
STATUTORY INSTRUMENTS

2009 No. 322

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

PART 3

Remedies

Financial markets, termination rights and continuity power

10.—(1) This article applies where a partial property transfer has been made in contravention of article 7 or 9 or any other provision of this Order which relates to the exercise of the continuity powers.

(2) The partial property transfer is void in so far as it is made in contravention of those provisions of the Order.

Set-off and netting

11.—(1) This article applies where a partial property transfer has been made in contravention of—

- (a) article 3; or
- (b) article 4, to the extent that the contravention relates to set-off arrangements, netting arrangements or title transfer financial collateral arrangements,

unless the contravention relates to the exercise of the continuity powers (in which case article 10 applies).

(2) The partial property transfer does not affect the exercise of the right to set-off or net.

Contravention of other provisions of the Order

12.—(1) Subject to paragraph (2), this article applies where any person (“P”) considers that a partial property transfer has been made in contravention of any provision of this Order and that as a result the property, rights or liabilities of P have been affected.

(2) This article does not apply to the extent that article 10 or 11 applies.

(3) P may give notice to the relevant authority of the alleged contravention of this Order.

(4) The notice under paragraph (3) must—

- (a) be given within 60 days of the day on which the partial property transfer took effect;
- (b) be in writing;
- (c) specify the provision of this Order which is alleged to have been contravened and the manner in which that contravention has occurred;
- (d) identify the property, rights or liabilities to which the alleged contravention relates; and
- (e) contain or be accompanied by such information as the relevant authority may reasonably require.

(5) Subject to paragraph (8), within 60 days of receipt of a notice under paragraph (3), the relevant authority must—

- (a) if it agrees that a provision of this Order has been contravened in the manner specified in the notice given under paragraph (3), take the steps specified in paragraph (6);
- (b) if it does not agree that a provision of this Order has been contravened in the manner specified in the notice given under paragraph (3), take the steps specified in paragraph (7).

(6) The steps are to remedy the contravention by transferring property, rights or liabilities to the transferee or the transferor under the partial property transfer (whether by means of an onward property transfer instrument under section 43 of the Act, a reverse property transfer under section 44, a property transfer order under section 45, a reverse property transfer under section 46 or by other means).

(7) The steps are to give reasons to P as to why it considers that no provision of this Order has been contravened in the manner specified in the notice under paragraph (3).

(8) If the relevant authority considers that the matters raised in the notice under paragraph (3) are of such complexity that it is impracticable to take a decision under paragraph (5) within 60 days of receipt of the notice, the relevant authority may extend the period of 60 days by no more than 60 days; in such cases it must, within 60 days of receipt of the notice under paragraph (3), inform P of the extension and the duration of the extension.

(9) The property, rights or liabilities which are transferred under paragraph (6) may be the same property, rights or liabilities which were, in contravention of this Order, transferred or not transferred (as the case may be) or, if the transfer of such property, rights or liabilities is not practicable, property, rights or liabilities which, in the opinion of the relevant authority, are equivalent to those property, rights or liabilities.