

ELIZABETH II



1977 CHAPTER viii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to British Linen Bank. [22nd July 1977]

WHEREAS the Provisional Order set forth in the schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said 1936 c. 52. Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the schedule hereunto annexed is hereby confirmed. Confirmation of Order in schedule.
2. This Act may be cited as the British Linen Bank Order Confirmation Act 1977. Short title.

SCHEDULE

BRITISH LINEN BANK

Provisional Order to provide for the transfer to The British Linen Bank of the undertaking of Bank of Scotland Finance Company Limited, to make provision for increasing the capital of The British Linen Bank; and for purposes incidental thereto and consequential thereon.

Whereas—

(1) The British Linen Bank (hereinafter called “the Bank”) whose head office is in Edinburgh was originally incorporated by a Charter of Incorporation in the year one thousand seven hundred and forty-six under the name of “The British Linen Company” such name being changed by a supplementary charter in the year one thousand nine hundred and six to “The British Linen Bank”:

(2) By an Act of the Parliament of Scotland passed in the fifth year of the reign of His Majesty King William the Third dated the seventeenth day of July one thousand six hundred and ninety-five intituled “Act for Erecting a Publick Bank” the Governor and Company of the Bank of Scotland was incorporated “for the carrying on and managing of a publick bank”:

1948 c. 38.

(3) Bank of Scotland Finance Company Limited (hereinafter called “the Company”) whose registered office is situate in Edinburgh is a company with limited liability incorporated under the Companies Act 1948 which carries on a banking business:

(4) Both the Bank and the Company are wholly-owned subsidiaries of the Governor and Company of the Bank of Scotland:

1936 c. 52.
1970 c. xxxiv.

(5) Under and in accordance with a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936 which was confirmed by the Bank of Scotland Order Confirmation Act 1970, the undertaking, business and property of the Bank which then comprised an extensive banking business, was on 1st March 1971 transferred to the Governor and Company of the Bank of Scotland and the capital stock of the Bank was reduced in value to the sum of five thousand pounds:

(6) For the better development and conduct of the business carried on by the Company it is expedient that the undertaking of the Company should be transferred to the Bank:

(7) It is further expedient that the aforesaid transfer should be effected economically and without interference with the conduct of business:

(8) It is further expedient that the provisions of the Bankers' Books Evidence Act 1879 shall apply to the books of the Bank and of the Company as provided in this Order: 1879 c. 11.

(9) It is further expedient that the capital stock of the Bank should be increased to eight million pounds and that the other provisions contained in this Order should be enacted:

(10) The purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936: 1936 c. 52.

Now therefore in pursuance of the powers contained in the last-mentioned Act the Secretary of State orders as follows:—

1. This Order may be cited as the British Linen Bank Order 1977. Short title.

2.—(1) In this Order, unless the subject or context otherwise requires— Interpretation.

“ Act of 1948 ” means the Companies Act 1948; 1948 c. 38.

“ appointed day ” means a day appointed under section 3 (Appointed day) below;

“ Bank ” means The British Linen Bank;

“ Bank of Scotland ” means the Governor and Company of the Bank of Scotland;

“ Company ” means Bank of Scotland Finance Company Limited;

“ customer ” includes any person having a banking account or other dealing, transaction or arrangement in the course of business with the Company;

“ enactment ” means an enactment in this Order, in the Act confirming this Order or in any general or local Act or in any order, rule or regulation made under any Act;

“ liabilities ” includes duties and obligations of every description whether actual or contingent, present or future;

“ property ” means property of every description wheresoever situate and includes property held on trust and securities, and rights and powers of every description but does not include the common seal of the Company or any documents, other than accounting records required to be kept by the Company by the Companies Acts 1948 to 1976;

“ security ” includes all personal bonds, bills, notes, assignments of contract and retention moneys, assignments of policies of assurance, assignments of trust interests and reversions or any other rights or interests, undertakings, mandates, guarantees, liens, impledgments, and all standard securities, bonds and dispositions in security, bonds of cash credit and dispositions in security, bonds of cash credit and assignments in security, ex facie absolute dispositions and assignments, mortgages, equitable mortgages, charges, debentures, fixed securities, floating charges and any other deeds or instruments

of any kind whatsoever made in favour of the Company and constituting a right in security in favour of the Company;

“subsidiary” has the same meaning as it has for the purposes of the Act of 1948; and

“the undertaking” when used in regard to the Company means the business and all of the property vested in or belonging to or held by the Company and all the liabilities to which the Company is subject.

(2) Any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended or amended by or by virtue of any subsequent enactment whether before, on or after the appointed day.

Appointed day.

3.—(1) The Secretary of State may by order appoint a day for the purposes of this Order provided that such day shall not be before the Bank is registered under Part VIII of the Act of 1948.

(2) The power conferred by subsection (1) above shall be exercisable by statutory instrument.

Transfer of undertaking of Company to Bank.

4.—(1) On the appointed day without further act or deed there shall be hereby transferred to and vested in the Bank the undertaking of the Company, and the Bank in consideration therefor shall issue to the Bank of Scotland capital stock of the Bank to the value of £7,995,000.

