

2008 No. 2644

BANKS AND BANKING

**The Heritable Bank plc Transfer of Certain Rights and
Liabilities Order 2008**

Made - - - - at 9.27 a.m. on 7th October 2008

Laid before Parliament at 12.30 p.m. on 7th October 2008

Coming into force - - at 9.30 a.m. on 7th October 2008

It appears to the Treasury to be desirable to make this Order for the following purpose:

maintaining the stability of the UK financial system in circumstances where the Treasury consider that there would be a serious threat to its stability if the Order were not made.

The Treasury, in exercise of the powers conferred by sections 6, 12, 13(2) of and Schedule 2 to the Banking (Special Provisions) Act 2008(a), make the following Order:

PART 1

GENERAL

Citation and commencement

1.—(1) This Order may be cited as the Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008.

(2) This Order comes into force at 9.30 a.m. on 7 October 2008.

Interpretation

2. In this Order—

“the Act” means the Banking (Special Provisions) Act 2008;

“the 1986 Act” means the Insolvency Act 1986(b);

“the 2000 Act” means the Financial Services and Markets Act 2000(c);

“administrator” means—

(a) an administrator appointed under paragraph 14 or 22 of Schedule B1 (Administration) to the 1986 Act(d) or on an administration application made to the court (and if more than

(a) 2008 c. 2.

(b) 1986 c.45.

(c) 2000 c.8.

(d) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).

- one administrator is appointed, the reference to “the administrator” is to any administrator so appointed); or
- (b) any person on whom a discretion is conferred under an interim order made under paragraph 13(1)(d) of Schedule B1 to the 1986 Act;
- “the Authority” means the Financial Services Authority;
- “the Bank” means the Bank of England;
- “Community law” means—
- (c) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and
- (d) all the remedies and procedures from time to time provided for by or under the Community Treaties;
- “the COMP Sourcebook” means the Compensation Sourcebook made by the Authority under the 2000 Act;
- “Deposits Management (Heritable)” means Deposits Management (Heritable) Limited, company registered number 6690442, a company which is for the purposes of the Act wholly owned by the Treasury;
- “the effective time” means the time this Order comes into force;
- “eligible claimant” has the meaning given in rule 4.2.1 of the COMP Sourcebook;
- “the FEES 6 Chapter” means Chapter 6 (Financial Services Compensation Scheme Funding) of the Fees Manual made by the Authority under the 2000 Act;
- “the Financial Services Compensation Scheme” means the scheme established by the Authority under Part 15 of the 2000 Act (The Financial Services Compensation Scheme);
- “FSCS” means the body corporate established by the Authority under section 212 of the 2000 Act (the Scheme Manager);
- “Heritable” means Heritable Bank plc, company registered in Scotland number SC000717;
- “protected deposit” has the meaning given in rule 5.3.1 of the COMP Sourcebook;
- “relevant protected deposit” means a protected deposit which relates to a transferred account;
- “the transfer” means the transfer effected by article 3;
- “transferred accounts” means the accounts to which the transferred rights and liabilities relate;
- “transferred liabilities” means the liabilities transferred by article 3(1);
- “transferred rights” means the rights transferred by article 3(2);
- “the transitional period” means the period of 6 months following the effective time.

PART 2

THE TRANSFER

Transfer

3.—(1) Subject to paragraph (3), by virtue of this Order the liabilities of Heritable to depositors in respect of the principal of, and accrued interest on, relevant deposit accounts are transferred to Deposits Management (Heritable).

(2) From the effective time, Deposits Management (Heritable) shall have the same rights in relation to depositors in relation to the transferred accounts as it would have if Heritable’s relevant terms of business applied.

(3) Paragraph (1) does not apply to any liability in respect of any breach of contract or other duty which arose before the effective time.

