or by virtue of subsection (6) only with the consent of the Treasury.

## **67 Special continuity obligations: share transfers**

- (1) Expressions in this section have the same meaning as in section 66.
- (2) The continuity authority may—
  - (a) cancel a contract or other arrangement between the transferred bank and a former group company;
  - (b) modify the terms of a contract or other arrangement between the transferred bank and a former group company;
  - (c) confer and impose rights and obligations on a former group company and the transferred bank, which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the continuity authority shall aim, so far as is reasonably practicable, to preserve or include—
  - (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm’s length.
- (4) The power under subsection (2)—

- (a) may be exercised only in so far as the continuity authority thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferred bank to operate effectively,
- (b) may be exercised by the Bank of England only with the consent of the Treasury, and
- (c) must be exercised by way of provision in a share transfer instrument or order (or supplemental instrument or order).

## **68 Continuity obligations: onward share transfers**

- (1) In this section “onward transfer” means a transfer (whether or not under a power in this Part) of securities issued by a bank where—
  - (a) securities issued by the bank were earlier transferred by share transfer order under section 13(2), or
  - (b) the bank was the transferee under a property transfer instrument under section 12(2).
- (2) The continuity authority may—
  - (a) provide for an obligation under section 66 to apply in respect of the bank after the onward transfer;
  - (b) extend section 67 so as to permit action to be taken under section 67(2) to enable the bank to operate effectively after the onward transfer.
- (3) In this section “continuity authority” has the same meaning as in sections 66 and 67.
- (4) Subsection (2) may be relied on to impose obligations on—
  - (a) the bank,
  - (b) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of the bank,
  - (c) anything which is or was a group undertaking of the residual bank (in a case to which subsection (1)(b) applies), or
  - (d) any combination.
- (5) Subsection (2) may be used to impose obligations—
  - (a) in addition to obligations under or by virtue of section 66 or 67, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person—
  - (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 66(3) to (7) and 67(3) and (4) apply to an obligation as applied under subsection (2) with any necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

## **69 Continuity obligations: consideration and terms**

- (1) The Treasury may by order specify matters which are to be or not to be considered in determining—

---

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

---

- (a) what amounts to reasonable consideration for the purpose of sections 63 to 68;
  - (b) what provisions to include in accordance with section 64(3)(b) or 67(3)(b).
- (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.
- (3) A continuity authority may give guarantees or indemnities in respect of consideration for services or facilities provided or to be provided in pursuance of a continuity obligation.
- (4) In this section “continuity authority”—
- (a) in relation to sections 63 and 64, means the Bank of England, and
  - (b) in relation to sections 65 to 68, has the same meaning as in those sections.

## **70 Continuity obligations: termination**

- (1) The continuity authority may by notice terminate an obligation arising under section 63 or 66.
- (2) The power under subsection (1) is exercisable by giving a notice to each person—
- (a) on whom the obligation is imposed, or
  - (b) who has benefited or might have expected to benefit from the obligation.
- (3) In this section “continuity authority”—
- (a) in relation to section 63, means the Bank of England, and
  - (b) in relation to section 66, has the same meaning as in that section.
- (4) A reference in subsection (1) to obligations under a section includes a reference to obligations under that section as applied under section 65 or 68.

## **71 Pensions**

- (1) This section applies to—
- (a) share transfer orders,
  - (b) share transfer instruments, and
  - (c) property transfer instruments.
- (2) An order or instrument may make provision—
- (a) about the consequences of a transfer for a pension scheme;
  - (b) about property, rights and liabilities of any pension scheme of the bank.
- (3) In particular, an order or instrument may—
- (a) modify any rights and liabilities;
  - (b) apportion rights and liabilities;
  - (c) transfer property of, or accrued rights in, one pension scheme to another (with or without consent).
- (4) Provision by virtue of this section may (but need not) amend the terms of a pension scheme.

- (5) A share or property transfer instrument may make provision in reliance on this section only with the consent of the Treasury.
- (6) In this section—
  - (a) “pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities, and
  - (b) a reference to a pension scheme of a bank is a reference to a scheme in respect of which the bank, or a group company of the bank, is or was an employer.
- (7) In subsection (6)(b) the reference to a group company of the bank is a reference to anything that is or was a group undertaking in relation to the bank within the meaning given by section 1161(5) of the Companies Act 2006.

