



Banking Act 2009

2009 CHAPTER 1

PART 1

SPECIAL RESOLUTION REGIME

[^{F1}CHAPTER 3

SPECIAL RESOLUTION ACTION]

Transfer of property

33 Property transfer instrument

- (1) A property transfer instrument is an instrument which—
 - (a) provides for property, rights or liabilities of a specified bank to be transferred;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of a specified bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (2) A property transfer instrument may relate to—
 - (a) all property, rights and liabilities of the specified bank,
 - (b) all its property, rights and liabilities subject to specified exceptions,
 - (c) specified property, rights or liabilities, or
 - (d) property, rights or liabilities of a specified description.

[^{F1}(3) In this section references to a bank include a resolution company (whether or not it is a bank).]

Status: Point in time view as at 01/01/2015.

Changes to legislation: Banking Act 2009, Cross Heading: Transfer of property is up to date with all changes known to be in force on or before 14 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F1** S. 33(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **35**

Commencement Information

- II** S. 33 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

34 Effect

- (1) In this section “transfer” means a transfer provided for by a property transfer instrument.
- (2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In subsection (3) “restriction” includes—
 - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
 - (b) a requirement for consent (by any name).
- (5) A property transfer instrument may provide for a transfer to be conditional upon a specified event or situation—
 - (a) occurring or arising, or
 - (b) not occurring or arising.
- (6) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subsection (5); and the consequences may include—
 - (a) automatic vesting in the original transferor;
 - (b) an obligation to effect a transfer back to the original transferor, with specified consequences for failure to comply (which may include provision conferring a discretion on a court or tribunal);
 - (c) provision making a transfer or anything done in connection with a transfer void or voidable.
- (7) Where a property transfer instrument makes provision in respect of property held on trust (however arising) it may also make provision about—
 - (a) the terms on which the property is to be held after the instrument takes effect^{F2} ..., and
 - (b) how any powers, provisions and liabilities in respect of the property are to be exercisable or have effect after the instrument takes effect.
- ^{F3}(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.

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- (9) In subsection (8) references to the transferor are references to the transferor under the property transfer instrument.]

Textual Amendments

- F2** Words in s. 34(7)(a) omitted (1.1.2015) by virtue of [Financial Services Act 2012 \(c. 21\)](#), **ss. 98(2), 122(3)** (with [Sch. 20](#)); [S.I. 2014/3323](#), [art. 2](#)
- F3** S. 34(8)(9) inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 98(3), 122(3)** (with [Sch. 20](#)); [S.I. 2014/3323](#), [art. 2](#)

Commencement Information

- I2** S. 34 in force at 21.2.2009 by [S.I. 2009/296](#), [art. 3](#), [Sch. para. 1](#)

35 Transferable property

- (1) A property transfer instrument may transfer any property, rights or liabilities including, in particular—
- property, rights and liabilities acquired or arising between the making of the instrument and the transfer date,
 - rights and liabilities arising on or after the transfer date in respect of matters occurring before that date,
 - property outside the United Kingdom,
 - rights and liabilities under the law of a country or territory outside the United Kingdom, and
 - rights and liabilities under an enactment (including legislation of the European Union).
- (2) Section 32 applies for the interpretation of this section (with the necessary modification).

Commencement Information

- I3** S. 35 in force at 21.2.2009 by [S.I. 2009/296](#), [art. 3](#), [Sch. para. 1](#)

36 Continuity

- (1) A property transfer instrument may provide—
- for a transfer to be, or to be treated as, a succession;
 - for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
- (2) A property transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.

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- (4) A property transfer instrument which transfers or enables the transfer of a contract of employment may include provision about continuity of employment.
- (5) A property transfer instrument may modify references (express or implied) in an instrument or document to a transferor.
- (6) In so far as rights and liabilities in respect of anything transferred are enforceable after transfer, a property transfer instrument may provide for apportionment between transferor and transferee to a specified extent and in specified ways.
- (7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument; but a modification—
 - (a) must achieve a result that could have been achieved by the instrument, and
 - (b) may not transfer (or arrange for the transfer of) property, rights or liabilities.
- (8) A property transfer instrument may require or permit—
 - (a) a transferor to provide a transferee with information and assistance;
 - (b) a transferee to provide a transferor with information and assistance.
- (9) Section 32 applies for the interpretation of this section (with the necessary modification).