(4) In paragraph (1), “relevant deposit accounts” means any of the following accounts operated by Heritable—

- (a) 1 Year Fixed Rate Bond;
- (b) 2 Year Fixed Rate Bond;
- (c) 3 Year Fixed Rate Bond;
- (d) 4 Year Fixed Rate Bond;
- (e) 5 Year Fixed Rate Bond;
- (f) 50 Plus Saver;
- (g) 60 Day Notice;
- (h) 90 Day Notice;
- (i) 120 Day Notice;
- (j) Easy Access;
- (k) Online Saver;
- (l) Direct Saver.

(5) The transfer under paragraph (1) takes place at the time this Order comes into force.

No consent or concurrence required

4. The transfer is effective despite the absence of any required consent or concurrence to, or in connection with, the transfer.

Associated liability and interference

5.—(1) The transfer takes effect as if—

- (a) no associated liability existed in respect of any failure to comply with any requirement in respect of the transfer; and
- (b) there were no associated interference with the transferred rights and liabilities.

(2) In this article “associated liability” and “associated interference” have the meanings given in paragraph 2(2) of Schedule 2 to the Act.

Interests, rights and liabilities of third parties relating to transferred rights and liabilities

6.—(1) No interest or right of any third party relating to any of the transferred rights and liabilities shall arise or become exercisable by virtue of or in connection with this Order.

(2) Save as otherwise provided in this Order, no third party shall incur any liability, or be subject to any obligation, relating to any of the transferred rights and liabilities, by virtue of or in connection with this Order.

(3) Without prejudice to the generality of paragraphs (1) and (2)—

- (a) the consequences specified in paragraph (4) shall not arise in respect of any relevant instrument as a result of the transfer or any other thing done, or matter arising, by virtue of or in connection with article 3 of this Order;
- (b) any circumstances which, but for sub-paragraph (a), would give rise to the consequences specified in paragraph (4) shall not be taken to have arisen for the purposes of any relevant instrument.

(4) The consequences are—

- (a) the termination of a relevant instrument or any rights or obligations under it;
- (b) any right to terminate a relevant instrument or any right or obligation under it becoming exercisable;
- (c) any amount becoming due and payable or capable of being declared due and payable;

- (d) any other change in the amount or timing of any payment falling to be made or due to be received by any person;
- (e) any right to withhold, net or set off any payment becoming exercisable;
- (f) any event of default or breach of any right arising;
- (g) any right not to advance any amount becoming exercisable;
- (h) any obligation to provide or transfer any deposit or collateral;
- (i) any right to give or withhold any consent or approval; or
- (j) any other right or remedy (whether or not similar in kind to those referred to in paragraphs (a) to (i)) arising or becoming exercisable.

(5) Without prejudice to paragraph (4), any provision in a relevant instrument that, as a result of the transfer or any other thing done, or matter arising, by virtue of or in connection with article 3 of this Order, provides for an obligation not to be created, suspends or extinguishes (in whole or in part) such an obligation or renders such an obligation subject to conditions, shall be of no effect.

(6) In this article—

“relevant instrument” has same meaning as in paragraph 4(3) of Schedule 1 to the Act and the specified connection referred to in paragraph 4(3)(c) of that Schedule is between Heritable and those undertakings whose assets and liabilities, profits and losses are consolidated in the consolidated accounts of Heritable;

“third party” shall be construed in accordance with paragraph 2(3) of Schedule 2 to the Act.

Payment of transferred liabilities

7.—(1) Deposits Management (Heritable) may without penalty or other charge pay any transferred liability prior to the due date for payment.

(2) Where Deposits Management (Heritable), in pursuance of paragraph (1), pays a transferred liability prior to the due date for payment, Deposits Management (Heritable) may not rely on any transferred right or any other term of business of Heritable to reduce or modify the transferred liability by reason of the fact that payment is being made prior to the due date for payment.

(3) Deposits Management (Heritable) shall not be obliged to pay any transferred liability sooner than is reasonably practicable.

Construction of documents etc.

