
STATUTORY INSTRUMENTS

2008 No. 432

The Northern Rock plc Transfer Order 2008

PART 1

GENERAL

Citation, commencement and interpretation

- 1.—(1) This Order may be cited as the Northern Rock plc Transfer Order 2008.
- (2) This Order comes into force on 22nd February 2008.
- (3) In this Order—
- “the Act” means the Banking (Special Provisions) Act 2008;
 - “the 1985 Act” means the Companies Act 1985(1);
 - “the 2006 Act” means the Companies Act 2006(2);
 - “the Authority” means the Financial Services Authority;
 - “the effective time” means the beginning of 22nd February 2008;
 - “Northern Rock” means Northern Rock plc, company registered number 3273685;
 - “Northern Rock’s registrar” means the person appointed by Northern Rock, as its agent, among other things to maintain its register of members;
 - “relevant undertaking” means Northern Rock or any of its group undertakings;
 - “shares in Northern Rock” means the ordinary shares, foundation shares and preference shares issued by Northern Rock;
 - “the transfer” means the transfer effected by article 2(1);
 - “the Treasury Solicitor” has the same meaning as in the Treasury Solicitor Act 1876(3) and whose address is One Kemble Street, London WC2B 4TS;
 - “the USRs” means the Uncertificated Securities Regulations 2001(4).

(1) 1985 c. 6.

(2) 2006 c. 46.

(3) 1876 c.18.

(4) S.I. 2001/3755; as amended by S.I. 2003/1633, there are other amending instruments but none is relevant.

PART 2

TRANSFER AND REGISTRATION OF SHARES AND EXTINGUISHMENT OF RIGHTS ETC

Transfers

2.—(1) By virtue of this Order, the shares in Northern Rock are transferred to the Treasury Solicitor as nominee of the Treasury.

- (2) The transfer of shares effected under paragraph (1) shall vest title in the Treasury Solicitor—
- (a) free from all trusts, liabilities and incumbrances; and
 - (b) together with all rights, benefits or privileges which attach or accrue to or arise from such shares on or after the effective time.
- (3) The transfer under paragraph (1) takes place at the effective time.

Registration of shares and issue of certificates

3.—(1) The Treasury Solicitor is entitled with effect from the effective time to be entered in the register of members of Northern Rock as holder of the shares transferred by virtue of this Order without the need for delivery of any instrument of transfer or other instrument or document and notwithstanding—

- (a) the absence of any required consent or concurrence to or with the transfer; and
 - (b) any other restriction relating to the transfer.
- (2) The Operator of a relevant system in which any shares transferred by virtue of this Order (“relevant shares”) are held immediately prior to the effective time shall forthwith after the effective time—
- (a) withdraw his permission for title to the relevant shares to be transferred by means of the relevant system with effect from the effective time; and
 - (b) inform all the system-members and Northern Rock’s registrar of the date and time the relevant shares ceased to be securities participating in the system.
- (3) Northern Rock shall procure that Northern Rock’s registrar shall forthwith after the effective time—
- (a) take such action as the Operator of a relevant system may require to convert any relevant shares held in such system immediately prior to the effective time into certificated form;
 - (b) register in Northern Rock’s register of members (including its issuer register of members) the Treasury Solicitor as the holder of shares in Northern Rock.
- (4) The Operator of a relevant system in which any relevant shares are held immediately prior to the effective time, Northern Rock and Northern Rock’s registrar shall each—
- (a) provide each other with such information as shall be necessary to comply with this article; and
 - (b) co-operate to ensure that the issuer register of members of Northern Rock reconciles with the Operator register of members of Northern Rock immediately prior to the effective time.
- (5) From the effective time and until the Treasury Solicitor is entered in Northern Rock’s register of members (including its issuer register of members) —
- (a) he is deemed for all purposes (including for the purposes of the 1985 Act and, when the relevant provisions of the 2006 Act come into force, the purposes of that Act and the USRs) to be—

- (i) the sole member of Northern Rock; and
 - (ii) entered as holder on the Operator register of members of Northern Rock; and
- (b) no other person may exercise or purport to exercise in respect of Northern Rock any right deriving from any shares in Northern Rock.
- (6) The Treasury Solicitor is entitled from the effective time to all the rights and advantages of a member of Northern Rock to the exclusion of all other persons, notwithstanding that he is not entered in either Northern Rock's register of members (including its issuer register of members) or the Operator register of members of Northern Rock.
- (7) Section 185(5) of the 1985 Act (duty of company as to issue of certificates) applies to Northern Rock with the following modifications—
- (a) the transfer by virtue of this Order is deemed to be a transfer of the first-mentioned type referred to in subsection (2) which is lodged with Northern Rock at the effective time;
 - (b) subsections (3) to (4D) do not apply.
- (8) The corresponding provision of the 2006 Act to that referred to in paragraph (7) shall have effect, when it comes into force, subject to modification to similar effect as referred to in that paragraph.
- (9) In paragraph (8), "corresponding provision" has the same meaning as in section 1297 of the 2006 Act (continuity of the law).
- (10) In this article "certificated", "issuer register of members", "Operator", "Operator register of members", "relevant system" and "system-member" have the meanings given in the USRs.

