

FINANCIAL SERVICES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Banking Act 2009

Section 20: Services forming part of recognised inter-bank payment systems

228. This section inserts a new section 206A into Part 5 of the Banking Act 2009 (the Act) (inter-bank payment systems).

New section 206A: Services forming part of recognised inter-bank payment systems

229. *Subsection (1)* confers a power on the Treasury to make order(s) applying (and modifying (*subsection (7)*)) any sections under Part 5 of the Act to “service providers”. “Service providers” are defined in *subsection (2)* as persons who supply services (such as telecommunication and IT systems) that form part of the arrangements of an inter-bank payment system that is specified by the Treasury as a recognised system under section 184(1) of the Act. The Bank of England may not be regarded as a service provider (*subsection (5)*).
230. An order under *subsection (1)* may be made only after consultation (*subsection (6)*) and only if a draft has been approved by each House of Parliament (*subsection (8)*).
231. It is envisaged that any order made applying Part 5 to service providers would make provision for the role of the FSA and the Bank of England in relation to persons who are subject to the oversight of the FSA, either as a person who has a permission under Part 4 of FSMA, or is a recognised persons under Part 18 of that Act.
232. In the event an order is made applying provisions of Part 5 to service providers, the Treasury must specify in any recognition orders made under section 184 of the Act the service providers who are to be subject to the Bank of England’s oversight under Part 5 of the Act (as applied) (*subsection (2(b))*). Before specifying any person as a service provider, the Treasury must consult with various parties, including the person whom the Treasury proposes to specify (*subsection (4)*).

Section 21: Minor amendments of provision made by Banking Act 2009

233. **Parts 1 to 3** of the Act establish a permanent special resolution regime (SRR), providing the Authorities with tools to deal with banks and building societies that are failing to meet the conditions for authorisation to perform deposit-taking activities (and credit unions if applied by section 89 of that Act). This section makes technical amendments to certain provisions in Parts 1 to 3 and to a provision in Part 15 of FSMA (which was inserted by Part 4 of the Banking Act 2009).
234. The Act includes property transfer powers, which may be used to effect a transfer of some or all of the property, rights or liabilities of a failing institution; and to make provision for the purposes of, in connection with, or in consequence of such a

*These notes refer to the Financial Services Act 2010
(c.28) which received Royal Assent on 8 April 2010*

transfer. *Subsection (2)* inserts a new section 48A (creation of liabilities) into the Act, expressly stating that this includes the power to create liabilities. This could be used, for example, where more liabilities than assets are transferred from a failing institution to a commercial purchaser and public funds are provided to make the transfer commercially viable. A liability may then be imposed on the residual of the failing institution in respect of these monies. New section 48A(2) makes clear that this liability can be determined by reference to another instrument such as an agreement with the transferee, which may make provision for the calculation of the amount of the liability.

235. The Act confers various powers on the Treasury to put in place compensation measures following an exercise of the stabilisation powers (see section 49), which may include provision for the appointment of independent valuers. These orders are subject to the affirmative procedure. The Treasury may make also additional provision for valuers, for example, their remuneration and procedure in separate orders, subject to the negative procedure. *Subsection (3)* allows for orders, subject to the affirmative procedure, that provide for the appointment of a valuer to contain this supplementary provision.
236. *Subsection (4)* makes a minor amendment to section 56 of the Act (independent valuer: money) providing a power for the Treasury to make provision for the payment of remuneration and allowances of persons appointed to remove an independent valuer from office, correcting an oversight in the Act.
237. *Subsection (5)* provides that the Treasury can make a third party compensation order where a building society has been taken into temporary public ownership by way of a subscription to new deferred shares in the society, correcting an oversight in the Act.
238. [Part 3](#) of the Act establishes a new bank administration procedure, which incorporates provisions of the Insolvency Act 1986 through a table listing all relevant sections, schedule and paragraphs that need to be included. *Subsection (6)* substitutes an entry relating to paragraph 79 of Schedule B1 of the Insolvency Act for the one relating to paragraph 80 of that Schedule. Paragraph 79 provides for the discharge of an administrator appointed by the court, and therefore is more apt for bank administration than paragraph 80, which provides for the discharge of an administrator appointed in other ways. *Subsection (7)* makes consequential changes to section 153 of the Act.
239. The Act inserts new sections into FSMA requiring the FSCS to contribute to special resolution regime costs and providing for information to be given to the FSCS in that case. Section 219(3A) of FSMA refers only to a “bank”, although it is intended to refer to all the institutions subject to the special resolution regime i.e. banks, building societies and credit unions. *Subsection (8)* amends the provision so it refers to all of these institutions.