Commencement Information

I4 S. 36 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

[^{F4}36A Directors [^{F5}and senior managers]

- (1) A property transfer instrument may enable the Bank of England—
 - (a) to remove a director [^{F6}or senior manager] of a specified bank;
 - (b) to vary the service contract of a director [^{F6}or senior manager] of a specified bank;
 - (c) to terminate the service contract of a director [^{F6}or senior manager] of a specified bank;
 - (d) to appoint a director [^{F6}or senior manager] of a specified bank.
- (2) Subsection (1) also applies to a director [^{F7}or senior manager] 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.

[In this section “senior manager” means a person who—

- ^{F8}(4) (a) exercises executive functions within a specified bank or banking group company, and
 - (b) is responsible, and directly accountable to the directors, for the day to day management of that bank or banking group company.
- (5) In this section references to a bank include a resolution company (whether or not it is a bank).]]

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Textual Amendments

- F4** S. 36A inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(4)**, 122(3) (with [Sch. 20](#)); [S.I. 2014/1847](#), [art. 2](#)
- F5** Words in s. 36A heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), [arts. 1\(2\)](#), **36(4)**
- F6** Words in s. 36A(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), [arts. 1\(2\)](#), **36(2)**
- F7** Words in s. 36A(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), [arts. 1\(2\)](#), **36(2)**
- F8** S. 36A(4)(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), [arts. 1\(2\)](#), **36(3)**

37 Licences

- (1) A licence in respect of anything transferred by property transfer instrument shall continue to have effect despite the transfer.
- (2) A property transfer instrument may disapply subsection (1) to a specified extent.
- (3) Where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliance between transferor and transferee.
- (4) In this section “licence” includes permission and approval and any other permissive document in respect of anything transferred.

Commencement Information

- I5** S. 37 in force at 21.2.2009 by [S.I. 2009/296](#), [art. 3](#), [Sch. para. 1](#)

^{F9}38 Termination rights, &c.

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Textual Amendments

- F9** S. 38 omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), [arts. 1\(2\)](#), **37**

39 Foreign property

- (1) This section applies where a property transfer instrument transfers foreign property.
- (2) In subsection (1) “foreign property” means—
 - (a) property outside the United Kingdom, and
 - (b) rights and liabilities under foreign law.
- (3) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of foreign law (if it is not wholly effective by virtue of the property transfer instrument).

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- (4) Until the transfer is effective as a matter of foreign law, the transferor must—
- (a) hold the property or right for the benefit of the transferee (together with any additional property or right accruing by virtue of the original property or right), or
 - (b) discharge the liability on behalf of the transferee.
- [^{F10}(4A) If the Bank of England determines that, in spite of any action taken by the transferee or the transferor, it is not possible for the transfer of certain property to be effective under the law of the jurisdiction where the property is located or (where the property consists of rights or liabilities) the law under which it arises—
- (a) subsection (4) ceases to apply, and
 - (b) the provisions of the property transfer instrument relating to that property are void.
- (4B) The Bank must give notice of any determination under subsection (4A) to the transferor and the transferee.]
- [^{F11}(5) The transferor must meet any expenses of the transferee in complying with this section.]
- (6) An obligation imposed by this section is enforceable as if created by contract between the transferor and transferee.
- (7) The transferor must comply with any directions of the Bank of England in respect of the obligations under subsections (3) and (4); and—
- (a) a direction may disapply subsections (3) and (4) to a specified extent, and
 - (b) obligations imposed by direction are enforceable as if created by contract between the transferor and the Bank of England.
- (8) In this section “foreign law” means the law of a country or territory outside the United Kingdom.

Textual Amendments

F10 S. 39(4A)(4B) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **38(a)**

F11 S. 39(5) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **38(b)**

Commencement Information

I6 S. 39 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

[^{F12}39A Banks which are [^{F13}recognised central counterparties]

Sections 89C to 89E ([^{F13}recognised central counterparty] rules, membership and recognition) apply in relation to a bank which would be a [^{F14}recognised central counterparty] but for section 89G(2) (exclusion of banks etc from definition of [^{F14}recognised central counterparty]) as they apply in relation to a [^{F14}recognised central counterparty].]

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Textual Amendments

- F12** S. 39A inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\), ss. 102\(4\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/1847, art. 2](#)
- F13** Words in s. 39A substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(3) (with regs. 52-58)
- F14** Words in Act substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **25(2)** (with regs. 52-58)

[^{F15}39B. Property transfer instrument: delisting

- (1) A property transfer instrument may provide for the listing of securities, under section 74 of the Financial Services and Markets Act 2000, to be discontinued or suspended.
- (2) Where the listing of securities is suspended in accordance with a property transfer instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000 as still being listed.]