Extinguishment of rights in relation to shares

- 4.—(1) By virtue of this Order any right or other entitlement granted by—
- (a) a relevant undertaking; or
 - (b) a person not within sub-paragraph (a), by reason of or in connection with—
 - (i) any individual's office or employment with a relevant undertaking; or
 - (ii) the services provided by any individual to a relevant undertaking,
- to receive shares in Northern Rock (whether by subscription, conversion or otherwise) is extinguished with effect from the effective time.
- (2) This article shall not apply to any right or entitlement to which article 5 applies.

Interest payments in relation to Tier 1 notes

- 5.—(1) This article applies if, while Northern Rock is wholly owned by the Treasury, Northern Rock would, but for this article, be obliged under the terms of any Tier 1 notes or arrangements relating to Tier 1 notes to issue ordinary shares in Northern Rock to satisfy entitlements to interest payments.
- (2) The Treasury may give notice to Northern Rock and the trustee for the holders of Tier 1 notes ("the trustee") that they—
- (a) intend to settle interest payments in respect of any Tier 1 notes in cash pursuant to paragraph (3); or
 - (b) require Northern Rock to settle interest payments in respect of any Tier 1 notes by Northern Rock issuing further Tier 1 notes to the trustee pursuant to paragraph (4).

(5) Subsections (4) to (4D) were substituted for subsection (4) by S.I. 2001/3649.

(3) Upon the giving of the notice referred to in paragraph (2)(a), unless and until the Treasury specify otherwise—

- (a) any obligation of Northern Rock to issue ordinary shares to the trustee is replaced by an obligation of Northern Rock to issue ordinary shares or, if so specified in the notice, further Tier 1 notes, to the Treasury Solicitor;
- (b) on each date when, but for this article, Northern Rock would be required to satisfy an entitlement referred to in paragraph (1) the Treasury shall pay an amount equal to the interest payments to or to the order of the trustee; and
- (c) Northern Rock shall have no further obligation in respect of the interest payments.

(4) Upon the giving of the notice referred to in paragraph (2)(b), unless and until the Treasury specify otherwise—

- (a) any obligation of Northern Rock to issue ordinary shares to the trustee shall be replaced by an obligation of Northern Rock to issue further Tier 1 notes to the trustee;
- (b) Northern Rock shall issue that number of further Tier 1 notes which is necessary to cover the entitlement of the holders of relevant Tier 1 notes in respect of the interest payments; and
- (c) Northern Rock shall have no further obligation in respect of the interest payments.

(5) In this article—

“further Tier 1 notes” means further Tier 1 notes which are on the same terms as the Tier 1 notes, subject to any modifications specified in the notice given by the Treasury under paragraph (2) (b) which the Treasury may consider appropriate, whether to ensure the inclusion of such notes in Northern Rock’s innovative tier one capital resources or otherwise;

“Tier 1 notes” means—

- (a) the £200,000,000 7.053 per cent callable perpetual core tier one notes of Northern Rock constituted by a trust deed dated 21st August 2002, and
- (b) the £300,000,000 8.399 per cent, step-up callable perpetual reserve capital instruments of Northern Rock constituted by a trust deed dated 21 September 2000 as supplemented by a supplemental trust deed dated 24th May 2001;

“innovative tier one capital resources” has the meaning given in the Glossary to the Authority’s Handbook;

“Handbook” means the handbook containing provisions made by the Authority under Part 10 of FSMA 2000.

Conversion of foundation shares into ordinary shares etc.

6.—(1) Immediately after the effective time, each foundation share issued by Northern Rock shall, by virtue of this Order, convert into and be redesignated as one ordinary share in Northern Rock notwithstanding any provision in the articles of association of Northern Rock and without the need for approval of any person.

(2) Northern Rock’s company secretary shall within one month after the effective time notify the registrar of companies of the alteration of the share capital of Northern Rock in accordance with section 122 of the 1985 Act (notice to registrar of alteration).

(3) The conversion and redesignation of the foundation shares by virtue of this Order shall be treated as having been carried out by Northern Rock under and in accordance with article 8.6 of its articles of association (save that article 8.22 shall not apply) and the Deed of Covenant made on 30th September 1997 between Northern Rock and the Northern Rock Foundation shall terminate immediately after such conversion and redesignation.

