



Banking Act 2009

2009 CHAPTER 1

PART 2

BANK INSOLVENCY

Process of bank liquidation

99 Objectives

- (1) A bank liquidator has two objectives.
- (2) Objective 1 is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor—
 - (a) has the relevant account transferred to another financial institution, or
 - (b) receives payment from (or on behalf of) the FSCS.
- (3) Objective 2 is to wind up the affairs of the bank so as to achieve the best result for the bank's creditors as a whole.
- (4) Objective 1 takes precedence over Objective 2 (but the bank liquidator is obliged to begin working towards both objectives immediately upon appointment).

100 Liquidation committee

- (1) Following a bank insolvency order a liquidation committee must be established, for the purpose of ensuring that the bank liquidator properly exercises the functions under this Part.
- (2) The liquidation committee shall consist initially of 3 individuals, one nominated by each of—
 - (a) the Bank of England,
 - (b) the FSA, and
 - (c) the FSCS.

Status: This is the original version (as it was originally enacted).

- (3) The bank liquidator must report to the liquidation committee about any matter—
 - (a) on request, or
 - (b) which the bank liquidator thinks is likely to be of interest to the liquidation committee.
- (4) In particular, the bank liquidator—
 - (a) must keep the liquidation committee informed of progress towards Objective 1 in section 99, and
 - (b) must notify the liquidation committee when in the bank liquidator’s opinion Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable.
- (5) As soon as is reasonably practicable after receiving notice under subsection (4)(b) the liquidation committee must either—
 - (a) resolve that Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable (a “full payment resolution”), or
 - (b) apply to the court under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (6) Where a liquidation committee passes a full payment resolution—
 - (a) the bank liquidator must summon a meeting of creditors,
 - (b) the meeting may elect 2 or 4 individuals as new members of the liquidation committee,
 - (c) those individuals replace the members nominated by the Bank of England and the FSA,
 - (d) the FSCS may resign from the liquidation committee (in which case 3 or 5 new members may be elected under paragraph (b)), and
 - (e) if no individuals are elected under paragraph (b), or the resulting committee would have fewer than 3 members or an even number of members, the liquidation committee ceases to exist at the end of the meeting.
- (7) Subject to provisions of this section, rules under section 411 of the Insolvency Act 1986 (as amended by section 125 below) may make provision about—
 - (a) the establishment of liquidation committees,
 - (b) the membership of liquidation committees,
 - (c) the functions of liquidation committees, and
 - (d) the proceedings of liquidation committees.

101 Liquidation committee: supplemental

- (1) A meeting of the liquidation committee may be summoned—
 - (a) by any of the members, or
 - (b) by the bank liquidator.
- (2) While the liquidation committee consists of the initial members (or their nominated replacements) a meeting is quorate only if all the members are present.
- (3) A person aggrieved by any action of the liquidation committee before it has passed a full payment resolution may apply to the court, which may make any order (including an order for the repayment of money).