Textual Amendments

- F15** S. 39B inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **39**

40 Incidental provision

- (1) A property transfer instrument may include incidental, consequential or transitional provision.
- (2) In relying on subsection (1) an instrument—
 - (a) may make provision generally or only for specified purposes, cases or circumstances, and
 - (b) may make different provision for different purposes, cases or circumstances.

Commencement Information

- I7** S. 40 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

41 Procedure

- (1) As soon as is reasonably practicable after making a property transfer instrument in respect of a bank the Bank of England shall send a copy to—
 - (a) the bank,
 - (b) the Treasury,
 - [^{F16}(c) the PRA,
 - (ca) the FCA, and]

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- (d) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a property transfer instrument the Bank of England shall publish a copy—
- (a) on the Bank's internet website,^{F17} ...
 - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected^{F18}, and
 - (c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),
- and arrange for the publication of a copy on the internet website of the bank in respect of which the instrument was made.]
- (3) Where the Treasury receive a copy of a property transfer instrument under subsection (1) they shall lay a copy before Parliament.
- [^{F19}(4) In this section references to a “bank” include a resolution company even if it is not a bank.]

Textual Amendments

- F16** S. 41(1)(c)(ca) substituted for s. 41(1)(c) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 20](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F17** Word in s. 41(2) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 40\(2\)](#)
- F18** Words in s. 41(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 40\(2\)](#)
- F19** S. 41(4) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 40\(3\)](#)

Commencement Information

- I8** S. 41 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- I9** S. 41 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

[^{F20}41A Transfer of property subsequent to resolution instrument

- (1) This section applies where the Bank of England has made a resolution instrument.
- (2) The Bank of England may make one or more property transfer instruments in respect of property, rights or liabilities of the bank.
- (3) [^{F21}Section 7 does] not apply to a property transfer instrument under subsection (2).
- (4) Before making a property transfer instrument under subsection (2) the Bank of England must consult—
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.]

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Textual Amendments

- F20** S. 41A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(1\)](#); S.I. 2014/3160, art. 2(1)(b)
- F21** Words in s. 41A(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 41](#)

42 Supplemental instruments

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) or ^[F22]12(2)^[F23], 12ZA(3) or 41A(2) (“the original instrument”).
- (2) The Bank of England may make one or more supplemental property transfer instruments.
- (3) A supplemental property transfer instrument is a property transfer instrument which—
 - (a) provides for property, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument);
 - (b) makes other provision of a kind that an original property transfer instrument may make under section 33(1)(b) (whether in connection with a transfer under the original instrument or in connection with a transfer under that or another supplemental instrument).
- (4) Sections 7^[F24], 8 and ^[F25]8ZA]] do not apply to a supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (5) Before making a supplemental property transfer instrument the Bank of England must consult—
 - ^[F26](a) the PRA,
 - (aa) the FCA, and]
 - (b) the Treasury.
- (6) The possibility of making a supplemental property transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in accordance with section 11(2)^[F27], 12(2)^[F28], 12ZA(3) or 41A(2)] (and not in reliance on subsection (2) above).

Textual Amendments

- F22** Words in s. 42(1) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(2\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F23** Words in s. 42(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 42\(2\)](#)
- F24** Words in s. 42(4) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(2\)\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F25** Word in s. 42(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 42\(3\)](#)

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- F26** S. 42(5)(a)(aa) substituted for s. 42(5)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 21](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F27** Words in s. 42(6) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 5\(2\)\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F28** Words in s. 42(6) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [42\(4\)](#)

Commencement Information

- I10** S. 42 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

[^{F29}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 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.]

Textual Amendments

- F29** S. 42A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 97\(5\)](#), 122(3) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

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43 Onward transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a [^{F30}resolution company] in accordance with section 12(2) [^{F31}or 12ZA(3)] (“the original instrument”).
- (2) The Bank of England may make one or more onward property transfer instruments.
- (3) An onward property transfer instrument is a property transfer instrument which—
 - (a) provides for property, rights or liabilities of the [^{F32}resolution company] 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 [^{F32}resolution company] (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (4) An onward property transfer instrument may relate to property, rights or liabilities of the [^{F33}resolution company] whether or not they were transferred under the original instrument.
- (5) An onward property transfer instrument may not transfer property, rights or liabilities to the transferor under the original instrument.
- (6) Sections 7, 8[^{F34}, 8ZA] and 52 do not apply to an onward property transfer instrument (but for other purposes it is to be treated in the same way as any other property transfer instrument, including for the purposes of the application of a power under this Part).
- (7) Before making an onward property transfer instrument the Bank of England must consult—
 - [^{F35}(a) the PRA,
 - (aa) the FCA, and]
 - (b) the Treasury.
- (8) Section 42 applies where the Bank of England has made an onward property transfer instrument.