8. As from the effective time and save as otherwise provided in this Order—

- (a) agreements made or other things done by or in relation to Heritable shall be treated, so far as may be necessary for the purposes of or in connection with the transfer (but not otherwise) as made or done by or in relation to Deposits Management (Heritable), as the case may be;
- (b) references to Heritable or to any officer or employee of Heritable in instruments or documents relating to the transferred rights and liabilities, shall have effect as if they were references to Deposits Management (Heritable), or to any officer or employee of Deposits Management (Heritable), as the case may be.

Validity of acts done by Deposits Management (Heritable)

9. Anything done by or in relation to Deposits Management (Heritable) after the effective time for the purposes of or in connection with this Order which would have been effective had it been done by or in relation to Heritable prior to the effective time shall be effective.

Exemption of Deposits Management (Heritable) Limited

10. Deposits Management (Heritable) is an exempt person for the purposes of the 2000 Act in respect of any regulated activity of the kind specified by article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a)(accepting deposits).

Provision of information and assistance

11.—(1) Heritable shall provide Deposits Management (Heritable) with such information and assistance as is reasonably requested by Deposits Management (Heritable)—

- (a) in relation to the transferred rights and liabilities;
- (b) for any purpose relating to this Order; or
- (c) for any purpose relating to any other function of Deposits Management (Heritable) which relate to its functions under this Order.

(2) Heritable shall provide the Treasury with such information and assistance as is requested by the Treasury for any purposes relating to this Order.

PART 3

FINANCIAL SERVICES COMPENSATION SCHEME

Application of Part 3

12. This Part applies where, before the effective time, Heritable is in default for the purposes of rule 6.3.1 of the COMP Sourcebook.

Sums to be paid to Deposits Management (Heritable) following the transfer

13.—(1) The following liabilities arise at the effective time—

- (a) the FSCS is liable to pay (as soon as practicable) to Deposits Management (Heritable) an amount equal to the amount that eligible claimants would, immediately before the effective time, have been entitled to claim from the FSCS in respect of claims against Heritable in relation to relevant protected deposits; and
- (b) the Treasury are liable to pay (as soon as practicable) to Deposits Management (Heritable) an amount equal to the aggregate amount of the liabilities transferred to Deposits Management (Heritable) under article 3 less the amount specified in subparagraph (a).

(2) For the purposes of paragraph (1)(a), if the quantification date for a claim would have been a date other than the date on which Heritable was determined to be in default for the purposes of section 6.3 of the COMP Sourcebook, the amount that an eligible claimant would have been entitled to claim from the FSCS is the lesser of—

- (a) the amount which the FSCS quantifies as being the value of that claim as at immediately before the effective time; and
- (b) the amount that would have been payable at the quantification date, if different, for that claim.

(3) In paragraph (2), “quantification date” has the meaning given in rule 12.3.1 of the COMP Sourcebook.

(4) As soon as practicable after the effective time—

- (a) Heritable shall estimate the aggregate amount of the transferred liabilities;

(a) SI 2001/544; amended by SI 2002/682.

- (b) the FSCS shall pay to Deposits Management (Heritable) the amount it is liable to pay under paragraph (1)(a) as estimated by the Authority; and
- (c) the Treasury shall pay to Deposits Management (Heritable) an amount equal to the amount estimated by Heritable in accordance with sub-paragraph (a) less the amount estimated by the Authority in accordance with sub-paragraph (b).

(5) From time to time—

- (a) the FSCS may revise the estimate of its liability under paragraph (1)(a); and
- (b) Heritable may revise the estimate of the aggregate amount of the transferred liabilities,

and the FSCS, the Treasury and Deposits Management (Heritable) shall make such corresponding payments to each other as are necessary to ensure that the FSCS and the Treasury have each paid to Deposits Management (Heritable) the amount required (and no more than the required amount) to meet their liability under paragraph (1).

(6) If at any time after the effective time Heritable is placed into administration or an interim order is made in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act, the references to Heritable in paragraphs (4) and (5) are to be treated as references to the administrator.

