
STATUTORY INSTRUMENTS

2009 No. 322

**The Banking Act 2009 (Restriction of
Partial Property Transfers) Order 2009**

PART 1

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009.

(2) This Order comes into force on 21st February 2009.

(3) In this Order—

“the Act” means the Banking Act 2009;

“the Bank” means the Bank of England;

“banking institution” means—

- (a) a bank (within the meaning of Part 1 of the Act)(**1**);
- (b) an undertaking which was a bank immediately before the making of a share transfer order under section 13(2) of the Act;
- (c) a bridge bank(**2**);
- (d) a building society (within the meaning of section 119 of the Building Societies Act 1986(**3**)); or
- (e) a holding company(**4**);

“continuity powers” means the powers conferred by section 64(2) of the Act (including that subsection as applied by sections 65(2) and 83(2)(f) of the Act) and section 67(2) of the Act (including that subsection as applied by sections 68(2) and 83(2)(f) of the Act);

“deposit” has the meaning given by article 5 of the Regulated Activities Order(**5**) (disregarding the exclusions in articles 6 to 9AA of that Order(**6**));

“eligible claimant” has the meaning given by rule 4.2.1 of the Compensation Sourcebook made by the Financial Services Authority under the Financial Services and Markets Act 2000(**7**);

“excluded rights” means rights—

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- (1) See section 2 of the Act.
 - (2) “Bridge bank” is defined in section 12(1) of the Act. By virtue of section 11 of the Interpretation Act 1978 (c.30), expressions used in this Order have, unless the contrary intention appears, the meaning which they bear in the Banking Act 2009.
 - (3) 1986 c.53.
 - (4) “Holding company” is defined in section 82(1) of the Act. By virtue of section 11 of the Interpretation Act 1978 (c.30), expressions used in this Order have, unless the contrary intention appears, the meaning which they bear in the Banking Act 2009.
 - (5) Article 5 was amended by SI 2002/682.
 - (6) Articles 6 to 9AA were amended by SI 2001/3544; SI 2002/682; SI 2002/1310; and SI 2002/1776.
 - (7) 2000 c.8.

- (a) which relate to a retail deposit made with a banking institution;
- (b) which relate to a retail liability owed to a banking institution;
- (c) which relate to a contract which was entered into by or on behalf of a banking institution otherwise than in the course of carrying on of an activity which relates solely to relevant financial instruments;
- (d) which relate to a claim for damages, an award of damages or a claim under an indemnity which arose in connection with the carrying on by a banking institution of an activity which relates solely to relevant financial instruments; or
- (e) which relate to subordinated debt;

and “excluded liabilities” shall be interpreted accordingly;

“financial instrument” means any instrument listed in Section C of Annex I to Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments⁽⁸⁾, read with Chapter VI of the Commission Regulation [1287/2006/EC](#)⁽⁹⁾;

“Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽¹⁰⁾;

“relevant authority” means—

- (f) in relation to Case 1 or 2 (as specified in article 2(2) and (3)), the Bank;
- (g) in relation to Case 3 (as specified in article 2(4)), the Treasury;

“relevant financial instrument” means—

- (h) a financial instrument;
- (i) a deposit;
- (j) a loan; or
- (k) an instrument which falls within article 77 of the Regulated Activities Order (disregarding the exclusions in article 77(2)(b) to (d));

“retail deposit” means a deposit in relation to which the condition in paragraph (a) or (b) is satisfied—

- (l) the depositor is an eligible claimant; or
- (m) the deposit is held in an account of a particular class or brand provided by a particular banking institution which either—
 - (i) is mainly used by eligible claimants; or
 - (ii) has been mainly marketed by the banking institution to eligible claimants;

“retail liability” means a liability which is owed to a banking institution by an eligible claimant;

“title transfer financial collateral arrangements” has the meaning given by regulation 3 of the Financial Collateral Arrangements (No 2) Regulations 2003⁽¹¹⁾.

(4) References in this Order to netting arrangements include—

- (a) arrangements which provide for netting (within the meaning given by regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999⁽¹²⁾); and
- (b) arrangements which include a close-out netting provision (within the meaning given by regulation 3 of the Financial Collateral Arrangements (No 2) Regulations 2003).

⁽⁸⁾ OJ L145 30.4.2004 p.1.

⁽⁹⁾ OJ L241 2.9.2006 p.1.

⁽¹⁰⁾ [SI 2001/544](#).

⁽¹¹⁾ [SI 2003/3226](#).

⁽¹²⁾ [SI 1999/2979](#).

Application of this Order

2.—(1) This Order applies in the following cases.

(2) Case 1 is where a partial property transfer⁽¹³⁾ has been made by the Bank in accordance with section 11(2) or 12(2) of the Act.

(3) Case 2 is where—

- (a) the Bank has made a property transfer instrument in accordance with section 11(2) or 12(2) of the Act (whether or not that instrument is a partial property transfer); and
- (b) a property transfer instrument under section 42, 43 or 44 of the Act has been made by the Bank which is a partial property transfer.

(4) Case 3 is where—

- (a) the Treasury have made a share transfer order in accordance with section 13(2) of the Act (including that section as applied by section 82 of the Act); and
- (b) a property transfer instrument has been made by the Treasury under section 45 or 46 of the Act (including those sections as applied and modified by section 83 of the Act) which by virtue of section 45(5)(b) or 46(5)(b) of the Act is to be treated as a partial property transfer.

(5) For the purposes of this Order, a property transfer instrument or order which purports to transfer all of the property, rights and liabilities of a banking institution shall be treated as having done so effectively (and so shall not be treated as a partial property transfer), notwithstanding the possibility that any of the property, rights or liabilities are foreign property and may not have been effectively transferred by the property transfer instrument or order or by virtue of steps taken under section 39 of the Act.

(13) “Partial property transfer” is defined by section 47(1) of the Act. See also section 42 (supplemental instruments), section 43 (onward transfer), section 44 (reverse property transfer), 45 (temporary public ownership: property transfer) and sections 82 and 83 (holding companies: temporary public ownership).