Textual Amendments

- F30** Words in s. 43(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [43\(2\)\(a\)](#)
- F31** Words in s. 43(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [43\(2\)\(b\)](#)
- F32** Words in s. 43(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [43\(3\)](#)
- F33** Words in s. 43(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [43\(4\)](#)
- F34** Word in s. 43(6) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [43\(5\)](#)
- F35** S. 43(7)(a)(aa) substituted for s. 43(7)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 22](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

- I11** S. 43 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

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44 ^[F36]^[F37] **Resolution company]: reverse] property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 12(2) ^[F38] or 12ZA(3) (“the original instrument”) providing for the transfer of property, rights or liabilities to a ^[F39]resolution company].
- (2) The Bank of England may make one or more ^[F39]resolution company] reverse property transfer instruments in respect of property, rights or liabilities of the ^[F39]resolution company].
- (3) If the Bank of England makes an onward property transfer instrument under section 43 the Bank may make one or more ^[F39]resolution company] reverse property transfer instruments in respect of property, rights or liabilities ^[F40]of a transferee under the onward property transfer instrument (“the onward transferee”).]
- (4) ^[F41]A ^[F39]resolution company] reverse] property transfer instrument is a property transfer instrument which—
 - (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
 - (b) provides for transfer to the ^[F39]resolution company] (where subsection (3) applies);
 - (c) 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) or (b) (whether the transfer has been or is to be effected by that instrument or otherwise).
- ^[F42](4A) The Bank of England must not make a ^[F39]resolution company] 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) ^[F43]the ^[F39]resolution company] reverse] property transfer instrument is made with the written consent of the onward transferee.]
- (5) Sections 7, 8^[F44], 8ZA] and 52 do not apply to ^[F45]a ^[F39]resolution company] reverse] property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (6) Before making ^[F46]a ^[F39]resolution company] reverse] property transfer instrument the Bank of England must consult—
 - ^[F47](a) the PRA,
 - (aa) the FCA, and]
 - (b) the Treasury.
- (7) Section 42 applies where the Bank of England has made ^[F48]a ^[F39]resolution company] reverse] property transfer instrument.

Status: Point in time view as at 01/01/2015.

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Textual Amendments

- F36** Words in s. 44 heading substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 16\(h\)](#); S.I. 2014/3160, art. 2(1)(b)
- F37** Words in s. 44 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 44\(5\)](#)
- F38** Words in s. 44(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 44\(3\)](#)
- F39** Words in s. 44 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 44\(2\)](#)
- F40** Words in s. 44(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 97\(6\)\(a\), 122\(3\) \(with Sch. 20\)](#); S.I. 2013/423, art. 3, Sch.
- F41** Words in s. 44(4) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 16\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F42** S. 44(4A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 97\(6\)\(b\), 122\(3\) \(with Sch. 20\)](#); S.I. 2013/423, art. 3, Sch.
- F43** Words in s. 44(4A)(b) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 16\(d\)\(ii\)](#); S.I. 2014/3160, art. 2(1)(b)
- F44** Words in s. 44(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 44\(4\)](#)
- F45** Words in s. 44(5) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 16\(e\)](#); S.I. 2014/3160, art. 2(1)(b)
- F46** Words in s. 44(6) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 16\(f\)](#); S.I. 2014/3160, art. 2(1)(b)
- F47** S. 44(6)(a)(aa) substituted for s. 44(6)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 23](#) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F48** Words in s. 44(7) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 16\(g\)](#); S.I. 2014/3160, art. 2(1)(b)

Commencement Information

- I12** S. 44 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

[^{F49} 44A Bail in: reverse property transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 41A(2) (“the original instrument”).
- (2) The Bank of England may make one or more bail-in reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
- (3) A bail-in reverse property transfer instrument is a property transfer instrument which—
 - (a) provides for a 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, or 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 may make a bail-in reverse property transfer instrument only with the written consent of the transferee under the original instrument.