Payment to Deposits Management (Heritable) to constitute payment of compensation for the purposes of the Financial Services Compensation Scheme

14. For the purposes of Part 15 (the financial services compensation scheme) of the 2000 Act, the COMP Sourcebook and the FEES 6 Chapter (including, without limitation, the power of the FSCS to impose levies)—

- (a) all payments by the FSCS to Deposits Management (Heritable) under article 13 shall constitute the payment of compensation to each eligible claimant under the Financial Services Compensation Scheme in accordance with their respective entitlements in respect of claims against Heritable for relevant protected deposits;
- (b) each eligible claimant—
 - (i) is deemed to have made an application for compensation for the purposes of rule 3.2.1(1) of the COMP Sourcebook; and
 - (ii) is deemed to have accepted an offer of compensation made by the FSCS and to have received payment of such compensation for the purposes of rule 11.2.1 of the COMP Sourcebook,

and, accordingly, an eligible claimant has no right to claim, and the FSCS has no obligation to pay, for a relevant protected deposit any further compensation under the Financial Services Compensation Scheme in respect of the default of Heritable determined by the Authority under section 6.3 of the COMP Sourcebook.

Liability of Heritable to the FSCS and the Treasury

15.—(1) Heritable is liable to the FSCS in respect of an amount equal to the amount which would have been provable in the administration of Heritable in respect of the transferred liabilities had this Order not been made and had Heritable been placed in administration immediately before the effective date.

(2) The FSCS shall pursue recoveries from Heritable in respect of the liability incurred under paragraph (1) to the extent reasonably practicable.

(3) Subject to paragraph (4), if an eligible claimant had, in relation to a relevant protected deposit, a liability to Heritable which would have been capable of being set-off against a liability of Heritable to that claimant in an administration of Heritable (if that liability had not been transferred), the amount which would have been provable in the administration shall for the purposes of paragraph (1) be taken to be the sum of—

- (a) the amount of the reduction in the depositor’s liability to Heritable as a result of the application of set-off; and

(b) the amount which would have been recovered in respect of the balance of the claim (if any) provable in the administration of Heritable.

(4) Paragraph (3) applies only to the extent that its application does not have the effect that the other creditors of Heritable are in a worse position than they would have been had the set-off been applied.

(5) The FSCS shall determine the proportion of any amount which it receives or recovers from Heritable which is properly attributable to each type of liability described below and shall promptly on receipt account for that receipt or recovery as follows—

- (a) in full to the Treasury, to the extent that—
 - (i) the receipt is attributable to a transferred liability; and
 - (ii) the person to whom such transferred liability is owed would not have been entitled to make a claim for compensation from the FSCS immediately before the effective time;
- (b) to the Treasury by reference to the relevant proportion, to the extent that—
 - (i) the receipt is attributable to a transferred liability;
 - (ii) the person to whom such transferred liability is owed is an eligible claimant; and
 - (iii) the amount of such liability exceeds the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time;
- (c) for the account of the FSCS, to the extent that—
 - (i) the receipt is attributable to a transferred liability owed to an eligible claimant; and
 - (ii) the amount of such liability is equal to or less than the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time.

(6) In paragraph (5), the “relevant proportion” is the proportion of the total liabilities which arise under article 13(1) for which the Treasury are liable.

(7) If Heritable is in administration or an interim order has been made in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act, the liability incurred under paragraph (1) shall not be treated as an expense of the administration under paragraph 99(3) of Schedule B1 of the 1986 Act, rule 2.67 of the Insolvency Rules 1986 or any analogous provision of the Insolvency (Scotland) Rules 1986.

(8) Nothing in this Part shall have the effect that the FSCS recovers less than it would have recovered if this Order had not been made.

FSCS’s power to require information

16.—(1) The FSCS may, by notice in writing given to Deposits Management (Heritable), require it –

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(2) Paragraph (1) only applies to information and documents the provision or production of which the FSCS considers to be necessary (or likely to be necessary) for the exercise of its functions under or by virtue of this Order.

(3) Subsections (2), (4), (5) and (7) of section 219 of the 2000 Act (scheme manager’s power to require information) apply to a requirement imposed under paragraph (1) as if it were a requirement imposed under that section.

