



Barclays Group Reorganisation Act 2002

2002 CHAPTER iv

8 Supplementary provisions

- (1) Without prejudice to the generality of the foregoing provisions of this Act but subject to any provision of this Act to the contrary, the following provisions of this section shall have effect in relation to an appointed undertaking transferred to a transferee under this Act.
- (2) Every existing contract relating to the appointed undertaking to which a transferor of the appointed undertaking is a party shall be construed and have effect on and from the appointed day—
 - (a) as if the transferee of the appointed undertaking had been a party thereto instead of the transferor;
 - (b) as if, subject to subsection (5) below, for any reference (however worded and whether express or implied) to the transferor there were substituted as regards anything falling to be done a reference to the transferee;
 - (c) as if any reference (however worded and whether express or implied) to the directors, officers, representatives or employees or to any director, officer, representative or employee of the transferor were a reference (as the case may require)—
 - (i) to the directors, officers, representatives or employees of the transferee of the appointed undertaking; or
 - (ii) to such director, officer, representative or employee of the transferee of the appointed undertaking as Barclays may nominate for that purpose; or
 - (iii) in default of nomination, to the director, officer, representative or employee of the transferee who corresponds as nearly as may be to the first mentioned director, officer, representative or employee; and
 - (d) (in the case where the contract relates to property or liabilities which are for the time being only partly transferred to, and vested in, the transferee of the appointed undertaking by virtue of this Act) as if the contract, to the extent to which it is enforceable by and against the transferor, constituted two separate contracts—

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- (i) one of which is enforceable by and against the transferee as regards the part of the property or, as the case may be, liabilities so transferred to, and vested in, it and not as regards the other part; and
 - (ii) the other of which is enforceable by and against the transferor as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, the transferee and not as regards the other part.
- (3) Paragraphs (b) and (c) of subsection (2) above shall, on and from the relevant appointed day, apply to any enactment other than the provisions of this Act and to any provision of any existing contract to which the transferor was not a party as they apply to a contract to which subsection (2) above applies.
- (4) Paragraphs (a), (b) and (c) of subsection (2) above shall, on and from the relevant appointed day, apply to any provision of any other existing document (not being a contract or a will) as they apply to a contract to which subsection (2) above applies.
- (5) Paragraph (b) of subsection (2) above shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of the transferor of an appointed undertaking which includes the initials, the name or part of the name of that transferor but, on or after the appointed day, the transferee of the appointed undertaking may change the name or title.
- (6) An offer or invitation to treat made to or by the transferor of the appointed undertaking before the appointed day shall be construed and have effect on and after the appointed day in relation to the appointed undertaking as an offer or invitation to treat, as the case may be, made to or by the transferee of the appointed undertaking.
- (7) Any account between the transferor and a customer in relation to the appointed undertaking shall, on the appointed day, become an account between the transferee of the appointed undertaking and the customer subject to the same conditions and incidents as theretofore; and such account shall be deemed for all purposes to be a single continuing account:

Provided that nothing herein shall affect any right of the transferor or transferee of the appointed undertaking or of the customer to vary the conditions or incidents subject to which any account is kept.
- (8) For the purpose of construing and giving effect to any contract which—
 - (a) has effect or continues to have effect on, or on and after, the appointed day; and
 - (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by a transferor,the transferee of the appointed undertaking shall have the same rights under that contract as the transferor had to publish, determine, ascertain, vary or amend rates, charges, tariffs, scales of fees, terms or conditions, and any such rates, charges, tariffs, scales of fees, terms or conditions published, determined, ascertained, varied or amended by the transferee shall apply in place of those which could have been published, determined, ascertained, varied or amended by the transferor.
- (9) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by a transferor of an appointed undertaking in relation to such undertaking (whether in writing or not and whether or not in relation to an account) shall have effect on and from the appointed day as if given to or, as the case may be, by the transferee of the appointed undertaking.