- (4) The court may (whether on an application under subsection (3), on the application of a bank liquidator or otherwise) make an order that the liquidation committee is to be treated as having passed a full payment resolution.
- (5) If a liquidation committee fails to comply with section 100(5) the bank liquidator must apply to the court—
 - (a) for an order under subsection (4) above, or
 - (b) for directions under or by virtue of section 168(3) or 169(2) of the Insolvency Act 1986 as applied by section 103 below.
- (6) A nominating body under section 100(2) may replace its nominee at any time.
- (7) After the removal of the nominated members under section 100(6)(c) the FSA and the Bank of England—
 - (a) may attend meetings of the liquidation committee,
 - (b) are entitled to copies of documents relating to the liquidation committee's business,
 - (c) may make representations to the liquidation committee, and
 - (d) may participate in legal proceedings relating to the bank insolvency.
- (8) Where a liquidation committee ceases to exist by virtue of section 100(6)(e)—
 - (a) it may be re-formed by a creditors' meeting summoned by the bank liquidator for the purpose, and
 - (b) the bank liquidator must summon a meeting for the purpose if requested to do so by one-tenth in value of the bank's creditors.
- (9) Where a liquidation committee ceases to exist by virtue of section 100(6)(e) and has not been re-formed under subsection (8) above or under section 141(2) or 142(2) of the Insolvency Act 1986 (as applied by section 103 below)—
 - (a) ignore a reference in this Part to the liquidation committee,
 - (b) for section 113(2) to (4) substitute requirements for the bank liquidator, before making a proposal—
 - (i) to produce a final report,
 - (ii) to send copies in accordance with section 113(2)(b),
 - (iii) to make it available in accordance with section 113(2)(c), and
 - (iv) to be satisfied as specified in section 113(4)(b),
 - (c) ignore Condition 2 in section 114, and
 - (d) for section 115(1) to (5) substitute a power for the bank liquidator to apply to the Secretary of State or Accountant of Court for release and requirements that before making an application the bank liquidator must—
 - (i) produce a final report,
 - (ii) send copies in accordance with section 115(2)(b),
 - (iii) make it available in accordance with section 115(2)(c), and
 - (iv) notify the court and the registrar of companies of the intention to vacate office and to apply for release.

102 Objective 1: (a) or (b)?

- (1) As soon as is reasonably practicable, a liquidation committee must recommend the bank liquidator to pursue—

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

- (a) Objective 1(a) in section 99,
 - (b) Objective 1(b) in section 99, or
 - (c) Objective 1(a) for one specified class of case and Objective 1(b) for another.
- (2) In making a recommendation the liquidation committee must consider—
- (a) the desirability of achieving Objective 1 as quickly as possible, and
 - (b) Objective 2 in section 99.
- (3) If the liquidation committee thinks that the bank liquidator is failing to comply with their recommendation, they must apply to the court for directions under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (4) Where the liquidation committee has not made a recommendation the bank liquidator may apply to the court under section 101(3); and the court may, in particular, make a direction in lieu of a recommendation if the liquidation committee fail to make one within a period set by the court.

103 General powers, duties and effect

- (1) A bank liquidator may do anything necessary or expedient for the pursuit of the Objectives in section 99.
- (2) The following provisions of this section provide for—
- (a) general powers and duties of bank liquidators (by application of provisions about liquidators), and
 - (b) the general process and effects of bank insolvency (by application of provisions about winding up).
- (3) The provisions set out in the Table apply in relation to bank insolvency as in relation to winding up, with—
- (a) the modifications set out in subsection (4),
 - (b) any other modification specified in the Table, and
 - (c) any other necessary modification.
- (4) The modifications are that—
- (a) a reference to the liquidator is a reference to the bank liquidator,
 - (b) a reference to winding up is a reference to bank insolvency,
 - (c) a reference to winding up by the court is a reference to the imposition of bank insolvency by order of the court,
 - (d) a reference to being wound up under Part IV or V of the Insolvency Act 1986 is a reference to being made the subject of a bank insolvency order,
 - (e) a reference to the commencement of winding up is a reference to the commencement of bank insolvency,
 - (f) a reference to going into liquidation is a reference to entering bank insolvency,
 - (g) a reference to a winding-up order is a reference to a bank insolvency order, and
 - (h) a reference to a company is a reference to the bank.
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.

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

- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

TABLE OF APPLIED PROVISIONS

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 127	Avoidance of property dispositions	Ignore section 127(2).
Section 128	Avoidance of attachment, &c.	
Section 130	Consequences of winding-up order	Ignore section 130(4).
Section 131	Company's statement of affairs	(a) Treat references to the official receiver as references to the bank liquidator. (b) A creditor or contributory of the bank is entitled to receive a copy of a statement under section 131 on request to the bank liquidator.
Section 135	Provisional appointment	(a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank insolvency order. (b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply). (c) Ignore the reference to the official receiver. (d) Only a person who is qualified to act as an insolvency practitioner and who consents to act may be appointed.