(2) To enable the Bank to complete a title if deemed fit to any property transferred to it by this Order whether by notice of title or otherwise this Order shall be deemed to be, and may be used as, a general disposition, conveyance or assignation as the case may be of such property in favour of the Bank.

Application of enactments, documents, etc.

5.—(1) Subject to the proviso to section 6 (Contracts to be binding on or enforceable by Bank) below, where—

(a) any enactment other than an enactment in this Order or in the Act confirming this Order;

(b) any document whensoever made or executed; or

(c) any resolution by a company or by directors of a company;

contains any reference express or implied to the Company such reference shall on and after the appointed day and except where the context otherwise requires, be read, construed and have effect as a reference to the Bank.

(2) Without prejudice to the generality of subsection (1) above, where by any order of a court or by any trust deed, settlement, covenant or agreement or by any trust disposition and settlement or will or codicil, whether made or executed before, on or after the appointed day the Company was or is (whether alone or with any other person) appointed or confirmed in any fiduciary capacity, such order, trust deed, settlement, covenant, agreement, trust disposition and settlement or will or codicil, shall not fail by reason of anything in this Order but shall on and after the appointed day be read, construed and have effect as if for any reference therein to the Company there were substituted a reference to the Bank.

6. All agreements, awards, contracts, conveyances, deeds, leases, licences, guarantees, bonds, indemnities, instructions and other instruments or undertakings entered into by or made with or addressed to the Company whether alone or with any other person and whether as principal or as agent and which are in force on the appointed day shall on and after that day be as binding and of as full force and effect in every respect against or in favour of the Bank and may be enforced as fully and effectually as if instead of the Company the Bank had been a party thereto, bound thereby or entitled to the benefit thereof:

Contracts to be binding on or enforceable by Bank.

Provided that no director, secretary or auditor of the Company shall by this Order become a director, secretary or auditor of the Bank.

7. Without prejudice to the generality of sections 4 to 6 above, the following shall have effect in relation to the business of the Company:—

Miscellaneous provisions as to business.

- (a) any account between the Company and a customer at any office or branch of the Company shall be transferred to the Bank on the appointed day and shall become on and after that day an account between the Bank and such customer with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between the Company and the customer had continued and such account shall be deemed for all purposes to be a single continuing account and so that any instruction, order, direction, mandate, power of attorney or authority given by such customer in relation to such account and subsisting on or given after the appointed day shall, unless and until revoked or cancelled, apply and have effect in relation to such account after its transfer to the Bank as aforesaid;
- (b) any security in favour of or held by the Company or an agent for or nominee of the Company as security for the payment or discharge of the liabilities of any person shall be transferred or deemed to be transferred to the Bank on the appointed day and shall on and after that day be held by and be available to the Bank as security for the payment or discharge of such liabilities to the Bank and where the security extends to future advances to, or future liabilities of, such person, the said security shall on and after that day be held by and be available to the Bank as security for future advances to the said person by, and future liabilities of the said person to, the Bank and shall have effect in favour of the Bank as fully in all respects as if it had originally been granted in favour of the Bank;
- (c) the Bank shall, in relation to any security transferred or deemed to have been transferred to it by this Order and to the moneys or obligations thereby secured, be entitled to the same rights and priorities and subject to the same obligations and incidents as the Company would have been entitled and subjected if the same had continued to be held by the Company;

(d) the custody of any document or property held by the Company, or by an agent for or nominee of the Company, as custodian for any person shall be transferred or deemed to be transferred to the Bank on the appointed day and the rights and obligations of the Company relating to such document or property shall be transferred on that day to the Bank.

Actions not
to abate.

8.—(1) If on the appointed day any claim (including any contingent claim), action, arbitration or proceeding or any cause of action, arbitration or proceeding is pending or existing against or in favour of the Company the same shall not abate or be discontinued or in anywise prejudicially affected by reason of this Order but the same may only be continued, prosecuted and enforced by or against or in favour of the Bank as and when it might have been continued, prosecuted and enforced by or against or in favour of the Company if the Act confirming this Order had not been passed.

(2) Any judgment, decree or award obtained by or against the Company and not fully satisfied before the appointed day shall only be enforceable by or against the Bank.

(3) Nothing in this Order shall terminate or prejudicially affect the appointment of any receiver or of any receiver and manager.

Documents
to remain
evidence.

9.—(1) All books, documents and other records which if the undertaking of the Company had not been transferred to and vested in the Bank by this Order would have been evidence in respect of any matter for or against the Company shall be admissible in evidence in respect of the same matter for or against the Bank.

(2) In subsection (1) above "documents" has the same meaning as in section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

1968 c. 70.

Application of
Bankers' Books
Evidence Act
1879.

1879 c. 11.

10.—(1) For the purposes of section 4 of the Bankers' Books Evidence Act 1879, bankers' books of the Company transferred to the Bank by this Order shall be deemed to have been ordinary books of the Bank at the time of the making of any entry therein purporting to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business of the Bank.