Statutory immunity

17. For the purposes of section 222 (statutory immunity) of the 2000 Act the scheme manager's functions shall include any acts or omissions carried out by the FSCS pursuant to or in connection with this Order.

PART 4

THE ADMINISTRATOR AND TRANSITIONAL PROVISIONS

Application of this Part

18. This Part applies if after the effective time —

- (a) Heritable is placed into administration; or
- (b) an interim order is made in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act.

The administration

19. The relevant provisions of the 1986 Act, the Insolvency Rules 1986(a) and the Insolvency (Scotland) Rules 1986(b) shall apply to Heritable subject to the provisions of this Part.

Objectives etc. of the administrator

20.—(1) This article only applies during the transitional period.

(2) The administrator must perform his or her functions with the objectives (“the overriding objectives”) of—

- (a) ensuring that Heritable provides, and managing the affairs, business and property of Heritable to enable it to provide, the services and facilities reasonably required by Deposits Management (Heritable) to carry on its functions in relation to the transferred rights and liabilities; and
- (b) ensuring that Heritable performs the other obligations imposed on it by or under this Order.

(3) The administrator shall only perform his or her functions with the objective determined in accordance with paragraph 3 of Schedule B1 to the 1986 Act to the extent that such objective is not inconsistent with and does not interfere with the achievement of the overriding objectives.

(4) Paragraph 3(2) of Schedule B1 to the 1986 Act only applies to the performance of the functions of the administrator to the extent that it is not inconsistent with and does not interfere with the achievement of the overriding objectives.

(5) The Treasury may, by notice in writing, give a direction to the administrator specifying that an act (or omission) is required for the overriding objectives.

(6) The Treasury may also, by notice in writing, give a direction to the administrator requiring him or her to act (or not act) if the Treasury consider that it is necessary to give such a direction for the purposes of —

- (a) protecting or enhancing the stability of the financial systems of the United Kingdom;
- (b) protecting or enhancing public confidence in the stability of the banking system of the United Kingdom; or
- (c) protecting depositors.

(7) The administrator must comply with any directions given under paragraph (5) or (6).

(a) SI 1986/1925.

(b) SI 1986/1915 (S.139).

(8) The services and facilities to which paragraph (2)(a) applies include (but are not limited to) the services and facilities specified in Schedule 1.

(9) The administrator shall not be required to include any proposals for achieving the overriding objectives in any statement he or she makes under paragraph 49 (administrator's proposals) or paragraph 54 (revision of administrator's proposals) of Schedule B1 to the 1986 Act or to obtain approval of such proposals at any creditors' meeting or from the court.

(10) The administrator shall not enter into a transaction or a series of transactions (whether related or not) to sell, lease, transfer or otherwise dispose of any property or right of Heritable having a value of more than £50 million at any time unless—

- (a) the court orders otherwise;
- (b) the Treasury gives its consent to the transaction; or
- (c) the sale, lease, transfer or disposal has been specifically approved at a meeting of creditors summoned under paragraph 51(1), 54(2) or 62 of Schedule B1 to the 1986 Act or by a creditors' committee constituted in accordance with rule 2.50 of the Insolvency Rules 1986 or any analogous provision of the Insolvency (Scotland) Rules 1986.

(11) In this article, "court" means—

- (a) in England and Wales, the High Court;
- (b) in Scotland, the Court of Session;
- (c) in Northern Ireland, the High Court.

Insolvency rules etc.

21. Nothing in the 1986 Act, the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986(a) or any other enactment or rule of law shall operate to invalidate or prejudice any act or omission done under or pursuant to this Order or give rise to a claim against or impose any liability on Heritable or the administrator for any act or omission so done.

Use of the Heritable brand

22. Heritable shall grant to Deposits Management (Heritable) a licence to use the Heritable brand during the transitional period for the purposes of Deposits Management (Heritable) carrying on its business in relation to the transferred rights and liabilities.