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 141	Liquidation Committee (England and Wales)	<p>(e) A provisional bank liquidator may not pay dividends to creditors.</p> <p>(f) The appointment of a provisional bank liquidator lapses on the appointment of a bank liquidator.</p> <p>The application of section 141 is subject to—</p> <p>(a) sections 100, 101 and 109 of this Act,</p> <p>(b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 141 to reflect</p> <p>(i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and</p> <p>(c) the omission of references to the official receiver.</p>
Section 142	Liquidation Committee (Scotland)	<p>The application of section 142 is subject to—</p> <p>(a) sections 100, 101 and 109 of this Act,</p> <p>(b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 142 to reflect</p> <p>(i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors'</p>

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		meetings under other provisions, and
		(c) the omission of references to the official receiver.
Section 143	General functions of liquidator	(a) Section 143(1) is subject to Objective 1 in section 99 above. (b) Ignore section 143(2).
Section 144	Custody of property	
Section 145	Vesting of property	
<i>Section 146</i>	<i>Duty to summon final meeting</i>	<i>Section 146 is not applied—but section 115 below makes similar provision.</i>
Section 147	Power to stay or sist proceedings	An application may be made only by— (a) the bank liquidator, (b) the FSA, (c) the Bank of England, (d) the FSCS, or (e) a creditor or contributory (but only if the liquidation committee has passed a full payment resolution).
Section 148	List of contributories and application of assets	<i>By virtue of the Insolvency Rules the functions under this section are largely delegated to the liquidator—rules by virtue of section 125 may achieve a similar delegation to the bank liquidator.</i>
Section 149	Debts due from contributories	
Section 150	Power to make calls	
Section 152	Order on contributory: evidence	
Section 153	Exclusion of creditors	

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 154	Adjustment of rights of contributories	
Section 155	Inspection of books by creditors	In making or considering whether to make an order under section 155 the court shall have regard to Objective 1 in section 99 above.
Section 156	Payment of expenses of winding up	
Section 157	Attendance at company meetings (Scotland)	
Section 158	Power to arrest absconding contributory	
<i>Section 159</i>	<i>Powers to be cumulative</i>	<i>Section 159 is not applied—but subsection (5) above makes similar provision.</i>
Section 160	Delegation of powers to liquidator (England and Wales)	
Section 161	Orders for calls on contributories (Scotland)	
Section 162	Appeals from orders (Scotland)	An appeal may be brought only if the liquidation committee has passed a full payment resolution.
Section 167 and Schedule 4	General powers of liquidator	(a) An application to the court may not be made under section 167(3) unless the liquidation committee has passed a full payment resolution (although a creditor or contributory may apply to the court with respect to any action (or inaction) of the liquidation committee, under section 101(3) above). (b) In exercising or considering whether

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		to exercise a power under Schedule 4 the bank liquidator shall have regard to Objective 1 in section 99.
		(c) A reference to the liquidation committee is to the liquidation committee established by section 100.
		(d) The power in paragraph 4 of Schedule 4 includes the power to submit matters to arbitration.
		<i>Some additional general powers are conferred by section 104 below.</i>
Section 168	Supplementary powers of liquidator	(a) A direction or request under section 168(2) has no effect unless the liquidation committee has passed a full payment resolution.
		(b) Section 168(5) also applies in the case of the imposition of bank insolvency by order of the Court of Session.
		(c) An application to the court may not be made under section 168(5) unless the liquidation committee has passed a full payment resolution (except as provided in section 100 or 102 above).
Section 169	Supplementary powers (Scotland)	(a) Ignore section 169(1).