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- (10) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money, in relation to an appointed undertaking, drawn on or by, or given to, or accepted or endorsed by, a transferor of that appointed undertaking, or payable at any place of business of that transferor, whether so drawn, given, accepted, endorsed or payable before, on or after the appointed day, shall have the same effect on and from that day—
- (a) as if it had been drawn on or by, or given to, or accepted or endorsed by, the transferee of the appointed undertaking; and
 - (b) if relevant, as if the place of business at which it is payable were a place of business of the transferee of the appointed undertaking.
- (11) Any document, claim or demand addressed on or before or after the appointed day to the transferor of an appointed undertaking pursuant to an existing contract which relates to the appointed undertaking shall be deemed to have been addressed to the transferee of the appointed undertaking.
- (12) The custody of any document or record, goods or other thing held by the transferor of an appointed undertaking and relating to the appointed undertaking, as bailee shall pass to the transferee of the appointed undertaking on the appointed day, and the rights and obligations of that transferor under any contract of bailment relating to any such document or record, goods or thing shall on that day become rights and obligations of that transferee.
- (13) Any security held immediately before the appointed day in relation to an appointed undertaking by the transferor, or by a nominee or agent of or trustee for that transferor, as security for the payment or discharge of any liability shall, on and from that day—
- (a) be held by the transferee of the appointed undertaking or, as the case may require, by that nominee, agent or trustee for that transferee; and
 - (b) be available to the transferee of the appointed undertaking, (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that liability of the appointed undertaking.
- (14) In relation to any security transferred to, and vested in, the transferee of the appointed undertaking by or under this Act and any liabilities thereby secured, that transferee shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which the transferor of the appointed undertaking would have been entitled and subject if it had continued to hold the security.
- (15) Without prejudice to the generality of subsection (14) above, in any case where any existing liability subsists between the transferor of an appointed undertaking and the transferee of that appointed undertaking, in respect of which that transferor or that transferee, or a nominee or agent of or trustee for that transferor or that transferee, holds security, that liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding the transfer to, and vesting in, that transferee.
- (16) Any security referred to in subsections (13) to (15) above which extends to future advances or liabilities shall, on and from the relevant appointed day, be available to the transferee of the appointed undertaking (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of future advances and future liabilities to the same extent and in the same manner in all respects as it extends immediately before that day to future advances or liabilities.

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- (17) Where by virtue of this Act any property or liability of the transferor of an appointed undertaking becomes property or a liability of the transferee of that appointed undertaking, that transferee and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that property or liability as if it had at all times been property or a liability of that transferee.
- (18) Any right of action and any remedy available in consequence thereof—
- (a) which accrues, arises or becomes enforceable or available before the relevant appointed day by or against the transferor of an appointed undertaking and which relates to the appointed undertaking; or
 - (b) which would, in the absence of a transfer pursuant to this Act and subject to the provisions relating thereto in this Act, accrue, arise or become enforceable or available by or against the transferor of an appointed undertaking, on or after the appointed day and which relates to the appointed undertaking,
- may, subject to the provisions relating to the appointed undertaking in this Act, be enforced or availed of by or against the transferee of the appointed undertaking on or after the appointed day.
- (19) Any legal proceedings, applications to any authority or other proceedings for the resolution of a dispute pending or current immediately before the appointed day by or against the transferor of the appointed undertaking and which relate to the appointed undertaking may be continued by or against the transferee of the appointed undertaking.
- (20) Any judgment, order or award obtained by or against the transferor of an appointed undertaking which relates to the appointed undertaking and which is not fully satisfied before the relevant appointed day shall, on that day, to the extent to which it is enforceable by or against that transferor, become enforceable by or against the transferee of the appointed undertaking.
- (21) On the appointed day the transferee of an appointed undertaking—
- (a) shall succeed to all the rights, liabilities and obligations of the transferor in respect of data which is comprised in the appointed undertaking and which is subject to the Data Protection Act 1998 (c. 29);
 - (b) shall become the data controller of any data which is comprised in the appointed undertaking and which is subject to the Data Protection Act 1998 in place of the transferor, and shall be deemed to have been the data controller of all such data at all material times when data was processed;
 - (c) shall be under the same duty by virtue of any law as the transferor was under to respect the confidentiality and privacy of any person and shall be bound by any specific notice given or request made by the data subject which was binding on the transferor and which required the transferor not to use data for marketing purposes.
- (22) In any consent given by a data subject in respect of such data as is mentioned in subsection (21)(a) above, any reference to the transferor (or to any subsidiary or holding company of the transferor or any subsidiary of such a holding company) shall be deemed to include a reference to the transferee and any subsidiary or holding company of the transferee and any subsidiary of such a holding company.

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(23) In subsection (22) above, “subsidiary” and “holding company” shall have the meanings set out in sections 736 and 736A of the Companies Act 1985 (c. 6).