



# Banking Act 2009

## 2009 CHAPTER 1

### PART 8

#### GENERAL

#### **257 “Financial assistance”**

- (1) In this Act “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (2) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for a specified purpose of this Act; and subsection (1) is subject to this subsection.
- (3) 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.

#### **258 “Enactment”**

In this Act “enactment” includes—

- (a) subordinate legislation,
- (b) an Act of the Scottish Parliament and an instrument under an Act of the Scottish Parliament, and
- (c) Northern Ireland legislation.

#### **259 Statutory instruments**

- (1) A statutory instrument under this Act—
  - (a) may make provision that applies generally or only for specified purposes, cases or circumstances,

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- (b) may make different provision for different purposes, cases or circumstances, and
  - (c) may include incidental, consequential or transitional provision.
- (2) No statutory instrument under this Act shall be treated as a hybrid instrument under Standing Orders of either House of Parliament.
- (3) The Table lists the powers to make statutory instruments under this Act and the arrangements for Parliamentary scrutiny in each case (which are subject to subsections (4) to (6)).

<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>
<b>PART 1—Special resolution regime</b>		
2	Meaning of “bank”	Draft affirmative resolution
25	Share transfer orders	Negative resolution
47	Partial transfers	Draft affirmative resolution
48	Protection of interests	Draft affirmative resolution
55	Independent valuer	Negative resolution
56	Independent valuer: money	Negative resolution
60	Third party compensation	Draft affirmative resolution
62	Compensation orders	Draft affirmative resolution
69	Continuity obligations: consideration and terms	Negative resolution
72	Transfers: enforcement	Negative resolution
74	Tax	Draft affirmative resolution (Commons only)
75	Power to change law	Draft affirmative resolution (except for urgent cases)
78	Public funds	Negative resolution (Commons only)
85	Building societies: orders	Negative resolution
86	Building societies: assets	(As for orders under section 90B of the Building Societies Act 1986)

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<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>
88	Building societies: consequential	Draft affirmative resolution
89	Credit unions	Draft affirmative resolution
<b>PART 2–Bank insolvency</b>		
91	Meaning of “bank”	Draft affirmative resolution
122	Application of insolvency law	Draft affirmative resolution
125	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)
130	Building societies	Draft affirmative resolution
131	Credit unions	Draft affirmative resolution
132	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)
133	Scottish partnerships	Negative resolution
135	Consequential provision	Draft affirmative resolution
<b>PART 3–Bank administration</b>		
148	Sharing information	Negative resolution
149	Multiple original transfers	Draft affirmative resolution
152	Transfer from temporary public ownership	Draft affirmative resolution
156	Application of other law	Draft affirmative resolution
158	Building societies	Draft affirmative resolution
159	Credit unions	Draft affirmative resolution
160	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)
163	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)
164	Scottish partnerships	Negative resolution

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<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>
168	Consequential provision	Draft affirmative resolution
<b>PART 4—Financial Services Compensation Scheme</b>		
170	Contingency funding	Draft affirmative resolution
171	Special resolution regime	Draft affirmative resolution
173	Borrowing from National Loans Fund	Negative resolution
<b>PART 5—Inter-bank payment systems</b>		
191	Bank of England directions: immunity	Negative resolution
203	Fees regulations	Negative resolution
204	Information	Negative resolution
<b>PART 6—Banknotes: Scotland and Northern Ireland</b>		
215	Banknote regulations	Draft affirmative resolution
<b>PART 7—Miscellaneous</b>		
230	Financial institution	Negative resolution
232	Investment banks: definition	Draft affirmative resolution
233	Investment banks: insolvency	Draft affirmative resolution
249	FSA – functions	Draft affirmative resolution
251	Central banks: assistance to building societies	Draft affirmative resolution
255	Financial collateral arrangements	Affirmative resolution
<b>PART 8—General</b>		
257	Financial assistance	Negative resolution
262	Repeal of Banking (Special Provisions) Act 2008	None
263	Commencement	None

- (4) A power listed in subsection (5) may be exercised without a draft being laid before and approved by resolution of each House of Parliament if—
- (a) the power is being exercised for the first time, and