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		(b) Powers of the bank liquidator by virtue of section 169(2) are subject to Objective 1 in section 99 above.
Section 170	Liquidator's duty to make returns	The liquidation committee is added to the list of persons able to apply under section 170(2).
Section 172	Removal of liquidator	<i>Section 172 is not applied to a bank liquidator—but section 108 makes similar provision.</i> Section 172(1), (2) and (5) are applied to a provisional bank liquidator.
<i>Section 174</i>	<i>Release of liquidator</i>	<i>Section 174 is not applied—but section 115 makes similar provision.</i>
Section 175	Preferential debts	
Section 176	Preferential charge on goods restrained	
Section 176ZA	Expenses of winding up	
Section 176A	Share of assets for unsecured creditors	
Section 177	Appointment of special manager	
Section 178	Power to disclaim onerous property	
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rentcharge	
Section 181	Disclaimer: powers of court	
Section 182	Leaseholds	
Section 183	Effect of execution or attachment (England and Wales)	
Section 184	Execution of writs (England and Wales)	

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 185	Effect of diligence (Scotland)	In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 the reference to an order of the court awarding winding up is a reference to the making of the bank insolvency order.
Section 186	Rescission of contracts by court	
Section 187	Transfer of assets to employees	
Section 188	Publicity	
Section 189	Interest on debts	
Section 190	Exemption from stamp duty	
Section 191	Company's books as evidence	
Section 192	Information about pending liquidations	
Section 193	Unclaimed dividends (Scotland)	
Section 194	Resolutions passed at adjourned meetings	
Section 195	Meetings to ascertain wishes of creditors or contributories	The power to have regard to the wishes of creditors and contributories is subject to Objective 1 in section 99.
Section 196	Judicial notice of court documents	
Section 197	Commission for receiving evidence	
Section 198	Court order for examination of persons (Scotland)	
Section 199	Costs of application for leave to proceed (Scotland)	
Section 200	Affidavits	
Section 206	Fraud in anticipation of winding up	

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 207	Transactions in fraud of creditors	
Section 208	Misconduct in course of winding up	
Section 209	Falsification of company's books	
Section 210	Material omissions	
Section 211	False representations to creditors	
Section 212	Summary remedy against directors, &c.	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	
Section 215	Sections 213 & 214: procedure	
Section 216	Restriction on re-use of company names	
Section 217	Personal liability for debts	
Section 218	Prosecution of officers and members of company	(a) Ignore subsections (4) and (6). (b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State. (c) In subsection (5) treat the reference to subsection (4) as a reference to subsection (3).
Section 219	Obligations under section 218	
Section 231	Appointment of 2 or more persons	
Section 232	Validity of acts	
Section 233	Utilities	
Section 234	Getting in company's property	
Section 235	Co-operation with liquidator	Ignore references to the official receiver

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 236	Inquiry into company's dealings	Ignore references to the official receiver
Section 237	Section 236: enforcement by court	
Section 238	Transactions at undervalue (England and Wales)	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 238.
Section 239	Preferences (England and Wales)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to giving a preference for the purpose of section 239.
Section 240	Sections 238 & 239: relevant time	
Section 241	Orders under sections 238 & 239	Having notice of the relevant proceedings means having notice of— (a) an application by the Bank of England, the FSA or the Secretary of State for a bank insolvency order, or (b) notice under section 120 below.
Section 242	Gratuitous alienations (Scotland)	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a gratuitous alienation for the purpose of section 242 or any other rule of law.
Section 243	Unfair preferences (Scotland)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to an unfair preference for the

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

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
		purpose of section 243 or any other rule of law.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency.
Sections 423–425	Transactions defrauding creditors	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 423.
Sections 430 to 432 and Schedule 10	Offences	
Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.

104 Additional general powers

(1) A bank liquidator has the following powers.

- (2) Power to effect and maintain insurances in respect of the business and property of the bank.
- (3) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank.
- (4) Power to make any payment which is necessary or incidental to the performance of the bank liquidator's functions.

105 Status of bank liquidator

A bank liquidator is an officer of the court.