Compensation payable to Heritable

23.—(1) The Treasury shall reimburse Heritable for the costs and expenses (including fees) properly incurred by the administrator during the transitional period in fulfilling his or her obligations under article 20(1).

(2) Paragraph (1) does not apply to any cost or expense which would have been incurred even if this Order had not been made.

Continuity

24.—(1) During the transitional period, any person wishing to terminate or modify (or treat as terminated or modified) any contract or agreement with Heritable for services and facilities or any right or obligation under such a contract or agreement must give not less than 14 days prior written notice to the administrator and to Deposits Management (Heritable).

(2) Except with the consent of the Treasury or the permission of the court, during the transitional period—

- (a) no person is entitled—

(a) SI 1986/1915 (S 139).

- (i) to terminate or modify any contract or agreement with Heritable for services and facilities, or any right or obligation under such a contract or agreement, where the contract or agreement or right or obligation relates to services or facilities which are reasonably required by—
 - (aa) Heritable to perform its duties under or pursuant to this Order;
 - (bb) the administrator to perform his or her duties under or pursuant to this Order; or
 - (cc) Deposits Management (Heritable) to carry on its functions in relation to the transferred rights and liabilities, or
 - (ii) to treat such a contract, agreement, right or obligation as terminated or modified, by virtue of or in connection with the transfer, the commencement of the administration in relation to Heritable or the making of an interim order in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act; and
 - (b) any counterparty to such a contract or agreement must perform his or her obligations in accordance with that contract or agreement.
- (3) The services and facilities to which paragraphs (1) and (2) apply include (but are not limited to) the services and facilities specified in Schedule 1.
- (4) Any purported termination or modification of any contract, agreement, right or obligation in contravention of paragraph (1) or (2), and any action taken in consequence of any such purported termination or modification, shall have no effect.
- (5) Paragraph (2) does not apply where—
- (a) Heritable, Deposits Management (Heritable) or the administrator, as the case may be, has failed to perform its payment obligations under the relevant contract or agreement and such non-payment is not remedied within 14 days of that person becoming aware of the non-performance; or
 - (b) Heritable, Deposits Management (Heritable) or the administrator, as the case may be, fails to notify the counterparty to the relevant contract or agreement within 14 days of its becoming aware of the request for consent to such termination, modification or non-performance of an obligation, that such consent has been withheld.
- (6) Without prejudice to the generality of paragraph (2), the transfer shall not have the effect of terminating or otherwise changing the terms of Heritable's membership (if any) of any payment system, including, in particular, BACS, CHAPS and the LINK payments systems.
- (7) This article is subject to any requirement of Community law.

Financial Ombudsman Scheme

25. For the purposes of section 227(2) (voluntary jurisdiction) of the 2000 Act, Deposits Management (Heritable) is deemed to be carrying on an activity to which the voluntary jurisdiction rules apply and is deemed to be participating in the ombudsman scheme.

PART 5

MISCELLANEOUS

Shadow directorship

26.—(1) While Deposits Management (Heritable) is wholly owned by the Treasury (or to be regarded as wholly owned by the Treasury for the purposes of the Act), for the purposes of the provisions listed in Schedule 2 to this Order, none of the persons listed in paragraph (3) shall be regarded as a shadow director or (unless otherwise appointed as a director) a person discharging managerial responsibilities of Deposits Management (Heritable).

(2) For the purposes of the definition of “director” in section 417 of the 2000 Act (definitions), none of the persons listed in paragraph (3) shall be regarded as a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of a relevant undertaking are accustomed to act while Deposits Management (Heritable) is wholly owned by the Treasury.

(3) The persons are—

- (a) a Minister of the Crown;
- (b) the Treasury;
- (c) the Treasury Solicitor;
- (d) the Bank;
- (e) persons—
 - (i) employed by or under; or
 - (ii) acting on behalf of,any of the persons listed in sub-paragraph (a) to (d).