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- (5) [^{F50}Section 7 does] not apply to a bail-in reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (6) Before making a bail-in reverse property transfer instrument the Bank of England must consult—
 - (a) the PRA,
 - (b) the FCA, and
 - (c) the Treasury.
- (7) Section 42 (supplemental instruments) applies where the Bank of England has made a bail-in reverse property transfer instrument.

Textual Amendments

F49 Ss. 44A-44C inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 5\(3\)](#); S.I. 2014/3160, art. 2(1)(b)

F50 Words in s. 44A(5) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [45](#)

44B Property transfer instruments: special bail-in provision

- (1) A property transfer instrument under section [^{F51}11(2), 12(2), 12ZA(3)] or 41A(2), or an associated supplemental property transfer instrument, may make special bail-in provision with respect to the bank (see section 48B).
- (2) The reference in subsection (1) to an “associated” supplemental property transfer instrument is to a supplemental property transfer instrument in relation to which the original instrument (as defined in section 42(1)) is a property transfer instrument under section [^{F52}11(2), 12(2), 12ZA(3)] or 41A(2).
- (3) In the case of a property transfer instrument under section 12(2), [^{F53}or 12ZA(3),] or a supplemental property transfer instrument in relation to which the original instrument is a property transfer instrument under section 12(2), [^{F53}or 12ZA(3),] the power under subsection (1) to make the provision described in section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes power to make provision replacing a liability (of any form) of the bank mentioned in subsection (1) with a security (of any form or class) [^{F54}of the bank or] of the bridge bank mentioned in section 12(1) [^{F55}or the asset management vehicle mentioned in section 12ZA(1) (as the case may be)].
- (4) Where securities of the bridge bank (“B”) are, as a result of subsection (3), held by a person other than the Bank of England, that does not prevent B from being regarded for the purposes of this Part (see particularly section [^{F56}12(1A) and 12ZA(2)]) as being wholly owned by the Bank of England, as long as the Bank of England [^{F57}is entitled to exercise, or control the exercise of, voting rights in respect of] all the ordinary shares issued by B.

Textual Amendments

F49 Ss. 44A-44C inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 5\(3\)](#); S.I. 2014/3160, art. 2(1)(b)

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- F51** Words in s. 44B(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **46(2)**
- F52** Words in s. 44B(2) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **46(3)**
- F53** Words in s. 44B(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **46(4)(a)**
- F54** Words in s. 44B(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **46(4)(b)**
- F55** Words in s. 44B(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **46(4)(c)**
- F56** Words in s. 44B(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **46(5)(a)**
- F57** Words in s. 44B(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **46(5)(b)**

44C Report on special bail-in provision

- (1) This section applies where the Bank of England makes a property transfer instrument containing provision made in reliance on section 44B.
- (2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision was made in the case of the liabilities concerned.
- (3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.
- (4) The insolvency treatment principles are that where an instrument includes special bail-in provision—
 - (a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and
 - (b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.
- (5) A report must comply with any other requirements as to content that may be specified by the Treasury.
- (6) A report must be made as soon as reasonably practicable after the making of the property transfer instrument to which it relates.
- (7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.]

Textual Amendments

- F49** Ss. 44A-44C inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 5(3)**; S.I. 2014/3160, art. 2(1)(b)

45 Temporary public ownership: property transfer

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).

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- (2) The Treasury may make one or more property transfer orders.
- (3) A property transfer order is an order which—
 - (a) provides for property, rights or liabilities of the bank to be transferred (whether accruing or arising before or after the original order);
 - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bank (whether the transfer has been or is to be effected by the order or otherwise).
- (4) Sections 7, 8 and 9 do not apply to a property transfer order.
- (5) A property transfer order is to be treated—
 - (a) in the same way as a share transfer order for the procedural purposes of section 25, but
 - (b) as a property transfer instrument for all other purposes (including for the purposes of the application of powers under this Part).
- [^{F58}(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.]
- (6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).
- (7) Section 42 applies where the Treasury has made a property transfer order.
- (8) Before making a property transfer order the Treasury must consult—
 - [^{F59}(a) the PRA,
 - (aa) the FCA, and]
 - (b) the Bank of England.

