

EXPLANATORY MEMORANDUM TO
THE KAUPTHING SINGER & FRIEDLANDER LTD TRANSFER OF CERTAIN
RIGHTS AND LIABILITIES ORDER 2008

2008 No. 2674

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Kaupthing Singer & Friedlander Ltd Transfer of Certain Rights and Liabilities Order 2008 ("the Order") transfers the rights and liabilities of Kaupthing in relation to retail deposit accounts known as "Edge" accounts to Frontpedal Limited (in the process of changing its name to Deposits Management (Edge) Limited), a company wholly owned by the Bank of England for the purposes of the Banking (Special Provisions) Act 2008 ("the publicly owned company"). The Order also makes a further transfer of certain rights and liabilities from the publicly owned company ING Direct N.V., a limited liability company incorporated in the Netherlands, and makes various connected provisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 It was not possible in the case of this Order to comply with the 21-day rule according to which relevant instruments are laid before Parliament for at least 21 days prior to coming into force. The Order was made at 12.05 pm on 8th October 2008, came into force at 12.15 pm on that day and then was laid before Parliament on that day.

3.2 In accordance with the proviso to section 4(1) of the Statutory Instruments Act 1946 Her Majesty's Treasury have notified the Speaker of the House of Lords and the Speaker of the House of Commons that the Order came into force before it was laid before Parliament. It is important that the transfer of certain rights and liabilities in Kaupthing Singer & Friedlander has effect as soon as possible following the making of the Order. It is in everyone's interest for the transfer of these rights and liabilities to be effected as swiftly as possible to avoid uncertainty. Transferring the Kaupthing deposit book of "Edge" accounts to a publicly owned company followed by an immediate transfer of retail deposits of Kaupthing to ING Direct N.V. will provide protection and continuity of business for depositors.

4. Legislative Background

4.1 The Order is made under the Banking (Special Provisions) Act 2008 ("the Act"), in exercise of the powers in section 6 to transfer rights and liabilities of an authorised UK

deposit-taker to a company wholly owned by the Bank of England and under section 8, to make a further transfer following a transfer to the public sector. By virtue of section 2(8) of the Act, the power is only exercisable for a period of one year from the passing of the Act. The Act received Royal Assent on 21st February 2008.

4.2 Section 2 of the Act requires that, before making an Order under section 6, the Treasury must consider that it is desirable to make the Order for either or both of the purposes set out in section 2(2). The Treasury considers it desirable to make the Order for the purpose set out in section 2(2)(a), that is, to maintain 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.

4.3 Part 2 of the order provides for the transfer of rights and liabilities relating to “Edge” accounts to the publicly owned company. In addition, Part 2, among other things, makes provision in relation to the interests, rights and liabilities of third parties relating to the rights and liabilities transferred.

4.4 Part 3 of the Order makes provision for the onward transfer of the transferred rights and liabilities relating to “Edge” accounts from the publicly owned company to ING Direct N.V.. In addition, Part 3, among other things, require Kaupthing to provide information to ING Direct N.V. and makes provision in relation to the interests, rights and liabilities of third parties relating to the rights and liabilities transferred.

4.5 Part 4 of the Order provides for the interaction of the transfer described in paragraph 4.4 above with the Financial Services Compensation Scheme (“FSCS”). Amongst other things it provides for certain payments to be made to ING by the FSCS and the Treasury in connection with that transfer, and for the payments by the FSCS to ING to constitute the payment of compensation to persons eligible to claim from the FSCS (for the purposes of the relevant provisions of the Financial Services and Markets Act 2000 and the relevant sections of the FSA Handbook).

4.6 Part 5 of the Order makes provision which applies if Kaupthing Singer & Friedlander Ltd is placed into administration after the transfer. It imposes particular objectives on the administrator relating to the Order and the operation of transferred accounts by the publicly owned company. It imposes obligations and restrictions in relation to certain contracts with Kaupthing Singer & Friedlander.

4.7 In accordance with the requirement in section 7(1) of the Act, the Treasury intend to make an Order that will provide for determining the amount of any compensation payable by the Treasury to Kaupthing.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is necessary.

7. Policy background

7.1 The purpose of the Act is to enable the Government to act to secure the continued stability of the UK financial system and to protect the public interest.

7.2 The purpose of the Order is to transfer the Kaupthing deposit book of “Edge” accounts to a publicly owned company followed by an immediate transfer of retail deposits of Kaupthing to ING Direct N.V. will provide protection and continuity of business for depositors.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

9.1 The Treasury Switchboard at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Tel: 020 7270 4558 or e-mail: public.enquiries@hm-treasury.gsi.gov.uk. The Switchboard can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HMT	Title: Impact Assessment of the transfer of Kaupthing deposit book of Edge accounts to ING Direct NV	
Stage: Implementation	Version: 1	Date: 8 October 2008
Related Publications: The Banking (Special Provisions) Act 2008		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries: HM Treasury Switchboard **Telephone: 020 7270 4558**

What is the problem under consideration? Why is government intervention necessary?

Protecting the public interest and maintaining stability of the UK financial system in circumstances where the Financial Services Authority has determined that a deposit taker is no longer meeting its threshold conditions for authorisation.

What are the policy objectives and the intended effects?

To support financial stability; to protect depositors' money; and to protect the interests of the taxpayer.

What policy options have been considered? Please justify any preferred option.

The purpose of the Order is to transfer Kaupthing's deposit book of "Edge" accounts indirectly to ING Direct N.V.. The purpose of the Order is to transfer Kaupthing's deposit book of "Edge" accounts via a transfer into a company wholly owned by the Bank of England followed by the onward transfer of those accounts to ING Direct N.V.. The Government has considered a number of options and weighed up the various competing considerations and considers this to be the best solution for protecting depositors and ensuring retail consumer confidence. In reaching this view, the Government has weighed up the various competing considerations, such as letting an administrator organise a swift payout or taking the whole company into temporary public ownership.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Government will review the costs and benefits of this action in due course.

Ministerial Sign-off For Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

..... Date: 8th
October 2008