(2) In subsection (1) above and in the said Act of 1879 in its application to the Bank, the expression "bankers' books" includes documents produced by a computer, microfilm, ledgers, day books, cash books, account books and all other books and records used in the ordinary business of the Company or of the Bank as the case may be.

Revaluation
of capital
stock of Bank.

11.—(1) The capital stock of the Bank existing before the appointed day shall be hereby on that day increased in value so that the total amount thereof shall be eight million pounds.

(2) On the appointed day section 14 of the Bank of Scotland Order 1970 shall be hereby repealed.

1970 c. xxxiv.

12.—(1) Notwithstanding anything contained in its charters or in section 394 of the Act of 1948 (which relates to the effect of registration under Part VIII of that Act) the Bank may—

Increase or reduction of capital and bye-law procedure.

(a) after the appointed day increase or (in accordance with the provisions of sections 66 and 67 of the Act of 1948) reduce its capital stock by such amount as it deems expedient;

(b) exercise the power to make, alter or annul bye-laws conferred by its charters—

(i) by special resolution, and

(ii) without the consent of the Secretary of State; and

(c) exercise the power referred to in paragraph (b) above so that any bye-laws which relate to proxies, the convening and holding of meetings and the passing of resolutions conform to the provisions relating to those matters in the Act of 1948.

(2) The powers conferred by subsection (1) (a) above shall be exercised in accordance with the bye-laws for the time being in force.

(3) In subsections (1) and (2) above “bye-laws” means bye-laws of the Bank and includes constitutions, orders and ordinances, and in subsection (1) (b) above “special resolution” means a resolution which is a special resolution within the meaning of section 141 of the Act of 1948.

13. Without prejudice to any powers exercisable apart from this section, the Bank shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its banking or other functions under and in accordance with its charters.

Powers of Bank.

14.—(1) The Company shall be hereby dissolved on the day (being a day after the appointed day) on which, at the request of the Bank of Scotland, the Registrar or other officer performing under the Act of 1948 the duty of registration of companies in Scotland strikes the Company off the register.

Dissolution of Company.

(2) Notwithstanding anything contained in section 354 of the Act of 1948 (which relates to the property of a dissolved company), on the day referred to in subsection (1) above the common seal of the Company and all documents (other than accounting records) required to be kept by the Company by the Companies Acts 1948 to 1976 shall be hereby transferred to the Bank of Scotland.

15. Subject to section 16 below, the production of a Queen’s Printer’s copy of the Act confirming this Order and of the instrument made under section 3 (Appointed day) above shall be conclusive evidence in all courts and proceedings of the transfer and vesting in accordance with this Order of the undertaking of the Company and any such copies shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 which are transferred by this Order, operate for the purposes of that Act as a duly executed and stamped stock transfer in respect of the transfer of those securities.

Evidence of transfer.

1963 c. 18.

Transfers governed otherwise than by the law of a part of Great Britain.

16. If any portion of the undertaking of the Company cannot be transferred and vested in accordance with this Order because transfers of that portion are governed otherwise than by the law of a part of Great Britain then so soon as is possible after the appointed day the Company shall take all necessary steps for the purpose of securing that the portion is transferred to and vested in the Bank.

Profits and losses transferred with the undertaking.

17. Any profits or losses of the Company or of any subsidiary thereof, in so far as they would constitute profits or losses of the Company, earned or incurred for the period from the beginning of the financial year of the Company or of any such subsidiary in which falls the appointed day, shall on and after that day be treated for all purposes as profits or losses of the Bank.

Reserves.

18.—(1) On and after the appointed day reserves shall be treated for all purposes as being of the same character as they were immediately before that day.

(2) In subsection (1) above “reserves” means the reserves (including Regional Development Grant Reserve) of the Company or of any subsidiary thereof immediately before the appointed day.

Transfers of interests in land.

1954 c. 56.

19. The transfer of an interest in land by this Order shall not—

- (a) constitute a purchase or creation of that interest for the purposes of section 30 (2) of the Landlord and Tenant Act 1954 (which restricts a landlord’s right to oppose an application for a new tenancy of business premises in certain cases); or
- (b) constitute an assignation, assignment, transfer, devolution, parting with possession or other disposition of that interest for the purposes of any provision relating to assignation, assignment, transfer, devolution, parting with possession or other disposition contained in any instrument concerning that interest; or
- (c) invalidate or discharge any contract or security; or
- (d) operate so as to merge any leasehold interest in the reversion which is expectant thereon.

No exemption from enactments concerning banking companies.
Costs of Order.

20. Nothing in this Order shall exempt the Bank from the provisions of any enactment relating to companies carrying on the business of banking.

21. The costs, charges and expenses preliminary to and of and incidental to the preparing for, obtaining and confirming of this Order or otherwise in relation thereto shall be paid by the Bank of Scotland.

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British Linen Bank Order Confirmation Act 1977

CHAPTER viii

ARRANGEMENT OF SECTIONS

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BRITISH LINEN BANK

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