
STATUTORY INSTRUMENTS

2008 No. 432

The Northern Rock plc Transfer Order 2008

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.