Textual Amendments

F58 S. 45(5A) inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 98(4)**, 122(3) (with [Sch. 20](#)); [S.I. 2014/3323](#), [art. 2](#)

F59 S. 45(8)(a)(aa) substituted for s. 45(8)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 24](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

Commencement Information

I13 S. 45 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I14 S. 45 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

46 Temporary public ownership: reverse property transfer

- (1) This section applies where the Treasury have made a property transfer order in accordance with section 45(2) (“the original order”) ^{F60}....
- (2) The Treasury may make one or more reverse property transfer orders in respect of property, rights or liabilities of the transferee under the original order.
- (3) A reverse property transfer order is a property transfer order which—
 - (a) provides for transfer to the transferor under the original order;

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- (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.

[^{F61}(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.]

(4) Sections 7, 8 and 9 do not apply to a reverse property transfer order.

(5) A reverse property transfer order is to be treated—

- (a) in the same way as a share transfer order for the procedural purposes of section 25, but
- (b) as a property transfer instrument for all other purposes (including for the purposes of the application of a power under this Part).

[^{F62}(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.]

(6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).

(7) Before making a reverse property transfer order the Treasury must consult—

- [^{F63}(a) the PRA,
- (aa) the FCA, and]
- (b) the Bank of England.

(8) Section 42 applies where the Treasury have made a reverse property transfer order.

Textual Amendments

- F60** Words in s. 46(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), [ss. 97\(7\)\(a\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F61** S. 46(3A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 97\(7\)\(b\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F62** S. 46(5A) inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 98\(5\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/3323](#), art. 2
- F63** S. 46(7)(a)(aa) substituted for s. 46(7)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. [122\(3\)](#), [Sch. 17 para. 25](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

Commencement Information

- I15** S. 46 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I16** S. 46 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

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47 Restriction of partial transfers

(1) In this Part “partial property transfer” means a property transfer instrument which provides for the transfer of some, but not all, of the property, rights and liabilities of a bank.

[^{F64}(1A) In subsection (1) the reference to a “bank” includes a resolution company (even if it is not a bank).]

(2) The Treasury may by order—

- (a) restrict the making of partial property transfers;
- (b) impose conditions on the making of partial property transfers;
- (c) require partial property transfers to include specified provision or provision to a specified effect;
- (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).

[^{F65}(3) Provision under subsection (2) may, in particular, refer to—

- (a) particular classes of deposit;
- (b) particular classes of client assets.]

(4) An order may apply to transfers generally or only to transfers—

- (a) of a specified kind, or
- (b) made or applying in specified circumstances.

(5) 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.

Textual Amendments

F64 S. 47(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 47

F65 S. 47(3) substituted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), ss. 96(5), 122(3) (with Sch. 20); S.I. 2014/3323, art. 2

Commencement Information

I17 S. 47 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

I18 S. 47 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

48 Power to protect certain interests

(1) In this section—

- (a) “security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,
- (b) “title transfer collateral arrangements” are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,

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- (c) “set-off” arrangements are arrangements under which two or more debts, claims or obligations can be set off against each other,
 - (d) “netting arrangements” are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, in particular, “close-out” netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt, and
 - (e) “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.
- (2) The Treasury may by order—
- (a) restrict the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
 - (b) impose conditions on the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
 - (c) require partial property transfers to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
 - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).
- (3) An order may apply to protected arrangements generally or only to arrangements—
- (a) of a specified kind, or
 - (b) made or applying in specified circumstances.
- (4) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.
- (5) In this section “arrangements” includes arrangements which—
- (a) are formed wholly or partly by one or more contracts or trusts;
 - (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;
 - (c) wholly or partly arise automatically as a matter of law;
 - (d) involve any number of parties;
 - (e) operate partly by reference to other arrangements between other parties.
- (6) 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.

Commencement Information

I19 S. 48 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

I20 S. 48 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

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[^{F66}48A Creation of liabilities

- (1) The provision that may be made by a property transfer instrument or order in reliance on section 33(1)(b), 42(3)(b), [^{F67}42A(3)(b),] 43(3)(b), 44(4)(c)[^{F68}, 44A(3)(b)], 45(3)(b) or 46(3)(b) includes provision for the creation of liabilities.
- (2) The provision may be framed by reference to an agreement which has been or is to be entered into, or anything else which has been or is to be done, by any person (including a person other than the person making the instrument or order).]

Textual Amendments

- F66** S. 48A inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(2)**, 26(1)(f)
- F67** Words in s. 48A(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 97(8)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F68** Word in s. 48A(1) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 5(4)**; [S.I. 2014/3160](#), art. 2(1)(b)

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