- (b) the person exercising it is satisfied that it is necessary to exercise it without laying a draft for approval.
- (5) The powers are those in—
  - (a) section 2 (special resolution regime: meaning of “bank”),
  - (b) section 47 (special resolution regime: partial transfers),
  - (c) section 48 (special resolution regime: protection of interests),
  - (d) section 60 (special resolution regime: third party compensation),
  - (e) section 88 (special resolution regime: building societies: consequential),
  - (f) section 91 (bank insolvency: meaning of “bank”),
  - (g) section 122 (bank insolvency: application of insolvency law),
  - (h) section 130 (bank insolvency: building societies),
  - (i) section 135 (bank insolvency: consequential provision),
  - (j) section 149 (bank administration: multiple original transfers),
  - (k) section 152 (bank administration: transfer from temporary public ownership),
  - (l) section 156 (bank administration: application of other law),
  - (m) section 158 (bank administration: building societies),
  - (n) section 168 (bank administration: consequential provision), and
  - (o) section 171 (Financial Services Compensation Scheme: special resolution regime).
- (6) Where an instrument is made in reliance on subsection (5)—
  - (a) it 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 instrument is made,
  - (b) the lapse of an instrument under paragraph (a) does not invalidate anything done under or in reliance on it before its lapse and at a time when neither House has declined to approve it, and
  - (c) the lapse of an instrument under paragraph (a) does not prevent the making of a new one (in new terms).

## 260 Money

Expenditure of the Treasury under, by virtue of or in connection with a provision of this Act shall be paid out of money provided by Parliament.

## 261 Index of defined terms

The Table sets out expressions defined in this Act for general purposes.

<i>Expression</i>	<i>Section</i>
Action	93 and 166
Bank (Part 1)	2
Bank (Part 2)	91
Bank administration	136
Bank administration order	141

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<i>Expression</i>	<i>Section</i>
Bank insolvency	90
Bank insolvency order	94
Bridge bank	12
Bridge bank reverse share transfer instrument	31
Bridge bank share transfer instrument	30
Compensation scheme order	49
The court (Part 2)	92
The court (Part 3)	166
Eligible depositors	93
Enactment	258
FSA	3, 93 & 166
FSCS	93
Fair	93
Financial assistance	257
Financial institution	230
Full payment resolution	100
Independent valuer	54
Inter-bank payment system	182
Liquidation committee	100
Objective 1 Achievement Notice	139
Onward bridge bank	12
Onward property transfer instrument	43
Onward share transfer order	28
Partial property transfer	47
Property transfer instrument	33
Property transfer order	45
Resolution fund order	49
Reverse property transfer instrument	44
Reverse property transfer order	46
Reverse share transfer order	29
Securities	14
Share transfer instrument	15
Share transfer order	16

<i>Expression</i>	<i>Section</i>
Special resolution regime	1
Special resolution objectives	4
Stabilisation options	1
Stabilisation powers	1
Supplemental property transfer instrument	42
Supplemental share transfer instrument or order	26 & 27
Third party compensation order	49 & 59
Unable to pay debts	93 & 166

## **262 Repeal**

- (1) The Treasury may by order repeal the Banking (Special Provisions) Act 2008.
- (2) An order—
  - (a) may include savings, and
  - (b) shall be made by statutory instrument.
- (3) Subsection (2)(a) is without prejudice to the generality of, or the application to this section of, section 259.

## **263 Commencement**

- (1) The preceding provisions of this Act shall come into force in accordance with provision made by the Treasury by order.
- (2) Subsection (1) does not apply to section 254, which comes into force at the end of the period of 2 months beginning with the date of Royal Assent.
- (3) An order under subsection (1)—
  - (a) may make provision generally or only in relation to specific provisions or purposes,
  - (b) may make different provision for different provisions or purposes,
  - (c) may include incidental or transitional provision (including savings), and
  - (d) shall be made by statutory instrument.
- (4) Where the Treasury or another authority are required to consult or take other action before exercising a power or fulfilling a duty to make legislation or to do any other thing under, by virtue of or in connection with this Act, the Treasury or other authority may rely on consultation or other action carried out before the commencement of the relevant provision of this Act.

## **264 Extent**

- (1) This Act extends to—
  - (a) England and Wales,

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- (b) Scotland, and
- (c) Northern Ireland.

(2) But—

- (a) sections 253 and 254 extend to Scotland only, and
- (b) an amendment of an enactment has the same extent as the enactment (or the relevant part).

## **265 Short title**

This Act may be cited as the Banking Act 2009.