

EXPLANATORY MEMORANDUM TO

THE BRADFORD & BINGLEY PLC TRANSFER OF SECURITIES AND PROPERTY ETC. (AMENDMENT) ORDER 2009

2009 No. 320

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. Purpose of the instrument

2.1 The Bradford & Bingley plc Transfer of Securities and Property etc (Amendment) Order 2009 ("the Order") amends the Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (SI 2008/2546) ("the 2008 Order").

2.2 The Order amends article 6 of the 2008 Order to provide clarity in relation to the circumstances in which the principal and interest on dated subordinated notes issued by Bradford & Bingley plc will become due and payable. The purpose of this amendment is to facilitate the orderly wind-down of Bradford & Bingley.

2.3 The Order also corrects a typographical error in the 2008 Order.

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

3.1 It has not been possible to comply with the 21 day rule in making the Order.

3.2 The primary enabling power for the Order is section 6 of the Banking (Special Provisions) Act 2008. Under section 2(8) of that Act that power may not be exercised after the end of the period of one year beginning with the day on which Act was passed. This period ends on 20 February 2009. It is therefore necessary to make the Order on or before that date.

3.3 The Treasury had originally proposed to make the Order on or before that date but to allow at least 21 days before bringing the Order into force. However, it has recently become apparent that there may be some doubt as to whether this approach would be permitted under the Banking (Special Provisions) Act 2008. This is because section 2(8) of that Act provides that section 6 does not affect "the continuation in force or effect of any order made" under section 6 before the end of the specified period. It is now considered that this might cast doubt on the ability of the Treasury to make an order under section 6 which did not come into force prior to 21st February 2009. This issue has only recently come to light.

4. Legislative Context

4.1 The Order is made under the Banking (Special Provisions) Act 2008 and, in particular, the power conferred by section 6 of that Act (in reliance on section 6(4)).

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 required.

7. Policy background

7.1 The purpose of the Order is to provide clarity in relation to the circumstances in which the principal and interest on dated subordinated notes issued by Bradford & Bingley plc will become due and payable. The purpose of this amendment is to facilitate the orderly wind-down of Bradford & Bingley.

8. Consultation outcome

8.1 None

9. Guidance

9.1 None

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 A business plan is being developed for the wind-down of Bradford & Bingley. This will be finalised by the end of March and a high-level version will be published shortly after.

13. Contact

13.1 Alexandra Arnall, at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Tel: 020-7270 5901 or e-mail: alexandra.arnall@hm-treasury.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HMT	Title: Impact Assessment of The Bradford & Bingley plc Transfer of Securities and Property etc. (Amendment) Order 2009	
Stage: Implementation	Version: 1	Date: 18 February 2009
Related Publications: The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008; The Banking (Special Provisions) Act 2008		

Available to view or download at:

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

Contact for enquiries:

Telephone:

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

Protecting the public interest and maintaining stability of the UK financial system by facilitating the orderly wind-down of Bradford & Bingley.

What are the policy objectives and the intended effects?

To support financial stability 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 provide clarity in relation to the circumstances in which the principal and interest on dated subordinated notes issued by Bradford & Bingley will become due and payable. The Government considered the option of not laying this Order but in all the circumstances considered provision of clarity to be beneficial.

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

A business plan is being developed for the wind-down of Bradford & Bingley. This will be finalised by the end of March and a high-level version will be published shortly after

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Paul Myners

.....Date: 19 February 2009

Summary: Analysis & Evidence

Policy Option:	Description: The Bradford & Bingley plc Transfer of Securities and Property etc. (Amendment) Order 2009
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' See below		
	One-off (Transition) Yrs			
	£			
	Average Annual Cost (excluding one-off)			
£	Total Cost (PV)	£		
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' See below		
	One-off Yrs			
	£			
	Average Annual Benefit (excluding one-off)			
£	Total Benefit (PV)	£		
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks
None

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	20 March 2009
Which organisation(s) will enforce the policy?	n/a
What is the total annual cost of enforcement for these organisations?	£ n/a
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£ n/a
What is the value of changes in greenhouse gas emissions?	£ n/a
Will the proposal have a significant impact on competition?	Yes/No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The purpose of the Order is to provide clarity in relation the circumstances in which the principal and interest on dated subordinated notes issued by Bradford & Bingley plc will become due and payable. The purpose of this amendment is to facilitate the orderly wind-down of Bradford & Bingley. Bradford & Bingley will continue to make interest payments to holders of subordinated notes in the short term, as if this Order – and the initial Transfer Order – had not been made. Bradford & Bingley’s longer-term strategy will be determined in the context of the business plan, which will be finalised by the end of March. A high-level business plan will be published shortly after, at which time a further announcement is expected to be made.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

None