Modification to Authority’s rule-making power

27.—(1) Subsections (1) and (1A)(a) of section 138 of the 2000 Act (general rule-making power) have effect as if modified by inserting after “protecting the interests of consumers”—

“or for the purposes of, to facilitate or in consequence of, a transfer under section 6 of the Banking (Special Provisions) Act 2008”.

(2) Section 148(2)(b) of the 2000 Act (modification or waiver of rules) shall also apply in relation to Heritable—

- (a) in the absence of an application by a person subject to rules made by the Authority; and
- (b) without any requirement for the consent of such a person.

(3) Section 148(4)(c) of the 2000 Act shall not prevent the Authority from modifying or waiving rules in relation to Heritable under section 148 of that Act provided that the Authority is satisfied that the modification or waiver is necessary for the purposes of, to facilitate or in consequence of the transfer.

Modification to Authority’s duty to consult on rule changes

28.—(1) Section 155(7) of the 2000 Act (consultation) has effect as if modified by adding at the end—

“or if it is making rules for the purposes of, or to facilitate or in consequence of, a transfer under section 6 of the Banking (Special Provisions) Act 2008.”

(2) Section 157 of the 2000 Act (guidance) has effect as if modified by adding after subsection (3)—

“(3A) Section 155(7) applies to proposed guidance as it applies to proposed rules with the modification made by article 28 of the Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008.”.

Freedom of information

29. For the purposes of section 3 of the Freedom of Information Act 2000 (public authorities)(d), Deposits Management (Heritable) shall be deemed—

(a) Subsections (1A) to (1C) were inserted by S.I. 2006/2975.
(b) Subsection (2) was substituted by S.I. 2007/1973.
(c) Subsection (4)(a) was amended by S.I. 2007/1973.
(d) 2000 c.36.

- (a) not to be a publicly-owned company for the purposes of subsection (1)(b);
- (b) not to hold information on behalf of the Treasury or Treasury Solicitor for the purpose of subsection (2)(b).

Proceedings against directors

30.—(1) No director of—

- (a) Heritable; or
- (b) Deposits Management (Heritable),

shall be liable in connection with the transfer or any other provisions of this Order and accordingly no proceedings may be brought (or, in Scotland, raised) against any such director in respect of such matters.

(2) The Treasury may in writing—

- (a) waive the effect of paragraph (1), and
- (b) give consent to bring (or, in Scotland, raise) such proceedings against such directors.

(3) Where paragraph (1) applies, section 232 of the Companies Act 2006 (provisions protecting directors from liability) shall not apply to a relevant undertaking.

(4) In this article—

“director” means a person who was a director immediately before the effective time, whether or not he has ceased to be a director at the time when proceedings in respect of that liability commenced;

“proceedings” includes proceedings under Part 11 of the Companies Act 2006 (derivative claims and proceedings by members).

Notification requirement

31.—(1) The Treasury must notify the Authority of the making of this Order.

(2) A notification under paragraph (1)—

- (a) may be given by such means as the Treasury consider appropriate;
- (b) must be given to the Authority as soon as reasonably practicable after the effective time.

(3) On receiving a notification under paragraph (1), the Authority must in turn notify any relevant EEA authority of the making of the Order.

(4) A notification under paragraph (3)—

- (a) may be given by such means as the Authority considers appropriate;
- (b) must be given to the relevant EEA authority as soon as reasonably practicable after the Authority is notified under paragraph (1).

(5) “Relevant EEA authority” means any regulatory authority in an EEA state that exercises functions in relation to any office or branch of the authorised deposit-taker in question in that state.

Transfer of data

32. Any transfer of data under this Order is not to be taken to breach any restriction on disclosure of information, however imposed.

7th October 2008

Dave Watts
Steve McCabe
Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Article 20

SERVICES AND FACILITIES

1. Website hosting services or facilities.
2. Information technology services or facilities.
3. Back office processing services or facilities.
4. Call centre services or facilities.
5. Payment and clearing services or facilities.