Minimum membership for carrying on business

7.—(1) While Northern Rock is wholly owned by the Treasury, section 24 of the 1985 Act (minimum membership for carrying on business) shall not apply in relation to Northern Rock or any member of Northern Rock.

(2) No petition shall be presented for the winding up of Northern Rock on the ground that the number of its members is less than the number required by law, nor shall any person be liable on that ground as a member of the company for the payment of any of its debts.

PART 3

MEETINGS, DIRECTORS AND PROCEEDINGS

Resolutions and meetings

8.—(1) Any meeting of members of Northern Rock held while Northern Rock is wholly owned by the Treasury shall, if the Treasury Solicitor is present in person or by proxy or authorises a corporate representative to attend, be deemed to be a duly constituted general meeting of the company notwithstanding that it may not have been properly called, or notice of it may not have been properly given, or any quorum required by Northern Rock's articles of association may not be present.

(2) Notwithstanding any provision in the articles of association of Northern Rock, an appointment of a proxy for the Treasury Solicitor—

- (a) may be in any written form (including in an electronic communication);
- (b) need not be given with any period of notice;
- (c) shall not require the approval of the board of Northern Rock;
- (d) is deemed to be given in accordance with the articles of association.

(3) A resolution of the company is effective notwithstanding that special notice (notice of intention to move it given to company at least 28 days before the meeting at which it is moved) of the resolution is required by any provision of the 1985 Act or 2006 Act but has not been given.

Removal of directors

9.—(1) While Northern Rock is wholly owned by the Treasury, the Treasury may in accordance with this article—

- (a) remove any person as a director of a relevant undertaking;
- (b) terminate a director's service contract with any relevant undertaking.

(2) For the purposes of any contract or arrangement between a person and a relevant undertaking, action taken under paragraph (1) shall be treated as having been carried out by the relevant undertaking and, in the case of paragraph (1)(a), under and in accordance with its articles of association.

(3) The Treasury may remove a person as a director of a relevant undertaking and may terminate his service contract by written notice to the relevant undertaking.

(4) Any notice given in accordance with paragraph (3) shall take effect from the date specified in the notice.

(5) A relevant undertaking which receives notice under paragraph (3) shall notify the person to whom the notice relates of that fact as soon as reasonably practicable.

(6) A person—

- (a) removed as director of a relevant undertaking, or
- (b) whose service contract with a relevant undertaking is terminated,

in accordance with this article shall not have any right or claim against the Treasury or any company wholly owned by the Treasury (other than a relevant undertaking) in consequence of the Treasury's actions under this article.

(7) This article is not to be taken—

- (a) as depriving any person removed under it of compensation or damages payable to him by a relevant undertaking in respect of—
 - (i) the termination of his appointment as director or of any appointment terminating with that as director; or
 - (ii) the termination of his service contract; or
- (b) as derogating from any power to remove a director or to terminate a director's service contract that may exist apart from this article.

(8) In this article and in article 10, "service contract" has the meaning given by section 227 of the 2006 Act (directors' service contracts).

Appointment of directors

10.—(1) While Northern Rock is wholly owned by the Treasury, the Treasury may appoint one or more directors of a relevant undertaking in accordance with this article and notwithstanding any restriction in the articles of association of the relevant undertaking.

(2) The Treasury may appoint a director of a relevant undertaking by written notice to the relevant undertaking provided the appointee has agreed to act in such a capacity.

(3) The appointment shall take effect from the date specified in the notice.

(4) The Treasury may determine the terms (including remuneration) of the service contract of a person appointed as a director under this article in whatever written form they see fit.

(5) Any appointment, contract or arrangement which is made or the terms of which are determined under this article is to be treated as made or entered into by the relevant undertaking in question.

(6) This article is not to be taken as derogating from any power to appoint a director or determine the remuneration and other terms and conditions of a director's service contract that may exist apart from this article.

Proceedings against directors of Northern Rock

11.—(1) No director of a relevant undertaking shall be liable for any act or omission of the director, acting in such capacity, which occurs while Northern Rock is wholly owned by the Treasury 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 2006 Act (provisions protecting directors from liability) shall not apply to a relevant undertaking.

(4) In this article—

"proceedings" includes proceedings under Part 11 of the 2006 Act (derivative claims and proceedings by members);

“director” means—

- (a) a person who is appointed as a director while Northern Rock is wholly owned by the Treasury, whether or not he has ceased to be a director when proceedings in respect of that liability commenced;
- (b) a person who was a director immediately before the effective time and whose continuing appointment as director while Northern Rock is wholly owned by the Treasury, the Treasury approves in writing, whether or not he has ceased to be a director at the time when proceedings in respect of that liability commenced; and
- (c) an alternate director of a person falling within sub-paragraph (a) or (b).