## **72 Enforcement**

- (1) The Treasury may by regulations make provision for the enforcement of obligations imposed by or under—
  - (a) a share transfer order,
  - (b) a share transfer instrument, or
  - (c) a property transfer instrument.
- (2) Regulations—
  - (a) may confer jurisdiction on a court or tribunal;
  - (b) may not impose a penalty or create a criminal offence;
  - (c) may make provision which has effect in respect of an order or instrument only if applied by the order or instrument.
- (3) Regulations—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **73 Disputes**

- (1) This section applies to—
  - (a) share transfer orders,
  - (b) share transfer instruments, and
  - (c) property transfer instruments.
- (2) An order or instrument may include provision for disputes to be determined in a specified manner.
- (3) Provision by virtue of subsection (2) may, in particular—
  - (a) confer jurisdiction on a court or tribunal;
  - (b) confer discretion on a specified person.

## **74 Tax**

- (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of a stabilisation power.

---

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

---

- (2) Regulations may relate to—
- (a) capital gains tax;
  - (b) corporation tax;
  - (c) income tax;
  - (d) inheritance tax;
  - (e) stamp duty;
  - (f) stamp duty land tax;
  - (g) stamp duty reserve tax.
- (3) Regulations may apply to—
- (a) anything done in connection with an instrument or order;
  - (b) things transferred or otherwise affected by virtue of an instrument or order;
  - (c) a transferor or transferee under an instrument or order;
  - (d) persons otherwise affected by an instrument or order.
- (4) Regulations may—
- (a) modify or disapply an enactment;
  - (b) provide for an action to have or not have specified consequences;
  - (c) provide for specified classes of property (including securities), rights or liabilities to be treated, or not treated, in a specified way;
  - (d) withdraw or restrict a relief;
  - (e) extend, restrict or otherwise modify a charge to tax;
  - (f) provide for matters to be determined by the Treasury in accordance with provision made by or in accordance with the regulations.
- (5) Regulations may make provision for the fiscal consequences of the exercise of a stabilisation power in respect of things done—
- (a) during the period of three months before the date on which the stabilisation power is exercised, or
  - (b) on or after that date.
- (6) In relation to the exercise of a supplemental or onward instrument or order under section 26, 27, 28, 30, 42, 43 or 45, in subsection (5)(a) above “the stabilisation power” is a reference to the first stabilisation power in connection with which the supplemental or onward instrument or order is made.
- (7) The Treasury may by order amend subsection (2) so as to—
- (a) add an entry, or
  - (b) remove an entry.
- (8) Regulations or an order under this section—
- (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 the House of Commons.

## **75 Power to change law**

- (1) The Treasury may by order amend the law for the purpose of enabling the powers under this Part to be used effectively, having regard to the special resolution objectives.



- (2) An order may be made—
  - (a) for the general purpose of the exercise of powers under this Part,
  - (b) to facilitate a particular proposed or possible use of a power, or
  - (c) in connection with a particular exercise of a power.
- (3) An order under subsection (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Act in connection with which the order is made (but in relying on this subsection the Treasury shall have regard to the fact that it is in the public interest to avoid retrospective legislation).
- (4) In subsection (1) “amend the law” means—
  - (a) disapply or modify the effect of a provision of an enactment (other than a provision made by or under this Act),
  - (b) disapply or modify the effect of a rule of law not set out in legislation, or
  - (c) amend any provision of an instrument or order made in the exercise of a stabilisation power.
- (5) Provision under this section may relate to this Part as it applies—
  - (a) to banks,
  - (b) to building societies,
  - (c) to credit unions (by virtue of section 89), or
  - (d) to any combination.
- (6) Specific powers under this Part are without prejudice to the generality of this section.
- (7) 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.
- (8) But if the Treasury think it necessary to make an order without complying with subsection (7)(b)—
  - (a) the order may be made,
  - (b) the order shall lapse 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,
  - (c) the lapse of an order under paragraph (b) 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
  - (d) the lapse of an order under paragraph (b) does not prevent the making of a new order (in new terms).