SCHEDULE 2

Article 26

SHADOW DIRECTORSHIP

1. The following provisions of the Companies Act 1985^(a)-
 - (a) section 317 of the (disclosure of interests in contracts);
 - (b) section 733 (offences by bodies corporate).
2. The following provisions of the Companies Act 2006^(b)—
 - (a) section 84 (criminal consequences of failure to make required disclosure);
 - (b) section 162 (register of directors);
 - (c) section 165 (register of directors' residential addresses);
 - (d) section 167 (duty to notify registrar of changes);
 - (e) sections 170 to 177 (general duties of directors);
 - (f) sections 182 to 186 (declaration of interest in existing transaction) as applied to shadow directors by section 187;
 - (g) sections 188 and 189 (directors' service contracts);
 - (h) sections 190 to 196 (substantial property transactions);
 - (i) sections 197 to 214 (loans etc to directors);
 - (j) sections 215 to 222 (payments for loss of office) as applied to shadow directors by section 223(2);
 - (k) sections 227 to 230 (directors' service contracts);
 - (l) section 231 (contracts with sole members who are directors);
 - (m) sections 260 to 269 (derivative claims in England and Wales and Northern Ireland);
 - (n) sections 854 to 859 (annual return).

(a) 1985 c.6.
(b) 2006 c.46.

3. The following provisions of the Insolvency Act 1986^(a)—
 - (a) section 214 (wrongful trading);
 - (b) section 249 (“connected” with a company).
4. The following provisions of the 2000 Act^(b)—
 - (a) section 96A (disclosure of information requirements);
 - (b) section 96B (disclosure rules: persons responsible for compliance).

^(a) 1986 c.45.
^(b) Sections 96A and 96B were inserted by S.I. 2005/381.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Banking (Special Provisions) Act 2008 (c.2) (“the 2008 Act”) and provides for certain rights and liabilities to be transferred from Heritable Bank Plc (“Heritable”) to Deposits Management (Heritable) Limited and for the operation of the Financial Services Compensation Scheme in relation to the transfer.

The transfer is given effect by article 3, which transfers the liabilities of Heritable to claimants who are eligible under the Financial Services Compensation Scheme in respect of deposit accounts to Deposits Management (Heritable), and confers associated rights on Deposits Management (Heritable).

The remainder of the articles in Part 2 make provision associated with the transfer, including in relation to interests, rights and liabilities of third parties relating to rights and liabilities transferred (article 6), payment of transferred liabilities by Deposits Management (Heritable) (article 7), and exemption of Deposits Management (Heritable) from the general prohibition in the Financial Services and Markets Act 2000 in respect of accepting deposits (article 10).

Part 3 concerns the Financial Services Compensation Scheme and applies where before the transfer Heritable is in default for the purposes of that Scheme. It provides for certain sums to be paid to Deposits Management (Heritable) by the Financial Services Compensation Scheme and the Treasury (article 13).

Article 14 provides that, for the purposes of the provisions which govern that Scheme, the payments made by the FSCS under article 13 constitute the payment of compensation to each qualifying claimant under that Scheme.

Article 15 provides for certain liabilities of Heritable to the FSCS, and requires the FSCS to account to the Treasury for certain amounts recovered by it from Heritable.

Part 4 makes provision in relation to the administrator and applies if after the transfer Heritable is placed into administration or an interim administration order is made in relation to it.

Article 20 imposes overriding objectives on the administrator relating to Heritable’s obligations under the Order and the provision of services by Heritable to Deposit Management (Heritable) to enable it to operate the transferred accounts. It also provides that the administrator may have regard to objectives relating to the stability of the UK financial system, public confidence in the stability of the banking system and protecting depositors.

Article 24 imposes obligations and restrictions in relation to contracts to which Heritable is a party.

Part 5 contains miscellaneous provisions, including provision on shadow directorships in relation to Deposit Management (Heritable) (article 26).

An Impact Assessment of the effect of this instrument on the costs to business has been prepared. It may be obtained from the Financial Stability Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of the document have been placed in the libraries of both Houses of Parliament.

STATUTORY INSTRUMENTS

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