Modification of rights in relevant instruments

12.—(1) The consequences specified in paragraph (3) 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 this Order.

(2) Any circumstances which, but for paragraph (1), would give rise to the consequences specified in paragraph (3) shall not be taken to have arisen for the purposes of any relevant instrument.

(3) The consequences are—

- (a) the termination of the relevant instrument or any rights or obligations under it;
- (b) any right to terminate the 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; or
- (i) any other right or remedy (whether or not similar in kind to those referred to in paragraphs (a) to (h)) arising or becoming exercisable.

(4) Without prejudice to paragraph (3), 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 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.

(5) This article does not apply to any action taken by the Treasury under article 9.

(6) In this article—

“relevant instrument” has the meaning given 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 Northern Rock and those undertakings whose assets and liabilities, profits and losses are consolidated in the consolidated accounts of Northern Rock.

PART 4

DE-LISTING, APPROVAL ETC.

De-listing

13.—(1) By virtue of this Order, the listing of any shares of Northern Rock is discontinued with effect from the effective time without the need for any notice to, or consent of, Northern Rock or any other person.

(2) In paragraph (1), “listing” has the meaning given in section 74(6) of FSMA 2000.

Approved persons

14.—(1) While Northern Rock is wholly owned by the Treasury the requirements imposed on Northern Rock and any subsidiary undertaking by section 59 of FSMA 2000 (approval for particular arrangements) in relation to directors (including non-executive directors) and the chief executive officer shall be deemed to be satisfied in relation to Northern Rock and any subsidiary undertaking, provided that at all material times the Authority is satisfied that at least two individuals who effectively direct the business of Northern Rock are of sufficiently good repute and have sufficient experience to perform controlled functions in that respect.

(2) The Treasury may give written notice to the Authority that paragraph (1) is no longer to apply.

(3) At least one month prior to giving a notice under paragraph (2) the Treasury shall give written notice to Northern Rock or the relevant undertaking of its intention to give a notice to the Authority under paragraph (2).

(4) In paragraph (1)—

“controlled functions” has the meaning given in section 59(3) of FSMA 2000.

PART 5

AUTHORITY’S RULE-MAKING POWER

Modification to Authority’s rule-making power

15.—(1) Subsections (1) and (1A)(7) of section 138 of FSMA 2000 (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 3 of the Banking (Special Provisions) Act 2008”.

(2) Section 148(2)(8) of FSMA 2000 (modification or waiver of rules) shall also apply—

- (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)(9) of FSMA 2000 shall not prevent the Authority from modifying or waiving rules in relation to a relevant undertaking 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.

(6) section 74 was amended by S.I. 2005/381 and 2005/1433.

(7) subsections (1A) to (1C) were inserted by S.I. 2006/2975.

(8) subsection (2) was substituted by S.I. 2007/1973.

(9) subsection (4)(a) was amended by S.I. 2007/1973.

Modification to Authority's duty to consult on rule changes

16.—(1) Section 155(7) of FSMA 2000 (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 3 of the Banking (Special Provisions) Act 2008.”

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

—
“(3A) Section 155(7) applies to proposed guidance with the modification made by article 16(1) of the Northern Rock Plc Transfer Order 2008.”.

PART 6

MISCELLANEOUS

Shadow directorship

17.—(1) While Northern Rock is wholly owned by the Treasury, for the purposes of the provisions listed in the Schedule 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 a relevant undertaking.

(2) For the purposes of the definition of “director” in section 417 of FSMA 2000 (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 Northern Rock 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 of England;
- (e) persons—
 - (i) employed by or under; or
 - (ii) acting on behalf of,any of the persons in paragraph (3).

Northern Rock and freedom of information

18.—(1) This article applies while Northern Rock is wholly owned by the Treasury.

(2) A relevant undertaking shall be deemed—

- (a) not to be a publicly-owned company for the purposes of section 3(1)(b);
- (b) not to hold information on behalf of the Treasury for the purposes of section 3(2)(b);

of the Freedom of Information Act 2000 (public authorities)(**10**).

Notification requirement

- 19.**—(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.

Modification of provision on liability in relation to Operator’s functions

- 20.**—(1) Section 291 of FSMA 2000 (liability in relation to recognised body’s regulatory functions) shall have effect as if the following modifications are made.
- (2) In subsection (1)—
- (a) after “its officers and staff” add “and an Operator and its officers and staff”;
 - (b) after “recognised body’s” add “or the Operator’s”.
- (3) In subsection (3) at the end add—
- “and the functions of the Operator so far as relating to, or matters arising out of, the obligations to which the Operator is subject under the Northern Rock plc Transfer Order 2008.
- (4) In this section, “Operator” has the meaning given in the Uncertificated Securities Regulations 2001”.

21st February 2008

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